

ORDINANCE NO. 745

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOMITA, CALIFORNIA,  
AMENDING ORDINANCE NO. 726 GRANTING A FRANCHISE TO CONSTRUCT AND USE  
AN OIL PIPELINE TO CONOCOPHILLIPS PIPE LINE COMPANY AND CONOCOPHILLIPS  
COMPANY

THE CITY COUNCIL OF THE CITY OF LOMITA, CALIFORNIA DOES HEREBY ORDAIN AS  
FOLLOWS:

SECTION 1. GRANT OF FRANCHISE.

The City of Lomita hereby grants a non-exclusive Franchise to ConocoPhillips Pipe Line Company, a wholly-owned subsidiary of ConocoPhillips Company (hereinafter referred to as "Grantee"), for the term of fifteen (15) years from and after February 1, 2009 (Effective Date), to lay and use pipelines, not to exceed twenty-four (24) inches in internal diameter, for the transportation of liquid petroleum hydrocarbons, industrial gases, water, biofuels, and products thereof, in, under, along and across the public streets, highways, alleys (hereinafter for the convenience, collectively referred to as "streets"), in the City of Lomita (hereinafter referred to as "City"), as described in Exhibit "A" and in Exhibit "B" attached hereto and made a part hereof (hereinafter referred to as the "Franchise").

The Franchise is hereby granted to Grantee, under and in accordance with the provisions of the Franchise Act of 1937 (the "Franchise Act") and the City's Municipal Code. This Franchise shall include the right, for the period and subject to the conditions hereof, to so maintain, operate, repair, renew, and change the size of the pipeline system, if any, of Grantee, as already laid and constructed in said streets.

The terms and conditions of this Franchise shall also apply to any pipe or other facilities of Grantee which are located within the right of way of any road or highway at the time such road or highway becomes a City street.

The granting of this Franchise is expressly conditioned upon Grantee's payment of (1) all franchise fees owed pursuant to Grantee's previous franchise; and (2) all franchise fees owed during any holdover period between the expiration of Grantee's previous franchise and the effective date of this Franchise (which shall be calculated pursuant to Section 7 of this Franchise).

SECTION 2. APPURTENANCES.

The Grantee shall have the right, subject to the prior approval of the City Engineer, to construct and maintain such traps, manholes, conduits, valves, appliances, attachments, and appurtenances (hereinafter for convenience collectively referred to as "appurtenances"), as may be necessary or convenient for the proper maintenance and operation of the pipelines under Franchise. The appurtenances shall be kept flush with the surface of the streets and so located as to conform to any order of the City Engineer in regard thereto and not to interfere with use of the street for travel. The Grantee shall have the right, subject to such ordinances, rules, or regulations as are now or may hereafter be in force, to make all necessary excavations in said highways for the construction and repair of said pipelines and appurtenances subject to the prior approval of the City Engineer. Such approval may be conditioned by the City Engineer, including, without limitation, the issuance to Grantee of encroachment permits.

### SECTION 3. LOCATION OF PIPELINES.

So far as is practicable, any pipelines constructed under this Franchise shall be located along the edge or shoulder of the streets or in the parking areas adjacent thereto so as not to unreasonably disturb the flow of traffic, and where possible shall be constructed in the unpaved portion of the street. If the pipelines shall be constructed across or along the paved portion of a street, the repair of the street, after the pipelines have been constructed, shall be made by the Grantee within five (5) days of the completion of the construction of such pipeline, at the expense of the Grantee in accordance with the ordinances and rules of the City.

### SECTION 4. CONSTRUCTION OF PIPELINES.

- A. Terms of Construction: The pipelines and appurtenances laid, constructed or maintained under the provisions of this Franchise shall be installed, maintained, and inspected by the Grantee in a satisfactory, safe, and workmanlike manner, of good material, and in conformity with all ordinances, rules, or regulations now or hereafter adopted or prescribed by the City, State, or Federal authorities.
- B. Restoration of Streets: The work of laying, constructing, maintaining, operating, renewing, repairing, changing, and moving any of the pipeline system contemplated by this Franchise and all other work in exercise of this Franchise shall be conducted with the least possible hindrance or interference to the use of City roads by the public or by the City of Lomita, and Grantee shall provide all necessary warning, safety and traffic control devices as are or may be required by City, County, State or Federal regulations. All excavations shall be back filled and adequately compacted. The surface of City roads shall be placed in as good and serviceable condition as existed at the beginning of this work and to the satisfaction of the City Engineer.

