

ORDINANCE NO. 532

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS GRANTING AN OIL PIPELINE FRANCHISE TO CARDINAL PIPELINE, L.P.

WHEREAS, the City adopted Ordinance No. 60 on January 10, 1967, granting Equilon Enterprises LLC dba Shell Oil Products US the right, privilege and franchise to lay and use oil pipelines in those roads, streets, highways and public places within the City, for the purpose of distributing oil, petroleum, and liquid hydrocarbon products and other substances, commonly known as the Brea Crude Pipeline; and

WHEREAS, Equilon Enterprises LLC dba Shell Oil Products US transferred the Brea Crude Pipeline franchise to Cardinal Pipeline, L.P., in 2005; and

WHEREAS, Ordinance No. 60 expired by its own terms on or around January 10, 2007; and

WHEREAS, By Resolution No. 103-2005, dated October 25, 2005, the City Council of Hawaiian Gardens approved the transfer of the Brea Crude Pipeline from Equilon Enterprises LLC dba Shell Oil Products US to Cardinal Pipeline, L.P., (hereinafter referred to as "Franchisee"); and

WHEREAS, on April 24, 2009, Franchisee notified the City that it wished to apply for a franchise to supersede Ordinance No. 60, renewing the right, franchise and privilege from time to time to lay, construct, maintain, operate, repair, renew, change the size of, and remove or abandon in place a pipeline system for the transportation of industrial gas, gasoline, petroleum oil, gas, other hydrocarbon substances, water, waste water, mud, steam, and other liquid or gas substances incident to the oil industry, together with all manholes, valves, service connections and appurtenances necessary or convenient for the maintenance and operation of the Brea Crude Pipelines, including any facilities necessary for cathodic protection of the Brea Crude Pipelines; and

WHEREAS, pursuant to Public Utilities Code Section 6232, on August 25, 2009 the Hawaiian Gardens City Council adopted Resolution No. 076-2009 declaring its intent to grant such franchise, which was published by the City Clerk within fifteen days after adoption of such resolution of intention; and

WHEREAS, the Hawaiian Gardens City Council held a duly noticed public hearing on adopting an ordinance granting the franchise; and

WHEREAS, the Hawaiian Gardens City Council has determined that adoption of this ordinance granting the franchise is in the best interests of the City and the public health, safety and welfare; and

WHEREAS, this franchise is granted pursuant to the Franchise Act of 1937 (Public Utilities Code Section 6200 et seq.); and

WHEREAS, the adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the State CEQA Guidelines because the

franchise granted by this Ordinance is for existing pipeline located within certain public rights-of-way in the City of Hawaiian Gardens, California, as more particularly described herein.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS DOES ORDAIN AS FOLLOWS:

General Provisions and Definitions

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

- a. "Applicable Law" shall mean all present or future federal, state, municipal, or local laws, rules, regulations, ordinances, orders, policies, actions, guidelines, permit requirements, directives, judgments, injunctions, or decrees, or any judgment or order or decree by a court applicable to the Franchisee or any of Franchisee's Facilities or activities that are subject to this Franchise.
- b. "Claims" shall mean all claims, losses, liabilities, causes of action, demands, damages, suits, judgments, debts, costs, claims for payment, contribution or indemnity, expenses (including but not limited to reasonable attorney's fees and costs), fines, penalties, judgments, orders, injunctions and liens of every kind and nature, whether based in tort, equity, contract, strict liability or statute, whether seeking judicial, arbitral, administrative, or equitable relief, and including, but not limited to, claims relating to any Environmental Condition or any Release of any Contaminant, claims for personal or bodily injury, wrongful death, injury to real or personal property, natural resources damages, and including claims based on active or passive negligence, gross negligence, contractual or statutory liability, or otherwise, and any claims seeking judicial or administrative relief, or relating to any formal or informal administrative proceedings by any governmental agency, and whether or not any such claim is ultimately defeated.
- c. "Contaminant" shall mean any substance or constituent, chemical or waste, whether solid, liquid, semisolid, or gaseous in nature, including any hazardous substance or waste, hazardous material, chemical compound or element, petroleum (or fraction thereof), or any hydrocarbon substance, pollutant or contaminant, as those terms are defined in their broadest sense by any federal, state or local law, rule, regulation or order.
- d. "City" shall mean the City of Hawaiian Gardens.
- e. "Council" shall mean the City Council of the City of Hawaiian Gardens.
- f. "Day" shall mean calendar day unless otherwise provided.

