

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF CULVER CITY, CALIFORNIA, GRANTING TO TORRANCE VALLEY PIPELINE COMPANY LLC, A FRANCHISE TO OPERATE AND MAINTAIN A CERTAIN PIPELINE AND ITS APPURTENANCES FOR THE TRANSPORTATION OF OIL OR PRODUCTS THEREOF IN THE CITY OF CULVER CITY

WHEREAS, ExxonMobil Oil Corporation ("ExxonMobil") presently has a franchise for an underground Pipeline pursuant to an agreement granted by the City of Culver City ("City"), on October 26, 1992; and,

WHEREAS, this franchise was amended on December 8, 2003, pursuant to Ordinance No. 2003-016; and,

WHEREAS, an initial term of five years and three five-year options were provided for under the terms of that franchise with the final option expiring on November 26, 2012; and

WHEREAS, although the ExxonMobil franchise has expired, ExxonMobil has continued to operate its Pipeline facility in compliance with all of the terms and conditions of the franchise; and,

WHEREAS, as verified by the Office of the State Fire Marshall, there have not been and are not now any violations of Pipeline safety; and

WHEREAS, ExxonMobil entered into a Sale and Purchase Agreement with PBF Holding Company LLC ("PBF") to purchase the assets covered by Franchise Ordinance No. 92-14. The assets were transferred into the name of Torrance Valley Pipeline Company LLC ("Torrance Valley") on July 01, 2016; and

WHEREAS, Torrance Valley has requested the Culver City Council to adopt a new ordinance which would grant Torrance Valley a franchise to operate and maintain the former ExxonMobil Pipeline and its appurtenances for the transportation of petroleum products in the City of Culver City; and

WHEREAS, the City Council, to ensure the continued protection of the public health, safety, and welfare, has directed the City Manager to enter into negotiations with Torrance Valley for the purpose of granting a new franchise to Torrance Valley; and

WHEREAS, pursuant to Resolution No. _____ adopted on _____, the City Council declared its intention to grant Torrance Valley's franchise application; and

WHEREAS, on _____, the City Council held a public hearing on the application submitted by Torrance Valley and, following public testimony and thorough

discussion of Torrance Valley's application, approved the application on the terms and conditions provided herein.

NOW THEREFORE, the City Council of the City of Culver City, California, DOES HEREBY ORDAIN as follows:

SECTION 1. TERMS AND CONDITIONS OF FRANCHISE

A. Terms of Franchise

This franchise is hereby granted to Torrance Valley Pipeline Company LLC, (herein after referred to as "Grantee") for a term of ten years (the "initial term") from the effective date of this franchise, subject to all of the limitations and restrictions herein contained. This franchise may be terminated by voluntary surrender or abandonment by Grantee, or by forfeiture for non-compliance of the terms and provisions hereof.

B. Grant of Franchise

This franchise grants to Grantee the right and privilege to install, operate, maintain, replace and repair a sixteen-inch (16") diameter Pipeline (hereinafter for convenience referred to as "Pipeline"), for the transportation of crude oil in, under, along and across certain public streets, highways and alleys, hereinafter for the convenience collectively referred to as "streets", in the City of Culver City, County of Los Angeles, State of California, hereinafter referred to as "City". The Pipeline is described in the attached Exhibit "A" and depicted in the map attached hereto as Exhibit "B".

C. Appurtenances

Grantee shall have the right to operate, maintain, repair or replace such scraper traps, manholes, flanges, conduits, culverts, valves, appliances, cathodic protection systems, attachments and other appurtenances (hereinafter for convenience collectively referred to as "appurtenances") as may be necessary or convenient for the proper maintenance and operation of the Pipeline under this franchise.

SECTION 2. COMPENSATION TO CITY

A. Upon approval of this ordinance, the Grantee shall pay to the City the sum of \$10,000.00 which shall be an administrative fee for City services incurred in processing this franchise application.

B. During the franchise term, Grantee shall pay to the City an annual franchise fee for the right to install, repair and for continued access to the Pipeline. The franchise fee shall be calculated in accordance with the provisions of Section 2.C. The first franchise fee shall be paid on or before the effective date of this franchise and

annually thereafter, on or before the anniversary of the effective date of this franchise, for the 12-month period following the anniversary date.

C. The franchise fee shall be calculated as follows: a base of \$64,139.85 shall be multiplied by a multiplying factor. For the first year of this franchise, the multiplying factor will be the Producer Price Index for All Commodities (1982=100 reference base, Not Seasonally Adjusted), published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), nearest the effective date of this franchise agreement divided by the Index for September 1992, which is stipulated to be 117.8. For all subsequent years, the multiplying factor will be the Index nearest the anniversary date of this franchise agreement divided by the Index for September 1992, which is stipulated to be 117.8. Under no circumstances shall the multiplying factor be less than one.

Formula:

$$\frac{\text{Base } (\$64,139.85)}{[\text{Index for September 1992}]} \times [\text{nearest Index}] = \text{franchise fee}$$

Example:

If the anniversary date is November 26, and the nearest published Index to that November 26th is 120.0, then the franchise fee for that year will be equal to:

$$\frac{\$64,139.85}{117.8} \times 120.0 = \$65,337.71$$

If the Index is discontinued or revised during the term, such other mutually agreeable governmental index or computation with which it is replaced shall be used in order to obtain substantially the same results that would be obtained if the Index had not been discontinued or revised.

D. Torrance Valley previously paid \$106,391.57 on November 10, 2020 as a pre-payment for the franchise fee for the period November 26, 2020 through November 25, 2021. Therefore, if the effective date of this franchise occurs prior to November 26, 2021, the first annual franchise fee due under this agreement shall be reduced by an amount calculated as follows: the franchise fee (as calculated using the methodology in Section 2.C, above) prorated by the number of days left in the period between the effective date of the franchise and November 26, 2021.

Formula:

$$\frac{\text{franchise fee for 1}^{\text{st}} \text{ period} \quad (X) \quad \# \text{ days before 11/26/21}}{365} = \text{franchise fee reduction}$$

Example:

If the effective date of this agreement is October 12, 2021, the franchise fee for the first period of this agreement as calculated in Section 2.C is \$100,000 and the number of days left in the period is 45, then the franchise fee shall be reduced by \$12,328.77, an amount derived as follows:

$$\frac{\$100,000 \quad (X) \quad 45}{365} = \$12,328.77$$

E. If in any calendar year, the average annual throughput of crude oil exceeds 95,000 barrels per day, then Grantee shall pay the City a fee in the amount of five cents (\$0.05) for each barrel the cumulative amount of crude oil transported through Culver City that year exceeds the annual average of 95,000 barrels per day times the number of days in that year. Such payment shall be made within thirty (30) days after the reports provided for in Section 9.D(v).