### SECTION 5. COMMENCEMENT OF CONSTRUCTION.

The Grantee shall not commence the construction of the pipelines under this Franchise or add to such existing pipeline system, if any there be, until it first shall have obtained a permit therefore from the City Engineer. In addition to any requirements of the Municipal Code, the application of the Grantee shall show the following facts: the length, approximate depth, and proposed location of the pipeline proposed to be laid or constructed, the size and description of the pipe intended to be used, and such other facts as the City Engineer may require. The Grantee shall pay any and all inspection fees of the City. Upon the completion of the construction of any pipelines constructed pursuant to this Franchise, the Grantee shall submit a written statement to the City of Lomita showing in detail the permit or permits issued and the total length of pipeline the construction of which was authorized under such permit or permits, and the total length of pipeline actually laid, and the Grantee shall accompany said report with payment to City for the pipelines which have been actually constructed under said Franchise at the rate of Two Hundred Dollars (\$200.00) per mile. Grantee shall prorate for pipeline construction of less than one (1) mile.

**SECTION 6. MAPS AND DATE TO BE FURNISHED.**

Within ninety (90) days following the date in which any pipelines or additional pipelines have been laid or constructed under this Franchise, the Grantee shall file a map in such form as may be required by the City Engineer showing the accurate location and size of all its facilities then in place, and shall, upon installation of any additional facilities or upon removal, change or abandonment of all or any portion thereof, file a revised map or maps showing the location and size of all such additional and/or abandoned facilities as of that date. If cathodic protection is to be used for facilities installed or maintained pursuant to this Franchise, a description of all the protective devices shall be furnished to the City Engineer which shall show the location and types of anodes, including a description of methods to be used as protection against corrosion and electrolytic leakage.

**SECTION 7. COMPENSATION TO THE CITY.**

A. Amount of Franchise Fee: As consideration for the Franchise hereby granted, the Grantee shall pay an annual Franchise Fee to the City. The Franchise Fee shall be paid annually to the City in lawful money of the United States within sixty (60) days after the end of each calendar year. The base rate of the Franchise shall be computed as follows

1. For the public utility pipelines as shown in Exhibit A the fee is in accordance with California Public Utility Code Section 6231.5, which the parties agree is:

The length of the pipe expressed in feet located within the franchised area, rounded to the nearest foot shall be multiplied by the applicable base rate, as adjusted pursuant to subdivision 3 below, in accordance with the following schedule:

Pipe size (internal diameter in inches)	Base rate per lineal foot
0-4 .....	.... \$0.132
6 .....	.... 0.198
8 .....	.... 0.264
10 .....	.... 0.330
12 .....	.... 0.396
14 .....	.... 0.462
16 .....	.... 0.528
18 .....	.... 0.646
20 .....	... 0.660
22 .....	... 0.720
24 .....	... 0.792
26 .....	... 0.858
28 .....	... 0.924
30 .....	... 0.990

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

2. For the non-public utility pipelines as shown in Exhibit B the fee is as follows:

The length of the pipe expressed in feet located within the franchised area, rounded to the nearest foot shall be multiplied by the applicable base rate, as adjusted pursuant to subdivision 3 below, in accordance with the following schedule:

Pipe size (internal diameter in inches)	Base rate per lineal foot
0-4 .....	... \$0.232
6 .....	... 0.352
8 .....	... 0.471
10 .....	... 0.584
12 .....	... 0.703
14 .....	... 0.823
16 .....	... 0.935
18 .....	... 1.055
20 .....	... 1.174
22 .....	...1.287
24 .....	...1.406
26 .....	...1.526
28 .....	...1.638
30 .....	... 1.758

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

3. Computation of Payments: Such payments shall be computed from the Effective Date of this Franchise, to and including the date of either actual removal of the facilities or the effective date of a properly approved abandonment "in place" authorized by the City, and until the Grantee shall have fully complied with all the provisions of this Franchise and of all other applicable provisions of law or ordinance relative to such abandonments. All such payments shall be made payable to the City, and shall be supported by the Grantee's verified statement concerning the computation thereof. In the event of installation or abandonment of facilities with the approval of the City as elsewhere in this Franchise provided, or in the event of removal of such facilities by the Grantee, the payments otherwise due to the City or occupancy of the streets by such facilities shall be prorated for the calendar year in which such installation, removal, or abandonment occurs as of the end of the calendar month in which installed, removed, or abandoned.

Provided, however, that the amount of each annual payment shall be computed and revised each calendar year as follows:

- a. The base applicable base rate shall be multiplied by the Consumer Price Index for the area, as published by the United States Department of Labor, Office of Information for the month of September immediately preceding the month in which payment is due and payable, and divided by the Consumer Price Index for June 30, 1989, which is declared to be 100.0. Under no circumstances shall the multiplying factor be less than one.