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- g. "Effective Date" shall mean thirty (30) days after the date the ordinance is adopted by the Hawaiian Gardens City Council.
- h. "Environmental Condition" shall mean the presence or likely presence of any Contaminant originating from any Facility or from Franchisee's activities, in surface water, ground water, drinking water supply, soil, land surface, subsurface strata or the air.
- i. "Facility" shall mean all property owned or used by the Franchisee in connection with the franchise, including, but not limited to, pipelines, pump stations, valves, communication equipment to remotely control valves, pipeline monitoring equipment, cathodic protection devices to control electrolytic deterioration, and service connections with the Franchisee's Facilities, whether installed by the Franchisee or not, erected, constructed, laid, operated or maintained in, upon, over, under, along or across any Street pursuant to any right or privilege granted by the franchise.
- j. "Franchisee" shall mean Cardinal Pipeline L.P., to whom the franchise is granted, and any person to whom the franchise is subsequently lawfully conveyed, merged, or assigned.
- k. "Franchise Payment Period" shall mean the time period between the effective date of this ordinance granting the franchise through and including December 31 of that same year, and each calendar year thereafter, during the life of the franchise.
- l. "Franchise Report Period" in all cases shall mean the time period between the effective date of this ordinance granting the franchise through and including December 31 of that same year, and each calendar year thereafter, during the life of the franchise.
- m. "Person" shall mean any individual, person, firm, partnership or corporation.
- n. "Release" shall mean any "release" (as that term is defined in Section 101(22) of CERCLA [42 U.S.C. Section 9601(22)]), or "disposal" (as that term is defined in Section 1004(3) of RCRA [42 U.S.C. Section 6903(3)]), or any discharge, active or passive migration, deposit, storage, burial, emplacement, seepage, filtration or disposal of a Contaminant into the environment originating from any Facility or from Franchisee's activities.
- o. "Remediation Costs" shall mean all costs and expenses incurred by the City in performing and monitoring any Remedial Work.
- p. "Remedial Work" means all "Remedial Action", as that term is defined in Section 101(24) of CERCLA [42 U.S.C. Section 9601], and all other actions as are necessary or required to fully remediate a Release or threatened Release of any Contaminant or an Environmental Condition to a condition which would allow unimpaired and unrestricted use and development and would comply with Applicable Law, including

but not limited to all actions necessary to "Respond" to, "Remove", or "Remedy", as those terms are defined in Sections 101(23), 101(24) and 101(25) of CERCLA [42 U.S.C. Section 9601], a Release of a Contaminant or Environmental Condition.

- q. "Shall" is mandatory; "may" is permissive.
- r. "Street" shall mean any street, road, highway, alley, lane or court or other public or private easement, which now exists or may hereafter exist in the City and in which the City has the authority to grant a franchise.

Section 2. Grant of Franchise. A right, privilege, and franchise is hereby granted to Franchisee to lay, construct, maintain, operate, repair, renew, change the size of, and remove or abandon in place a pipeline system for the transportation of industrial gas, gasoline, petroleum oil, gas, other hydrocarbon substances, water, waste water, mud, steam, and other liquid or gas substances incidental to the oil industry, together with all manholes, valves, service connections and appurtenances necessary or convenient for the maintenance and operation of said Facilities in, under, along and across the public streets, ways, alleys and places within the City as shown on Exhibit "A", attached hereto and incorporated herein, in such a manner as not to inconvenience the public's use of the Streets. The franchise, rights, and privileges granted herein shall be held and enjoyed subject to and only upon the compliance with the provisions, conditions, and obligations described by law and those contained in this ordinance.

Section 3. Term. The term of this franchise shall be twenty five (25) years from the Effective Date. The Franchisee may request, by written notice, five (5) year extensions to the term of this franchise prior to its expiration, as may be extended from time to time. Such extensions shall be subject to approval by the City in its sole discretion. The City shall provide written notice to the Franchisee of its approval of any extension request.

Section 4. Acceptance of Franchise. The Franchisee shall, within thirty (30) days after the passage of this ordinance, file with the City Clerk of the City a written acceptance of the terms and conditions of this ordinance.

Section 5. Forfeiture. This franchise is granted and shall be held and enjoyed upon each and every condition contained in this ordinance. Any neglect, failure or refusal to comply with any of the conditions of the franchise, including the failure to comply with all Applicable Law in force at that time, shall constitute grounds for the suspension or forfeiture of the franchise. The Council, prior to any suspension or forfeiture of the franchise, shall give to the Franchisee at least thirty (30) days notice in writing of any default. If the Franchisee does not, within the noticed period, begin the work of compliance therewith or after beginning fails to prosecute the work with due diligence to completion, the Council may hold a hearing, at which the Franchisee shall have the right to appear and be heard, and thereupon the Council may determine, whether such conditions are material and essential to the franchise and whether the Franchisee is in default with respect thereto and may declare the franchise suspended or forfeited. Notice of hearing shall be given to the Franchisee by certified mail not less than ten (10) working days before the hearing. The Franchisee shall have the right to seek review of the Council's decision in the Superior Court of the State of California.

Section 6. State Highways. If any street or portion thereof becomes a state highway, except for such rights as by law remain with the City; the state shall succeed to all rights reserved to the City by the franchise. This subsection does not apply to any change of location in a state highway for a temporary purpose.