F. The annual franchise fee set forth in this Section shall in no way limit Grantee's obligation to compensate City or any private citizen for any damage, claim, expense, or loss whatsoever arising from Grantee's acts or the acts of Grantee's agents pursuant to this franchise.

G. In the event of complete removal of the Pipeline, Grantee shall be liable to pay City the annual franchise fee for the period to and including the last day of the month in which Grantee actually removes all of the Pipeline and complies with all provisions of law or ordinances pertaining to the removal of the Pipeline. Similarly, in the event of abandonment of the entire Pipeline in place, Grantee shall be liable to pay City the annual franchise fee for the period to and including the last day of the month in which Grantee complies with all applicable provisions of Section 6 of this franchise and with all the provisions of law or ordinances relative to such abandonments.

H. In the event of partial abandonment of the Pipeline with the approval of City as elsewhere in this franchise provided, or in the event of partial removal of such Pipeline by Grantee, the franchise fee subsequently due City for occupancy of the streets by such Pipeline shall be reduced by a percentage reflecting the percentage of the Pipeline which has been partially abandoned or partially removed relative to the length of the Pipeline immediately before the involved abandonment or removal.

I. Grantee shall pay to City, on demand, the cost of all repairs made to public property if the need for such repairs was caused by any operation of the Grantee or Grantee's agents under this franchise. In addition, if any private property is damaged by an accident, spill, discharge, release, escape, accident, leaks or breaks in the Pipeline or appurtenances or from any cause arising in whole or in part from the operation or existence of the Pipeline or appurtenances or from any act or omission of Grantee or Grantee's agents, Grantee shall pay all damages or compensation to which the owners of the private property are entitled and Grantee shall repair its facilities to protect all property from further damage to the extent permitted and in conformity with Federal, State and local law, rule, regulation or order.

J. Any payment due from Grantee to City under any provision of this franchise which is not paid when due shall bear interest at the highest amount allowed by law, but the payment of such interest shall not excuse nor cure any other default by Grantee under this franchise. All payments shall be paid without deduction or offset except as herein provided, in lawful money of the United States to City at the following address: City of Culver City Attn: Chief Financial Officer, 9770 Culver Boulevard, Culver City, California 90232, or at such place as City may from time to time designate in writing.

In addition to the interest payable pursuant to the paragraph above, in the event any payment required under this Section is late, the following schedule of late charges shall be applicable to that portion which is overdue as follows: late 10 days but fewer than 30 days -- 2% of the amount due; for each additional 30 days or fraction thereof over 30 days an additional 2% of the amount, including interest due under this Section.

SECTION 3. ROUTINE MAINTENANCE AND REPAIR

A. The Pipeline laid, constructed or maintained under the terms of this franchise shall be installed, maintained, and inspected by the Grantee in a satisfactory, safe, and workmanlike manner. The Pipeline shall be of good material, and in conformity with all ordinances, rules, or regulations now or hereafter adopted or prescribed by any State or Federal law. All Pipeline shall be designed, manufactured, installed, constructed and inspected in accordance with applicable law.

B. At all times during the term of this franchise, Grantee shall maintain and assure the ability to immediately locate any operating difficulty or irregularity, so as to minimize any risk to public health, safety and welfare. If at any time during the term of this franchise any State or Federal regulatory authority finds or determines that the Pipeline does not comply with applicable health, safety and/or welfare regulations, Grantee shall promptly make, at Grantee's own expense, all corrections required by the involved State or Federal regulatory authority

C. For all required maintenance activities, the City agrees to process permit applications for such repairs in a timely manner, subject to the payment of the fee therefor as set by City Council.

D. Subject to Grantee's compliance with all applicable provisions of Section 9 below, Grantee, at Grantee's sole cost, shall conduct repairs of Pipeline and appurtenances and coordinate with the City to ensure the least possible hindrance to the use of streets, and as soon as such work is completed, the entire width of all portions of streets which have been excavated or otherwise damaged thereby shall be repaired to the satisfaction of the Public Works Director.

E. Should Grantee plan any known routine repairs to Pipeline during any calendar year, the plans for such repairs, showing location and approximate date and length of time of work, must be submitted to the Culver City's Public Works Director ("Public Works Director") six months prior to the time in which the repairs are to take place. Any repairs not scheduled in accordance herewith may be denied unless the work is an emergency, determined to be regulatory required, or the need is unforeseen.

F. Grantee, upon completing repairs under this Section, guarantees that the repairs shall be good against all faulty work and materials and shall, for a period of one (1) year thereafter, maintain all such restored street surfaces in a like-new condition and according to current ordinances of City and all other applicable law, rules, and regulations. Grantee shall not be held liable for damage to the area of repairs found to be the result of 3rd parties or City maintenance activities.

G. In the event City elects to perform work on streets that requires relocation or alteration of Grantee's facilities which are the subject matter of this franchise, Grantee hereby agrees to move and alter its Pipeline and appurtenances, as required by the Public Works Director at Grantee's sole cost.

SECTION 4. UNPLANNED MAINTENANCE AND REPAIRS

A. Grantee shall report immediately any unplanned repairs, including but not limited to those undertaken in response to spills or leaks, to City. If any portion of any street is damaged by reason of operation of Pipeline and/or appurtenances, or if any street, sidewalk, sewer, storm drain, other facility or private property is contaminated with any products transported in Pipeline, Grantee shall, at its sole expense, immediately repair or clean up or cause to be repaired or cleaned up any such damage or contamination and repair the entire width of such street or other facility to a like-new condition, to the satisfaction of the Public Works Director. Such repairs or cleanups shall be accomplished in a timely manner, with as little public disruption as possible.

B. Grantee shall reimburse City for all costs associated with City services provided for such unplanned maintenance and repairs. Such reimbursement shall include, but not be limited to, the current rate of overhead being charged by City for reimbursable work. Reimbursable work shall include, but not be limited to, inspection, traffic control, police, fire, street, environmental, and any other City response forces or services.

C. Grantee shall promptly repair any damage to or leaks or breaks in the Pipeline from whatever cause. If any street or other public rights of way or property shall be damaged by any accident, spill, discharge, release, escape, leak or break in the Pipeline or by reason of any cause arising from or related to in whole or in part the acts or omissions of Grantee or to the operation or existence of the Pipeline, Grantee shall promptly repair, remediate and restore to a like-new condition, to the satisfaction of the Public Works Director, any damage arising from or related to the accident, spill, discharge, release, escape, leak or break.

D. In addition to any other notifications required by law, the City of Culver City Fire Department shall immediately be notified, and the Public Works Director shall be notified within 72 hours, in the event of any break in or accident to any portion of the Pipeline, as well as any spill, discharge, release, leak, or escape of any petroleum, oil, gas, hydrocarbon, chemical, water, wastewater, mud or other product or substance of any kind from the Pipeline within the boundaries of the City or if a discharge, release or escape occurs outside the boundaries of the City and can reasonably be expected to impact the City.