- b. If the United States Department of Labor, Office of Information discontinues the preparation or publication of a Consumer Price Index for the area, and if no translation table prepared by the Department of Labor is available so as to make those statistics which are then available applicable to the index of June 30, 1989, the City shall prescribe a rate of payment which shall, in its judgment, vary from the rates specified in this section in approximate proportion as commodity consumer prices then current vary from commodity consumer prices current in December 1988. On this point, the determination by the City shall be final and conclusive.
  - c. If the Office of Information shall revise the said Index, the parties hereto shall accept the method of revision or conversion recommended by the Office.
4. Right of Inspection: The City shall have the right to inspect Grantee's pipeline records relating to its annual report and to audit and recompute any and all amounts payable under this Franchise. Costs of audit shall be borne by Grantee when audits result in an increase of more than five percent of Grantee's annual payments due the City. Acceptance of any payment shall not be construed as a release, waiver, acquiescence, or accord and satisfaction of any claim the City may have for further or additional sums payable under this Agreement or for the performance of any other obligation hereunder.
  5. Granting Fee: In consideration for the granting of this Franchise, and to reimburse the City for its administrative and publication expenses in preparing and approving the Franchise documents, Grantee shall pay the City Fifteen Thousand Dollars (\$15,000.00) within thirty (30) days of the date the City Council approves this Franchise.

#### SECTION 8. EMERGENCY PREPAREDNESS.

- A. Equipment and Crews: At all times during the terms of this Franchise, the Grantee shall maintain on a twenty-four (24) hour-a-day basis a fully-operational computer-aided system, such as Supervisory Control and Data Acquisition (SCADA), or a similar system designed for the purpose of controlling and monitoring rates of flow, pressures and fluid characteristics, or provide adequate emergency equipment and a properly trained emergency crew or representatives within a radius of fifteen (15) miles from any facilities installed or maintained pursuant hereto for the purpose of shutting off the pressure and the flow of contents of such facilities in the event of an emergency resulting from any earthquake, act of war, civil disturbance, flood, or other cause.
- B. Plans: Within ninety (90) days of the effective date of this Ordinance, Grantee shall submit an emergency preparedness plan. Grantee shall obtain approval from the City Engineer of the plan, and update it to the satisfaction of the City Engineer.

#### SECTION 9. REPAIRS.

Grantee shall pay to City on demand the cost of all repairs to City property made necessary by any of the operations of Grantee under the Franchise, provided however that Grantee may make repairs to streets, sidewalks, curbs, and gutters itself at its own cost in accordance with City specifications, if the same can be done without undue inconvenience to the public use of the streets.

SECTION 10. REARRANGEMENT OF FACILITIES.

A. Expense of Grantee

1. If any of the Grantee's facilities, in the discretion of the City, shall endanger the public in the use of the public streets or interfere with or obstruct the use of any street by the public or for public purpose, the City shall have the right to require the Grantee, and the Grantee shall move, alter, or relocate the same (hereinafter called "rearrangement") to avoid such danger interference or obstruction, in conformity with the written notice of the City Engineer, at the Grantee's sole expense.
2. Whenever, during the existence of this Franchise, the City, its Redevelopment Agency, any water, electric, gas, or other utility system now or hereafter owned or operated by the City, or any community facilities or assessment district, or similar agency established by the City, shall change the grade, width, alignment, or location of any street, way, alley, or place or improve any said street in any manner, including but not limited to the laying of any sewer, storm drain, conduits, gas, water, or other pipes, pedestrian tunnels, subway, viaduct or other work of the City (the right to do all of which is specifically reserved to the City without any admission on its part that it would not otherwise have such rights), the Grantee shall, at its own cost and expense, do any and all things to effect such change in position, or location, in conformity with the written approval of the City Engineer, including without limitation the acceptance of encroachment permits, and the removal or relocation of any facilities installed, if and when made necessary by the determination of the City Engineer.

B. Expense of Others

1. The City shall also have the right to require the Grantee to rearrange any part of the Grantee's facilities for the accommodation of any private person, firm, or corporation. When such rearrangement is done for the accommodation of any private person, firm or corporation, the cost of such rearrangement shall be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, shall deposit with the Grantee funds and shall be required to pay the costs of such rearrangement.
2. Any rearrangement under this Section B shall be accomplished in conformity with the written notice of the City Engineer.

C. Rearrangement of the Facilities of Others. Nothing in this Franchise contained shall be construed to require the City to move, alter, or relocate any of its facilities upon said streets, at its own expense, for the convenience, accommodation, or necessity of any other public utility, person, firm, or corporation now or hereafter owning a public utility system of any type or nature, to move, alter, or relocate any part of its system upon said streets for the convenience, accommodation, or necessity of the Grantee.

D. Notice. The Grantee shall be given not less than thirty (30) days written notice of any rearrangement of facilities that the Grantee is required to make herein. Such notice shall specify in reasonable detail the work to be done by the Grantee and shall specify a reasonable time for such work to be accomplished, including time allowances for Grantee to secure all requisite

governmental permits and approvals covering the work to be accomplished. In the event that the City shall change the provisions of any such notice given to the Grantee, the Grantee shall be given an additional period not less than thirty (30) days to accomplish such work.

