

**ORDINANCE NO. 816  
(AS AMENDED THROUGH 816.1)  
AN ORDINANCE OF THE COUNTY OF RIVERSIDE AMENDING ORDINANCE NO. 816  
GRANTING TO NORTH BAJA PIPELINE, LLC, A DELAWARE LIMITED LIABILITY  
COMPANY, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE FOR A PERIOD  
OF FORTY-FIVE (45) YEARS, TO CONSTRUCT, MAINTAIN, OPERATE AND REPAIR  
A PIPELINE FOR THE TRANSPORTATION OF NATURAL GAS ALONG,  
UNDER AND ACROSS COUNTY ROADS AND COUNTY RIGHTS OF WAY  
IN THE EASTERN PORTION OF RIVERSIDE COUNTY**

THE BOARD OF SUPERVISORS OF THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, Ordains as follows:

Section 1. As used in this franchise, the singular number includes the plural and the plural includes the singular. Unless it shall be apparent from the context that they have a different meaning, the following words and phrases shall have the meaning stated in this section, to wit:

County: The County of Riverside.

Grantee: North Baja Pipeline, LLC, a Delaware limited liability company, and any person, firm, corporation or entity to which the franchise may hereafter be lawfully transferred as herein provided.

Board: The Board of Supervisors of the County.

Franchise Property: All property constructed, installed, operated or maintained in a County right of way or a County highway pursuant to any right or privilege granted by this franchise, provided that any such property shall retain its character as "franchise property" only so long as it shall remain in or upon any County right of way or County highway pursuant to a right or privilege granted by this franchise.

Highway: Any County highway, road, street, lane, alley, court, sidewalk, parkway, or other County place, including the area above or below the same, which now exists or which may hereafter exist within the unincorporated area of the County.

Section 2. A franchise, privilege and right is hereby granted to North Baja Pipeline, LLC, a Delaware limited liability company, its successors or assigns, for a period of forty-five (45) years from and after the effective date of this ordinance, to construct, maintain, operate, replace or repair, a pipeline for the transportation of natural gas together with all necessary appurtenances as may be required to operate and maintain said pipeline in, along, under and across the County's rights of way and County highways, as the same now exist or may hereafter exist. The pipeline constructed under this ordinance shall not be used for transportation of any other substance unless approved in writing by the Board of Supervisors. The franchise granted herein is solely for the transportation of natural gas. The franchise granted herein includes additional franchise property to be constructed. The additional franchise property to be constructed consists of approximately one mile of pipeline to be interconnected with Grantee's existing pipeline system as approved under Riverside County Ordinance No. 816.

Section 3. This franchise is granted under California Constitution Article 11, Section 7, Government Code Section 26001 and Public Utilities Code Section 6202. Payment by the Grantee for this franchise is as provided under Public Utilities Code Section 6231.5 and pursuant to the terms and conditions hereinafter set forth.

Section 4. The pipeline to be constructed and operated under this franchise shall be built and constructed in a good workmanlike manner and be of good materials that meet or exceed all existing codes and industry standards. Any pipeline laid, located or maintained under this franchise shall be placed at such locations as described in the exhibits attached to the Encroachment Permit issued by the Transportation and Land Management Agency ("TLMA") of the County pursuant to County Ordinance No. 499 and shall be located so as not to interfere with the use of County highways or County rights of way by the traveling public or with the use of County property or County public works for their primary purposes. Grantee shall make and fill all excavations in such manner as to leave the highway right of way or other public property in as good condition as it was prior to said excavation. Grantee shall mark the location of the pipeline at regular intervals with appropriate permanent signs that meet all laws, codes and/or industry standards and such signs shall be maintained by Grantee for the term of the franchise. The design, construction and all such work associated therein shall be performed in compliance with existing Federal statutes, laws of the State of California, ordinances of the County, and any rules, regulations, policies or standards adopted pursuant thereto. Grantee also agrees to modify the pipeline and the procedures associated with its maintenance and testing to comply with all future statutes, laws, ordinances and rules regulations, policies or standards adopted pursuant thereto. Grantee shall create and maintain an emergency response plan and maintain the necessary trained personnel and equipment to respond to any gas leak, fire or explosion associated with the pipeline. Such emergency plan shall include emergency shut off procedures that may be required due to leaks caused by earthquake damage, trauma or any other possible cause of leaks or pipeline rupture. The pipeline shall have shutoff valves at regular intervals in accordance with industry standards. Grantee shall on a regular basis and especially following a rain and/or wind storm inspect the pipeline backfill to see that the line remains covered with backfill to the depth as specified in original drawings when the line was first laid.

