

**ORDINANCE NO. 27-10 N.S.**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND ADDING  
CHAPTER 47 TO ARTICLE XIII OF THE RICHMOND MUNICIPAL CODE  
RELATING TO THE GRANT OF DETERMINATE PIPELINE FRANCHISES TO  
CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES, NECESSARY  
OR PROPER FOR TRANSMITTING SUBSTANCES UNDER, ALONG, ACROSS OR  
UPON ANY PUBLIC PLACE WITHIN THE CITY**

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The Council of the City of Richmond do ordain as follows:

**Section 1**      Findings

The Council of the City of Richmond finds and declares:

(a) Article IX, section 5 of the Charter of the City of Richmond prohibits any person from exercising any franchise, permit or privilege along any Public Place in the City unless such person has obtained a grant therefor except insofar as the person may be entitled to do so by direct authority of the Constitution or laws of the State or the Constitution or laws of the United States; and

(b) The City Council wishes to add a new Chapter 13.47 to Article XIII of the Richmond Municipal Code to, among other things, add specific provisions relating to the grant of franchises to maintain, operate, renew, repair, change the size of, remove or abandon in place pipes and pipelines for the collection, transportation or distribution of oil, gasoline, petroleum, gas of any type or nature, hydrocarbon substances, hydrogen, water, waste water, mud, steam, and other approved liquid or gaseous substances, together with all manholes, valves, Appurtenances and service connections necessary or convenient for the operation of said pipes or pipelines including conduits, cathodic protection devices, wires, cables and other Appurtenances necessary or convenient for the exercise of the Grantee's business, in, under, along or across any and all Public Places within the City of Richmond, and to provide rules, regulations, restrictions and terms and conditions for granting such franchises; and

(c) In adopting this ordinance, the City Council intends to provide for the protection of the physical environment, the safety and well-being of the public, and the soundness of City infrastructure by implementing conditions and restrictions that will ensure pipeline franchises are granted, operated, and terminated in an environmentally responsible and safe manner; that the granting, operation, and termination of pipeline franchises is conducted in accordance with appropriate planning principles; and that responsibility for oversight of pipeline franchises rests with the appropriate City personnel; and

(d) An Initial Study of the proposed Richmond Municipal Code text addition was prepared in accordance with the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15063 to assess potential environmental impacts of such addition.

- e) In adopting this ordinance, the City Council does not intend to interfere with the lawful regulatory jurisdiction of any state or federal agencies over pipeline safety or regulated public utilities under any Applicable Law.

**Section 2** Chapter 13.47 is hereby added to Article XIII of the Richmond Municipal Code, as follows:

### **Chapter 13.47**

#### **PIPELINE FRANCHISES**

- 13.47.010 Pipeline Franchises.**
- 13.47.020 Definitions Relating to Pipeline Franchises.**
- 13.47.030 California Environmental Quality Act**
- 13.47.040 Responsibility for Administration.**
- 13.47.050 Application and Grant of Franchise; City Costs.**
- 13.47.060 Term of Pipeline Franchise.**
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- 13.47.080 Franchise Fees.**
- 13.47.090 Payment; Audit.**
- 13.47.100 Construction of Pipelines and Facilities; Compliance with Applicable Laws; Pipeline Standards.**
- 13.47.110 Relocation of Pipelines and Appurtenances.**
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- 13.47.130 Special Provisions for Water Pipelines.**
- 13.47.140 Hazardous Materials.**
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- 13.47.160 Pipeline Emergency Plan.**
- 13.47.170 Liability; Damage to Property.**
- 13.47.190 Environmental Compliance Reports; Environmental Notices and Records.**
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- 13.47.300 Emergency Suspension Order.**
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- 13.47.320 Jurisdiction and Venue.**
- 13.47.330 Notices.**
- 13.47.340 Challenges.**
- 13.47.350 Future Amendment to Cited Statute.**

**13.47.010**                    **Pipeline Franchises.**

(a) Every franchise hereafter granted or renewed by the City to lay or construct from time to time, and to maintain, operate, renew, repair, change the size of, remove or abandon in place pipes and pipelines for the collection, transportation or distribution of oil, gas, gasoline, petroleum, wet gas, hydrocarbon substances, hydrogen, water, waste water, mud, steam, and other approved liquid or gaseous substances, together with all manholes, valves, Appurtenances and service connections necessary or convenient for the operation of said pipes or pipelines including conduits, cathodic protection devices, wires, cables and other Appurtenances necessary or convenient for the exercise of the Grantee's business, in, under, along or across any and all Public Places within the City of Richmond, except as otherwise provided in the ordinance granting the franchise, shall be granted upon and be subject to the rules, regulations, restrictions and terms and conditions of this Chapter, in addition to those rules, regulations, restrictions, terms and conditions set forth in the Code. To the extent any party contends it is not required to obtain a franchise from the City for any reason, including, but not limited to, because it is not operating or maintaining a pipeline in a "Public Place," the burden shall be on such party to establish, based upon Applicable Laws, that no franchise is required. A franchise granted under this Chapter does not convey to a grantee an easement or any other right, title or interest in or to any Public Place, but merely grants to the grantee the limited, specific rights and privileges to enter upon and use Public Places in the manner and subject to the conditions, limitations and obligations set forth in this Chapter.

(b) No pipeline franchise granted under this Chapter shall be construed or interpreted to permit the Grantee to use any Facilities in any Public Place for any purpose other than (i) the transmission of liquid or gaseous substances, or (ii) ensuring the mechanical integrity and safety of the pipeline, unless approved in advance and in writing by the City Engineer. Nothing in this Section or in any ordinance granting a franchise shall be construed to permit the Grantee to construct new poles or other Facilities above or below ground, except as permitted in writing by the City Engineer. Fiber optic or telecommunications Facilities or similar Facilities may be used only for pipeline operations, maintenance and safety, and for no other purpose, unless the franchise agreement expressly provides for such other use. Nothing herein shall allow the Grantee to allow third parties to use such Facilities. The Grantee shall not use the pipeline for any purpose not approved in writing by the City Engineer or by its franchise.

(c) This Chapter shall be construed to assure consistency with the Charter, the Code, Applicable Law, the requirements of the Clean Water Act and acts amendatory thereof or supplementary thereto, applicable implementing regulations, and any existing or future municipal National Pollution Discharge Elimination System (NPDES) Permits and any amendments or revisions thereto or reissuance thereof. Any amendment to this Chapter shall apply prospectively to the grant of new franchises, unless such amendment specifically states that it is intended to apply retroactively.

(d) This Chapter shall apply to all new applications for pipeline franchises as well as to applications for renewal of expired franchises that were originally created before the enactment of this Chapter.

**13.47.020 Definitions Relating to Pipeline Franchises.**

This Chapter shall be interpreted in accordance with the definitions set forth below, whether or not the specific term is capitalized, and in accordance with the rules of construction and definitions set forth in this Chapter, Chapter 1 of Article I of the Richmond Municipal Code, and in the Charter of the City. When consistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number.

(a) “Applicable Law” means all present or future federal, state, municipal, local, administrative or judicial laws, regulations, ordinances, orders, policies, actions, common law, guidelines, permit requirements, directives, judgments, injunctions or decrees or any order or directive issued by any governmental agency.

(b) “Applicant” means any person applying for a pipeline franchise under this Chapter, including any person seeking to renew a franchise granted prior to the effective date of this Chapter.

(c) “City Engineer” means the engineer of the City of Richmond, unless otherwise designated by the City Manager.

(d) “City Manager” shall mean the City Manager or the City Manager’s designee.

(e) “Code” means the Richmond Municipal Code.

(f) “Construct, maintain and use” means to lay, construct, erect, install, operate, maintain, use, repair, modify or replace.

(g) “Contaminant” shall mean any substance or constituent, material, chemical or waste, whether solid, liquid, semisolid, or gaseous in nature:

(1) Which has the following characteristics:

i) Is or shall be listed or defined by any governmental agency as hazardous, toxic, or dangerous, or as having toxic characteristics, under any Applicable Law; or

ii) Is a liquid or gaseous hydrocarbon substance or petroleum product or any fraction or constituent thereof; or

iii) Is or contains asbestos or polychlorinated biphenyl; or

iv) Is toxic, explosive, corrosive, flammable, infectious, reactive, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental agency; or

(2) Which is considered a hazardous waste, material or substance, or solid waste (as defined by RCRA [42 §§ U.S.C. 6901, et seq.]), or is considered a hazardous liquid (as defined in 49 C.F.R. § 195.2), or is considered a pollutant or Contaminant, as those terms are defined in their broadest sense by any Applicable Law, including the meanings assigned to the terms “hazardous substance” in Section 736(f)(3) of the California Code of Civil Procedure and “hazardous material” in Section 25401.1 of the California Health & Safety Code, including but not limited to petroleum and its fractions and constituents; or

(3) Is listed in the United States Department of Transportation (DOT) Table [49 C.F.R. § 172.101] as a hazardous material, or by the Environmental Protection Agency (EPA) or any successor agency, as a hazardous substances [40 C.F.R. Part 302] or designated pursuant to 33 U.S.C. § 1321 or listed pursuant to 33 U.S.C. § 1317; or the presence of which:

i) Causes or threatens to cause a trespass or nuisance or any violation of any Applicable Law, or poses or threatens to pose a hazard to the health and safety of persons or the environment; or

ii) Requires investigation, treatment, mitigation, removal or remediation under Applicable Law or the investigation, mitigation, treatment, removal or remediation of which is required by any governmental agency; or

iii) Causes or threatens to cause a nuisance or a trespass on, beneath or emanating from the Public Place or the pipeline or other Facility or Appurtenance of the Grantee or to adjacent properties, or poses or threatens to pose a hazard to the health or safety of persons or to the environment and released or disposed on a property by Grantee or any third party, or migrates onto the route of any pipeline constructed or operated pursuant to the franchise.

(h) “Council” means the City Council of the City of Richmond.

(i) “Day” means a calendar day.

(j) “Department” shall mean Public Works Department of the City of Richmond.

(k) “Environmental Condition” means the presence or likely presence or Release or threatened or potential Release of any Contaminant, whether discovered or undiscovered, in surface water, ground water, drinking water supply, soil, land surface, subsurface strata, aboveground and underground, in tanks or other containers, or in the ambient air on, over, beneath, about or emanating from any Facility.