#### SECTION 11. REMOVAL OR ABANDONMENT OF FACILITIES.

At the time of expiration, revocation or termination of this Franchise or the permanent discontinuance of the use of its facilities, or any portion thereof, the Grantee shall, within thirty (30) days thereafter, make a written application to the City Engineer to either: (1) abandon all, or a portion, of such facilities in place, or (2) remove all, or a portion, of such facilities as the City Engineer, in his discretion, shall consider to be appropriate. Such application shall describe the facilities desired to be abandoned by reference to the map or maps required by Article 6 of this Agreement and shall also describe with reasonable accuracy the relative physical condition of such facilities. Thereupon, the City Engineer shall determine whether any abandonment or removal which is thereby proposed maybe effected without detriment to the public interest or under what conditions such proposed abandonment or removal may be safely effected and shall then notify the Grantee, according to such requirements as shall be specified in the City Engineer's order, and within ninety (90) days thereafter, to either:

- (a) Remove all or a portion of such facilities, or
- (b) Abandon in place all or a portion of such facilities.

If any facilities to be abandoned in place subject to prescribed conditions shall not be abandoned in accordance with all such conditions, then the City Engineer may make additional appropriate orders, including, if he or she deems desirable, an order that the Grantee shall remove all such facilities in accordance with applicable requirements.

A request of the Grantee to abandon in place any facilities shall be deemed an offer of transfer of such facilities to the City and by resolution authorizing Grantee to abandon any facility in place, the City shall succeed to all right, title, and interest of Grantee in said facilities.

#### SECTION 12. COMPLETION OF WORK.

In the event that the Grantee fails to commence any work or act and diligently proceed therewith or to complete any such act or work required of the Grantee by the terms of this Franchise within the time limits required hereby, the City may cause such act or work to be completed by the City or, at the election of the City, by a private contractor. The Grantee agrees to pay the City, within ten (10) days after delivery of an itemized bill, the cost of performing such act or work plus an amount equal to ten percent (10%) thereof for overhead. If the Grantee is dissatisfied with any decision made by the City Engineer hereunder or the determination of the cost of any work performed by the City pursuant to this Agreement, it may petition the City Council to review the same within ten (10) days after such decision or determination. The decision of the City Council shall be final and conclusive.

SECTION 13. RECOVERY OF COSTS OF REPAIRS AND UNPAID FEES.

If the Grantee has not paid the City for such fees and expenses incurred by or payable to the City as hereinabove set forth, the City may institute the following collection procedures:

- A. The City Engineer shall keep an itemized account of the expenses incurred by the City pursuant hereto, or the fees unpaid by the Grantee. Sixty (60) days after the presentation of the bill to the Grantee therefore, the City Engineer shall prepare and file with the City Clerk a report specifying the work done by the City, or the unpaid fees, the itemized and total cost of the work, a description of the work performed, and the name and address of the Grantee entitled to notice pursuant to this Agreement.
- B. Upon receipt of said report, the City Clerk shall present it to the City Council for consideration. The City Council shall fix a time, date, and place for hearing said report, and any protest or objections thereto. The City Clerk shall cause notice of said hearing to be posted once in a newspaper of general circulation in the City, and served by certified mail, postage prepaid, addressed to the Grantee as set forth herein. Such notice shall be given at least ten (10) days prior to the date set for hearing and shall specify the day, hour, and place when the Council will hear and pass upon the City Engineer's report, together with any objections or protests which may be filed as hereinafter provided.
- C. The Grantee may file written protests or objections with the City Clerk at any time prior to the time set for the hearing on the report of the City Engineer. Any such protest or objection must contain a description of the work or unpaid fee in which the Grantee is interested, the grounds of such protest or objection, and the date it was received by the City Clerk. The City Clerk shall present such protest or objection to the City Council at the time set for the hearing, and no other protest or objection shall be considered.
- D. Upon the day and hour fixed for the hearing, the City Council shall hear and pass upon the report of the City Engineer together with any such objections or protests. The Council may make such revision, correction, or modification in the report or charge as it may deem just; and when the Council is satisfied with the correctness of the charge, the report as submitted, or as revised, corrected or modified, together with the charge, shall be confirmed or rejected. The decision of the City Council on the report and the charge, and on all protests or objections, shall be final and conclusive.
- E. The City Council may thereupon order that such charge shall be made a personal obligation of the Grantee or assess such charge against the property of the Grantee.
  1. If the City Council orders that the charge shall be personal obligation of the Grantee, it shall direct the City Attorney to collect the same on behalf of the City by use of all appropriate legal remedies.
  2. If the City Council orders that the charge shall be assessed against the property of the Grantee, it shall confirm the assessment, cause the same to be recorded on the assessment roll, and thereafter, said assessment shall constitute a special assessment against and a lien upon any property held in the State of California by the Grantee.