Section 5. No encroachment permit shall be issued for work to be undertaken in county rights of way under this franchise, until Grantee has filed its written acceptance of the terms and conditions of this franchise as specified in Section 21. Grantee and its contractors shall comply with all requirements established by the TLMA under County Ordinance No. 499 and the TLMA's bonding requirements. Grantee shall comply with all requirements under Government Code Sections 4216 through 4216.9.

Section 6. Grantee shall defend, indemnify and hold harmless County, Special Districts, their respective directors, officers, Board of Supervisors, elected officials, agents and employees (the "County Parties") from any liability whatsoever, based or asserted upon any act or omission, including but not limited to negligent acts or omissions, of Grantee, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death or any other element of damage of any kind or nature, relating to or, in anyway connected with or arising from Grantee's use of the County's rights of ways, County roadways or County property or the condition thereof, with respect to the placement, use and maintenance of the pipeline therein, specifically excluding therefrom the gross negligence or willful misconduct of the County Parties, and Grantee shall defend, at its expense including without limitation attorney fees, expert fees and investigation expenses, County, Special Districts, their respective directors, officers, Board of Supervisors, elected officials, agents and employees in any legal action based upon such alleged acts or omissions. The obligation to defend, indemnify and hold free and harmless expressed

herein shall survive until any and all claims, actions and causes of action with respect to any and all such alleged acts or omissions are fully and finally barred by the applicable statute of limitations unless such statute of limitations is overturned by any court of jurisdiction wherein the indemnification shall continue until all issues are fully resolved.

Grantee shall also defend, indemnify and hold harmless County, the Board of Supervisors, and County's officers and employees from any action or claim brought by any party challenging the issuance of this franchise or any subsequently issued encroachment permit. The obligation to defend, indemnify and hold harmless expressed herein shall include without limitation attorney fees, expert fees and investigation expenses and shall survive until any and all claims, actions and causes of action with respect to any an all alleged acts or omissions are fully and finally barred by any applicable statute of limitations unless such statute of limitations is overturned by any court of jurisdiction wherein the indemnification shall continue until all issues are fully resolved.

Section 7. **INSURANCE** Without limiting or diminishing Grantee's obligation to indemnify or hold the County harmless, Grantee shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the term of this Franchise.

**Workers' Compensation:**

Grantee shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employer's Liability (Coverage B) including Occupational Disease with limits not less than one million (\$1,000,000) per person per accident. Policy shall be endorsed to waive subrogation in favor of the County of Riverside.

**Commercial General Liability:**

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, completed operations, explosion, collapse and underground (XCU), personal and advertising injury covering claims which may arise from or out of Grantee's performance of its obligations hereunder. Policy shall include the County of Riverside, special districts, their respective directors, officers, Board of Supervisors, elected officials or employees as an Additional Insured with respect to Grantee's performance hereunder. Policy's limit of liability shall not be less than ten million dollars (\$10,000,000) per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Franchise or be no less than two (2) times the occurrence limit.

**Vehicle Liability:**

Grantee shall maintain liability insurance for all owned, non-owned or hired vehicles in an amount not less than one million (\$1,000,000) per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Franchise or be no less than two (2) times the occurrence limit. Policy shall name the County of Riverside, special districts, their respective directors, officers, Board of Supervisors, elected officials or employees as an Additional Insured.

**General Insurance Provisions - All lines:**

a. Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of

California and have an A.M. BEST rating of not less than an A: VIII (A: 8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

b. Grantee's insurance carrier(s) must declare its insurance deductibles or self-insured retentions. If such deductibles or self-insured retentions exceed \$500,000 per occurrence such deductibles and/or retentions shall have the prior written consent of the County Risk Manager before the commencement of operations under this Franchise. Upon notification of deductibles or self insured retentions which are deemed unacceptable to the County, at the election of the County's Risk Manager, Grantee's carriers shall either; 1) reduce or eliminate such deductibles or self-insured retentions as respects this Franchise with the County, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, defense costs and expenses.

