

ORDINANCE NO. F-352

AMENDING ORDINANCE NO. F-3 (Second Revision)

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN, STATE OF CALIFORNIA, AMENDING ORDINANCE F-3 (REVISED) OF THE COUNTY OF KERN PERTAINING TO FRANCHISES

The following ordinance, consisting of two (2) sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Kern, State of California, at a regular meeting of the Board of Supervisors held on the 19th day of February, 1991, by the following vote, to wit:

AYES: Ashburn, Austin, Larwood, Hettenger, Shell

NOES: None

ABSENT: None

Karl F. Hettenger
Chairman of the Board of Supervisors of
the County of Kern, State of California

(SEAL)

ATTEST:

SUE LASITER
Clerk of the Board of Supervisors

By Tracy E. Cody, Deputy Clerk

THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN ORDAINS AS FOLLOWS:

Section 1. This ordinance shall take effect and be in full force on and after the 21st day

of March, 1991, shall be published once in the Bakersfield Californian, a newspaper of general circulation, published in the County of Kern, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

Section 2. Ordinance F-3 (Revised) (effective December 9, 1982) and amended by Ordinance F-312 (effective July 21, 1988) is hereby; renamed Ordinance F-3 (Second Revision) and amended to read as follows:

PART I. – PURPOSE OF ORDINANCE

Sec. 1. A complication of the necessary terms and conditions of franchises granted and to be granted by the County of Kern for any public road and highway herein pursuant to section 26001 of the Government Code and pursuant to Division 3 (commencing at section 6001) of the Public Utilities Code (as amended) is set out in this ordinance.

Sec. 2. When any ordinance granting a franchise, any franchise, or any notice or resolution pertaining to the franchise refers to the standard terms and conditions hereinafter set out they shall be a part thereof as if fully set out in the notice, resolution, franchise or ordinance.

Sec. 3. The terms and conditions set out in Part II hereof shall be known and referred to as “Terms and conditions of franchise as provided by Ordinance F-3 of the County of Kern.”

Sec. 4. Nothing herein shall prevent an ordinance, franchise, notice or resolution from containing additional or contrary terms and conditions specifically set out in such ordinance, franchise, notice or resolution.

PART II – TERMS AND CONDITIONS OF FRANCHISE

Sec. 1. “Grantee” includes the grantee’s successors and assigns.

Sec. 2. The successful bidder for a franchise shall pay the cost of publishing the notice of sale and for publishing the ordinance granting the franchise.

Sec. 3. “Board” means the Board of Supervisors of the County of Kern.

Sec. 4. The term of a franchise begins on the date the ordinance granting it become effective.

Sec. 5. “Public Roads” means the public highways, streets, roads, ways, alleys and places as they now or hereafter exist within the County of Kern and are subject to the jurisdiction of the County.

Sec. 6. "Facility" means the particular kind of privilege to be exercised under this franchise as described in the ordinance granting the franchise.

Sec. 7. "Installation" means the actual construction, erection or laying of the means of transmission or operation of the facility.

Sec. 8. No facility installation, repair or maintenance, which disturbs the surface of any highway or obstructs its public use shall be started without first obtaining a permit from the Board or the officer designated by said Board. All installations under the franchise shall be performed in accord with the provisions and conditions prescribed by law and of all applicable ordinances and regulations of the County of Kern and with the least possible hindrance to the use of the highways for purposes of travel. Any excavations in the highways shall be backfilled and the surface placed in as good condition as it was at the time of beginning such work and to the satisfaction of the County. The Board may elect to repair any highway or any portion of any highway in which grantee may have excavated for the purpose of making installations hereunder, and the reasonable cost of such repairs shall be a charge against the grantee to be paid within thirty (30) days after billing by the County.

Sec. 9. If facilities cover pipeline and it is necessary to lay pipe across or under any portion of the pavement, it shall be done by a tunnel or bore unless the Board directs otherwise. The Board retains the power to refuse permission for the laying of pipe across or under any paved highway if it believes that the work cannot be done without permanent damage to the highway.