(l) “Environmental Damage Claims” mean all claims (including strict liability claims), judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation, analysis, remediation and defense of any claim, whether such claim is ultimately defeated, and any good faith settlement of whatever kind or nature, contingent or

otherwise, choate or inchoate, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements, expert or consultant fees, any of which are incurred at any time as a result of any Environmental Condition or the presence or suspected presence of any Contaminant, upon, about, or beneath any Facility or the Release or threatened Release to or from any Facility, or the existence of a violation of any Applicable Law, including without limitation:

(1) All damages for personal injury, injury to property, or natural resources occurring upon or off any Facility, whether foreseeable or unforeseeable, including without limitation, lost profits and consequential damages, the cost of demolition, rebuilding of any improvements on real property, remediation, interest and penalties, and including, but not limited to, claims brought by or on behalf of employees of Grantee;

(2) Fees or expenses incurred by the City or third parties for the services of attorneys, experts, consultants, contractors, laboratories and any and all other Remediation Costs and other costs reasonably incurred in connection with the investigation or remediation of Contaminants or violations of Applicable Law, including, but not limited to preparation of studies or reports or the performance of cleanup, Remedial Work, removal, response, abatement, containment, closure, restoration or monitoring work required by any governmental agency, or reasonably necessary to make economic use of any property, or which are otherwise expended in connection with the existence or Release of Contaminants on or from any Facility, and including attorneys' fees, costs and expenses incurred in enforcing the provisions of the franchise or in collecting any sums due hereunder;

(3) Liability to any third person, or to any governmental agency, to defend or indemnify such person or agency for costs expended in connection with the items referenced in subparagraphs (1) and (2) above; or

(4) The diminution in the value of any Public Place or property in the vicinity of a Facility, and any damages for the loss of business and restriction on the use of or adverse impact on the marketing or rentable or useable space of any aspect of any property affected by Contaminants or violation of any of Applicable Law.

(m) "Facility," "Facilities" or "Appurtenances" shall mean all property of the Grantee, including, but not limited to, pipes, pipelines, pump stations, service connections and appurtenances, such as valves and corrosion control devices, whether installed by the Grantee or not, erected, constructed, laid, operated or maintained in, upon, over, under, along or across any Public Place within the City or on property owned by the City, pursuant to any right or privilege granted by franchise, and includes without limitation all items defined as a "facility" under Section 101(9) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA") [42 U.S.C. § 9601(9)].

(n) "Franchise" shall mean a grant of the rights and privileges by the City pursuant to and as described in this Chapter.

(o) “Grant” means the issuance of a new franchise or renewal of an expired franchise agreement.

(p) “Grantee” shall mean the person to whom the franchise is granted, and any person to whom it is lawfully assigned.

(q) “Main” shall mean any pipeline or conduit laid in, along, or approximately parallel with any street for the collection, transmission or distribution of any substance or commodity.

(r) “Person” shall mean any individual, person, firm, partnership or corporation or other business entity.

(s) “Pipeline franchise” shall mean a grant of a franchise by the City pursuant to and as described in this Chapter to operate pipelines, pipes and Appurtenances and related Facilities for the transmission of oil, gasoline, petroleum, gas of any type or nature, hydrocarbon substances, hydrogen, water, waste water, mud, steam, and other liquid and gaseous substances in and under Public Places in the City.

(t) “Pipelines” and “Pipes and Appurtenances” means Facilities necessary for the transmission of oil, gasoline, petroleum, gas of any type or nature, hydrocarbon substances, hydrogen, water, waste water, mud, steam, and other liquid and gaseous substances, including pipes, pipelines, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, taps and compressors, appliances, attachments, communication circuits, Appurtenances, and without limitation to the foregoing, any other equipment located or to be located under, along, across or upon the Public Places of the City, and necessary or proper in transmitting the foregoing described substances.

(u) “Public Place” means any street, lane, alley, court or other City-owned property within the City.

(v) “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, ejecting, escaping, leaching, dumping, migration, deposit, emplacement, seepage, filtration or disposal into the environment.

(w) “Remedial Work” means such actions as are necessary or required to remediate property or the environment to a condition which would allow unimpaired and unrestricted use and development and would comply with Applicable Law, and including, but not limited to, the following:

(1) All actions, investigations or inquiries necessary to fully assess an Environmental Condition, including any preliminary assessments, remedial investigations, feasibility studies, remedial action plans, or other reports or studies required by any governmental agency, and including all activities necessary for the implementation of the design, construction, operations, maintenance and monitoring of any remedial actions;

(2) All actions, investigations and inquiries to properly remediate, cleanup, remove, dispose, contain, monitor or treat any Contaminant or any Release, or otherwise to bring any Environmental Condition into compliance with Applicable Law, and to such condition or state determined by the City;

(3) All other actions necessary to “Respond” (as that term is defined in CERCLA Section 101(25) [42 U.S.C. § 9601(25)]), to any Environmental Condition or the presence, Release or threatened Release of a Contaminant, and including all other actions necessary to monitor, assess and evaluate the Release or threatened Release, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize or mitigate damage to the Public Place, the pipeline route or to adjoining properties, public health or welfare, or to the environment, or which may otherwise result from an Environmental Condition or the presence, Release or threat of a Release of a Contaminant, or as may be required by any governmental agency. This term includes but is not limited to, such actions as security fencing or other measures to limit access, provisions for alternative water supplies, evacuation and housing for threatened individuals or entities, storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of Contaminants, and associated contaminated materials, recycling or reuse, diversion, destruction, segregation, dredging or excavation, repair or replacement of containers, collection of leachate and runoff, onsite treatment or incineration, and any monitoring reasonably required to ensure that such actions protect adjoining properties, public health and welfare, and the environment. The term also includes offsite transport and offsite storage, treatment, destruction or secure disposition of a Contaminant and associated contaminated materials;

(4) Operating and maintenance activities performed in connection with any investigation or monitoring of site conditions, or any cleanup, disposal, treatment, remedial, removal or restoration work directed by the City or required or performed by any governmental agency, or performed by any nongovernmental entity or person due to the presence, suspected presence, Release or suspected Release of a Contaminant in the air, soil, surface or groundwater at or emanating from a Facility; and

(5) All restoration work on or off the Facility or the pipeline route relating to the measures and activities described above.

(x) “Remediation Costs” means all costs and expenses incurred in performing the Remedial Work, including all costs incurred in assessing, remediating, monitoring, treating or removing any Environmental Condition or Contaminant on, under or emanating from the pipeline route or a Facility and including, but not limited to, the following:

(1) All “Response” (as that term is defined in Section 101(25) of CERCLA [42 U.S.C § 9601(25)]) costs relating to any Facility or costs otherwise recoverable under Applicable Law;

(2) All past and future, direct and indirect costs, charges, payments, penalties in consent decrees, fees and the like relating to any “Removal,” “Remedy,” or “Remedial Action,” as those terms are defined in Sections 101(23) and 101(24) of CERCLA [42 U.S.C. § 9601(23) and 42 U.S.C. § 9601(24)] or costs recoverable under Section 107 of CERCLA [42 U.S.C. § 9607];

(3) All oversight, administrative, enforcement, removal, operation or maintenance, monitoring, investigative or remedial costs or to the extent recoverable from the City, other expenses incurred or to be incurred by the City, or its consultants, or any governmental agency, or any steering committee or work defendants, or any other third parties, relating to any Remedial Work;

(4) All consultant’s fees, contractor costs, the City’s attorney’s fees, indirect costs, travel costs, laboratory costs, access costs, plan and report review, and development costs, permit and license fees, taxes, capital expenditures, and all other related costs incurred in connection with the performance of the Remedial Work, and the preparation and implementation of any remediation plan or Remedial Work, or the implementation or enforcement of any consent decree, judgment, settlement or order relating to any Facility;

(5) The cost of fully satisfying any judgments, judicial, administrative or governmental orders, directives, or any liens, settlements, penalties, or other resolutions arising out of any Environmental Damage Claims or otherwise relating to Remedial Work; and

(6) All other costs, expenses, payments or other charges for Remedial Work or response or remedial measures or actions at or in the vicinity of any Facility, whether or not such costs are otherwise recoverable under CERCLA, and the cost of operating any removal or remedial Facilities, oversight costs, steering committee charges, penalties, operation and maintenance costs, reasonable attorney’s fees, and the costs of evaluating, monitoring or controlling any alleged Contaminants at or in the vicinity of and emanating from a Facility or a pipeline, and the cost of removing, remediating, nullifying, treating, disposing, transporting or cleaning up any alleged Contaminants, at or in the vicinity of and emanating from a Facility and otherwise complying with any judicial, administrative or governmental order, guideline, notice, directive or equitable relief directly or indirectly relating to any Facility.

(y) “Street” means all streets, highways, avenues, boulevards, alleys, courts, places, squares or other public ways in the City which have been or may hereafter be dedicated and open to public use, or such other public property so designated in any law of this State.

(z) “Term” shall mean the initial term as defined in Section 13.47.060 of this Chapter and any renewal term, unless otherwise required by the context.

**13.47.030 California Environmental Quality Act.**

(a) Nothing herein shall ever be construed so as to exempt the City from compliance with the California Environmental Quality Act (Pub. Resources Code, §§ 21000 *et seq.*)(CEQA).

(b) Before approving any franchise pursuant to this chapter, or before approving any discretionary permit or entitlement in connection with the grant, maintenance, operation, or termination of a franchise, the City shall ensure that such approval is conducted in compliance with CEQA.

**13.47.040 Responsibility for Administration.**

(a) City Manager. Pipeline franchises issued pursuant to this Chapter shall be administered for the City by the City Manager, or his designee, in consultation with the City Engineer. The City Manager, or his designee, shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this Chapter.

(b) Administrative Rules. The City, through Article XII of the Code, has adopted administrative rules and regulations pertaining to construction activity within a public right of way, with which any Grantee must comply to the extent applicable.

**13.47.050 Application and Grant of Franchise; City Costs.**

(a) An application for and the determination by the Council to grant or renew a pipeline franchise shall be made in the manner provided in this Chapter and as otherwise provided in the Charter and the Code.

- (1) An Applicant for a franchise shall file with the Council a verified application which shall contain the following information:
  - i) The name of the Applicant;
  - ii) The purpose and term, whether definite or indeterminate, for which the franchise is desired;
  - iii) The amounts and/or percentages, if any, the Applicant will pay to the City during the life of the franchise if granted;
  - iv) Any limitations as to time, place or type of service proposed by the Applicant;
  - v) Any other terms or conditions which the Applicant may desire, including the surrender of existing franchises, or parts thereof, or claims to such franchises or proposals to settle any litigation or controversies between the Applicant and the City;
  - vi) Such information as necessary to comply with Section 13.47.050(a)(2)(6) below;
  - vii) A map, as provided in Section 13.47.050(c) below; and
  - viii) Such other information as the Council, the City Manager or the City Engineer may require.