- F. The validity of any assessment made under the provisions of this Franchise shall not be contested in any action or proceeding unless the same is commenced within sixty (60) days after the assessment is placed upon the assessment roll as provided herein. Any appeal from a final judgment in such action or proceeding must be perfected within sixty (60) days after the entry of such judgment.
- G. The City Council in its discretion, may determine that assessments in amounts of \$500.00 or more shall be payable in not more than five (5) equal annual installments. The Council's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest, and the rate thereof, shall be adopted by a resolution prior to the confirmation of the assessment.
- H. Immediately upon its being placed on the assessment roll, the assessment shall be deemed to be complete, the several amounts assessed shall be payable, and the assessments shall be liens against the property of the Grantee in the State of California. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property, and shall be paramount to all other liens except for state, county, and municipal taxes with which it shall be upon a Parity. The lien shall continue until the assessment and all interest due and payable thereon are paid. All such assessments remaining unpaid after thirty (30) days from the date of recording on the assessment roll shall become delinquent and shall bear interest at the then current levied amount in judicial judgments from and after said date.
- I. After confirmation of the report, certified copies of the assessment shall be filed with the County Auditor on or before August 10<sup>th</sup>. The descriptions of the parcels reported shall be those used for the same parcels on the County Assessor's map books for the current year.
- J. The amount of the assessment shall be collected at the same time and in the same manner as ordinary municipal taxes are collected; and shall be subject to the same penalties and procedure and sale in case of delinquency as provided for ordinary municipal taxes. All laws applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to such assessment.
- K. If the City Council has determined that the assessment shall be paid in installments, each installment and any interest thereon shall be collected in the same manner as ordinary municipal taxes in successive years. If any installment is delinquent, the amount thereof is subject to the same penalties and procedure for sale as provided for ordinary municipal taxes.
- L. All money recovered by payment of the charge or assessment or from the sale of the property at foreclosure sale shall be paid to the City Treasurer.

#### SECTION 14. BOND.

Grantee shall, within thirty (30) days of the Effective Date of this Franchise, file with the City Clerk, and yearly thereafter, maintain in full force and effect, a bond running to the City in the penal sum of One-Hundred Thousand Dollars (\$100,000.00), with a surety to be approved by the City Finance Director, conditioned that Grantee shall, will and truly observe, fulfill, and perform each and every term and condition of this Franchise, and in case of a breach of condition of said Franchise, at the

discretion of the City Council, the whole amount of the penal sum therein shall be paid to the City in addition to any damages recoverable by the City and shall be recoverable from the principal and sureties of the bond. If said bond is not so filed, the award of this Franchise will be set aside and any money paid therefore will be forfeited.

Whenever a bond is taken under this Section for any breach of a term or condition of this Franchise, the Grantee must immediately file another bond of like amount and character, and if the Grantee fails to do so within the time set by the City Council, the Council may, by resolution, declare said Franchise automatically forfeited.

Nothing herein shall insulate Grantee from liability in excess of the amount of said bond or shall be construed as a waiver by the City of any remedy at law against the Grantee for any breach of the terms and conditions of this Franchise, or for any damage, loss or injuries suffered by the City in case of any damage, loss or injury suffered by any person, firm, or corporation by reason of any work done or any activity conducted by the Grantee in the exercise of this Franchise.

#### SECTION 15. INSURANCE.

At its own expense, Grantee shall maintain during the life of the franchise a policy or policies of commercial general liability, including pollution legal liability coverage and workers' compensation insurance from companies authorized to transact business in the State of California by the Insurance Commissioner of California and with an A.M. Best's Rating of "A" or better.

A. The commercial general liability insurance policy shall:

1. Be issued for Grantee and name the City and its officers, agents and employees as additional insureds.
2. Defend and indemnify the insureds against liability for which the Grantee is legally obligated to pay by reason of liability imposed upon Grantee by law or liability assumed by Grantee under the franchise for personal injury, bodily injury, wrongful death and property damage arising from the activities conducted pursuant to the franchise by providing coverage therefore, including but not limited to, coverage for the negligent acts or omissions of Grantee and its agents, servants and employees, committed in the conduct of franchise operations.
3. Provide coverage limits in the amount of \$10,000,000.00, per occurrence, and if a policy aggregate applies, such policy aggregate shall be at least twice the per occurrence limit.
4. Be non-cancellable without thirty (30) days prior written notice directed to the City Clerk.

B. The Workers' Compensation insurance requirement may be satisfied by self-insurance if the Grantee is a qualified self-insured as approved by the State of California Department of Industrial Relations. Grantee shall provide City a copy of the certificate to self insure as issued by the California Department of Industrial Relations.