c. At the time the Franchise is signed and annually thereafter, at the anniversary of the Grantee's insurance renewals, Grantee shall cause its insurance carrier(s) to furnish the County of Riverside with 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein; or, 2) if requested to do so orally or in writing by the County Risk Manager, allow the Grantor to review a certified copy of the original policy and all endorsements thereto at the offices of the Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect, Further, said Certificate(s) (and policies of insurance shall contain the covenant of the insurance carrier(s) shall provide no less than thirty (30) days written notice be given to the County of Riverside prior to any material modification or cancellation of such insurance. In the event of a material modification or cancellation of coverage, this Franchise shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverages and the insurance herein is in full force and effect. Individual(s) authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance. **Grantee shall not commence operations until the County of Riverside has been furnished original Certificate(s) of Insurance and certified original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section.**

d. It is understood and agreed by the parties hereto and Grantee's insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retentions or self-insured programs shall not be construed as contributory as respects all claims that arise from this Franchise.

e. Grantee shall pass down the insurance obligations contained herein to all tiers of contractors and subcontractors working under the Franchise, except that contractors' limit of liability for Commercial General Liability insurance shall not be less than five million dollars (\$5,000,000) per occurrence combined single limit and subcontractors' limit of liability for Commercial General Liability insurance shall not be less than three million dollars (\$3,000,000) per occurrence combined single limit.

The County of Riverside reserves the right to adjust the types of insurance required

under this Agreement and the monetary limits of liability for the insurance coverage required herein, if; in the County Risk Manager's reasonable judgment, the amounts or types of insurance coverage specified herein have become materially inadequate due to passage of time or changed circumstances.

Section 8. (a) The County, State, City or other political subdivision or governmental agency or instrumentality of the State of California, when acting in a governmental capacity, may improve any highway or portion thereof in which franchise property has heretofore been constructed or installed, and may construct, install, repair and maintain in any such highway, and may remove from any such highway any public improvement.

(b) If notice in writing is given to Grantee thirty (30) days in advance of the fact that work is to be done pursuant to any right reserved in subdivision (a) of this section, specifying the general nature of the work and area in which the same is to be performed, then Grantee shall do all things necessary to protect its franchise property during the progress of such work and if ordered by the Board or by the governmental agency performing such work, Grantee shall disconnect, revoke or relocate its franchise property in the highway or public right of way to such extent and in such manner as shall be necessary to permit the performance of such work, and to permit the maintenance, operation and use of such public improvement or of the highway as so improved. All of such things to be done and work to be performed by Grantee shall be at the sole cost and expense of Grantee. Grantee shall, upon receipt of a written request from the County to relocate the pipeline that is in conflict with a public works project on the public right of way, cause the conflicting portion of the pipeline to be relocated in a diligent manner as to avoid any unreasonable delays or costs to the public works project. Any direct costs incurred by the County, resulting from such a delay to a County administered public works project which such delay is caused by the failure of Grantee to relocate the conflicting portion of the pipeline in a diligent manner as to avoid any unreasonable delay or costs to the public works project, shall be the responsibility of Grantee, which shall reimburse said costs to County upon demand.

(c) Grantee shall, upon demand by the County, and at the expense of Grantee, precisely identify the vertical and horizontal location of the pipeline by pot holing and land survey measurements or other accurate means, for the purpose of the design or construction of the public works projects on County rights of way.

Section 9. In the event that the County or any government agency above mentioned shall hereafter construct, install, reconstruct or repair any bridge or artificial support in or underlying any highway in which Grantee's franchise property is located or which is prescribed as the location for any of Grantee's franchise property, and in the event that the cost thereof be increased in order to provide for the installation, maintenance or operation of Grantee's franchise property in or on the highway area covered or underlain by said bridge or other artificial support, then Grantee shall pay to the County or to such governmental agency or instrumentality doing such work the full amount of such increase of cost upon completion of such construction, installation or repair.

Section 10. No provision of this franchise shall be so construed as to impose upon the County any duty or obligation to construct, repair or maintain any highway included in the area in which Grantee's franchise property is located in any particular manner or to any particular standard.

Section 11. Grantee, its successors or assigns, shall in good faith commence construction under this franchise within not more than six (6) months from the granting of this franchise and, if not so commenced within said time, this franchise shall be declared forfeited. The completion of the work shall be prosecuted diligently and in good faith by grantee.

Section 12. Before any excavation or other work requiring excavation in any public road or highway under the jurisdiction, supervision and control of the County of Riverside is commenced, Grantee shall notify the TLMA, no less than thirty (30) days prior to commencement of such excavation or work. Provided that, in cases of emergency requiring immediate action, Grantee may make excavations and perform work in any such public highway for repairing and restoring its pipeline without giving prior notice to the TLMA of such excavation and work, but notice thereof shall be given to said agency promptly after the commencement of such excavation and work. In all cases, Grantee at its own cost and expense shall without unnecessary delay replace and restore the excavated portion of such public highway and right of way in and to as good condition as before such excavation and work.