(2) In addition to the requirements above, unless exempted from disclosure to the City by a provision of the federal Homeland Security Act (6 U.S.C. §§ 101, et seq.) specifically identified by the Applicant, the Applicant shall also provide the following information for existing and new pipelines to the City and such other information as may be requested by the City Engineer and the Richmond Fire Department, including, but not limited to: the volume, pressure and type of substances being transported by the pipeline, size, date of construction, material specifications of pipeline, maximum pipeline pressure ratings, date of most recent inspection, inspection results, date of most recent certification, copy of certification, detailed description of materials, detailed description of transported, maximum daily volumes, and certifications from all agencies responsible for permitting and operation of the pipeline Facilities, as applicable, and evidence of public utility status, if any, and the Pipeline Emergency Plan specified in Section 13.47.160. Any information provided to the City pursuant to this Chapter is potentially subject to the disclosure requirements of the California Public Records Act (Government Code §§ 6250, et. seq.) and the Richmond Public Information Ordinance (Richmond Municipal Code, §§ 2.40.010, et seq.), subject to any valid exceptions. To the extent an Applicant believes certain information is not subject to disclosure, the Applicant shall so advise the City at the time the information is provided to the City and state the factual and legal basis for any assertion that information is exempted from disclosure under a specific provision of the federal Homeland Security Act, the California Public Records Act or the Richmond Public Information Ordinance. Any such documents shall be marked by the Applicant as “Confidential”. The City will then promptly undertake its own investigation of whether the marked material is confidential. If the City determines that the information is not confidential, and if the City subsequently receives a Public Records Act request for that information designated as not subject to disclosure by Applicant and marked by the Applicant as “Confidential”, the City will promptly notify the Applicant of the request, and the Applicant may take necessary steps to protect its properly marked information or documents within the time period prescribed for disclosure under the Public Records Act.

(3) An Applicant for a pipeline franchise shall also reimburse the City for all of the City’s administrative costs, staff time, administrative, legal and consulting fees incurred by City, in connection with processing the application or an application for the extension of a franchise, including but not limited to the preparation of any reports, statements or studies pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000, et seq.) and any similar federal statute, or any successor statute, and for any advertising and publishing costs, including the cost of publishing the ordinance, if necessary, incurred in connection with the granting of the franchise and any legal and consulting fees incurred by City, in connection with oversight, supervision and administration of the pipeline franchise.

(4) The grant of a pipeline franchise and its continued effectiveness shall be conditioned upon the Applicant's full payment of the City's costs relating thereto. Payment of the City's oversight and administrative costs relating to its pipeline operations is not and will not be considered in any manner as compensation to the City for the occupation of City's Public Places.

(5) A Grantee of an existing franchise from the City may request notice from the City Engineer of the application by an Applicant for a new franchise within the City and a copy of any map of any proposed pipeline route, subject to the restrictions and limitations set forth in Section 13.47.050(a)(2) above.

(6) An Applicant for a new franchise from the City shall provide notice and a copy of its application and a copy of any map of its proposed pipeline route, (subject to the restrictions and limitations set forth in Section 13.47.050(a)(2) above) to (i) any Grantee of a franchise who has requested notice pursuant in Section 13.47.050(a)(5) above and (ii) any Grantee of a franchise whose pipeline or other Facilities are either within, crossing or adjoining the proposed pipeline route, as set forth in the Application and the map of the proposed pipeline route. Such Grantee may file objections to the proposed pipeline route, and the City, in processing the application, shall give due consideration to any such objection.

(7) No application for a new franchise shall be processed by the City or will be considered by the Council, nor shall any franchise be granted to an Applicant which is operating a pipeline in any Public Place in the City without having first obtained a current, valid franchise from the City. The City may, in its sole discretion, condition the processing of any such application or the grant of any such franchise upon the deposit with such an application and the payment in full to the City at the time of the grant of the franchise of an amount equivalent to the franchise payments that would have been paid during the period of delinquency if such Applicant had been operating under a valid franchise, as determined by the City. Such payment, however, shall not be considered a waiver of or an estoppel to assert any provision of this Chapter or the Code, or of any penalties under this Code, nor require the City to issue a franchise to such Applicant.

(8) An application for the renewal of an existing franchise pursuant to Section 13.47.060(b) will be denied if the Grantee is not fully in compliance with all of the terms and conditions of its existing franchise, this Chapter and this Code, including but not limited to payment of any unpaid franchise fees. No application for the renewal of an existing franchise shall be processed by the City or will be considered by the Council, nor shall any renewal franchise be granted, unless such Grantee pays the City in full any and all unpaid franchise fees which have accrued through the date of the application, and thereafter, through the date of the grant of the renewed franchise, as determined by the City. Such payment, however, shall not be considered a waiver of or an estoppel to assert any provision of the existing franchise, this Chapter or the Code, or of any penalties under this Code, nor require the City to renew any existing franchise.

(b) Estimate of Costs.

(1) The Applicant shall deposit an amount established by resolution with the City as a condition to processing the application. If an application is not accompanied by such payment, the City may suspend processing of the application.

(2) In the event that the City Manager or City Engineer determines that the City's oversight and administrative costs may exceed the initial deposit, the Applicant will deposit additional funds with the City within thirty (30) calendar days of the City's request. The City shall furnish written statement to the Applicant for any costs exceeding the initial deposit after the ordinance granting the franchise becomes effective.

(3) All invoices and requests for deposit will be paid by the Applicant within thirty (30) calendar days of the mailing date of the City's invoice or requests for deposit.

(c) Map. An Applicant for a new pipeline franchise or an extension of an existing pipeline franchise shall provide the City Engineer and the Richmond Fire Department with a map, in such format as the City Engineer and/or the Richmond Fire Department requests, drawn to a size and scale approved by the City Engineer and/or the Richmond Fire Department, showing the location boundaries of the area to be described in the franchise, and detailing the location, size, description, and date of installation, if known, of all existing or proposed pipelines, mains, laterals, services, and service pipes and of all valves, pressure regulators, drips, manholes, handholes, transformer chambers, or other appliances installed beneath the surface of the Public Places, as well as the location of those Facilities for which Applicant or Grantee claims exemption from the franchise provisions of this Chapter. The map provided to the City Engineer and the City Fire Department shall be accompanied with a list of the names and addresses of the operators of existing pipelines in the vicinity of its proposed pipeline route.

(d) Non-Exclusive Franchise. Any pipeline franchise granted by the City to a Grantee under this Chapter to operate pipelines and related Facilities shall be a non-exclusive and determinate franchise to construct, maintain and use pipes and Appurtenances necessary or proper for the transmission of the liquid or gaseous substances approved in writing by the City Engineer under, along, across or upon the Public Places within City. The grant of the franchise shall not be construed to prevent the City from granting any identical or similar franchise to any person other than the Grantee.

(e) No Exemption. Nothing herein contained shall ever be construed so as to exempt a Grantee of a pipeline franchise from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted.

(f) Facilities. All Facilities erected, constructed, laid, operated or maintained by the Grantee in Public Places, including services connected with the Grantee's facilities, whether installed by the Grantee or not, in the area described in and by virtue of the authority provided by a prior franchise shall become subject to all the terms and conditions of such new franchise upon

the effective date of the new franchise, provided, however, upon request of Grantee and at the discretion of the City, a new, separate franchise may be granted for new pipeline segments.

(g) Acceptance. The grantee of any franchise shall, within fifteen (15) days after the franchise is granted, file with the City Clerk a written acceptance of the terms and conditions thereof and any bond or other security required by the Council.

#### **13.47.060 Term of Pipeline Franchise.**

(a) Initial Term. The initial term of a pipeline franchise shall commence with the effective date of the ordinance granting the franchise and continue for a period of ten (10) years (“Initial Term”), subject to renewal and termination as provided under this section. If an Applicant for a franchise proposes to construct a new pipeline and demonstrates to the satisfaction of the City Council the need for a longer Initial Term, the City Council may, in its sole discretion, grant a franchise with an Initial Term of up to fifteen (15) years. The aggregate term of any franchise, including the Initial Term and Renewal Terms (as defined below), shall not exceed thirty (30) years.

(b) Renewal Terms. At the conclusion of the Initial Term and upon application by Grantee, the term of the franchise may be renewed by the City Council for an additional ten (10) year period (“First Renewal Term”), and thereafter for a second, additional ten (10) year period (“Second Renewal Term”), provided, however, that the Grantee has fully complied with all of the terms of the franchise, including but not limited to payment of all franchise fees and all Applicable Laws. An application for renewal shall be filed with the City Clerk at least six (6) months before the expiration date of the current term. Such application shall be subject to the approval of the City Council. In approving the application, the City Council may modify the franchise based upon, but not limited to, the experience of the City and other cities and governing agencies in administering the franchise during the preceding term, changes in the Consumer Price Index, changes in relevant technology, changes in Applicable Law, including but not limited to amendments or modifications of the Public Utilities Code, changes in relevant environmental practices and requirements, utility industry regulatory developments and business practices, as well as changes in franchise fees pursuant to Subsection 13.47.080(b), and such other factors the City Council considers relevant at the time the City Council considers the application for renewal. In order for a renewal to be effective, Grantee shall accept such renewal pursuant to Subsection 13.47.050(g). Nothing herein, however, shall obligate the City to renew a franchise.]

(c) Termination. During the term of the franchise, the franchise shall remain in full force and effect unless Grantee provides six months advance notice to the City Manager and the City Engineer that: (1) Grantee voluntarily surrenders or abandons the franchise, in compliance with the removal and abandonment provision in Section 13.47.120; (2) the State of California or some municipal or public corporation purchases by voluntary agreement or condemns and takes under the power of eminent domain, all property actually used and useful in the exercise of the franchise and situated within the territorial limits of the State, municipal or public corporation purchasing or condemning such property, or (3) the franchise is forfeited for noncompliance with its terms by Grantee. Provided, however, the following provisions of this Chapter shall remain in full force and effect after any such termination: 13.47.110 (relocating); 13.47.120 (removal or

abandonment of facilities); 13.47.170 (liability, damage to property); 13.47.180 (release of Contaminants); and 13.47.210 (liability, indemnity).

(d) Public Utilities. If, after the granting of a franchise to other than a public utility, the Grantee qualifies before the Public Utilities Commission of the State of California as a common carrier, the Grantee shall then have no right to continue to operate hereunder after the date of such qualification, except with the consent of the Council, granted upon such additional terms and conditions as the Council may deem proper. Such additional terms and conditions shall be expressed by ordinance.