Section 7. Assignment. The Franchisee shall not directly or indirectly sell, transfer, assign or lease the franchise or any part thereof, or allow another Person or entity to operate any pipeline or related Facility subject to the franchise, except with the consent of the Council which consent shall not be unreasonably withheld. Such sale, transfer, assignment, lease or agreement shall be made only by filing with the Council a copy of the duly executed instrument of such sale, transfer, assignment, lease or agreement and a written request for the consent of the Council to such sale, transfer, assignment, lease or agreement. As a condition to the granting of consent to such sale, transfer, assignment, lease or agreement, the Council may impose such reasonable additional terms and conditions upon the franchise and upon the Franchisee or assignee, which the Council may deem to be in the public interest. Such additional terms and conditions shall be expressed by ordinance. Franchisee may however transfer or assign its rights received herein to a parent, affiliate or subsidiary entity so long as the City receives notice within ninety (90) days after the transfer or assignment and the Franchisee agrees to remain bound by the obligations hereunder. Notwithstanding any of the foregoing, Franchisee may agree, contract or arrange with any affiliate or third party Person in connection with the operation or maintenance or the performance of any other services or work on behalf of Franchisee with respect to the pipeline or any related Facility.

Section 8. Prior Franchises. All Facilities erected, constructed, laid, operated or maintained by the Franchisee in the streets of the City, whether installed by the Franchisee or not, prior to the effective date of this ordinance, except those maintained under prior right other than franchise, shall become subject to all the terms and conditions of this ordinance.

Section 9. City Officers. Any right or power conferred, or duty imposed upon any officer, employee or Department of the City shall be subject to transfer to any other officer, employee, or Department of the City.

Section 10. Hazardous Substances. Prior to the issuance of any excavation permit for the construction or installation of any pipelines for the intrastate transmission of hazardous liquid substances in a gaseous state, except natural gas, or prior to the transmission of such a substance, approval shall be obtained from the Hawaiian Gardens City Engineer. Such approval shall not conflict with the State Fire Marshall's jurisdiction in this area and will be granted if the Hawaiian Gardens City Engineer determines that the pipeline will create no hazard or potential hazard to life or property.

The Franchise shall be exempt from this requirement for all pipeline maintenance activities including, but not limited to, the use of nitrogen to displace petroleum hydrocarbons.

Section 11. Council Approval of Location of New Facilities. The Franchisee may not install or operate any new Facilities, other than Facilities existing prior to the date of this ordinance, without first obtaining the prior approval of the Council, which shall not be unreasonably withheld, by resolution or ordinance for new Facilities, except approval is not needed for installation of valves, valve operators, pressure transmitters, cathodic protection devices and any other equipment deemed necessary by Franchisee to enhance the safety, integrity, and operating efficiency of the existing pipeline, in any public street, highway, road, alley or other public place. Approval for new Facilities must be obtained separately and is not implied by the Council's approval of this franchise. For such new Facilities, Franchisee shall not install or operate such new Facilities without first obtaining approval by the City Engineer, with regard to whether the new Facilities meet City Regulations, which may be granted subject to conditions.

Section 12. Release of Contaminants. In the event of Release of a Contaminant by Franchisee, or the discovery of an Environmental Condition caused by Franchisee or by any Facility of Franchisee, except such Release of a Contaminant or discovery of an Environmental Condition caused by third party infliction of damage to any Facility of Franchisee, Franchisee shall immediately conduct such Remedial Work and pay all Remediation Costs, at its sole expense, as is necessary to fully mitigate and remediate the same in accordance with all Applicable Law, administrative order or regulation. Nothing herein shall be construed as waiving Franchisee's rights to seek recovery from a third party for any such release.

Section 13. Compliance With Applicable Laws. Until such time as (i) the franchise terminates; and (ii) the Franchisee removes all of its Facilities; and (iii) completes any necessary Remedial Work, Franchisee will comply with all Applicable Laws.

Section 14. Removal or Abandonment of Facilities.

- a. Upon revocation or termination of this franchise or upon the permanent discontinuance of the use of all or a portion of its Facilities, the Franchisee shall, within ninety (90) days, make written application to the Hawaiian Gardens City Engineer for authority, as determined by the Franchisee, either: (1) to abandon all or a portion of such Facilities in place; or (2) to remove all or a portion of such Facilities. Such application shall describe the Facilities desired to be abandoned or removed by reference to the map or maps required by Section 31 of this ordinance and shall also describe with reasonable accuracy the physical condition of such Facilities.
- b. The Hawaiian Gardens City Engineer shall determine whether the abandonment or removal which is proposed may be effected without detriment to the public interest and the conditions under which such proposed abandonment or removal may be safely effected. The Hawaiian Gardens City Engineer shall then notify the Franchisee of his determination no later than one hundred and twenty (120) days after his receipt of the Franchisee's written application.
- c. Within sixty (60) days after receipt of such notice, the Franchisee shall apply for a permit from the City to abandon or remove all or a portion of the Facilities and shall pay all reasonable fees and reasonable costs related thereto. The permit shall

contain all such reasonable conditions of abandonment or removal as may be prescribed by the City Engineer. These conditions shall be fully complied with to the satisfaction of the City Engineer, whose approval shall not be unreasonably withheld, before the Facilities shall be considered abandoned or removed. Until so abandoned or removed, fees applicable to the franchise shall continue to accrue. Any abandonment shall be conditioned, in part, upon Franchisee's agreement to comply with all applicable provisions of this ordinance.