C. Grantee shall file with the City Clerk certificates of insurance providing the following information:

1. The policy number.
  2. The policy effective date and the expiration date.
  3. The named insured and the certificate holder/additional insured.
  4. Type of coverage provided by each policy of insurance.
  5. The limits of coverage for each policy of insurance.
  6. If applicable, all endorsements required by this Franchise or that form a part of the policy.
- D. The Grantee shall not commence operations until Grantee has complied with the aforementioned provisions of this Section. The Grantee shall cease operations if the Grantee fails to maintain said policies in full force and effect. In the event any policy is cancelled, the Grantee shall provide the City, at least five (5) business days prior to the effective date of the cancellation, but not later than one (1) day prior to the effective date of the cancellation, a certificate of insurance or confirmation of coverage binder showing that the Grantee has replacement insurance in full force effective on the effective date of the cancellation.
- E. The Grantee may satisfy any or all of the insurance requirements under this Section through self-insurance, provided the Grantee is a qualified self-insurer as approved by the State of California or the Grantee submits evidence, satisfactory to the City's Risk Manager, of sufficient assets to support a self-insurance program. Grantee retains the right to determine what levels of deductibles or self-insured retentions to maintain provided, however, that such deductibles or self-insured retentions are declared to and approved by City's Risk Manager prior to the commencement of this Franchise.

#### SECTION 16. INDEMNIFICATION BY GRANTEE.

The Grantee shall indemnify, defend with counsel approved by City, protect and hold harmless City, its officers, employees, agents, assigns, and any successor or successors to City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), penalties, attorneys' fees, consultants' and experts' fees, and costs arising directly or indirectly as a result of the Grantee's exercise of the Franchise or operation of the pipeline system, regardless whether any act or omission complained of is authorized, allowed, or prohibited by the Franchise. This indemnity includes, but is not limited to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other, plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes including petroleum and its fractions as defined in the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. § 9601, et seq.) the Resource Conservation and Recovery Act ["RCRA"; 42 U.S.C. § 6901 et seq. ]and California Health & Safety Code § 25280 et seq. at any place where Grantee maintains a pipeline for the transportation of substances and liquids pursuant to this Franchise. The foregoing indemnity is intended to (1) supplement and not replace any other indemnity from any source, and (2) operate as an agreement pursuant to Section 107(e) of CERCLA and California Health & Safety Code Section 25364, to assure, protect, hold harmless and indemnify City from liability. This indemnity shall not include those claims, actual damages (including, but not limited to, special and consequential damages), penalties, attorneys' fees, consultant's and expert's fees and costs arising directly or indirectly from the active negligence or willful misconduct of the City, its officers, employees, agents, assigns, or successors-in-interest.

SECTION 17. ASSIGNMENT.

- A. Grantee shall not transfer, sell, hypothecate, sublet, or assign the Franchise, nor shall any of the rights or privileges therein be hypothecated, leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, without the prior consent of the City Council expressed by resolution. Nothing in this Section shall prohibit the Grantee from using its pipelines for the purpose of transporting for other persons oil, petroleum, gas, gasoline, or other hydrocarbon substances or water, but in such event the Grantee shall be responsible to the City for the full performance and observance of the terms and conditions of this Franchise.
- B. Any sale, lease, assignment or transfer of this Franchise or the rights or privileges granted hereby, or any of them, without first obtaining the prior written consent of the City Council, expressed by resolution, whether by operation of law or otherwise, shall be null and void.
- C. The City shall not unreasonably withhold its consent to a Franchise transfer. For the purpose of determining whether it shall consent to such transfer, City may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist City in any such inquiry. In seeking City's consent to any change of ownership or control, Grantee shall have the responsibility of insuring that transferee completes an application in form and substance reasonably satisfactory to City. An application shall be submitted to City not less than ninety (90) days prior to the date of transfer. The Grantee shall be required to establish that it is in material compliance with its Franchise. The transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the pipeline and comply with all Franchise requirements for the remainder of the term of the Franchise. If the City finds that the legal, financial, character, technical, and other public interest qualities of the applicant are satisfactory, and that the proposed transferee has the capability to operate and maintain the system and comply with all Franchise requirements for the then remaining term thereof, the City shall consent to the transfer and assignment of the rights and obligations of such Franchise. The City may condition the transfer to insure the transferee is in material compliance, and remains in material compliance with the Franchise.
- D. The provision of this section shall also apply to any change in control of Grantee. "Change of control" shall mean any sale, transfer, merger, or acquisition of more than ten percent (10%) of Grantee's voting stock, or of Grantee's parent corporation(s), by a person or group of persons acting in concert, who own less than 50% of the voting stock.
- E. Notwithstanding any other provision of this Section, Grantee shall have the right to assign and transfer the Franchise in its entirety, without consent of City, to a corporation acquiring or owning a portion of the assets of Grantee through consolidation, merger, or reorganization, or to a subsidiary of Grantee, or to any person, firm, or corporation having assets of a value in excess of Five Million Dollars (\$5,000,000.00). The provisions of this Franchise do not require any such consent and no consent shall be required for any transaction by Grantee by way of mortgage or hypothecation covering all or any part of Grantee's property, which mortgage or hypothecation is for the purpose of securing an indebtedness of Grantee or for the purpose of renewing, extending, refunding, retiring, paying or cancelling, in whole or in part, any such indebtedness.