#### **13.47.070 Transfer of Franchise.**

(a) A Grantee may not sell, transfer, assign or lease any franchise, or any part thereof, or any of the rights or privileges granted thereby, except with the written consent of the City, which the City shall not arbitrarily withhold. Grantee shall file with the City no later than sixty (60) days after execution of an agreement for any sale, transfer, assignment, or lease of the franchise, or any part thereof, or any of the rights or privileges granted thereby, written evidence of the transaction certified to by the Grantee, and a written request for the consent of the City to such sale, transfer, assignment or lease. Any attempt to sell, transfer, assign, lease or otherwise dispose of the franchise without the consent of the City shall be null and void. Notwithstanding the foregoing, City approval is not required for the granting of a security interest in any of Grantee's assets, or any mortgage or other hypothecation, or by assignment as collateral of any rights, title or interest of Grantee in the franchise in order to secure an indebtedness. City approval is required to sell, transfer, assign or lease any franchise resulting from a consolidation or merger of Grantee with or into any other person, entity or corporation, or any other business reorganization, including any transaction or series of related transactions by Grantee where in excess of twenty-five percent (25%) of the ownership is transferred, unless such ownership is transferred to any person or entity that was, immediately prior to the transaction or transactions, the direct or indirect owner of, or under common ownership with, Grantee.

(b) To obtain City's consent, Grantee shall provide City with a written request setting forth the specific interests to be transferred, along with such other information as the City may request, to the extent such information is not proprietary or otherwise privileged. The City Council shall conduct a public hearing on the proposed transfer. Notice of the hearing shall be published at least fifteen (15) days prior to the hearing in a newspaper of general circulation within City or posted in the places designated for posting of official notices.

(c) The City's approval or disapproval of the proposed transfer shall be based on the proposed transferee's legal, financial and technical qualifications, the transferee's acceptance of the terms and conditions of the franchise and agreement to be bound thereby, and on whether Grantee is in compliance with the terms of the franchise and this Chapter, and such approval shall not be arbitrarily withheld. As a condition to the granting of consent to such sale, transfer, assignment, lease or agreement, the City may impose such additional terms and conditions upon the franchise and upon the Grantee or assignee, which the City may deem to be in the public interest. Such additional terms and conditions shall be expressed by ordinance.

(d) Nothing herein contained shall be construed to grant to the Grantee the right to sell, transfer, assign or lease the franchise, or any part thereof, except in the manner set forth in this Section. No transfer shall be effective unless and until such transfer is approved by the City Council, as provided in this Section.

**13.47.080 Franchise Fees.**

(a) Grantee shall pay the franchise fees as established by resolution of the City or such other fees negotiated with the Grantee.

(b) The City reserves the right to change its franchise fees upon the renewal of a franchise at ten year intervals following the effective date of the ordinance granting the franchise, if such action is not in conflict with the law of the State of California.

(c) In the case of an initial grant of franchise, or franchises which extend, renew, or continue previously granted franchises, a base granting fee, if applicable, shall be set by resolution of the City and shall be paid within thirty (30) days after the Council adopts the ordinance granting the franchise and prior to signing the written acceptance of the franchise.

(d) The franchise fees made under this Section constitute payment for the privilege of using Public Places, and is not in derogation of any other lawful fee or exaction. Nothing in this ordinance shall limit or otherwise affect any ability City may have, acting pursuant to its status as a charter city, or in its proprietary capacity or under the police power, to require Grantees making use of Public Places to pay any fees or other charges imposed by City to address impacts of such Grantees' activities on City or its assets.

(e) The holder of the franchise shall pay at the time of installation, voluntary relocation, or replacement of any pipeline or other Facility covered by the franchise, a base construction charge set by resolution of the City. The City reserves the right to change the base charges established by resolution at any time after the effective date of the ordinance granting a franchise. The base construction charge shall not be applicable to those Facilities installed, relocated or replaced by Grantee as a result of actions resulting from conflicts with City projects.

(f) These fees provided in this Chapter are not inclusive of any other permitting or other fees the City may charge.

(g) The Grantee of any pipeline operating in a Public Place within the City shall be liable to pay the fees referenced in this Section. Provided, however, such payment shall not relieve such Grantee of the obligation to obtain a franchise from the City, nor shall such payment be considered a grant by the City of a franchise or any other right to operate or maintain a pipeline within the City.

**13.47.090      Payment; Audit.**

(a) As used in this Section:

(1) “Quarterly Payment Date” means June 30 (as to the first quarter of the calendar year), September 30 (as to the second quarter), December 31 (as to the third quarter) and March 31 (as to the fourth quarter).

(2) “Quarterly Payment Amount” means the payment of one quarter of the annual franchise fee payments paid to City pursuant to a franchise.

(b) On each Quarterly Payment Date, Grantee shall pay City the Quarterly Payment Amount. Alternatively, if Grantee requests, the City Manager may approve annual payments by Grantee.

(c) Within three (3) months after the expiration of each calendar year, or fractional calendar year, following the effective date of the franchise, Grantee shall file with the City Treasurer or other official designated by the City Manager a verified statement under penalty of perjury showing in detail the basis for the calculation of the franchise payment of franchise fees. Grantee’s statement shall include all data or information as City may need to calculate or determine the amounts which Grantee is obligated to pay City. Grantee’s statement shall be in such form and detail as from time to time may be reasonably prescribed by City.

(d) Annually, at Grantee’s expense, Grantee shall provide City with an audited report conducted pursuant to Generally Accepted Auditing Standards consistently applied, which expresses an opinion that the statement has been prepared in accordance with the terms of the franchise and that nothing has come to the auditor’s attention that would cause the auditors to believe that Grantee has not complied with the franchise insofar as it relates to accounting matters.

(e) The City Treasurer, or any certified public accountant or qualified person designated by the City Manager, after reasonable notice and at any reasonable times during business hours, may make examination or audit at Grantee’s office or offices, of its books, accounts and records germane to and for the purpose of verifying the data set forth in the statement required by this ordinance. All books, accounts and all records deemed necessary by City relating to the revenues derived by Grantee within City and the required statement shall be kept within City, or in such other place within the territory served by Grantee as the reasonable convenience of Grantee may require. Upon City’s request, Grantee shall provide City with such records, directly related to revenues derived within City, in electronic format. In the event that it becomes necessary for the City Auditor or designated representative to make the examination at any place other than the City, then all reasonable increased costs and expenses to City necessary or incident to such examination taking place in another location shall be paid to City by Grantee on demand. Where appropriate, Grantee may designate such books and records as proprietary or Confidential by clearly marking them as such. Such documents marked as “Confidential” shall be handled by the City in the manner set forth in Section 13.47.050(a)(2).

(f) Except for pipelines lawfully maintained other than by the authority granted by the franchise, the annual payments shall accrue from the respective dates of installation, whether

before or after the effective date of the ordinance granting the franchise, and such payments, together with the initial construction charges, if any, shall be due and payable annually. The City Manager shall have the discretion to modify or waive this requirement upon request by the Grantee if Grantee demonstrates that its franchise payments are based on a linear foot calculation, and that there have been no changes in the fee calculation.

(g) Grantee also shall file with the City Clerk and Treasurer a copy of any annual report filed with the Federal Energy Regulatory Commission or successor agency (the "Commission"), or other applicable pipeline regulating agency, within 60 days after filing with the Commission.

(h) Any neglect, omission or refusal by Grantee to file the verified statement, or to remit its payment, or to submit any required annual audited report, shall be grounds for declaration of a forfeiture of the franchise and of all rights of Grantee hereunder, subject to the notice and cure provisions of Section 13.47.270 hereof.

**13.47.100 Construction of Pipelines and Facilities; Compliance with Applicable Laws; Pipeline Standards.**

(a) Subject to the restrictions set forth in this Chapter, the Grantee shall have the right to construct, maintain and repair such pipelines, pipes and Appurtenances, traps, manholes, conduits, valves, appliances, attachments and related Facilities as may be necessary or convenient for the proper maintenance and operation of the pipelines under its franchise, and such Facilities and Appurtenances shall be located so as to conform to any ordinance, rule, guideline or regulation of the City and Applicable Law, and any permit issued by the City in regard thereto. The location and construction of any such pipelines, pipes and Appurtenances and Facilities shall not interfere with the use or maintenance of any Public Place. All construction, operation, maintenance, repairs and testing shall be conducted in accordance with Applicable Laws and are subject to inspection by the City Engineer.

(b) The issuance of any permit to a Grantee for any Facilities requires the prior review and approval of the City Engineer and compliance with the City's Encroachment Permit Guidelines and the Code, including all insurance requirements and other Applicable Laws. Grantee shall first obtain and pay for any necessary permit from the City for doing any work on any Facilities.

(c) The Grantee of a pipeline franchise shall construct, maintain and use all pipelines, pipes and Appurtenances and other Facilities in a good and workmanlike manner and in compliance with all Applicable Laws in force at the time the franchise becomes effective or as may be amended or added from time to time during the term of the franchise and the lawful standard plans, specifications, orders, rules and regulations of City and each of its applicable Departments, and subject to all lawful fees and exactions. Provided, this Section shall not be applied or interpreted in a manner contrary to the standards of any state or federal agencies lawfully having regulatory jurisdiction over pipeline safety under any Applicable Law. This ordinance shall be interpreted and administered pursuant to general California principles of statutory construction regarding the retroactive application of newly adopted laws.

(d) Until such time as (i) the franchise terminates; and (ii) the Grantee removes all Facilities; and (iii) completes all Remedial Work on any Facility or relating to any Release, Grantee:

(1) Will maintain all Facilities in good repair and condition at its own expense, including, but not limited to, repair of street pavement associated with operation of the pipeline;

(2) Will not allow any Contaminant to be generated, used, stored for any period of time, Released on or under any Facility, or arrange for another person to do the same, except in full compliance with Applicable Law;

(3) Will undertake no actions on any Facility which might adversely affect the liability of City under Applicable Law;

(4) Will immediately notify the Fire Chief upon obtaining knowledge of any potential or known Release, threatened Release, generation, storage, disposal or any other emplacement of any Contaminant on or in any Facility;

(5) Will comply with all Applicable Laws in its operations on or in the vicinity of any Facility;

(6) Will provide the City Engineer with written notice upon Grantee's obtaining knowledge of any potential, known Release or threatened Release of any Contaminant at or from any Facility, or by any person for whose conduct Grantee is responsible, or which may result in a lien on any Facility, or upon Grantee's receipt of any notice to such effect from any governmental agency, or upon Grantee's obtaining knowledge of any incurrence of any expense or loss by such governmental agency in connection with the assessment, containment, or removal of any Contaminant for which expense or loss Grantee may be liable, or for which expense a lien may be imposed upon any Facility; and

(7) Will mitigate any visual impacts of any Facility that is in a location reasonably determined by the City Engineer to require such treatment.

