

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE GRANTING NUSTAR LOGISTICS, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, LAY, MAINTAIN, OPERATE AND USE A PIPELINE IN, UNDER AND ACROSS STREETS, AVENUES, PARKWAYS AND BOULEVARDS IN THE CITY OF DEER PARK, HARRIS COUNTY, TEXAS, FOR THE PURPOSE OF TRANSPORTING REFINED PETROLEUM PRODUCTS; PROVIDING FOR A FEE; PROVIDING AN INDEMNITY CLAUSE; PROVIDING THAT THIS FRANCHISE SHALL NOT BE EXCLUSIVE; RESERVING ALL POWERS OF REGULATION; PROVIDING FOR AND ACCEPTANCE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY BY FINE OF UP TO \$2,000.00 FOR EACH DAY'S VIOLATION.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEER PARK:**

**Section 1.** Subject to compliance with the terms, conditions and provisions of this Ordinance, the City of Deer Park, Texas, herein called "Grantor", does hereby grant unto **NUSTAR LOGISTICS**, its successors and assigns, herein called "Grantee", the right, privilege and franchise to construct, lay, maintain, operate and use, in, under, across and along any and all of the present and future streets, as described in Grantee's proposal, heretofore filed with the City Secretary, a twelve inch (12") pipeline for the purpose of transporting refined petroleum products.

**Section 2.** Grantee's facilities shall be so constructed and maintained as not to interfere unreasonably with any existing water line, sanitary sewer line, storm sewer line, telephone line, telegraph line, gas line or any appurtenance to any of the same, or with ordinary travel over the public streets, sidewalks, thoroughfares and ways of Grantor or the flow of water in any gutter or drain. Within the streets or other public ways of the Grantor, the location and route of all facilities heretofore or hereafter placed and constructed and to be placed and constructed by Grantee in the construction and maintenance of its pipeline within the corporate boundaries of Grantor shall be subject to the reasonable and proper regulation, control and direction of the Grantor, or of any official of Grantor to whom such duties have been or may be duly delegated, which regulation and control shall include, but not by way of limitation, the right to require, in the relocation of Grantee's facilities, exclusive of facilities installed for service exclusively to the Grantor, at

Grantee's cost within the present, proposed or future proposed streets, both public and private, and places whenever such shall be reasonably necessary on account of the installation, relocation, change removal or addition of Grantor's water, sanitary sewer or storm sewer line or appurtenances or the widening, paving, repaving, change of grade, relocation or other construction by Grantor within such present, proposed or future proposed public or private streets, places or ways. The surface of any public road, highway, streets, lanes, alleys or other public place disturbed by Grantee in erecting, constructing, maintaining, operating, using, extending, removing, replacing or repairing its pipelines shall be restored immediately after the completion of the work to as good a condition as before the commencement of the work and maintained to the satisfaction of the Grantor, or of any official of Grantor to whom such duties have been or may be duly delegated, for one year from the date the surface of said public road, highway, street, lane, alley or other public place is broken for such construction, maintenance or removal work. Grantee shall, as soon as reasonably possible, notify City's Fire and Police Departments of the commencement of any of the aforesaid work giving its location and extent. No public road, highway, street, lane, alley or other public place shall be encumbered by construction, maintenance or removal work by Grantee for a longer period than shall be necessary to execute such work.

**Section 3.** Grantee agrees to pay an initial fee of Two Thousand Five Hundred Dollars (\$2500.00) for this franchise and an annual fee thereafter in the sum of Five Hundred Dollars (\$500.00), payable annually in advance, on or before the anniversary date of the final passage of this Ordinance.

**Section 4.** Grantee agrees by accepting the franchise, to save the City of Deer Park harmless from all liability for injury or damage to any person or persons, or property, caused by the construction, maintenance, operation, repair or removal of any part or all of such pipeline, and to pay to the City of Deer Park all damages caused to the City by reason of any such matters, including, without limitation thereby, the cost of repaving any cut in any pavement with materials approved by the City Manager and of repairing all excavations made by the Grantee in any street, alley, or public place.