### SECTION 18. RECEIVERSHIP AND FORECLOSURE.

- A. Subject to applicable provisions of the Bankruptcy Code, the Franchise shall, at the option of the City, cease and terminate one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:
1. Such receiver or trustee shall have, within one hundred twenty (120) days after his election or appointment, fully complied with all terms of the Franchise and remedied all breaches of the Franchise or provided a plan for the remedy of such breaches which is satisfactory to the City; and
  2. Such receiver or trustee shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every term, provision, and limitation of the Franchise.
- B. Upon the foreclosure or other judicial sale of all or a substantial part of a pipeline system, the Grantee shall notify the City Clerk of such fact, and such notification shall be treated as a notification that a change in ownership of the Grantee has taken place and the provisions of this Chapter governing such changes shall apply.

### SECTION 19. WAIVER OF BREACH.

No waiver of the breach of any of the covenants, agreements, restrictions, or conditions of this Franchise by the City shall be construed to be a waiver of any such succeeding breach of the same or other covenants, agreements, restrictions, or conditions of this Franchise. No delay or omission of the City in exercising the right, power, or remedy herein provided in the event of default shall be construed as a waiver thereof, or acquiescence therein, nor shall the acceptance of any payments made in a manner or at a time other than is herein provided be construed as a waiver of or variation in any of the terms of this Franchise.

### SECTION 20. DEFAULT.

- A. In any event that the Grantee shall default in the performance of any of the terms, covenants, and conditions herein, the City Manager may give written notice to the Grantee of such default. In the event that the Grantee does not commence the work necessary to cure such default within five (5) days after such notice is sent or prosecute such work diligently to completion, the City Council may declare this Franchise forfeited by giving written notice thereof to the Grantee, whereupon this Franchise shall be void and the rights of the Grantee hereunder shall terminate and the Grantee shall execute an instrument of surrender and deliver the same to the City.

If the City Council declares this Franchise forfeited, it may thereupon and thereafter exclude the Grantee from further occupancy or use of all City roads authorized under this Franchise. A forfeiture of said Franchise shall not of itself operate to release the bond filed for said Franchise.

Upon declaring a Franchise forfeited, the City Council may elect to take and accept the bond as liquidated damages therefore and pursue any other legal remedy for any damage, loss, or injury suffered by the City as a result of such breach. After forfeiture, the bond shall remain in full force and effect for a period of one (1) year unless exonerated by the City Council. No bond shall be exonerated unless a release is obtained from the City Engineer and is filed with the City Clerk. The release shall state whether all excavations have been back filled, all obstructions removed, and whether the substratum or surface of City roads occupied or used have been placed in good and serviceable condition. Release shall not constitute a waiver of any right or remedy which the City of Lomita may have against the Grantee or any person, firm, or corporation for any damage, loss, or injury suffered by the City as a result of any work or activity performed by the Grantee in the exercise of this Franchise.

- B. Cumulative Remedies. No provision herein made for the purpose of securing the enforcement of the terms and conditions of this Franchise shall be deemed an exclusive remedy or to afford the exclusive procedure, for the enforcement of said terms and conditions, but the remedy and procedure herein provided, in addition to those provided by law, shall be deemed to be cumulative.

#### SECTION 21. SCOPE OF RESERVATION.

Nothing herein contained shall ever be construed so as to exempt the Grantee from compliance with all ordinances of the City now in effect or which may be hereafter adopted which are not inconsistent with the terms of this Franchise. The enumeration herein of specific rights reserved shall not be construed as exclusive, or as limiting the general reservation herein made or as limiting such rights as the City may now or hereafter have in law.

#### SECTION 22. EMINENT DOMAIN.

The franchise granted hereunder 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; 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 23. AMENDMENT OF FRANCHISE ACT.

In the event the Franchise Act of 1937 ("Franchise Act") is amended by the Legislature or interpreted by a final decision of the Supreme Court of the State of California in a manner that materially affects or materially changes the rights or obligations of the parties, City and Grantee shall meet to negotiate changes to this franchise which may be appropriate in view of such change in law. The parties agree to meet and to negotiate in good faith in a commercially reasonable manner.

#### SECTION 24. NOTICE.

Any notice required to be given under the terms of this Franchise, the manner of service of which is not specifically provided for, may be served personally or by United States First Class Mail as follows:

- A. Upon the City, by addressing a written notice to the City Clerk of the City of Lomita, 24300 Narbonne Avenue, Lomita, California 90717;
- B. Upon the Grantee, by addressing a written notice to ConocoPhillips Pipe Line Company, 3900 Kilroy Airport Way, Suite 210, Long Beach, California 90806;
- C. For such other address as may from time to time be furnished in writing by one party to the other and depositing said notice in the United States Mail, first class, postage prepaid.

When service of any such notice is made by mail, the time of such notice shall begin upon deposit of same in the United States Mail, first class, postage prepaid.

#### SECTION 25. SUCCESSORS.

The terms herein shall inure to the benefit of and shall bind, as the case may be, the successors and assigns of the parties hereto, subject, however, to the provisions of Section 17.