(e) The Grantee of a pipeline franchise will be responsible to protect against intentional or negligent acts or omissions of third parties which might result directly or indirectly in the Release of Contaminants on, in, or under any Facility.

(f) Upon constructing, maintaining or using any pipes and Appurtenances or other Facilities, or any part thereof, the Grantee shall expeditiously at its own cost and expense restore to applicable and lawful City standards all Public Places disturbed or altered as a result of Grantee's actions. Grantee shall comply with City's terms and conditions concerning the location within the Public Places of proposed Facilities, except to the extent State or federal law or regulation preempts any such terms and conditions.

(g) New installation or replacement of pipelines and Appurtenances and all other Facilities necessary for the installation, operation, maintenance, and safety of pipelines and conduits shall be laid and maintained only pursuant to permit issued by the City.

(1) A Grantee may not install or operate any Facilities in any Public Place without first obtaining the prior approval of the City Engineer. All such installations or replacements shall be reviewed by the City Engineer as to the most desirable location in the streets of the City and his decision shall be final and binding on the Grantee, subject to any applicable appeal procedures set forth elsewhere in the Code.

(2) Where the provisions of the Code, or the provisions of any other ordinance, rule or regulation, or provision of Applicable Law which shall be in force at the time, require the issuance of an excavation, encroachment or other type of permit, the Grantee shall not commence any excavation or encroachment or any other work under the franchise until it shall have obtained such permit. The application of the Grantee for such permit shall show the following facts in addition to any other information requested by the City Engineer: the length and proposed location of the pipeline and/or appurtenance intended to be used, and such other facts as the City may require. Where appropriate, Grantee may designate such information as proprietary by clearly marking it as such. The Grantee shall pay any and all permit inspection fees to the City.

(3) The work of constructing, laying, replacing, maintaining, repairing or removing all pipelines and Appurtenances authorized under the provisions of this Section in, over, under, along or across any street shall be conducted with the least possible hindrance to the use of the street for purposes of travel, and as soon as such work is completed, all portions of the street which have been excavated or otherwise damaged thereby shall promptly and in a workmanlike manner be repaired, replaced or restored and placed in as good condition as the same was before the commencement of such work. All such work shall be done to the satisfaction of the City Engineer at the expense of the Grantee, in accordance with the terms and conditions of the Code.

(4) In the event that the Grantee fails or neglects to initiate any repair, replacement, or restoration work, then ten (10) days after notice therefor has been given from the City, instructing it to repair such damage, or fails to commence to comply with such instructions, or, thereafter, fails to diligently to prosecute such work to completion, then the City immediately may do whatever work is necessary to carry out said instructions at the cost and expense of the Grantee, which cost and expense, by the acceptance of the franchise, the Grantee agrees to pay upon demand. If such damage constitutes an immediate danger to the public health or safety requiring the immediate repair thereof, the City without notice may repair such damage and the Grantee agrees to pay all costs incurred plus 50% of said cost, upon demand.

(5) In the event that the Grantee fails to complete the work within the time specified in a permit, the City may require the Grantee to pay to the City not more than two thousand dollars (\$2,000.00) per day as liquidated damages for each day construction extends beyond the time specified in the permit.

(6) Whenever the Grantee fails to complete any work in a Public Place required by the terms and conditions of the franchise, and the permits issued thereunder, within the time limits required thereby, the City may complete or cause to be completed any and all such work at the expense of the Grantee. The Grantee agrees to pay to the City the cost of performing such work. The amount so chargeable to Grantee shall be the direct cost of such work plus the current rate of overhead being charged by the City for reimbursable work.

(h) Within ninety (90) days following the date in which any pipelines or Appurtenances or Facilities have been constructed, laid, removed or abandoned under the franchise, the Grantee shall submit a statement to the City Engineer, identifying the permit or permits issued by the City, the total length of pipeline, pipeline material, diameter of pipeline, the construction of which was authorized under such permit or permits, the total length of pipeline or Appurtenance or Facility actually constructed or laid, and as-built drawings. The Grantee shall submit to the City Engineer as-built drawings of its Facilities within the City to indicate existing pipelines and Facilities and any additional pipelines and Facilities constructed or acquired by the Grantee within the preceding year. Such map shall be submitted to the City Engineer on each anniversary date of the grant of the pipeline franchise.

#### **13.47.110 Relocation of Pipelines and Appurtenances.**

(a) The City reserves the right to change the grade, to change the width or to alter or change the location of any street over which the franchise is granted. If any of the pipelines, Facilities or Appurtenances heretofore or hereafter constructed, installed or maintained by the Grantee pursuant to the franchise on, along, under, over, in, upon or across any street are located in a manner which prevents or interferes with the change of grade, traffic needs, operation, maintenance, improvements, repair, construction, reconstruction, widening, alteration or relocation of the street, the Grantee shall relocate permanently or temporarily any such Facility at no expense to the City upon receipt of a written request from the City Engineer to do so, and shall promptly apply for any required permits and commence such work on or before the day specified in such written request which date shall be not less than thirty (30) days from receipt of such written request. Grantee shall thereafter diligently prosecute such work to completion. Provided, nothing in this Section is intended to restrict any right that the Grantee may have, if any, to recover any relocation costs from the California Department of Transportation for state freeway or highway construction, or for such Department to pay such costs itself. Nothing in this Section shall restrict any right that the Grantee may have, if any, to recover any relocation costs under Applicable Law from a third party other than the City or an agency of the City.

(b) The City reserves the right for itself, and all other public entities which are now or may later be established, to lay, construct, repair, alter, relocate and maintain subsurface or other Facilities or improvements of any type or description in a governmental but not proprietary capacity within the streets over which the franchise is granted. If the City or any other public

entity finds that the location or relocation of such Facilities or improvements conflicts with the Facilities laid, constructed or maintained under the franchise, whether such Facilities were laid before or after the facilities of the City or such other public entity were laid, the Grantee of such franchise shall, at no expense to the City or public entity, on or before the date specified in a written request from the City Engineer, which date shall be not less than forty-five (45) days after the receipt of such notice and request to do so, commence work to change the location either permanently or temporarily of all Facilities so conflicting with such improvements to a permanent or temporary location in said streets to be approved by the City Engineer and thereafter diligently prosecute such work to completion. If such street is subsequently constituted a state highway, while it remains a state highway, the rights of the State of California shall be as provided in Section 680 of the Streets and Highways Code of the State of California. Nothing in this Section shall restrict any right that the Grantee may have, if any, to recover any relocation costs under Applicable Law from a third party other than the City or an agency of the City.

(c) Grantee shall remove or relocate, without expense to City and within the time City reasonably specifies, any Facilities installed, used and maintained under the franchise, if and when made necessary by any lawful change of grade, alignment or width of any Public Place, including the construction of any subway or viaduct by City. As examples only and not by way of limitation, a change by City to such public works as sewers, water lines and storm drains, and public facilities below grade, in trenches, conduits or otherwise, shall give rise to Grantee's obligation to remove or relocate its Facilities. The City may, in the discretion of the City Manager and at the Grantee's sole cost, provide such assistance as the City Manager deems appropriate in locating and securing the rights to alternate locations to which to relocate the pipeline when relocation is required under this section. Nothing in this section shall obligate the City to provide any such assistance.

(d) Conflicting Improvements. If the City or any other public entity constructs or maintains any storm drain, sewer structure, or other facility or improvement under or across any facility of the Grantee maintained pursuant to the ordinance, the Grantee shall provide at no expense to the City or other public entity such support as shall be reasonably required to support, maintain and protect Grantee's Facility.

(e) Relocation. If the Grantee after reasonable notice fails or refuses to relocate permanently or temporarily its Facilities located in, on, upon, along, under, over, across or above any highway or to pave, surface, grade, repave, resurface or regrade as required, pursuant to any provision of the franchise, the City or other public entity may cause the work to be done and shall keep an itemized account of the entire cost thereof, and the Grantee shall hold harmless the City, its officers and employees from any liability which may arise or be claimed to arise from the moving, cutting, or alteration of any of the Grantee's facilities, or the turning on or off of water, oil, or other liquid, gas, or electricity.

(f) Reimbursement. The Grantee shall reimburse the City for such costs under this section within forty-five (45) days after presentation to said Grantee of an itemized account of such costs.

**13.47.120      Removal or Abandonment of Facilities.**

(a) At the expiration, revocation or termination of the franchise or upon the permanent discontinuance of the use of all or a portion of its Facilities, the Grantee shall, within thirty (30) days thereafter, make written application to the City Engineer for authority, as determined by the Grantee, either: (1) to abandon all or a portion of such Facilities in place; or (2) to remove all or a portion of such Facilities. Such application shall describe the Facilities desired to be abandoned or removed by reference to the map or maps required by this Chapter and shall also describe with reasonable accuracy the physical condition of such Facilities and why such proposed action is in the best interest of the public.

(b) The City Engineer, at his sole discretion, shall determine whether the abandonment in place or removal which is thereby proposed may be effected without detriment to the public interest and under what conditions such proposed abandonment or removal may be safely effected. The City Engineer shall then notify the Grantee of his determination. The Grantee shall pay to the City the cost of all tests required to determine whether the franchise Facilities shall be abandoned in place or removed.

(c) Within forty-five (45) days after receipt of such notice, the Grantee shall apply for a permit from the Department to abandon in place or remove all or a portion of the Facilities and shall pay all fees and costs related thereto. Said permit shall contain such conditions of abandonment or removal as may be prescribed by the City Engineer and the Department and such conditions shall be fully complied with to the satisfaction of the City Engineer before the Facilities shall be considered abandoned or removed. Until so abandoned or removed, fees applicable thereto shall continue to accrue. Any abandonment in place shall be conditioned, in part, upon Grantee's compliance with the provisions of subparagraphs (a) and (b) of this Section.

(d) The Grantee shall, within ninety (90) days after obtaining such permit, commence and diligently prosecute to completion the work authorized by the permit.

(e) If the Grantee applies for authority to abandon all or a portion of its Facilities in place, and the City Engineer determines that abandonment in place of all or part of the facilities may be effected without detriment to the public interest, the Grantee shall pay to the City a fee established by resolution of the City. Where Grantee has paid the abandonment fee required by resolution, if the City later requires removal of the abandoned Facilities, the amount of any fee paid for abandonment shall be credited against Grantee's cost of removal.

(f) The Grantee shall reimburse the City for all reasonable costs, staff time, administrative, legal, and consulting fees incurred by the City in preparing any reports, statements, studies, and other environmental review pursuant to CEQA for the abandonment or removal of any pipeline(s) and/or Facilities.