E. If Grantee, within ten (10) days after receipt of notice from the City, instructing it to repair any damage, fails to commence work or to comply with the instructions, or otherwise fails to diligently prosecute the work to completion, or to the satisfaction of the Director of Public Works, then the City may immediately do whatever work is necessary to carry out the work at the cost and expense of Grantee, which cost and expense, by the acceptance of the franchise, Grantee agrees to pay upon demand. If the damage constitutes an immediate danger to public health or safety, requiring immediate repair, the City, without notice, may repair the damage, and Grantee, by the acceptance of this franchise, agrees to pay all cost and expense upon demand.

SECTION 5. EMERGENCY MAINTENANCE AND REPAIRS

A. In the case of emergency, Grantee shall coordinate its response with all Federal, State, Regional, and City forces to respond to and rectify such emergency.

Such coordination shall include, but not be limited to, providing notice to City immediately of such emergency condition.

B. Emergency crews: At all times during the term of this franchise, Grantee shall maintain, on a twenty-four (24) hour basis, personnel to operate Pipeline and appurtenances, including but not limited to the leak detection and other safety or operations systems used in the operation of the Pipeline. Such personnel shall reach the site of any emergency involving the Pipeline within Culver City within one (1) hour of receiving notification of the existence of such emergency, provided however such access to site maybe extended beyond the one (1) hour timeframe to accommodate conditions outside of Grantee's control. In addition, during the term of this franchise, Grantee shall maintain, on a twenty-four (24) hour basis, adequate standby equipment and properly trained emergency crews for the purpose of implementing emergency response such as repairs, oil spill cleanup, preventing or minimizing damage or the threat of damage to people, property and the environment in the event of an emergency resulting from an earthquake, act of war, civil disturbance, flood, leakage, or other cause. As soon as practicable following discovery of an emergency, Grantee shall report the emergency to the National Response Center and other applicable Federal, State, Regional agencies and departments and call out the emergency standby crews and equipment.

C. Within ninety (90) days of the effective date of this franchise, Grantee shall provide the City with an emergency preparedness plan. Thereafter, within 90 days of a reasonable request from the City, Grantee shall update its plan to the satisfaction of the City.

SECTION 6. REMOVAL OR ABANDONMENT OF FACILITIES

A. Abandonment

During the term of this franchise, Grantee shall obtain permission from the Public Works Director to abandon any facilities. No Pipeline shall be abandoned in-place without the express written permission of the Public Works Director, who in his or her reasonable discretion may set the terms and conditions of the abandonment, including the amount of payment to the City for the privilege of such an abandonment.

B. Application to the Public Works Director

At least one hundred eighty (180) days prior to the expiration or termination of this franchise, the Grantee shall make a written application to the Public Works Director to remove or abandon the Pipeline. The application shall describe in detail how the removal or abandonment will occur.

C. Determination of the Public Works Director

The Public Works Director shall review the application submitted pursuant to this Section and, within 30 days of such application being deemed complete by the Public Works Director, determine whether such proposed abandonment or removal may be effected without detriment to the public interest or under what conditions such proposed abandonment or removal may be safely effected. The Public Works Director shall notify Grantee of the Public Works Director's determination to approve, conditionally approve, or deny such application, and, in the case such application is approved or conditionally approved, in accordance with such requirements and conditions as shall be specified by the Public Works Director in any permit issued as a result of the application submitted pursuant to this Section, including but not limited to applicable state and federal regulations, Grantee shall, within ninety (90) days of such determination, either:

1. Remove all or a portion of such Pipeline, or
2. Abandon in place all or a portion of such Pipeline, as set forth in the approved Permit.

D. Failure to Properly Abandon

If any Pipeline to be abandoned in place subject to prescribed conditions shall not be abandoned in accordance with all such conditions, then the Public Works Director may make additional appropriate orders, including, if deemed desirable, an order that Grantee shall remove all such Pipeline in accordance with applicable requirements of the Pipeline Safety Act or other governing law or statute. In the event Grantee shall fail to remove any facilities which it is obligated to remove in accordance with such applicable requirements within such time as may be prescribed by the Public Works Director, then City may remove or cause to be removed such Pipeline at Grantee's expense, and Grantee shall pay City the actual cost thereof plus the current rate of overhead being charged by City for reimbursable work, as such overhead rate may have been set by action of City Council or as may reasonably be calculated by City Manager.

SECTION 7. REARRANGEMENT/RELOCATION OF FACILITIES

A. Expense of Grantee

Whenever, during the franchise term, City shall change the grade, width, or location of any Street or improve any Street in any manner including the laying of any sewer, storm drain, conduits, gas, water, or other pipes owned or operated by City or any other public agency or utility, or construct any pedestrian tunnels or other work of City (the right to do all of which is specifically reserved to City without any admission on

its part that it would not otherwise have such rights) and such work shall, in the opinion of the Public Works Director, render necessary any change in the position or location of any Pipeline in the Street, Grantee shall, at its sole cost and expense, do any and all things to effect such change in position or location in conformity with the written notice of the Public Works Director as provided in this Section; provided, however, that City shall not require Grantee to remove Pipeline in its entirety.

B. Expense of Others

Except as provided in Paragraph A of this Section, when such rearrangement/relocation is done for the accommodation of any person, firm, or corporation, the cost of such rearrangement shall be borne by the accommodated party. Such accommodated party, in advance of such rearrangement, shall (a) deposit with Grantee either cash or a corporate surety bond in an amount, as in the reasonable discretion of Grantee shall be required to pay the costs of such rearrangement, and (b) shall execute an instrument agreeing to indemnify and hold harmless Grantee from any and all damages or claims caused by such rearrangement.

C. Rearrangement/Relocation of the Facilities of Others

Nothing in this franchise shall be construed to require Grantee to move, alter, or relocate any of the facilities upon said streets for the convenience, accommodation, or necessity of any other public or private utility, person, firm, or corporation, or to require City or any person, firm, or corporation now or hereafter owning a public utility system of any type or nature to move, alter, or relocate any part of its system upon said streets for the convenience, accommodation, or necessity of Grantee.

D. Notice Related to Rearrangement/Relocation of Facilities

Prior to commencement of any rearrangement of facilities which Grantee is required to make hereunder, Grantee shall be given not less than thirty (30) days' written notice, which notice shall specify the time that such work is to be accomplished. In the event that City shall change the planned rearrangement/relocation of facilities, or the notice given to Grantee, Grantee may require an additional period of no fewer than sixty (60) days to accomplish such work, unless Grantee shall waive such additional period in whole or in part.