Sec. 10. The right is reserved in the County of Kern to (1) change the grade, alignment, or width of any public road over which a franchise is granted; or (2) extend, place, lay or construct an installation of any kind of nature including the construction of any subway or viaduct, whether or not it is within the facilities granted by franchise, over, in upon or under any public road. In the event County desires to exercise any of the foregoing powers, ten (10) days written notice shall be given by the Board of its intention to do so and the grantee at its own cost and expense, within said time shall begin, and within a reasonable time shall complete, a change of location of all installations made by it in its operations under franchise so as to permit and conform to such change or installation desired to be made by the County.

Sec. 11. In the event that the County or any governmental agency or instrumentality mentioned in Section 13 shall construct, install, reconstruct or repair any bridge or artificial support in or underlying any highway in which the franchise property is located or which is prescribed as the location for any franchise property, and the cost thereof be increased in order to provide for the installation, maintenance or operation of the franchise property in or on the highway area covered or underlain by said bridge or other artificial support, then the grantee shall pay to the County or such governmental agency or instrumentality doing such work the full amount of such increase of cost, upon completion of such construction,

installation or repair.

Sec. 12. 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, including those areas in which franchise property is located, to any particular standard.

Sec. 13.

(a) The State and any municipal corporation, political subdivision or governmental agency or instrumentality of the State acting in a governmental capacity may improve any public road or portion thereof in which franchise properties have been installed and may install, and maintain in any such public road or remove any public improvement.

(b) If notice in writing is given to the grantee ten (10) days in advance that work is to be done pursuant to any right reserved in subdivision (a) of this section, specifically the general nature of the work and the area in which the same is to be performed, then the grantee shall do all things necessary to protect its franchise property during the progress of such work. If ordered by the Board or by the governmental agency performing such work, the grantee shall disconnect, remove or relocate its franchise property within the highway to such extent, in such manner, for such period as shall be necessary to permit the performance of such work in an economical manner, and in accordance with the generally recognized engineering and construction methods, to permit the maintenance, operation and use of such public improvement or of the highway as so improved. All of such things shall be done and such work be performed by the grantee at the sole cost and expense of the grantee.

(c) Notwithstanding any provision in this section to the contrary, the provisions of subsection (a) and (b) hereof shall have no application to nor shall said provisions be enforceable against any grantee which is a public utility within the meaning of sections 3, 5, and 8 of article XII of the California Constitution and section 216 of the Public Utilities Code of the State of California and which has, or may hereafter be granted a franchise and is using said franchise for the purpose of providing utility services to its consumers within the meaning of said sections 3, 5 and 8 of article XII and said section 216 of the Public Utilities Code.

Sec. 14. The successful bidder for a franchise shall during the life of the franchise pay to Kern County two percent (2%) of the gross annual receipts of the grantee arising from its use, operation or possession. No percentage shall be paid for the first five (5) years succeeding the date of the franchise, but thereafter such percentage shall be payable annually.

Notwithstanding any other provision of this section, if the application for a franchise is filed pursuant to Chapter 2, Division 3 of the Public Utilities Code (commencing at section 6201) the grantee will pay to the County during the life of the franchise two percent (2%) of the gross annual receipts of applicant arising from the use, operation or possession of the franchise; provided, however, that such payment shall in no event be less than one percent

(1%) of the gross annual receipts of applicant derived from the sale within the limits of the County of the utility service for which the franchise is awarded; provided, further, if the application is for a franchise complimentary to a franchise derived under section 19 of article XI of the State Constitution as the section existed prior to its amendment on October 10, 1911, then in lieu of either of the aforesaid percentages applicant will pay annually, if the application is for an electric franchise, a sum equivalent to two percent (2%) of the gross annual receipts of applicant arising from the use, operation, or possession of the franchise; provided, however, that such payment shall in no event be less than a sum equivalent to one-half percent ($\frac{1}{2}\%$) of the gross annual receipts derived by applicant from the sale of electricity within the limits of the County under both the electric franchises; or, if the application is for a gas, oil pipeline, or water franchise, a sum equivalent to two percent (2%) of the gross annual receipts of applicant arising from the use, operation, or possession of the franchise; provided, however, that such payment shall in no event be less than a sum equivalent to one percent (1%) of the gross annual receipts derived by applicant from the sale of gas or water, as the case may be, within the limits of the County under both the gas or water franchises, as the case may be.