- d. The Franchisee shall, within ninety (90) days after obtaining such permit, commence and diligently prosecute to completion the work authorized by the permit.
- e. Facilities abandoned "in place" shall be subject to the condition that if, at any time after the effective date of the abandonment, the City Engineer reasonably determines that the facility, or a portion thereof, may materially interfere with any public project, Franchisee or its successor in interest must physically remove the conflicting portion of the facility at its own expense when requested in writing to do so by the City or pay the City for the reasonable cost of such removal.
- f. If any Facilities to be abandoned "in place" subject to prescribed conditions shall not be abandoned in accordance with all such reasonable conditions, the City Engineer may make additional appropriate orders, including an order that the Franchisee shall remove any or all such Facilities. The Franchisee shall comply with such additional orders and bear the associated reasonable costs and reasonable expenses.
- g. In the event that the Franchisee shall fail to comply with the terms and conditions of abandonment or removal as may be required by this section and within such time as may be prescribed by the City Engineer and Franchisee fails to commence and diligently work to comply with such terms and conditions within thirty (30) days after receipt of notification of such, then the City may remove or cause to be removed such Facilities at the Franchisee's expense.

Section 15. Appeal. Any decision made by the City Engineer pursuant to the authority delegated in this ordinance may be appealed by Franchisee to the City Council.

Part II.

Indemnification and Insurance

Section 16. Indemnification.

- a. To the fullest extent permitted by law, Franchisee shall indemnify and hold harmless the City and its Council members, contractors, agents, attorneys and representatives from claims, demands, causes of actions and liabilities of every kind and nature, whatsoever arising out of or in any way related to the franchise or activities conducted by or on behalf of Franchisee. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force. The

indemnity shall apply regardless of any active and/or passive negligent act of omission of the City or its Council members, contractors, agents, attorneys and representatives but the Franchisee shall not be obligated to indemnify any party for claims arising from the sole negligence or willful misconduct of the City or its Council members, contractors, agents, attorneys and representatives. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

- b. The City and the other parties indemnified herein shall have the right to select attorneys of their own choice to represent them at Franchisee's expense, so long as the rates charged by said attorneys do not exceed the rates City or the other indemnified parties pay for other similar legal services.

Section 17. Insurance. On or before commencement of any franchise operations, Franchisee shall obtain or provide satisfactory evidence of having policies of commercial or excess liability including sudden and accidental pollution liability and worker's compensation insurance from financially sound insurers of recognized responsibility.

- a. The policy of commercial or excess liability insurance shall:
 1. Be issued to Franchisee and name the City, and its officers, agents, and employees, as additional insureds.
 2. Defend and indemnify the insureds against all liability for personal injury, bodily injury, wrongful death and property damage arising from Franchisee's activities conducted pursuant to the franchise by providing coverage therefore, including but not limited to, coverage for:
 - (a) Negligent acts or omissions of Franchisee and the agents, servants and employees thereof, committed in the conduct of franchise operations;
 3. Provide a combined single limit liability insurance in the amount of twenty million dollars (\$20,000,000.00).
 4. Provide products and completed operations and sudden and accidental pollution liability coverage.
 5. Be non cancelable without thirty (30) days' written notice thereof directed to the Hawaiian Gardens City Clerk.
- b. The policy of worker's compensation insurance shall:
 1. Have been previously approved as to substance and form by the California Insurance Commissioner.

2. Cover all employees of Franchisee who in the course and scope of their employment are to conduct or do work pursuant to the franchise operations.
3. Provide for every benefit and payment presently or hereinafter conferred by Division 4 of the Labor Code of the State of California upon an injured employee, including vocational rehabilitation and death benefits.
- c. Franchisee shall file with the City Clerk prior to commencement of any franchise operations certificates of insurance for each of the required policies executed by the company issuing the policy, certifying that the policy is in force and providing the following information with respect to said policy:
 1. The policy number.
 2. The date upon which the policy will become effective and the date upon which it will expire.
 3. The subject of the insurance.
 4. The type of coverage provided by the insurance.
 5. The amount of limit of coverage provided by the insurance.
- d. Franchise operations shall not commence until Franchisee has complied with the aforementioned provisions of this section, and any such operations shall be suspended during any period that Franchisee fails to maintain said policies in full force and effect.
- e. Notwithstanding anything to the contrary contained herein, subject to approval by the City's Risk Management Authority, the Franchisee may provide a program of self-insurance for commercial liability and any pollution exposure including sudden and accidental and such approval shall not be unreasonably withheld. Any self-insurance program maintained by the Franchisee shall be consistent with the provisions and the specified limits contained herein. Franchisee may effect for its own account any insurance not required by this Ordinance.