Section 13. Grantee, its successors or assigns, during the life of this franchise shall by February 1<sup>st</sup> of each year pay to the Riverside County Treasurer, in lawful money of the United States, the sum of \$17,851.23 for 2008 based on the current Consumer Price Index. This sum is calculated based upon the estimated length of the pipeline of 42,342 linear feet (36,960 linear feet of the currently existing pipe plus 5,382 linear feet of the proposed addition pipeline) at \$.396 per foot (plus increases in the Consumer Price Index for 2003-2007 relating to the existing pipe) as authorized in Public Utilities Code Section 6231.5(a)(3) and (e)(2). The payment specified herein shall be increased on February 1<sup>st</sup> of every year, by the same percentage as the increase in the Consumer Price Index, All Urban Consumers, (Los Angeles – Anaheim) for the twelve (12) month period ending four (4) months prior to February 1<sup>st</sup>.

Grantee shall have ten (10) days after notice of a monetary default to cure said default to the satisfaction of the County. Grantee shall have thirty (30) days after notice of a non-monetary default to cure said default to the satisfaction of the County. Any notice under this franchise agreement shall be deemed received three (3) days after deposit into the United States mail, properly addressed and postage prepaid. Notices under this franchise agreement shall be sent as follows:

If to County: Clerk of the Board of Supervisors  
4080 Lemon Street  
Riverside, CA 92501  
(909) 955-1060  
(909) 955-1071

If to Grantee: North Baja Pipeline, LLC  
1400 SW Fifth Avenue, Suite 900  
Portland, Oregon 92701  
Attn: Project Manager  
Telephone: 503-833-4108

Section 14. Whenever any portion of the territory covered by this franchise shall be annexed to, or otherwise become a part of any municipality, or of any other county, the rights reserved under this franchise to the County of Riverside, shall inure to the benefit of such municipality or county, and its appropriate officers.

Section 15. Grantee shall have the right to transfer this franchise in whole or part or assign all or part of its rights and interests hereunder, including without limitation, to any lender or any other investor to whom is granted a security interest. In such event, Grantee shall first provide the County thirty (30) days advance notice in writing of such proposed transfer or assignment. Any transferee shall be in financially sound condition and shall remain subject to all the terms and conditions in this franchise including the obligation to maintain insurance coverage in the amounts specified in Section 6.

Section 16. Any neglect, failure or refusal to comply with any of the conditions of this franchise shall constitute cause for forfeiture thereof in the discretion of the Board of Supervisors, and upon such exercise of this discretion, the County of Riverside by its Board of Supervisors may declare this franchise forfeited and may exclude the Grantee, its successors or assigns, from any further use of the public highways and public rights of way in the unincorporated territory of the County of Riverside under this franchise; and Grantee, its successors or assigns, shall thereupon surrender all rights in and to the same, and this franchise shall be deemed and shall remain null, void and of no effect.

Section 17. This franchise is granted under and pursuant to the provisions of the laws of the State of California applicable to the granting of franchises by counties and this franchise shall not be exclusive. The Board of Supervisors of the County of Riverside reserves and shall have the right and power to grant other and additional franchises to persons, firms and corporations as authorized and provided by law.

Section 18. Upon expiration or termination of this franchise, Grantee shall upon written request of the County and at its own expense remove the pipeline and all ancillary equipment from County roadways and rights of way and properly and lawfully dispose of all such pipeline materials and ancillary equipment.

Section 19. The franchise herein granted and all provisions, rights, obligations and duties thereof shall extend and inure to and be binding on the Grantee, its successors and assigns.

Section 20. This franchise may create a possessory interest that may be subject to taxation, if created, and the party in whom the possessory interest is vested may be subject to the payment of the property taxes levied on the interest.

Section 21. Within 30 days of the effective date of this ordinance Grantee shall file a written acceptance of this franchise in which it shall agree to abide by the terms and conditions herein.

Section 22. If any section, paragraph, provision, sentence, clause or phrase of this

ordinance, or the application thereof to any public highway, right of way or other public place included in this ordinance, is for any reason held invalid, the remainder of this ordinance shall not be affected thereby.

Section 23. This ordinance shall take effect thirty (30) days after its passage.

**Adopted:** 816 Item 7.1 of 03/05/2002 (Eff: 04/04/2002)

**Amended:** 816.1 Item 15.15 of 07/31/2007 (Eff: 08/30/2007)