SECTION 8. SUSPENSION OF OPERATIONS

If, for any reason, Grantee suspends operations on Pipeline, during any period of suspended operations and while maintenance and Repairs are effectuated, Grantee shall maintain its normal Pipeline surveillance and safety monitoring processes, including all cathodic protection systems, to ensure ongoing Pipeline integrity. This shall

continue until such a time as the line is returned to service or abandoned in accordance with this franchise. Subject to the foregoing, this will confirm that performing maintenance or repair of the Pipeline shall not be construed as suspending operations.

SECTION 9. SAFETY REQUIREMENTS AND REPORTING

A. Conformance with Pressure Piping Code

The Pipeline and appurtenances shall be operated, maintained, replaced or repaired in accordance with the latest revision of the "American National Standard Code for Pressure Piping ANSI/ASME B31 4-1979," American Petroleum Institute Standard 1104, Code of Federal Regulations, Part 195, Title 49 USC and other applicable standards and codes, whichever is the most stringent.

B. Conformance with Federal and State Law

The Pipeline and appurtenances shall be operated, maintained, replaced or repaired in accordance with all applicable Federal and/or State standards for the constructing and operation of interstate Pipelines as set forth in State or Federal laws, rules or regulations. Whenever there is a conflict with the Federal or State standards, the more stringent standard will prevail.

C. Conformance with City Ordinances, Regulations, and Permits

The Pipeline and appurtenances shall be operated, maintained, replaced, or repaired in conformity with all applicable City ordinances, rules or regulations (including, without limitation, City's Standard Plans for Public Works Construction and the Standard Specifications for Public Works and standard plans for street repair), not in conflict with Federal or State standards, or as otherwise prescribed by City Council, not in conflict with Federal or State standards, and in accordance with the terms and conditions of any permit issued by the Public Works Director.

D. Reporting

The Grantee shall provide to the Public Works Director, on or before the effective date of this franchise and annually thereafter on or before the anniversary of the effective date of this franchise, a report verified under oath or penalty of perjury by a duly authorized officer of the Grantee, which describes in full the following information:

- (i) The length of lines prescribed in this franchise;
- (ii) The nominal internal diameter of such lines;
- (iii) The method used to calculate the franchise fee for the following franchise year, including the total amount due to the City; and
- (iv) Maps or suitable diagrams indicating the accurate “as-built” location, depth, and size of the Pipeline that changed over the past 12-month period and contingency plans for any pipeline emergencies impacted by such change; and
- (v) Throughput reports of the amount of crude oil transported through the Pipeline within Culver City during the preceding calendar year. Such reports shall be based on the figures developed at the Torrance terminus of the Pipeline.

The City reserves the right to revise and to amend the safety and reporting requirements prescribed in this franchise in conformity with all rules or regulations now or hereafter adopted or prescribed by any State or Federal law.

Once every 5 years, on or before the anniversary of the effective date of this franchise, Grantee shall provide an audit of the throughput reports in Section 9.D(v) prepared by an independent, internationally-recognized accounting firm with significant crude oil accounting experience. Any such audit report shall cover the 5-year period prior to the date of submission of subject report.

- (vi) A summary of all regulatory required testing performed on the Pipeline for the prior 12-month period.

E. For those pipelines and appurtenance subject to the provisions of the Elder Pipeline Safety Act of 1981 (Government Code §51010, et seq.), the testing will be performed in accordance with State Fire Marshal requirements, and all tests results and expert opinion as to the current operational condition of Grantee’s pipeline will be requested by the City from the State Fire Marshal. In the even the State Fire Marshal fails to provide test results to the City, Grantee will provide the test results upon written request. City acknowledges the State Fire Marshal’s has regulatory oversight and jurisdiction over the operation and maintenance of the Pipeline covered by this section.

SECTION 10. INDEMNIFICATION, INSURANCE, AND BONDS

A. Indemnification

Grantee shall indemnify, defend and hold City, its City Council, boards and commissions, officers, agents, servants and employees harmless from and against any and all loss, damages, liability, claims, suits, costs, fees and expenses of any kind

whatsoever, including reasonable attorneys' fees ("Claims"), arising from any act or omission by Grantee or Grantee's agents and arising from this franchise, the Pipeline, or the transport of any hazardous substance or hazardous waste, including but not limited to petroleum and crude oil, any of their fractions or constituent products or by-products, regardless whether any act or omission complained of is authorized, allowed, or prohibited by the franchise; provided, however, the provisions of this indemnity shall not apply to the extent that any Claims arise as a result of the negligence or willful misconduct of the City or third parties. This indemnity includes, but is not limited to any repair, cleanup or detoxification, or the preparation and implementation of any removal, remediation, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any facilities or equipment or the effects of such facilities or equipment authorized by this franchise, and any hazardous substance or hazardous wastes, including petroleum and any of its fractions or constituent products as defined in the Comprehensive Environmental Response, Compensation and Liability Act ["CERCLA"; 42 U.S.C. § 9601, et seq.], the Resource Conservation and Recovery Act ["RCRA"; 42 U.S.C. § 6901 et seq.] and California Health & Safety Code § 25280 et seq. This indemnity is intended to supplement and not replace any other indemnity from any source. This indemnity is also intended to operate as an agreement pursuant to Section 107(e) of CERCLA and California Health & Safety Code Section 25364, to assure, protect, hold harmless and indemnify City from liability.

B. Grantee shall indemnify, protect, defend, and hold harmless the City, its City Council, officers, officials, employees, servants and agents against any and all claims, demands, losses, costs, expenses, fees, penalties, damages, or liability of any kind or nature resulting from, or arising with respect to, the award of this franchise.

C. The indemnity provided for in Sections 10.A and 10.B shall survive the termination of this franchise.

D. As indemnitees, the City, City Council as well as the City's boards, commissions, officers, agents, volunteers and employees shall have the right to approve the attorneys selected by Grantee to represent them. In the event Grantee does not provide attorneys acceptable to the indemnified parties, the indemnified parties may select attorneys of their choice, so long as the attorney's rates do not exceed the greater of the rates the indemnified parties pay for other legal services, or the amount the Grantee pays for their legal services in the matter.

E. Insurance

Grantee at all times during the franchise term shall maintain insurance for all operations of Grantee relating to the operation of Pipeline within City in the amounts

and coverage's specified and described in Exhibit "C" attached hereto and incorporated herein by this reference.

F. Upon request of the Public Works Director, Grantee shall file with City a bond in the amount of two hundred thousand dollars (\$200,000.00) in favor of City, in a form approved by City Attorney. For each additional renewal period thereafter, the amount of the required bond shall be reviewed by the City and shall be increased based on the then current Pipeline franchise standard. In no event shall the amount of the bond be reduced below two hundred thousand dollars (\$200,000.00).