Further, if the application is for a franchise for a nonpublic utility pipeline for oil or products thereof, filed pursuant to Chapter 2, Division 3 of the Public Utility Code, then the application shall state that the applicant if granted the franchise will pay to the County during the life of the franchise either a specified percentage agreed to by the applicant and the County of the gross annual receipts of the applicant arising from the use, operation, or possession of the franchise or an annual franchise fee in an amount agreed to by the applicant multiplying the sum of one-half cent (\$.005) times the nominal internal diameter of the pipe, expressed in inches, times the number of lineal feet of such pipe within the public streets, ways, alleys, or other public placed within the County.

Sec. 15. Within thirty (30) days after any installation by it under this franchise the grantee shall file with the Board a map showing in detail the length and details of such installation and the location of the same with its beginning and terminus in the highway both with reference to the surface and with reference to the property lines along said highway.

Sec. 16. All installations constructed and maintained under the provisions of a franchise upon any highway which becomes or has become a state highway within any portion of the territory covered by this franchise shall be constructed and maintained in conformity with all the laws of the State of California relating to the control and maintenance of any such state highways and all ordinances, rules and regulations prescribed by the Department of Engineering or other offices of the State of California which may be authorized by law to exercise power and control over such state highway.

Sec. 17. If the grantee shall fail to comply with any instructions of the Board with respect to the location of any installations or the repair of any damage to highways done by grantee in construction or maintenance thereof within ten (10) days after the service of

written notice upon the grantee, requiring compliance therewith, then the Board may immediately declare the franchise forfeited and/or do at the cost and expense of said grantee whatever work is necessary to carry out the said instructions, which cost by acceptance of the franchise said grantee agrees to pay upon demand.

Sec. 18. The installation shall be commenced in good faith within not more than four (4) months from the date of granting of the franchise and if not so commenced within said time, said franchise so granted may be declared forfeited. The work of installation shall be prosecuted diligently and in good faith so as to satisfy the reasonable purposes for which this franchise is granted.

Sec. 19. It shall be the duty of the grantee to file with the Clerk of the Board at the expiration of six (6) years from the date of granting of this franchise and at the expiration of each and every year thereafter a statement verified by the oath of the manager or presiding officer of said grantee showing in detail the gross receipts and gross earnings collected or received by said grantee, its successors or assigns, during the preceding twelve (12) months through the use of any part of the facilities for the construction and operation of which said franchise is granted; and within ten (10) days after the time for filing the aforesaid statement it shall be the duty of said grantee, its successors or assigns, to pay to the County Treasurer of the County of Kern the aggregate sum of the said percentage upon the amount of the gross annual receipts arising from the use, operation or possession of this franchise and if the amount paid is incorrect in the judgment of the Board, they may order the payment of such additional sum as they may find due hereunder and if not paid, the same may be collected by suit.

Notwithstanding any other provision of this section, if the application for a franchise is filed pursuant to Chapter 2, Division 3 of the Public Utilities Code (commencing at section 6201), the verified statement by the grantee shall be filed within three (3) months after the expiration of the calendar year or fractional calendar year, following the date of the granting of the franchise and within three (3) months after the expiration of each calendar year thereafter.

Sec. 20. The franchise shall not be assignable in whole or in part without the written consent of the Board being first obtained.

Notwithstanding the foregoing, grantee may hypothecate the franchise without such consent and, in the event of foreclosure, the creditor may assume the franchise provided that: (a) the facilities are property maintained; (b) all terms and conditions of the franchise and other County requirements are being adhered to; and (c) the creditor agrees in writing to be bound by the terms of the franchise and not to assign or transfer the franchise without the approval of the Board.