Section 18. Liability. Franchisee shall be fully liable to the City for damage to City property, including but not limited to damage to any Street, or any other cost incurred by the City directly caused by Franchisee, any of Franchisee's Facilities or by any Person acting on Franchisee's behalf, excepting those persons who are employees or agents of the City. In the event that Franchisee fails to promptly comply with Section 12, Franchisee shall be liable for any reasonable and customary Remediation Costs, incurred by the City for control or abatement of any Environmental Condition, Release of Contaminants, Remedial Work or any fire or explosion resulting from any activity conducted by or on behalf of Franchisee pursuant to the franchise.

Section 19. Damage to Public Property. Any damage done directly or indirectly to property of any public agency by Franchisee in exercising directly or indirectly any right, power, or privilege under this franchise, or in performing any duty under or pursuant to the provisions of this ordinance, shall be promptly repaired by Franchisee at its sole cost and expense to as good a condition as it was before such damage was incurred, to the reasonable satisfaction of the City Engineer. If the Franchisee, within thirty (30) days after receipt of written notice from the City, instructing it to repair such damage, shall fail to commence to comply with such instructions, or, thereafter, shall fail to diligently prosecute such work to completion, then the City immediately may do whatever work is necessary to carry out said instructions at the reasonable cost and reasonable expense of the Franchisee, which cost and expense, by the acceptance of this franchise, the Franchisee agrees to pay upon demand. If such damage constitutes an immediate danger to the public health or safety requiring immediate repair, the City without notice may repair such damage and the Franchisee agrees to pay all reasonable costs and reasonable expenses incurred.

Part III.

Compensation

Section 20. Rates. As consideration for the franchise granted, the Franchisee shall pay to the City in lawful money of the United States the following:

- a. **Common Carrier Utility Franchise Rates.** The Franchisee, as further consideration for such franchise including the extension, renewal, or continuation of a previously granted franchise, shall pay to the City in lawful money of the United States the following fees:
 1. **Base Granting Fee.** In the case of an initial grant of franchise, or franchises which extend, renew, or continue previously granted franchises, a base granting fee of two thousand five hundred dollars (\$2,500) for pipelines with a total length of 1/4 mile or more or five hundred dollars (\$500) for pipelines with a total length of less than 1/4 mile shall be paid within thirty (30) days after the Council adopts the ordinance granting the franchise and prior to signing the written acceptance of the franchise pursuant to Section 4 of this ordinance. If at any time during the first five (5) years following the grant of a franchise, additional pipeline is voluntarily added which will result in a total length of pipeline of 1/4 mile or more, the two thousand five hundred dollars (\$2,500) granting fee shall be required at the same time said footage is added.
 2. **Base Annual Fee.** A base annual fee shall be paid within ninety (90) days after the end of each calendar year and during the life of the franchise for each and every year, including the year of granting the franchise, according to the "Franchise Payment Period" as defined in this ordinance, as provided for in Section 6231.5 of the California Public Utilities Code which annual fee shall be computed as follows:

Pipe size (internal diameter in inches)	Base rate per lineal foot
0-4	\$0.088
6	0.132
8	0.176
10	0.220
12	0.264
14	0.308
16	0.352
18	0.396
20	0.440
22	0.484
24	0.528
26	0.572
28	0.616
30	0.660

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

In determining the number of feet of pipeline upon which the annual fee will be computed, the greatest number of feet of pipeline covered by the franchise during the calendar year for which payment is due will be utilized. The base annual fee shall be paid no later than ninety (90) days following the end of the calendar year and a penalty at the rate of two percent (2%) per month or fraction thereof beyond the payment date shall be charged, but in no event shall said penalty exceed fifty percent (50%).

- b. Adjustments. 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 for All Urban Consumers in the Los Angeles – Riverside – Orange County 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.

2. If the United States Department of Labor, Office of Information discontinues the preparation or publication of a Consumer Price Index for All Urban Consumers in the Los Angeles – Riverside – Orange County 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. Payment Correspondence. The base annual fee, as adjusted, shall be paid by Franchisee to the City no later than ninety (90) days following the end of each calendar year. In conjunction with such payment, Franchisee shall provide the City documentation that includes the length of the pipeline, internal diameter, and calculations showing any adjustments made to the base annual fee along with the then current contact information of Franchisee. Such payment and associated documentation outlined above shall be sent to the address set forth below, or such other address as the City may specify.

Hawaiian Gardens City Clerk
ATTN: Finance Department
21815 Pioneer Boulevard
Hawaiian Gardens, California 90716
Telephone: (562) 420-2641
Fax Machine: (562) 496-3708

Section 21. Permit Fees. The Franchisee shall pay all permit fees and other fees mandated by Applicable Law in connection with constructing, operating, maintaining, repairing, removing or abandoning any franchise Facility.