SECTION 11. DEFAULT

A. Effect of Default

In the event that Grantee shall default in the performance of any of the terms, covenants, and conditions herein and such default is curable, City may give written notice to Grantee of such default. In the event that Grantee does not commence the work necessary to cure such default within thirty (30) days after such notice is sent or prosecute such work diligently to completion, City may declare this franchise forfeited. Upon giving written notice thereof to Grantee, this franchise shall be void, the rights of Grantee hereunder shall terminate, City may exclude the Grantee from further occupancy or use of all City streets and other public rights of way, and Grantee shall execute an instrument of surrender and deliver the same to City. Upon giving notice of such forfeiture to Grantee and the State Fire Marshal, City may require Grantee to immediately shut off the access valves to the Pipeline. Further, City may require Grantee to effect the removal of Pipeline at the sole cost of Grantee. In the event Grantee does not commence removal of the facilities within 60 days of receipt of notice from City that removal is required, then City may commence removal of such facilities and pursue remedies against Grantees, including but not limited to, the exercise of its rights under any bonds provided under this franchise.

If the City declares this franchise forfeited pursuant to the provisions of Section 11.A, such forfeiture shall not operate to release any bond filed for this franchise. Upon declaring this franchise forfeited, the City may elect to take and accept the bond as liquidated damages therefor and pursue any other legal remedy for any damage, loss or injury suffered by the City as a result of such breach. After any forfeiture, the bond shall remain in full force and effect for a period of one (1) year unless exonerated by the City. No bond shall be exonerated unless a release is obtained from the Public Works Director and is filed with the Clerk of the City. The release shall state whether all excavations have been back filled, all obstructions removed, and whether the substratum or surface of City streets or public rights of way occupied or used by Grantee have been placed in good and serviceable condition. Any release shall not

constitute a waiver of any right or remedy which the City may have against the Grantee or any person, firm or corporation for any damage, loss or injury suffered by the City as a result of any work or activity performed by the Grantee in the exercise of this franchise.

B. Force Majeure

In the event Grantee is unable to perform any of the terms of this franchise by reason of strikes, riots, acts of God, acts of public enemies, or other such cause beyond its control, it shall not be deemed to be in default or have forfeited its rights hereunder if it shall commence and prosecute such performance with all deliberate speed.

C. Cumulative Remedies

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

SECTION 12. SCOPE OF RESERVATION

The enumeration herein of specific rights reserved shall not be construed as exclusive or as limiting such rights as City may now or hereafter have in law.

SECTION 13. NOTICE

Any notice required to be given under the terms of this franchise, the manner of services of which is not specifically provided for elsewhere herein, may be served as follows:

(1) Upon City, by serving the City Clerk personally, or by addressing a written notice to the City Clerk of the City of Culver City, City Hall, 9770 Culver Boulevard, P. O. Box 507, Culver City, California 90232-0507, or at such address as City may subsequently provide to Grantee, and depositing such notice in the United States mail, postage prepaid or,

(2) Upon Grantee, by personal delivery to the Chief Operating Officer or by addressing a written notice to Grantee addressed to Torrance Pipeline Company LLC, Attn: Manager, Rights of Way Department, 12851 E. 166th Street, Cerritos, California 90703, and depositing such notice in the United States mail, postage prepaid, or such other address as may from time to time be furnished in writing by Grantee to City, and depositing said notice in the United States mail. When the service of any such notice is

made by mail, the time of such notice shall begin with and run from the date of the deposit of same in the United States mail.

SECTION 14. SUCCESSORS AND ASSIGNMENT

A. Grantee shall not transfer, sell, hypothecate, sublet or assign this franchise, nor shall any of the rights or privileges therein be hypothecated, leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, nor shall there be any change in control, as defined below, without the prior consent of the City Council adopted by resolution.

B. Any sale, lease, assignment or transfer of this franchise or the rights or privileges granted by it, or any change in control of Grantee without the prior written consent of the City Council first having been obtained, whether by operation of law or otherwise, shall be null and void.

C. The City shall not unreasonably withhold its consent to a franchise transfer or a change in control of Grantee. For the purpose of determining whether it shall consent to such transfer, City may inquire into the qualifications of the prospective transferee or controlling party, and Grantee shall assist City in any such inquiry. In seeking City's consent to any change of ownership or change in control, Grantee shall have the responsibility of ensuring that the prospective transferee completes an application in a form and substance reasonably satisfactory to City. Such application shall be submitted to City not less than ninety (90) days prior to the date of transfer. The Grantee shall be required to establish that it is in material compliance with this franchise prior to City considering consenting to a franchise transfer or change in control. The prospective transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the Pipeline and comply with all franchise requirements for the remainder of the term of the franchise. If the City finds that the legal, financial, character, technical and other public interest qualities of the prospective transferee are satisfactory, and that the prospective transferee has the capability to operate and maintain the Pipeline and comply with all franchise requirements for the then remaining term, the City shall consent to the transfer and assignment of the rights and obligations of such franchise. The City may condition the transfer to ensure the prospective transferee is in material compliance, and remains in material compliance, with the franchise. For purposes of this Section 14, a change in control of Grantee shall be deemed to be a transfer requiring the City's consent. Nothing in this provision is intended to waive or contract away the City's police power.

D. Change in control means (i) any merger, consolidation or other reorganization of Grantee in which Grantee, or an affiliate of Grantee, is not the surviving entity, (ii) any transfer or change in ownership of fifty percent (50%) or more of the capital stock, capital accounts, equity interests or memberships, as the case may be, of Grantee, (iii) the acquisition of management control by any owner or new owner of interests in Grantee that previously did not control the management of Grantee, or (iv) the sale of fifty percent (50%) or more of the market value of the assets of Grantee.

E. The provisions of this Section shall not apply to Grantee's assignment of rights, duties and obligations under the franchise to any affiliate or subsidiary of Grantee. As used in this franchise, the term "affiliate" or "subsidiary" shall mean an entity controlling, controlled by or under common control with the entity to which the term applies, whether by ownership, contract or voting control. Grantee and the entity to whom the rights are to be assigned shall sign an assignment and assumption agreement whereby the transferee agrees to be bound by and comply with the terms of this franchise.

SECTION 15. RECEIVERSHIP OR FORECLOSURE

A. Subject to applicable provisions of the Bankruptcy Code, this franchise shall, at the option of the City, cease and terminate one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(1) Such receiver or trustee shall have, within one hundred twenty (120) days after his or her election or appointment, fully complied with all terms of this franchise and remedied all breaches of this franchise or provided a plan for the remedy of such breaches which is satisfactory to the City; and

(2) Such receiver or trustee shall, within said one hundred twenty (120) days, execute an agreement duly approved by the court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every term, provision and limitation of this franchise.

B. Upon the foreclosure or other judicial sale of all or a substantial part of a Pipeline System, the Grantee shall notify the City Clerk of such fact, and such notification shall be treated as a notification that a change in ownership of the Grantee has taken place and the provisions of Section 14 above governing such changes shall apply.