**Section 5.** Nothing herein contained shall ever be held or considered as conferring upon Grantee and its successors and assigns any exclusive rights or privileges of any nature whatsoever.

**Section 6.** The Grantor by the granting of this franchise does not surrender or to any extent lose, waive, impair or lessen the lawful powers and rights, now or hereafter vested in the Grantor to regulate the operation of this pipeline, and Grantee by its acceptance of this franchise agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the Grantor shall be in full force and effect and subject to the exercise thereof by the Grantor at any time and from time to time. In granting this franchise, it is understood that the lawful power vested by law in the Grantor to regulate all public utilities within Grantor and to regulate the local rates of public utilities within the Grantor within the limits of the Constitution and laws, and to require all persons or corporations to discharge the duties and undertakings, for the performance of which this franchise is made, is reserved; and this grant is made subject to all lawful rights, powers and authorities, either of regulation or otherwise, reserved to the Grantor by law.

**Section 7.** The terms and conditions hereof shall be equally binding upon the successors and assigns of Grantee and upon any person or firm or company which may succeed to or acquire the properties of Grantee within Grantor City. The continued operation of Grantee's pipeline shall be deemed agreement to all of the terms hereof.

**Section 8.** City shall have the right to inspect any part of Grantee's pipeline or facilities within Grantor City at any reasonable time and from time to time.

**Section 9.** The Grantee shall, within thirty (30) days from the date this Ordinance is finally passed, file with the Grantor a written statement signed in its name and behalf in the following form:

"To the City of Deer Park:

"The Grantee, for itself, its successors and assigns, hereby accepts the above and foregoing

Ordinance and agrees to be bound by all of its terms and provisions."

## NUSTAR LOGISTICS

By: \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2021."

Subject to compliance by Grantee with the terms hereof, this franchise, if so accepted, shall take effect on the date of acceptance.

**Section 10.** If any provision, section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, void or invalid (or for any reason unenforceable), the validity of the remaining portions of this Ordinance shall not be affected thereby, it being the intent of the Grantor in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision or regulation, and to this end, all provisions of this Ordinance are declared to be severable.

**Section 11.** Any person, firm or corporation who shall violate any of the provisions or terms of this Ordinance shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding Two Thousand Dollars (\$2,000.00) and each day's violation shall constitute a separate offense.

**Section 12.** It is officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given, all as required by Chapter 551 of the Government Code of the State of Texas.

**Section 13.** This Ordinance or the caption thereof shall be read at three (3) regular meetings of the City Council of the City of Deer Park, Texas, and shall not be finally acted upon until at least forty-two (42) days after the first reading hereof. It shall take effect if passed on that date.

In accordance with Article VIII, Section 1 of the City Charter, this Ordinance was introduced before the City Council of the City of Deer Park, Texas, **passed and approved** on the first reading on this the \_\_\_\_ day of \_\_\_\_\_, 2021 **by a vote of** **“Ayes” and** **“Noes”**.

\_\_\_\_\_  
**MAYOR**, City of Deer Park, Texas

**ATTEST:**

\_\_\_\_\_  
City Secretary

In accordance with Article VIII, Section 1 of the City Charter, this Ordinance was introduced before the City Council of the City of Deer Park, Texas, **passed and approved** on the second reading on this the \_\_\_\_ day of \_\_\_\_\_, 2021 **by a vote of** **“Ayes” and** **“Noes”**.

\_\_\_\_\_  
**MAYOR**, City of Deer Park, Texas

**ATTEST:**

\_\_\_\_\_  
City Secretary

In accordance with Article VIII, Section 1 of the City Charter, this Ordinance was introduced before the City Council of the City of Deer Park, Texas, **passed, approved and adopted** on the third and final reading on this the \_\_\_\_ day of \_\_\_\_\_, 2021 **by a vote of** **“Ayes”** **and** **“Noes”**.

\_\_\_\_\_  
**MAYOR**, City of Deer Park, Texas

**ATTEST:**

\_\_\_\_\_  
City Secretary

**APPROVED:**

\_\_\_\_\_  
City Attorney