(g) If any Facilities to be abandoned in place subject to prescribed conditions shall not be abandoned in accordance with all such conditions, the City Engineer may make additional appropriate orders, including an order that the Grantee shall remove any or all such Facilities. The Grantee shall comply with such additional orders.

(h) In the event that the Grantee shall fail to comply with the terms and conditions of abandonment in place or removal as may be required by this Section and within such time as may be prescribed by the City Engineer, then the City may remove or cause to be removed such Facilities at the Grantee's expense. The Grantee shall pay to the City the cost of such work plus the current rate of overhead being charged by the City for reimbursable work.

(i) If, at the expiration, revocation or termination of a franchise, or of the permanent discontinuance of the use of all or a portion of its Facilities, the Grantee shall, within forty-five (45) days thereafter, fail or refuse to make written application for the above-mentioned authority, the City Engineer shall make the determination as to whether the Facilities shall be abandoned in place or removed. The City Engineer shall then notify the Grantee of his determination. The Grantee shall thereafter comply with the provisions of Subsections 13.47.110(c) and 1347.110(d).

(j) Facilities abandoned in place shall be subject to the condition that if, at any time after the effective date of such abandonment, the City Engineer determines that the Facility or portion thereof may interfere with any public project, or that such Facility threatens to Release a Contaminant or otherwise create an Environmental Condition, Grantee or its successor in interest must immediately remove the conflicting portion of the Facility at its sole expense when requested to do so by the City or pay City for the full cost of such removal.

#### **13.47.130 Special Provisions for Domestic Water Service Pipelines.**

(a) Rights Granted. The Grantee granted a franchise for domestic water service shall have the right, during the term of period covered by the franchise and subject to the terms thereof, to make service connections with all property adjoining City streets and to furnish and distribute water through said pipes and pipelines to any property within the City adjacent to said pipes and pipelines for any purpose.

(b) Plan Approval. All new pipelines, replacements, and extensions for domestic water service shall be constructed, laid, and designed according to plans approved by the City Engineer.

(c) Condition of Approval. The City Engineer shall approve such plans if the pipelines to be laid, extended or replaced are so designed in conjunction with related facilities, and the location of fire hydrants comply with required domestic demand and fire flows indicated by the Board of Fire Underwriters.

(d) Exception. The City Engineer may grant an exception to the requirements of Subsection (c) where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of said subsection, and in the granting of such exception the spirit of said subsection will be observed, public safety secured, and substantial justice done.

(e) Fire Hydrants. As further consideration for the grant of the franchise, the Grantee shall, at the request of the City Engineer, install at no cost to the City, or to any county fire protection district, fire hydrants at such places along the Grantee's water mains covered by the Franchise as may be designated by the City Engineer.

(f) Report to City Engineer. On January 1 of each year the franchise is in effect, the Grantee shall file with the City Engineer a report in triplicate, showing the permit number of each permit obtained for the installation of new mains during the immediately preceding year, together with the length and size of said mains. On this report, the Grantee shall identify any change in franchise footage since the last year, segregating such footage as to new mains laid, old mains removed, old mains abandoned in place, and the footage of mains in territory annexed or incorporated.

(g) Constitutional Franchise. The provisions of this ordinance, as they may be amended from time to time, with the exception of sections 13.47.050 through 13.47.090, shall apply to companies holding a valid constitutional franchise granted by the State of California prior to the 1911 repeal of Section 19 of Article XI of the California Constitution of 1879.

**13.47.140 Hazardous Materials.**

Prior to the issuance of any excavation permit for the construction or installation of any pipelines for the transmission of flammable liquids or gases, approval shall be obtained from the City Engineer and, as applicable, from the City Fire Department. Such approval should be based on the determination that no undue fire hazard will be created to life or property in the areas through which the proposed pipeline will be located. To make such determination, consideration shall be given to:

- (a) Type of commodity to be transmitted;
- (b) Density of population or structural development in the area through which the pipeline will be located;
- (c) Adequacy of water supplies for fire control purposes;
- (d) Extent of available public fire protection facilities; and
- (e) Number and location of shut-off valves in line.

**13.47.150 Pipeline Testing.**

The Grantee shall test all pipelines as required by the State Fire Marshal or other state or federal agency with jurisdiction over the pipeline or by any Applicable Law. Copies of results of tests and any related responses shall be provided to the City Engineer.

**13.47.160 Pipeline Emergency Plan.**

(a) At the time of application for the franchise, Grantee shall file and thereafter annually during the life of the franchise keep on file with the City Fire Department, a Pipeline Emergency Plan, if required by Federal regulations 49 C.F.R. § 195.402, the State of California Pipeline Safety Act of 1981, as amended, or other Applicable Law. Grantee shall also update its Pipeline Emergency Plan whenever the City improves adjacent infrastructure, and will file such plan with the City Fire Department immediately thereafter.

(b) Emergency Equipment. At all times during the term of a franchise, the Grantee shall maintain or arrange for, on a twenty-four (24) hour-a-day basis adequate emergency equipment and a properly trained emergency crew within a radius of twenty-five (25) miles from any Facilities installed or maintained pursuant hereto for the purpose of shutting off the pressure and the flow of contents of such Facilities in the event of an emergency resulting from an earthquake, act of war, civil disturbance, fire, flood, or any other cause whatsoever.

(c) Emergency Contacts. At all times during the term of a franchise, the Grantee shall provide twenty-four (24) hour-a-day emergency contact information to the City and update such information annually.

### **13.47.170 Liability; Damage to Property.**

(a) Liability. The Grantee of a pipeline franchise within the City shall be fully liable to the City for any damage or injury incurred by the City in connection with use or occupancy of any Public Place in the City for any such Facilities. The Grantee shall be strictly liable for any activity conducted pursuant to or in connection with the franchise. Such strict liability shall also extend to the costs incurred by the City for control or abatement of conditions, such as Releases of Contaminants, fires, explosions, leaks, ruptures or spills, which threaten human health, property or the environment. All owners of any interest in, and any affiliates or subsidiaries of any Grantee (except for those persons or entities whose interest is strictly as the holder of stock or a limited partnership interest) shall be jointly and severally liable to the City in the event that a claim against the Grantee cannot be fully satisfied by such Grantee. Nothing herein shall be construed as waiving a Grantee's right to seek recovery from a third party other than the City or an agency of the City for such liabilities.

(b) Indemnity. The Grantee of a pipeline franchise shall indemnify the City for any costs, including attorney's fees, associated with the investigation and/or defense of any third party property damage claims brought as a result of the construction, operation, or maintenance of a pipeline.

(c) Damage, Breaks, Leaks and Defective Facilities. Any damage to any property within the City caused directly or indirectly by any breaks, leaks or defective Facilities of a pipeline within the City shall be promptly repaired by the Grantee of such pipeline at its sole cost and expense. Such Grantee shall restore such property to the same condition it was in before such damage or leak and shall conduct all necessary Remedial Work, all to the satisfaction of the City Engineer. The Grantee shall obtain and pay for any necessary permits from the City for the performance of any such work and shall reimburse the City for all expenses and Remediation Costs that may be incurred or paid by the City. Nothing herein shall be construed as waiving a Grantee's rights to seek recovery from a third party for such expenses and Remediation Costs.

(d) Performance of Repair Work By The City. If a Grantee fails to fully perform or observe its obligations under Section 13.47.170(c) within a reasonable time, as determined by the City Manager or City Engineer, then the City will have the right, but not the duty, and without limitation upon any other rights of the City pursuant to the franchise, to perform the same, and the Grantee will indemnify and reimburse the City for all costs and all liabilities arising therefrom, as provided in this Chapter.

(e) Emergency Response. To the extent any emergency response costs are incurred by the City in connection with any damage referenced in this Section, such costs, as well as any attorneys' fees associated therewith, will be reimbursed by the Grantee within 30 days of being presented with a bill therefor.

**13.47.180 Release of Contaminants.**

(a) The Release of a Contaminant from any Facility is a trespass and a public nuisance.

(b) Notwithstanding any other provision herein, in the event of any Release or any uncontrolled loss of a Contaminant or the discovery of an unremediated Environmental Condition on, under or from any Facility, any Grantee of a pipeline franchise within the City shall immediately conduct such Remedial Work, at its sole expense, as is necessary to fully mitigate and remediate the same in accordance with all Applicable Law, and as directed by the City. Nothing herein shall be construed as waiving Grantee's rights to seek recovery from a third party for such Remedial Work.

(c) The Grantee of any pipeline franchise within the City will provide the City and its representatives, at no cost, with all information and documents known to or in the possession of such Grantee concerning the Environmental Condition of any Facility or adjoining properties or the existence or the Release of any Contaminants thereon, including all environmental studies, reports, assessments, tests and sampling results, and all documents relating to all known or suspected Releases of any Contaminants on or in the vicinity of any Facility, whether or not such Releases resulted in Remedial Work, as well as all documents identifying all Contaminants handled or utilized on any Facility, even if such Contaminants were disposed offsite.

(d) The City shall also receive copies at no cost of all documents generated by any consultant retained by the Grantee.

(e) The Grantee will take all such action, including, without limitation, Remedial Work and the conducting of further assessments, engineering and geological tests and sampling, all at the sole expense of the Grantee, to confirm that no Contaminants are being generated, stored, treated, or Released on or under any Facility.

(f) The Grantee shall be responsible for the performance of all operations and maintenance activities relating to the Remedial Work.

(g) Should any Grantee fail to perform or observe its obligations hereunder, then City will have the right, but not the duty, and without limitation upon any other rights of City pursuant to the franchise, to perform the same, and the Grantee agrees to indemnify and reimburse the City for all Remediation Costs and other costs and all liabilities arising therefrom, as provided in this Chapter.

**13.47.190      Environmental Compliance Reports; Environmental Notices and Records.**

(a)      Grantee shall establish and maintain at its sole expense a system to monitor and to assure continued compliance with all Applicable Laws relating to the protection of the environment. The system shall include a detailed annual review of such compliance and an environmental audit by such consultant as Grantee may select. Grantee shall furnish such environmental audit to the City within thirty (30) days after its completion, together with any such additional information as the City may reasonably request. Grantee shall provide the City with a copy of any report prepared by any agent, employee, consultant or contractor concerning compliance with Applicable Law or the Environmental Condition of any Facility. The City Manager, in his/her sole discretion, may accept a report prepared by Grantee for another agency that essentially provides the same information required in this Section 13.47.190(a).

(b)      Should such environmental audit indicate any violation of any Applicable Law, then, at the request of the City, a detailed review of the status of such violation by such consultant or consultants (the Supplemental Audit) shall be provided to the City within thirty (30) days after its completion, together with any such additional information as the City may reasonably request.