SECTION 16. ACCEPTANCE OF FRANCHISE

This franchise is granted and shall be held and enjoyed only upon the terms and conditions herein contained, and Grantee must, within thirty (30) days after the ordinance granting said franchise becomes effective, file with City Clerk a written acceptance of such terms and conditions. Failure of Grantee to file said written acceptance subjects this franchise to revocation by City upon City providing written notice thereof to Grantee.

SECTION 17. COSTS OF LITIGATION

If any legal action is necessary to enforce any provision hereof or for damages by reason of an alleged breach of any provisions of this franchise, the prevailing party shall be entitled to receive from the losing party reasonable costs and expenses in such amount as the court or arbitrator may adjudge to be reasonable attorney's fees and costs incurred by the prevailing party in such action or proceeding.

SECTION 18. CAPTIONS FOR CONVENIENCE

The captions herein are for convenience and references only and are not a part of this franchise and do not in any way limit, define or amplify the terms and provisions hereof.

SECTION 19. FRANCHISE TO BE STRICTLY CONSTRUED AGAINST GRANTEE

A. This franchise is granted upon each and every condition herein contained and shall ever be strictly construed against Grantee.

B. If any section, subsection, sentence or clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases are declared invalid or unconstitutional.

SECTION 20. GOVERNING LAW

This franchise has been made and shall be constructed and interpreted in accordance with the laws of the State of California.

SECTION 21. MEDIATION/REFERENCE

A. If a dispute arises between the parties relating to this franchise, the parties agree to use the following procedure prior to using the reference procedure described in

Section 21.B below. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation in accordance with the commercial Mediation Rules of the American Arbitration Association. Grantee shall advance the costs of mediation. The parties shall jointly appoint a mutually acceptable mediator, seeking assistance in such regard from the American Arbitration Association if they have been unable to agree upon such appointment within twenty (20) days from the conclusion of the negotiation period. The parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) days. Any decision of the mediator shall be supported by written findings of facts and conclusions of law. The mediator shall apportion the costs of mediation.

B. If the parties are not successful in resolving the dispute through mediation, the matter shall be heard by a referee pursuant to the provisions of California Code of Civil Procedure Sections 638 to 645.2, inclusive. The parties hereto shall agree upon a single referee who shall try all issues of fact, whether at law or in equity (including, but not limited to, specific enforcement of any provision of this agreement, declaratory relief or injunctive relief), and report a finding and judgment thereon. If the parties are unable to agree upon a referee, either party may seek to have one appointed, pursuant to California Code of Civil Procedure Sections 638 and 640. The cost of such proceeding shall initially be borne equally by the parties. However, the prevailing party shall be entitled, in addition to all other costs, to the costs of the reference as an item of recoverable costs.

C. Notwithstanding the provisions of this Section 21, either party shall be entitled to seek declaratory and injunctive relief in any court of competent jurisdiction to enforce the terms of this franchise or to enjoin the other party from an asserted breach thereof, pending the selection of a referee, on a showing that the moving party would otherwise suffer irreparable harm.

D. As part of its procedures to adjust claims of the residents of Culver City, Grantee shall and does hereby agree to binding arbitration before a retired judge from the Judicial & Mediation Services, Inc. (J.A.M.S.) within the County of Los Angeles, appointed pursuant to J.A.M.S. procedures. Any individual resident or property owner within the City of Culver City may submit the dispute to such binding arbitration as an alternative to litigation should efforts to resolve claims with Grantee not be successful. Grantee agrees to advance the costs of the arbitrator. As a condition of said arbitration, the arbitrator may award attorneys' fees and costs to the prevailing party. Any decision of the arbitrator shall be supported by findings of fact and conclusions of law. Grantee will agree to maintain a bond in the amount of \$100,000, in a form satisfactory to the

City Attorney, to secure payment of award to any claimant who elects to proceed with its claim against Grantee through use of the arbitration procedure employing the Judicial Mediation Services, Inc. (J.A.M.S.) as set forth in this paragraph. The bond may be drawn upon by any Arbitrator appointed by JAMS to pay such award, if an award is made by the Arbitrator to the claimant, and the claimant presents satisfactory evidence to the Arbitrator that the award has not been paid by or on behalf of Grantee within 30 days of the rendering of such award.

SECTION 22. NO WAIVERS

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

SECTION 23. EXECUTION

The Mayor of the City shall sign and City Clerk shall attest to the passage of this ordinance. This ordinance shall take effect thirty (30) days from the date of its adoption and prior to the expiration of fifteen (15) days from the adoption hereof City Clerk, pursuant to Section 616 of the City Charter, shall cause a summary of this ordinance to be published and shall post in the Office of the City Clerk a copy of the full text of this ordinance along with the record of the vote thereon.

APPROVED and ADOPTED this _____ day of June, 2021.

ALEX FISCH, Mayor
City of Culver City, California

ATTEST:

APPROVED AS TO FORM:

JEREMY GREEN
City Clerk

CAROL A. SCHWAB
City Attorney

EXHIBIT "A"

Description of Pipeline Location

[behind this page]

EXHIBIT "A"

Segment 1

Beginning at the intersection of Venice Boulevard., and Sepulveda Boulevard,
thence South along Sepulveda Boulevard to the intersection of Culver Boulevard;
thence Westerly along culver Boulevard to Sawtelle Boulevard;
thence South along Sawtelle Boulevard to the City of Culver City and the City of Los Angeles boundaries;

Segment 2

Beginning at the City boundary at Sawtelle Boulevard North of McDonald Street,
thence Southeasterly along Sawtelle Boulevard to the Alley East of Segrell Way;
thence South along the Alley East of Segrell Way to Slauson Avenue;
thence East along Slauson Avenue to Sepulveda Boulevard;
thence South along Sepulveda Boulevard to a point where the pipeline enters Centinela Creek Channel Right of Way (excluding approximately 477 feet of Sepulveda Boulevard which is under City of Los Angeles jurisdiction).