#### SECTION 26. INTERPRETATION.

This Franchise is granted upon each and every condition herein contained, and shall be strictly construed against Grantee. Nothing shall pass by the Franchise granted hereby to Grantee unless it be granted in plain and unambiguous terms. Each of said conditions is a material and essential condition to the granting of the Franchise.

#### SECTION 27. FORCE MAJEURE.

The time within which Grantee is obligated hereunder to construct, erect, maintain, operate, repair, renew, change the size of, and remove pipelines or other improvements shall be extended for a period of time equal in duration to, and performance in the meantime shall be excused on account of and for and during the period of any delay caused by strikes, threats of strikes, lockouts, war, threats of war, insurrection, invasion, acts of God, calamities, violent action of the elements, fire, impossibility of obtaining materials, or other things beyond the reasonable control of Grantee.

#### SECTION 28. ATTORNEYS' FEES.

In the event of legal action between the City and Grantee (or Grantee's bonding companies or insurance carriers) to compel performance of or to recover for breach of any covenant, agreement, or condition contained in this Franchise, or for damages, each party shall pay its own attorneys' fees and costs.

# EXHIBIT A

## CONOCOPHILIPS UTILITY FACILITIES

Pipeline Size	Name	Length (Feet)	Description	Product Type	Plat Map	Franchise Number	D4A Number	Status
10"	"A" Line	289	Walnut Street from Torrance City Boundary south to Nordman Street	Oil	CC0024	361	D4A159	Idle
10"	"A" Line	1407	Walnut Street from Torrance City Boundary South to 247th Street East to Los Angeles County	Oil	CC0025	361	D4A159	Idle

**EXHIBIT B**  
**CONOCOPHILIPS PROPRIETARY FACILITIES**

Pipeline Size	Name	Length (Feet)	Description	Product Type	Plat Map	Franchise Number	D4A Number	Status
6"		175	Lomita Blvd. from east Boundary Westerly 175 feet	Gasoline	PP0020	361	D4A159	Idle
8"	"F" Line	2142	Lomita Blvd. from east Boundary to Walnut Street then North to 246th Street	Gasoline	PP0020	361	D4A159	Idle
10"	No. 1 TGL	4280	Lomita Blvd. from east Boundary to Walnut Street then North to 246th Street	Gasoline	PP0020	361	D4A159	Active
12"	No. 2 TGL	4290	Lomita Blvd. from east Boundary to Walnut Street then North to 246th Street	Gasoline	PP0020	361	D4A159	Active
6"		1407	Walnt Street from Torrance City Boundary South to 247th Street East to Los Angeles County	Gasoline	PP0020	361	D4A159	Idle
6"		265	Walnt Street from Torrance City Boundary South to Nordman Street	Gasoline	PP0021	362	D4A160	Idle
8"	"F" Line	289	Walnt Street from Torrance City Boundary South to Nordman Street	Gasoline	PP0022	363	D4A161	Idle

SECTION 29. PUBLICATION EXPENSES.

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; said payment to be made within thirty (30) days after the City shall have furnished said Grantee with a written statement of such expenses.

SECTION 30. ACCEPTANCE.

The Franchise granted hereby shall not become effective until written acceptance thereof shall have been filed by the Grantee with the City Clerk of the City within thirty (30) days of the effective date of this Ordinance.

SECTION 31 AMENDMENT.

Ordinance No. 726 of the City Council of the City of Lomita is hereby amended. By its acceptance under Section 30 of this Ordinance, Grantee consents to the amendment of Ordinance No. 726 and waives any rights or privileges there under.

SECTION 32 SEVERABILITY.

The City Council hereby declares that the provisions of this Ordinance are severable and if for any reason a court of competent jurisdiction shall hold any sentence, paragraph, or Section of this Ordinance to be invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

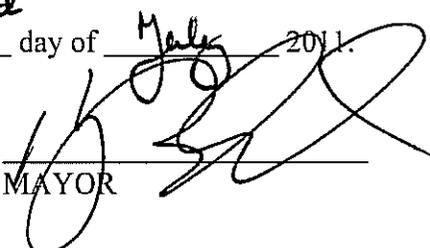
SECTION 33. CERTIFICATION.

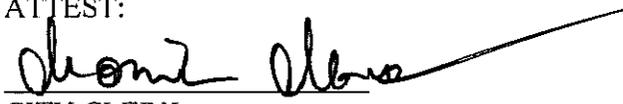
The City Clerk shall certify to the adoption of this ordinance and shall cause the same to be posted as required by law.

SECTION 34. EFFECTIVE DATE.

This ordinance shall take effect thirty (30) days after the date of its passage; and prior to fifteen (15) days after its passage, the City Clerk shall cause a copy of this ordinance to be published in accordance with the provisions of the law.

PASSED, APPROVED AND ADOPTED this 5<sup>th</sup> day of July 2011.

  
MAYOR

ATTEST:  
  
Asst. CITY CLERK