(c)      Grantee will transmit the following documents to City:

(1)      Copies of all records concerning Grantee's contacts with any governmental agency concerning any violation or alleged violation of any Applicable Law involving any pipeline or facility, including records demonstrating Grantee's compliance with such laws.

(2)      All records involving violation or alleged violation of, or compliance with any laws concerning the condition of any Facility and/or Contaminants on any Facility, records indicating any condition of any Facility which may require repair, construction, alteration or installation or Remedial Work in order to comply with such Applicable Law, or other information concerning any operation or activity which may be in violation of such Applicable Law; and

(3)      All notices, order or statements sent to or received from any governmental agency concerning any Facility or any operations conducted thereon or any Environmental Conditions existing thereon.

(d)      Payment of Cost of Repairs. Grantee shall pay to City on demand the cost incurred by City for all repairs to public property made necessary by any of Grantee's operations under a franchise.

**13.47.200      Performance Bond or Letter of Credit.**

(a)      Grantee shall file with the City Clerk at the time it files acceptance of a franchise granted under this Chapter a corporate surety bond. The surety bond must be executed using the City's standard bond form, available from the City Risk Manager. The surety bond shall be in favor of the City and approved by the City Council, in a sum as set forth in the resolution of intention to grant the franchise. The bond shall be conditioned that Grantee shall well and truly

observe, fulfill and perform the construction maintenance and use provisions of this Chapter as set forth in Section 13.47.100, the Relocation provisions of this Chapter as set forth in 13.47.110, and the Removal and Abandonment provisions of this Chapter as set forth in 13.47.120. The bond shall also set forth that in case of any breach of condition of the bond the amount of the penal sum therein shall be recoverable. Grantee shall file such bond within five (5) days after the adoption of this ordinance. If the bond is not so filed, or is not approved by the City Council, the franchise may be refused or forfeited and any money paid to City in connection therewith shall be retained by City.

(b) Grantee shall maintain the bond in full force and effect throughout the Term of a franchise at Grantee's sole expense. The bond shall be issued by a surety insurer and comply with the requirements of the Bond and Undertaking Law, codified in Code of Civil Procedure Sections 995.010 *et seq.* A franchise shall be considered a "license or permit" within the meaning of the Bond and Undertaking Law, solely for purposes of application of such law to the bonding requirements of this Section.

(c) Grantee may, at its sole election, provide an irrevocable standby letter of credit, in a form acceptable to the City Attorney, securing all or a portion of the amount otherwise required to be secured by the performance bond. The letter of credit shall be issued by an issuing bank with offices in California, or shall authorize an advising bank with offices in California to pay the beneficiary thereunder. The City shall have the right to validate the creditworthiness of the bank being used for a letter of credit. The letter of credit shall authorize City to draw upon its proceeds in the event that Grantee fails to well and truly observe, fulfill and perform each term and condition of the franchise, and that in case of any breach of the franchise City may draw against the letter of credit up to the total amount set forth therein. If Grantee determines to file a letter of credit, Grantee shall file such letter of credit within ten (10) days after the adoption of this ordinance. If the Grantee or a parent entity of the Grantee is sufficiently creditworthy in the reasonable discretion of the City Council on the recommendation of the City Manager, the bonding requirement may be satisfied by the provision of an undertaking or guarantee by the Grantee or the parent entity."

#### **13.47.210 Liability; Indemnity.**

(a) Grantee shall be liable to City for all damages resulting from the failure of Grantee well and faithfully to observe and perform any provision of the franchise and any provision of any Applicable Law under which a franchise is granted.

(b) Grantee shall indemnify to the fullest extent permitted by law, defend and hold free and harmless City, its Council Members, employees, contractors, agents, attorneys and representatives from and against any and all:

(1) Claims and liability for damages resulting from any operations under a franchise granted under this Chapter;

(2) Environmental Damage Claims;

(3) Claims arising from any damage or injury suffered by any person by reason of any excavation or obstruction being improperly guarded or secured during any work authorized pursuant to the franchise or the failure or neglect of the Grantee to properly perform, maintain, or protect any phase of such work;

(4) Claims, actions, or proceedings against City or its agents, officers, or employees to attack, set aside, void, or annul any approval of a pipeline franchise or other discretionary actions in furtherance of the goals of this Chapter, or to impose personal liability against such agents, officers, or employees, on the ground that City failed to comply with CEQA;

(5) Any claims arising from the acts or omissions of subcontractors of the Grantee without regard to the subcontractor's insurance or lack thereof; and

(6) All other claims, losses, liabilities, causes of action, demands, damages, suits, judgments, debts, costs, claims for payment, contribution or indemnity and expenses (including but not limited to attorney's fees and costs) and liens of every kind and nature, resulting from or attributable to (i) Grantee's use or occupation of any Facility, or (ii) any failure to comply with any Applicable Law or governmental regulation, directive or order; or (iii) arising from the Release of any Contaminant on or from any Facility, whether such Release is caused by Grantee or any third party; or (iv) Grantee's failure to fully remediate or respond to any Environmental Condition on, under or emanating from any Facility in accordance with Applicable Law or as directed by the City; or (v) the performance of any Remedial Work, including all Remediation Costs.

(c) Defense.

(1) Grantee will also defend the City from any such claims, provided, however, the City and the other parties indemnified herein shall have the right to select attorneys of its own choice to represent it at Grantee's expense.

(2) Grantee shall be primarily responsible for responding to and defending against and/or complying with any administrative or judicial order, notice, request, directive, or demand relating to potential or actual Release of Contaminants on or from any Facility, or third party claim, including the claims of former or future operators of any Facility, or owners or tenants of any property adjoining or near any Facility, and for all Remedial Work and for Remediation Costs, or other costs of any such actions which any third party claimant has undertaken, whether such order, request, demand or claim names the City, Grantee or both. The responsibility conferred on Grantee under this Section includes but is not limited to responding to such orders, requests, notices, directives, demands and claims on behalf of the City and defending against any assertion of City's responsibility or duty to perform thereunder.

(3) Grantee shall assume any liabilities or responsibilities which are assessed against the City in any action described under this Section.

(d) Documents. In satisfying the obligations under this Section, Grantee shall provide the City with copies of all communications, filings or writings, photographs or materials given to or received from any person, entity or agency in connection with any claim, order, request or demand described herein, or of any cleanup or Remedial Work conducted on any Facility, on or in the vicinity of any Facility, and shall notify the City of and permit a City representative to attend any meetings or oral communications relating thereto.

(e) City Costs. Without limiting the generality of any of the foregoing, this indemnification shall also specifically cover all costs incurred by the City, including all Remediation Costs and all other costs for any investigation and Remedial Work required by Applicable Law or otherwise necessary to responding to any claims, as well as all attorney's fees and consultant fees incurred by the City in responding to any such Claims and the City's consequential damages.

(f) Performance of Remedial Work. Without waiving any rights, at its option, the City may, upon failure of the Grantee to promptly perform necessary Remedial Work, commence such work itself and require the Grantee to pay, pursuant to the foregoing indemnity, all Remediation Costs and other costs thereby incurred.

(g) No City Obligation. The grant of such rights to the City is not intended to and shall not be construed to impose any obligation on the City to exercise the rights granted herein or otherwise investigate, monitor or clean up any Environmental Condition at any Facility. Nor shall the grant of such rights to the City authorize the City to operate Grantee's Facilities.

**13.47.220 Insurance.**

(a) On or before commencement of any franchise operations, Grantee shall obtain or provide satisfactory evidence of having policies of general and automobile liability, pollution liability, and workers' compensation insurance from companies authorized to transact business in the State of California by the Insurance Commissioner of California.

(b) The policy of liability insurance shall:

(1) Be issued to Grantee and name the City, and its officers, agents, and employees, as additional insureds by endorsement form CG 20 10 11 85 (or current equivalent form), for general liability coverage; and

(2) Be issued to Grantee and name the City, and its officers, agents, and employees, as additional insureds by endorsement form, for automobile liability coverage; and

(3) Indemnify for all liability, including but not limited to personal and bodily injury, death, products and completed operations, and damage to property arising from activities conducted pursuant to the franchise by providing coverage therefor, including but not limited to, coverage for:

i) Acts or omissions of Grantee and the agents, servants and employees thereof, committed in the conduct of franchise operations;

ii) Provide a combined single limit liability insurance in the amount of ten million dollars (\$10,000,000.00) for general liability and two million dollars (\$2,000,000.00) per accident for automobile liability, or other equivalent insurance as determined acceptable by the City's Risk Manager.

iii) Be non-cancellable without thirty (30) days' written notice thereof directed to the City Manager, except for ten (10) days written notice for lack of premium payment.

(c) The policy of workers' compensation insurance shall:

(1) Have been previously approved as to substance and form by the California Insurance Commissioner.

(2) Cover all employees of Grantee who in the course and scope of their employment are to conduct or do work pursuant to the franchise operations.

(3) Provide for every benefit and payment presently or hereinafter conferred by Division 4 of the Labor Code of the State of California (Labor Code, §§ 3200 *et seq*) upon an injured employee, including the vocational rehabilitation and death benefits.

(4) Be non-cancellable without thirty (30) days' written notice thereof directed to the City Manager, except for ten (10) days written notice for lack of premium payment.

(d) The policy of pollution liability insurance shall:

(1) Have been previously approved as to substance and form by the California Insurance Commissioner;

(2) Provides limits of coverage of five million dollars (\$5,000,000) per occurrence and ten million dollars (\$10,000,000) aggregate, or other equivalent insurance as determined acceptable by the City's Risk Manager; and

(3) Be issued to Grantee and name the City, and its officers, agents, and employees, as additional insureds by endorsement form acceptable to City.

(e) Grantee shall file with the City Manager prior to commencement of any franchise operations certified copies of said policies, written evidence of insurance deemed sufficient by the City's Risk Manager, or a certificate of insurance for each of the required policies executed by the company issuing the policy, certifying that the policy is in force and providing the following information with respect to said policy:

- i) The policy number.
- ii) The date upon which the policy will become effective and the date upon which it will expire.
- iii) The names of the named insured and any additional insureds.
- iv) The additional insured endorsement form(s).
- iv) Subject of the insurance.
- v) The type of coverage provided by the insurance.
- vi) Amount of limit of coverage provided by the insurance.
- vii) A description of all endorsements that form a part of the policy.

(f) Any franchise operations shall not commence until Grantee has complied with the aforementioned provisions of this subsection, and any such operations shall be suspended during any period that Grantee fails to maintain said policies in full force and effect.