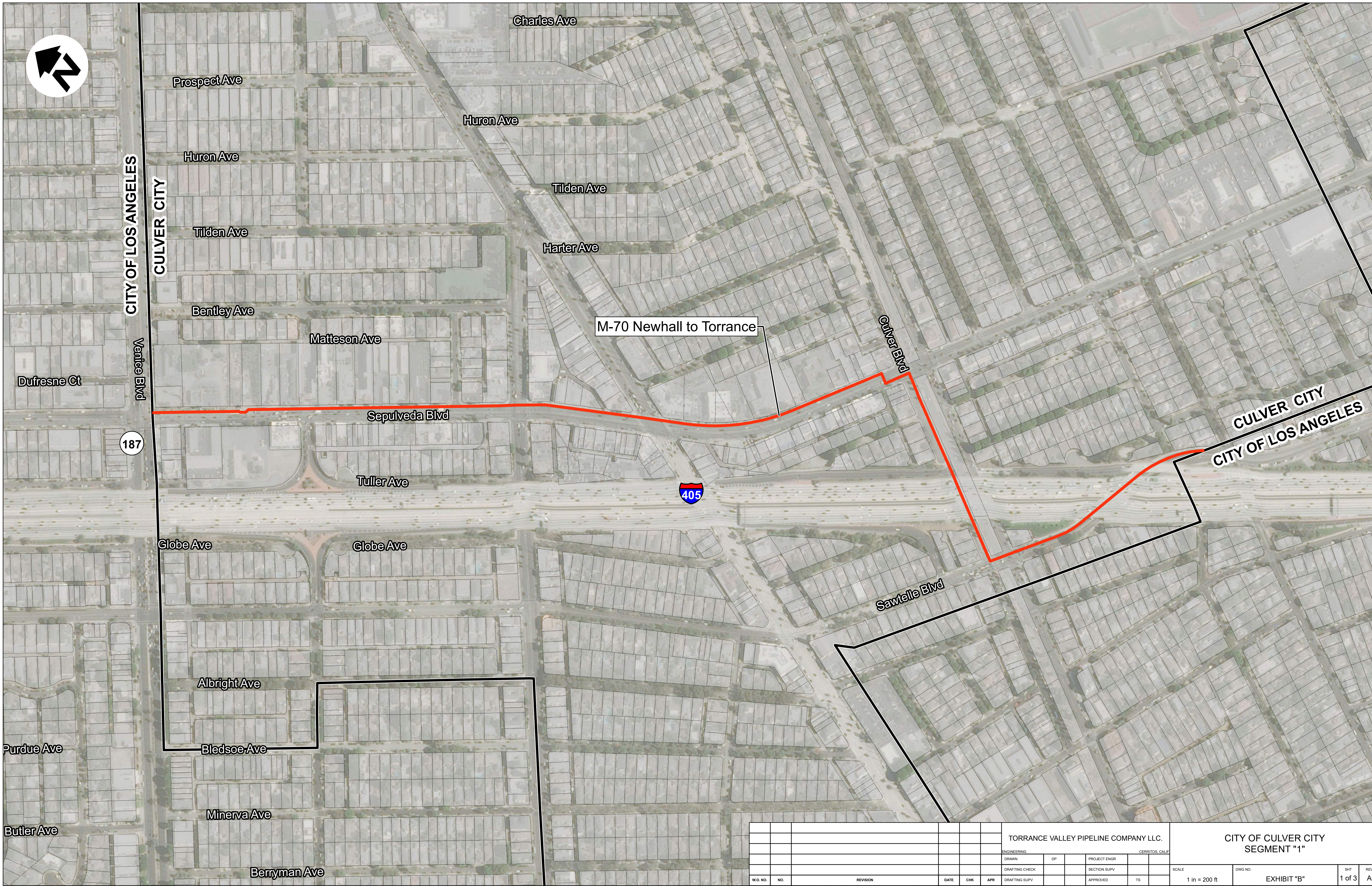
Segment 3

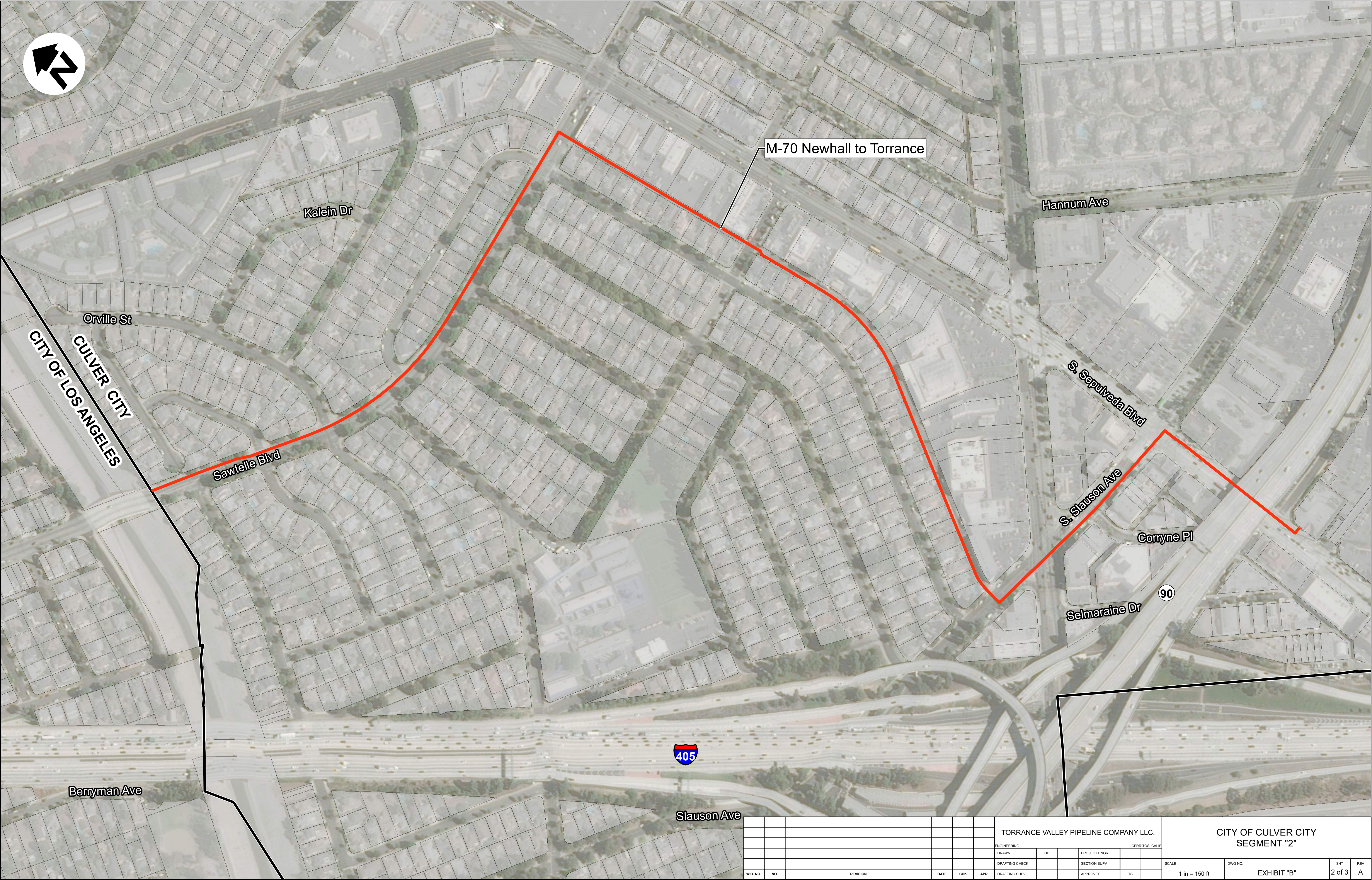
Beginning at the City of Culver City boundary at Bristol Parkway, crossing Bristol Parkway and proceeding Southerly to Centinela Boulevard;
thence Southeasterly along Centinela Boulevard to the Culver City boundary.