Section 22. Proration of Payments. In the event of abandonment of Facilities with the approval of the City as stated elsewhere in this ordinance, or in the event of removal of such Facilities by the Franchisee, or in the event of the grant of a franchise with an initial Franchise Payment Period of less than one year, the annual franchise fee required by this ordinance shall be prorated for the calendar year in which such removal or abandonment or grant occurs as of the end of the calendar month in which removed, abandoned or granted.

Section 23. Records. Franchisee shall keep and preserve for a period of five (5) years subsequent to the date of the most recent franchise fee determination all the records necessary to determine the amount of such franchise fee.

Part IV.

Construction

Section 24. Construction Requirements. Pipelines and all other Facilities shall be constructed in a good workmanlike manner in conformity with Applicable Law in force at the time of such construction and maintained in a good workmanlike manner in conformity with all

Applicable Law. All pipes laid under the franchise shall comply with Applicable Law in force at the time of such construction.

Section 25. New Installation or Replacement. New installation or replacement of pipelines and all other new Facilities necessary for the installation, operation, maintenance, and safety of pipelines and conduits shall be laid and maintained only pursuant to any necessary permits issued by the City. All such new installations or replacements shall be reviewed by the City Engineer as to the most desirable location in the streets of the City.

Section 26. Permits. Where the provisions of any Applicable Law, which shall be in force at the time, requires the issuance of an excavation, encroachment or other type of permit, the Franchisee shall not commence any excavation or encroachment work under the Franchise until it shall have obtained such permits, except in cases of emergency affecting public health, safety or welfare or the preservation of life or property, in which case the Franchisee shall apply for such permits not later than the next business day, but the Franchisee may proceed with the emergency-related work.

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

Section 27. Work on and Restoration of Streets. The work of constructing, laying, replacing, maintaining, repairing or removing all pipelines and other Facilities authorized under the provisions of this ordinance in, over, under, along or across any street or sidewalk shall be conducted with the least possible hindrance to the use of the Street for purposes of travel, and as soon as such work is completed, all portions of the Street which have been excavated or otherwise damaged thereby shall promptly and in a workmanlike manner be repaired, replaced or restored and placed in as good condition as the same was before the commencement of such work. All work shall comply with the requirements of a City-issued permit.

In the event that the Franchisee shall fail or neglect to make such Street repair, replacement, or restoration work, then twenty (20) days after notice therefore has been given Franchisee by the City Engineer, the City may repair, replace or restore said Street at the expense of Franchisee. Franchisee agrees to pay to the City the reasonable cost and expense of performing such work, provided, however, the City shall not move, cut, alter or perform an work on any of the Franchisee's Facilities or pipeline.

Section 28. Failure to Timely Comply. Whenever the Franchisee fails to complete any work required by the terms and conditions of this franchise within the time limits required, and after receiving written notice from the City, the City may complete or cause to be completed any and all such work at the reasonable expense of the Franchisee. The Franchisee agrees to pay to the City the reasonable cost of performing such work.

Section 29. Shoring. If the City or any other public entity constructs or maintains any storm drain, sewer structure, or other facility or improvement under or across any facility of the Franchisee maintained pursuant to the franchise, the Franchisee shall provide at no expense to

the City or other public entity such shoring or other support as shall be reasonably required to support, maintain and protect Franchisee's facility. The City agrees to provide the Franchisee with no less than fifteen (15) days notice of such shoring or support requirements.

Section 30. Maps. Within ninety (90) days following the date in which any Facilities have been laid, removed or abandoned under the franchise, the Franchisee shall file a map or maps with the City showing the location, depth, and size of the Facilities so laid, removed or abandoned.

Section 31. Facilities. The Franchisee shall have the right to construct, maintain and repair such traps, manholes, conduits, valves, appliances, attachments and other Facilities as may be necessary or convenient for the proper maintenance and operation of the pipelines, including communication and cathodic protection facilities, portions of which may need to be installed above ground, under said franchise, and said Facilities shall be kept flush with the surface of the street and so located as to conform to any ordinance, rule or regulation of the City, or of any permit issued by the City in regard thereto and shall not interfere with the use of the street for travel. The Franchisee shall have the right to make all necessary excavations in said streets for the construction, maintenance and repair of said Facilities, subject to such ordinances, rules or regulations in force at the time of such excavations; provided, however, that the Franchisee shall first obtain an excavation permit from the City for doing any such work.

Section 32. Relocation. Whenever, during the existence of this Franchise, the City shall lawfully change the grade, alignment, width, or location of any public street, way, alley or place, including the construction of any subway or viaduct owned or operated by the City, the Franchisee shall, at its own cost and expense, remove or relocate its facilities. However, no such change of location shall be required for a temporary purpose, nor shall the City require the Franchisee to remove its pipeline entirely from the street, way, alley or place. The City shall specify in a written demand a reasonable time, not less than one hundred twenty (120) days, within which the work of relocation shall be commenced and the Franchisee shall work with the City to establish a new right of way and commence the relocation within the time specified in the demand and thereafter diligently prosecute it to completion.