In the event of transfer or assignment for any cause, the Board shall have the right to substitute for the security a new security conditioned upon the assignee or transferee well

and truly observing, fulfilling and performing and terms and conditions of the franchise, and upon the filing of said security with and the approval thereof by said Board, to exonerate and excuse further liability upon the original security.

Sec. 21. Within five (5) days after said franchise is awarded, the successful bidder shall file with the Board a bond running to the County in a penal sum set by said Board, with at least two (2) good and sufficient sureties or executed by a surety company authorized to do business in the State of California, conditioned that said bidder shall well and truly observe, fulfill and perform each and every term and condition of said franchise, and in case of any breach of condition of said bond the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages and shall be recoverable from the principal and sureties upon said bond. If said bond be not so filed, the award of said franchise will be set aside and any money paid therefore will be forfeited.

Notwithstanding any other provision of this section, if the application for a franchise is filed pursuant to section 26001 of the Government Code and pursuant to Chapter 2, Division 3 of the Public Utilities Code (commencing at section 6201), the grantee of a franchise under said chapter may be required to file a bond running to the County with at least two (2) good and sufficient sureties approved by the Board of Supervisors, or with a corporate surety approved by said Board, in a penal sum prescribed by the Board of Supervisors and set forth in the resolution of intention to grant the franchise, conditioned that the grantee shall well and truly observe, fulfill, and perform each term and condition of the franchise, and that in case of any breach of condition of the bond the amount of the penal sum therein named shall be recoverable from the principal and sureties upon the bond. The bond, if required by the Board, shall be filed with the Board within five (5) days after the date of the granting of the franchise; and if the bond is not so filed, or does not receive the approval of the Board, the franchise may be refused or forfeited and any money paid to the County in connection therewith shall be retained by the County.

In lieu of a faithful performance bond and if the application for a franchise is filed pursuant to section 26001 of the Government Code and pursuant to Chapter 2, Division 3 of the Public Utilities Code, then any grantee may deposit money, a certificate of deposit, bearer bonds or bearer note of the United States or the State of California, savings accounts assigned to the County, or investment certificates or share accounts assigned to the County, or certificates for funds or share accounts assigned to the County pursuant to California Code of Civil Procedures section 995.710 and in the form approved by the Board of Supervisors and for a penal sum set by said Board. The amount of the penal sum of a bond or certificate of deposit shall be taken if the grantee fails to well and timely observe, fulfill, and perform each term and condition of the franchise. It is understood that in the event of the taking of said bond or certificate of deposit, that said action shall be in addition to those remedies outlined in the franchise granted to the party.

Said bond, a substitution bond or certificate of deposit shall be kept on file with the Board of Supervisors throughout the term of the franchise. Any substitution of said bond with

another bond shall be preceded by sixty (60) days prior written notice to the Property Management Division of the General Services Department of the County.

Sec. 22. No franchise is exclusive in the grantee.

Sec. 23. Any provision, clause or section of this Ordinance, or the application thereof, which is, or becomes inconsistent or in conflict with any of the laws of the United States of American or State of California shall be deemed to be preempted and superseded.

Any provision, clause or section of this Ordinance, or the application thereof, which is preempted or superseded shall not preempt, supersede or in any other way invalidate the other provisions, clauses or sections of this Ordinance which can be given a reasonable effect without the preempted or superseded provision, clause, or section, and to this end, the provisions, clauses, and sections of this Ordinance are hereby declared to be severable.

Sec. 24. The 1982 amendment of Ordinance F-3 does not alter or impair in any way the rights and obligations set out in any franchise (except Ordinance F-233) granted by the Board of Supervisors pursuant to Ordinance F-3, Ordinance G-75 or Ordinance F-43. Notwithstanding the foregoing, this Ordinance (Ordinance F-3 {Second Revision}) shall apply to all ordinances granted by the Board of Supervisors pursuant to Ordinance F-3 (Revised).

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