EXHIBIT "B"

Map of Pipeline Location

[behind this page]





M-70 Newhall to Torrance

CITY OF LOS ANGELES
CULVER CITY



90

								TORRANCE VALLEY PIPELINE COMPANY LLC.				CITY OF CULVER CITY SEGMENT "2"				
								ENGINEERING		CERRITOS, CALIF						
								DRAWN	DP		PROJECT ENGR					
								DRAFTING CHECK			SECTION SUPV					
								DRAFTING SUPV			APPROVED	TS				
W.O. NO.	NO.	REVISION				DATE	CHK	APR					SCALE	DWG NO.	SHT	REV
													1 in = 150 ft	EXHIBIT "B"	2 of 3	A



										TORRANCE VALLEY PIPELINE COMPANY LLC.										CITY OF CULVER CITY SEGMENT "3"																			
										ENGINEERING										CERRITOS, CALIF.																			
										DRAWN					DP					PROJECT ENGR																			
										DRAFTING CHECK										SECTION SUPV																			
										DRAFTING SUPV										APPROVED					TS														
W.O. NO.		NO.		REVISION				DATE		CHK		APR												SCALE		1 in = 150 ft		DWG NO.		EXHIBIT "B"		SHT		3 of 3		REV		A	

EXHIBIT "C"

INSURANCE REQUIREMENTS

Without limiting Grantee's duty to indemnify City, Grantee shall procure and maintain, for the duration of the franchise, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the operation, use, maintenance or any other privilege exercised under the franchise:

Minimum Scope/Limits of Insurance

Coverage may be arranged through any combination of primary and excess or umbrella policies to reach the required minimum limits. General, excess and pollution liability coverage must be location-specific or in the alternative, endorsed to provide a separate aggregate limit per location. Required coverage shall be as follows:

1. Commercial General Liability (CGL): Providing coverage at least as broad as Insurance Services Office Form CG 00 01 and covering bodily injury, property damage, personal injury and advertising injury, with minimum limits of \$1,000,000 per occurrence, \$2,000,000 general aggregate, and \$2,000,000 products and completed operations aggregate. The CGL policy shall be scheduled under the Excess or Umbrella policy identified in Paragraph 3, below. This policy shall contain no exclusions for:
 - a. Hazards commonly referred to as "XCU," including explosion, collapse and underground property damage; or
 - b. Work performed within 50 feet of a railroad.
2. Business Auto Liability: Providing coverage at least as broad as Insurance Services Office Form CA 00 01 with a minimum of \$1,000,000 combined single limit. This policy shall cover "any auto" (symbol "1"). This policy shall be scheduled under the Excess or Umbrella policy identified in Paragraph 3, below.
3. Excess or Umbrella Liability: Providing coverage at least as broad as specified above for the CGL and Business Auto coverage, with total limits of not less than \$50,000,000 per occurrence and aggregate. Such policy or policies shall include the following terms and conditions:
 - a. Pay on behalf of wording, as opposed to reimbursement;
 - b. Concurrency of effective dates with primary policies;
 - c. Policies shall be excess to the underlying primary policies;
 - d. Insureds under primary policies shall also be insureds under the umbrella or excess policies.

4. Pollution Legal Liability and/or Asbestos Pollution Legal Liability on an occurrence basis: Insurance appropriate to the work being performed, with limits of no less than \$75,000,000 per occurrence. All activities contemplated in this franchise shall be specifically scheduled on the policy as “covered operations.” This policy shall specifically provide for a duty to defend on the part of the insurer. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed “by or on behalf” of the insured.

The minimum limits required in this agreement are not limiting on coverage. If the Grantee maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Grantee. The City shall not accept any additional insured endorsement or policy provision that attempts to limit the amount of the additional insureds’ protection under the policy.

Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- a. Additional Insured Status (all policies): The City, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL, Umbrella and Pollution policies. Grantee shall ensure that the additional insured’s status remains current on subsequent annual policies for as long as this franchise remains in effect.
- b. Primary Coverage (all policies): For any claims related to this franchise, the Grantee’s insurance shall be primary as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Grantee’s insurance and shall not contribute with it.
- c. Notice of Cancellation (all policies): Each insurance policy required herein shall state that coverage shall not be cancelled, except after 30 days prior written notice of reasons for cancellation (other than non-payment of premium) has been given to the City.
- d. Waiver of Right of Recovery and Subrogation (all policies): All policies, except for worker’s compensation and professional liability, shall allow or shall be endorsed to allow Grantee to waive its right of recovery prior to loss. Grantee hereby waives its right to recovery with respect to the City, its officers, officials, employees, and volunteers. If any policy, except for worker’s compensation and professional liability, does not have a provision whereby the insurer’s right of subrogation is deemed waived by the insured’s pre-loss waiver of recovery, Grantee shall obtain an endorsement waiving Grantee’s insurer’s right of subrogation against the City, its officers, officials, employees and volunteers. The waiver

provisions of this sub-paragraph d. shall apply whether or not City has received a waiver of subrogation endorsement from the Grantee's insurer. Worker's compensation and professional liability policies shall be endorsed to waive the insurer's right of subrogation against the City, its officers, officials, employees and volunteers.

- e. Bankruptcy or Insolvency of the Insured: All policies must provide that bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy.

Requirements Not Limiting

Requirements of specific coverage features or limits contained in this Exhibit "C" are not intended as a limitation on coverage, limits or other requirements, nor as a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Grantee to reduce or eliminate the deductible or retention applicable to this franchise or provide satisfactory proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. Grantee shall ensure that the relevant Insurance Policy expressly permits (but does not obligate) City, or a designee of City, to pay the self-insured retention to satisfy any policy condition requiring payment of the self-insured retention for coverage to apply. If Grantee or the entity responsible for the self-insured retention does not pay the self-insured retention amount when due, then City may, but is not obligated to, pay the self-insured retention amount on behalf of such entity, and Grantee shall indemnify City for such amount and any other Losses incurred by City in connection with the Grantee's or the relevant entity's failure to pay the self-insured retention amount when due.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A-:VII, unless otherwise acceptable to the City.

Timely Notice of Claims

Grantee shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Grantee's performance under this franchise, and that involve or may involve coverage under any of the required liability policies.

Verification of Coverage

Grantee shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required herein. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain required documents prior to the work beginning shall not waive the Grantee's obligation to provide them. Grantee acknowledges and agrees that any actual or alleged failure on the part of the City to inform Grantee of non-compliance with any insurance requirement imposes no additional obligations on the City nor does it waive any rights hereunder. The City reserves the right to require complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.