In the decision process necessary to determine if the Franchisee's pipeline and/or appurtenances thereto are required to be relocated, the City shall also consider all known future projects that, if done separately, may cause multiple relocations of the pipeline and/or appurtenances. If such known future projects can be identified, full consideration of concurrent projects shall be given by the City. If the City requires the relocation within the public street, way, alley or place more than once within a period of ten (10) years, the City shall pay the cost of the second and all subsequent relocations within such ten (10) year period.

When the City requires a rearrangement of the Franchisee's pipeline and/or appurtenances, and such rearrangement is done for the accommodation of any person, firm, public agency other than the City, or corporation, the cost of such rearrangement and lost revenue while the pipeline and/or appurtenances are out of service shall be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, shall (a) deposit with the Franchisee either cash or a corporate surety bond in an amount, as in the reasonable discretion

of the Franchisee, to pay the costs of such rearrangement; and (b) execute an instrument agreeing to indemnify and hold harmless the Franchisee from any and all damages or claims caused by such rearrangement. This provision shall not be construed to require the Franchisee to rearrange its pipeline and/or appurtenances. Any accommodation for rearrangement of the Franchisee's pipeline and/or appurtenances shall be made at the discretion of the Franchisee.

Nothing in this Franchise contained herein shall be construed to require the City to move, alter, or relocate any of the facilities upon the City's streets, at the City's 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, or to move, alter, or relocate any part of the City's pipelines or infrastructure upon said streets for the convenience, accommodation or necessity of the Franchisee.

Section 33. Completion Statement. Upon the completion of the construction of any pipelines or other Facilities constructed pursuant to the franchise, the Franchisee shall submit a statement to the City Engineer, identifying the permit or permits issued by the City, the total length of pipeline, pipeline material, diameter of pipeline, the construction of which was authorized under such permit or permits, the total length of pipeline or other Facility actually laid, and as-built drawings.

Part V.

Miscellaneous

Section 34. Force Majeure. Notwithstanding any other term or provision of this Franchise or Ordinance, if the performance of any obligation of a party (other than the obligation to make payments) is prevented in whole or in part by causes beyond the reasonable control of such party, whether foreseeable or not foreseeable, including but not limited to wars (declared or undeclared), hostilities, revolution or civil commotion, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, storms, floods, washouts, strikes or labor disputes, fire, explosion, flood, inability to obtain raw materials or fuel, embargo, sinking of vessel or any act, proclamation, regulation or ordinance of any government or governmental agency, having, or claiming to have, jurisdiction of the subject of this Franchise or Ordinance or of the parties to this Agreement, or any Act of God or any other cause whether of a similar or dissimilar nature beyond the reasonable control of the party affected, then such party shall not be held responsible for the non-performance of such obligation during the continuance of the delay, provided prompt notice and full particulars of such delay have been given to the other party. The period of performance of the delayed party shall be extended by the duration of the delay. In addition, notwithstanding any other term or provision of this Franchise or Ordinance, neither party shall be obligated to settle or resolve any strike or labor dispute.

Section 35. Severability. If any sections, subsections, sentences, clauses, phrases or portions of this ordinance are for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause of this ordinance whether or not any one or more sections, subsections, phrases or clauses may be declared invalid or unconstitutional on their face or as applied.

Section 36. Exclusion of Prior Drafts. Prior drafts of this franchise and prior correspondence regarding this franchise shall not be used by either party as evidence of the intent of the parties or otherwise be admissible in evidence in interpreting this franchise.

Section 37. Entire Agreement, Waiver. The parties agree that this franchise shall constitute the entire agreement between the parties with respect to the transactions contemplated hereby. Any and all previous agreements and understandings between or among the parties regarding the transactions contemplated hereby, whether written or oral, are superseded by this franchise. Any waiver or amendment of any requirements and/or provisions of this franchise must be in writing and signed by an officer or authorized representative of the waiving party in order to be effective and enforceable; no purported oral waiver or amendment of any requirements and/or provisions of this franchise shall be effective or enforceable; and no waiver or amendment of any requirements and/or provisions of this franchise based on course of conduct, course of dealing, or course of performance shall be effective or enforceable.

Section 38. Notices. Any notice, consent or other communication required or permitted to be given hereunder, excluding the notice provisions for the payment of the annual fee and associated documentation more particularly described in Section 21, shall be in writing and shall be given to such other party at its address set forth below, or such other address as such party may hereafter specify for the purposes by notice to the other party, and shall be deemed given when delivered personally or sent by confirmed overnight mail service, postage prepaid.