(g) Grantee shall be required to verify that all subcontractors maintain insurance in accordance with the limits so specified herein, and if any subcontractor does not maintain such limits, Grantee shall be fully responsible for the liability of all subcontractors, including workers' compensation coverage for all employees.

(h) In no event shall the City's insurance or self-insurance program, including an award by a jury or court, be called upon to respond to any Grantee liability.

(i) Notwithstanding anything to the contrary contained herein, subject to approval by the City, the Grantee may provide a program of self-insurance for commercial liability and any pollution exposure including coverage for sudden and accidental occurrences, and such approval shall not be unreasonably withheld by the City. Any self-insurance program maintained by the Grantee shall be consistent with the provisions and the specified limits contained herein. Grantee shall provide information as requested by City to evaluate the financial worthiness of Grantee's self insurance program. Grantee may obtain for its own account any insurance not required by this Ordinance. Upon a recommendation by the City's Risk Manager, and approval by the City Manager, the City may accept different insurance than as required in this section.

**13.47.230 Police Power.**

Nothing in any franchise shall limit or otherwise affect the police power of City, as such authority may affect Grantee.

**13.47.240 Other Remedies.**

Nothing herein or in any franchise shall limit or otherwise affect other remedies the City has available under federal, state or local law.

**13.47.250 Acquisition of Grantee's Property.**

(a) Any franchise granted hereunder in no way impairs or affects the right of the City to acquire the property of Grantee by purchase or condemnation, and nothing in this ordinance shall be constructed to contract away, modify or abridge either for a term or in perpetuity City's right of eminent domain in respect to any public utility.

(b) Valuation of Franchise. A franchise shall never be given any value before any court or other public authority in any proceeding of any character in excess of the cost to Grantee of the necessary publication under this Chapter at the time of grant of the franchise.

**13.47.260 State Highways.**

(a) If any Public Place or portion thereof becomes a state highway, except for the right to continue to collect franchise payments in such other rights as by law remain with the City, the state shall succeed to all rights reserved to the City by the franchise; but this provision shall not preclude the Grantee from receiving reimbursement for the relocation of its Facilities if and to the extent otherwise lawfully entitled to.

(b) This subsection applies to any street or portion thereof which becomes a state highway in which the Grantee maintains its Facilities under the authorization of the franchise at the time such street or such portion thereof becomes a state highway, whether at such time it is under the jurisdiction of the City, or any other public entity.

(c) This subsection does not require any change of location in a state highway for a temporary purpose.

**13.47.270 Forfeiture.**

(a) A franchise is granted and shall be held and enjoyed upon each and every condition contained in the ordinance granting the franchise, including such conditions contained herein as are incorporated by reference in said franchise ordinance, and shall never be strictly construed against the Grantee. Nothing shall pass thereby unless it is granted in plain and unambiguous terms. Any neglect, failure or refusal to comply with any of the conditions of the franchise shall constitute grounds for the suspension or forfeiture thereof.

(b) The City Engineer, prior to any suspension or forfeiture of the franchise, shall give to the Grantee not less than thirty (30) days notice in writing of any default thereunder. If

the Grantee does not, within the noticed period, begin the work of compliance or after such beginning does not prosecute the work with due diligence to completion, the Council may hold a hearing, at which the Grantee shall have the right to appear and be heard, and thereupon the Council may determine whether such conditions are material and essential to the franchise and whether the Grantee is in default with respect thereto and may declare the franchise suspended or forfeited. Notice of said hearing shall be given to the Grantee by certified mail not less than ten (10) days before said hearing, unless shorter notice is agreed to in writing by the Grantee.

**13.47.280     Enforcement.**

(a) If Grantee fails, neglects or refuses to comply with any of the provisions or conditions prescribed in this ordinance, and does not within fifteen (15) days after receipt of a written demand for compliance begin the work of compliance, or after such beginning does not prosecute the work with due diligence to completion, City through its City Council may declare the franchise forfeited, or assess damages as provided in this Section for unexcused violations of the franchise.

(b) To implement enforcement under this Section, the City shall proceed as follows:

(1) Notice of demand for compliance shall be in writing signed by the City Manager, the City Engineer or a designee and delivered by personal delivery or certified mail to the Grantee. The notice shall demand correction within a reasonable time as determined by the City Manager at the last known address known to the City.

(2) If Grantee is shown to have violated the franchise, or to have failed to correct the violation within the time prescribed, or if Grantee fails to commence corrective action within the time prescribed and diligently remedy such violation thereafter, or if the violation is not correctable, then the City Engineer shall give Grantee written notice of not less than fifteen (15) days of a public hearing to be held before the City Council. The City Council shall also give public notice of the hearing. The notice shall specify the alleged violations.

(3) At the hearing, the City Council shall hear and consider all relevant evidence, and thereafter render written findings and its written decision. The hearing shall provide Grantee with the full opportunity to participate and present evidence.

(4) If the City Council finds that no material violation exists, or that Grantee has corrected the violation, or has diligently commenced correction of such violation after notice thereof from the City and is diligently proceeding to fully remedy such violation, the proceedings shall terminate and no penalty or other sanction shall be imposed. In determining whether a violation is material, the City Council shall take into consideration the reliability of the evidence of the violation, the nature of the violation and the damage (if any) caused to the City thereby, whether the violation was chronic, and any aggravating or mitigating circumstances and such other matters as the City may deem appropriate.

(5) In the event a proceeding is terminated, and the City subsequently finds that the violation has not been corrected, the City may, without prejudice, reinstate the proceeding.

(6) If the City Council finds that a material violation exists and that Grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation, the City Council may declare the franchise forfeited; or require payment of a dollar amount of compensatory damages resulting from Grantee's material violation; or declare the franchise forfeited and require payment of such compensatory damages. Upon the occurrence of such event, as an alternative to compensatory damages, the City Council may impose liquidated damages of up to two thousand dollars (\$2,000) per day or per violation, for unexcused violations of a franchise, commencing with the expiration of the ten (10) day notice period described in this Section. In setting the amount of liquidated damages hereunder, the City has determined that the amount of damages arising out of a violation would be impracticable or extremely difficult to fix. If Grantee fails to pay any sum due under this Section within ten (10) days after invoice, the City may require payment under the performance bond or letter of credit.

(7) Grantee shall have the right to seek review of the City Council's decision in the Superior Court of the State of California. The City Council's decision shall not be stayed pending such review, absent a contrary order of the Court.

(8) The remedies set forth in this Section are cumulative, and are in addition to all other rights and remedies, including injunctive relief, available to the City.

**13.47.290 Public Nuisance.**

Operation of a pipeline in any manner in violation of this Chapter or the terms of a franchise granted hereunder or any order issued by the City Manager or the City Engineer is hereby declared a public nuisance and shall be corrected or abated as directed by the City Manager or the City Engineer. Any person creating a public nuisance is guilty of a misdemeanor.

**13.47.300 Emergency Suspension Order.**

The City may, by order of the City Manager or the City Engineer, suspend operations pursuant to a franchise when the City Manager or the City Engineer determines that such suspension is necessary in order to stop an actual or impending discharge which presents or may present an imminent or substantial endangerment to the health and welfare of persons, or to the environment, or may cause the City to violate any Applicable Law. Any Grantee notified of and subject to an Emergency Suspension Order shall immediately cease and desist all operations pursuant to the franchise.

**13.47.310 City Officers.**

Any right or power conferred, or duty imposed upon the City Manager or the City Engineer or any officer, employee or department of the City shall be subject to transfer or delegation to any other officer, employee, or department of the City.

**13.47.320 Jurisdiction and Venue.**

Any dispute that arises under or relates to a franchise shall be resolved in the superior court of the State of California, and venue shall be proper in Contra Costa County. In the event that the Grantee or the City shall commence any legal or equitable action or proceeding to enforce or interpret the provisions of a franchise, the City shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs, including costs of expert witnesses and consultants, as well as costs on appeal, if the City is the prevailing party in such action.

**13.47.330 Notices.**

All notices, demands or statements required by a franchise or this Chapter to Grantee shall be in writing and delivered by hand or certified mail or by overnight delivery addressed to the person Grantee has designated pursuant to Corporations Code Section 17060(a)(2) or successor legislation. All notices required by a franchise or this Chapter to the City shall be in writing and delivered by hand or certified mail addressed to the City Clerk and the City Engineer. All notices shall be deemed given on the date of delivery by hand or, or three days after deposit in the mail, postage prepaid or to overnight delivery carrier.

**13.47.340 Challenges.**

Pursuant to Section 1094.6 of the California Code of Civil Procedure, any action by means of administrative mandamus brought to review any adjudicatory administrative decisions under this Chapter shall be filed no later than ninety (90) days following the final adjudicatory administrative decision. Notwithstanding the foregoing, judicial review of an order of the City Council imposing administrative civil penalties may be made only if the petition for writ of mandate is filed not later than the thirtieth (30<sup>th</sup>) day following the day on which the order of the City Council becomes final.

**13.47.350 Future Amendment to Cited Statute.**

Unless specifically provided otherwise, any reference to a state or federal statute in this Chapter shall mean such statute as it may be amended from time to time.

**Section 3 Conflicts**

Any provisions of the Richmond Municipal Code or appendices thereto or any other ordinances, resolutions or policy of the City inconsistent herewith, to the extent of such inconsistencies and no further, are subject to governance by the adoption of this Ordinance.

**Section 4 Severability**

If any section, subsection, sentence, 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 the ordinance, the 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 be declared invalid or unconstitutional. In the event any provision of this ordinance is held by a court to be void or unenforceable, the City shall have the opportunity to amend this ordinance in a manner consistent with the judgment and in consultation with Grantee.

**Section 5** Effective Date

This Ordinance shall take effect thirty (30) days after its passage.

**Section 6** Certification and Publication

The City Clerk shall certify to the passage and adoption of this ordinance and shall make a minute of the passage and adoption thereof in the records and proceedings of the City Council at which the same is passed and adopted.

First read at a meeting of the Council of the City of Richmond held on July 20, 2009, and finally passed and adopted at a meeting held September 21, 2010, by the following vote:

AYES: Councilmembers Bates, Butt, Lopez, Rogers, Viramontes, and Vice Mayor Ritterman, Mayor McLaughlin

NOES: None

ABSTENTIONS: None

ABSENT: None

DIANE HOLMES  
CLERK OF THE CITY OF RICHMOND  
(SEAL)

Approved:

GAYLE McLAUGHLIN  
Mayor

Approved as to form:

RANDY RIDDLE  
City Attorney

I certify that the foregoing is a true copy of Ordinance No. **27-10 N.S.**, finally passed and adopted by the Council of the City of Richmond at a regular meeting on September 21, 2010.