Notices to Franchisee:

Cardinal Pipeline L.P.
ATTN: General Counsel
410 17th Street, Suite 1010
Denver, CO 80202
(303) 892-9333 (T)
(303) 825-1035 (F)

and

Notices to City of Hawaiian Gardens: The Cavanaugh Law Group, APLC

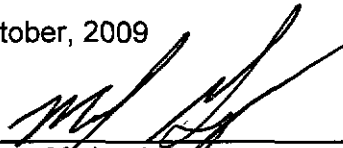
ATTN: City Attorney
23120 Alicia Parkway, Suite 200
Mission Viejo, CA
(949) 837-4300 (T)
(949) 837-4800 (F)

Section 39. Recitals. The recitals are incorporated into this Agreement by reference, as if fully set forth herein at length, and shall be considered terms of this Agreement.

Section 40. This Ordinance shall take effect thirty (30) days after the date of its adoption, and prior to the expiration of fifteen (15) days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

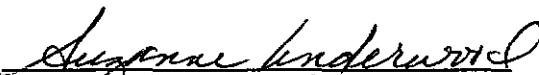
Section 41. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be published in the manner prescribed by law.

APPROVED AND ADOPTED this 13 day of October, 2009



Mayor Michael Gomez

ATTEST:



Suzanne Underwood, City Clerk

CITY OF HAWAIIAN GARDENS
CITY CLERK'S OFFICE
CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) SS
CITY OF HAWAIIAN GARDENS)

I, Suzanne Underwood, City Clerk of the City of Hawaiian Gardens, do hereby certify that **Ordinance No. 532**, was duly and regularly introduced and placed upon its first reading at a Regular meeting of the City Council on **SEPTEMBER 22, 2009**, and that thereafter, said Ordinance was duly adopted and passed at a Regular meeting of the City Council on this **13th day of OCTOBER 2009**, by the following votes as the same appears on file and of record in the Office of the City Clerk.

AYES: SCHULTZE, OYAMA-CANADA HECKERMAN, FARFAN, GOMEZ
NOES: NONE
ABSENT: NONE
ABSTAIN: NONE



SUZANNE UNDERWOOD
CITY CLERK/RECORDS MANAGER

Agenda Item No.: A-1
Meeting Date: 9/22/2009
City Administrator: [Signature]

HAWAIIAN GARDENS CITY COUNCIL STAFF REPORT

TO: Honorable City Council
THRU: Ernesto Marquez, City Administrator
BY: City Attorney
DATE: September 3, 2009
SUBJECT: ORDINANCE NO. 532

CITY OF HAWAIIAN GARDENS
ACTION:
☒ Approved
☐ Denied
☐ Amended
☐ Receive & File
☐ Other
VOTE: 5-0
DATE: 9/22/2009

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HAWAIIAN GARDENS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, GRANTING A FRANCHISE OF THE BREA CRUDE PIPELINE TO CARDINAL PIPELINE L.P.

SUBJECT

An Ordinance granting a franchise of the Brea Crude Pipeline to Cardinal Pipeline L.P. by Ordinance during a public hearing.

SUMMARY

In 1967 the City of Hawaiian Gardens granted to Shell Oil Company a forty (40) year franchise to construct, operate and maintain a pipeline for the transportation of hydrocarbon substances, commonly known as the Brea Crude Pipeline. With the City's approval on October 25, 2005, Shell Oil Company transferred the franchise to Cardinal Pipeline L.P. On February 9, 2007 the forty (40) year franchise expired. Cardinal Pipeline L.P. has requested a renewal of the franchise agreement. On August 25, 2009 Resolution No. 076-2009 was passed wherein the City Council declared its intention to pass by Ordinance during a public hearing, a franchise of the Brea Crude Pipeline to Cardinal Pipeline L.P. Pursuant to California Public Utilities Code section 6233 and 6234 notice of the public hearing was been properly published.

DISCUSSION

Cardinal Pipeline L.P. has been continuously operating the Brea Crude Pipeline for the past three and half (3 ½) years. The original franchise granted to Shell Oil Company and transferred to Cardinal Pipeline expired February 9, 2007. The renewed franchise is a twenty-five (25) year lease which may be extended in five (5) year increments. The Ordinance outlines the new terms including the increase in the franchise rate.

FISCAL IMPACT

The original franchise annual base rate was \$.01 multiplied by the internal diameter of the pipe multiplied by the total length of the pipe in linear feet. The Brea Crude Pipeline is 8" in diameter and runs 5594' in length making the total annual fee under the prior agreement \$447.52. Under the new agreement Cardinal Pipeline will pay an initial Base Granting Fee of \$2,500.00 (one time fee) and a Base Annual Fee of \$.176 multiplied by the internal diameter of the pipe (8") multiplied by the total length of the pipe (5594') for a Base Annual Fee of \$7,876.35/year. The total increase in revenue from this franchise will be a \$2,500 (one-time) Base Granting Fee and \$7,876.35/year Base Annual Fee.

RECOMMENDATION

Staff respectfully recommends that the CITY COUNCIL approve Ordinance No. 532.

ATTACHMENTS

Ordinance No. 532