

ORDINANCE NO. 24-17 N.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RICHMOND,
GRANTING A FRANCHISE TO PHILLIPS 66 CO. TO USE OR TO LAY AND USE,
OIL PIPES AND APPURTENANCES FOR THE PURPOSE OF TRANSMITTING
AND DISTRIBUTING OIL AND PRODUCTS THEREOF IN, ALONG, ACROSS,
UPON AND UNDER CERTAIN PUBLIC STREETS AND RIGHTS-OF-WAY WITHIN
THE CITY OF RICHMOND**

WHEREAS, under Article II of the Richmond City Charter, the City Council is empowered to grant by ordinance a franchise to any person, firm corporation to furnish the City or its inhabitants with water, light, heat, gas, electricity, power, or any other public utility or service using or proposing to use any public street, way, alley or place in the City for any of such purposes or for the operation of any plants, works or equipment for the furnishing thereof, or exercising or proposing to exercise any public utility franchise right or privilege in the City; and

WHEREAS, subject to the provisions of Article II of the Richmond City Charter, the Council may grant a franchise pursuant to a procedures prescribed by ordinance or by State law; and

WHEREAS, the Franchise Act of 1937 (Public Utilities Code Section 6201, *et. seq.*, "State law"), sets forth the procedure by which the City may grant a franchise to use, or to lay and use, pipes and appurtenances for the purpose of transmitting and distributing oil and products thereof;

WHEREAS, PHILLIPS 66 CO. a public utility subject to the jurisdiction of the California Public Utilities Commission (hereinafter "Grantee" as defined in Section 1 of this Ordinance), has submitted an application seeking to renew a franchise to construct, operate and maintain, Pipelines in the City, as described in Exhibit 1 which is attached hereto and incorporated by this reference: and

WHEREAS, pursuant to Resolution No. 102-17, the City declared its intention to grant the franchise fee and set a public hearing for October 17, 2017 and notice thereof was published as required by State law; and

WHEREAS, pursuant to this ordinance, Grantee may construct, operate and maintain its pipelines and related appurtenances within the alignment described in Exhibit 1: and

WHEREAS, this ordinance provides the terms and conditions under which may construct, operate and maintain its pipelines and related appurtenances within the alignment described as follows:

- Canal Boulevard - between Phillips 66 Richmond and West Cutting Boulevard
- West Cutting Boulevard – between Canal Boulevard and approximately 480' west of Canal Boulevard
- South Garrard Boulevard - between approximately 520' north of West Cutting Boulevard and West Ohio Avenue
- Garrard Boulevard - between West Ohio Avenue and Pennsylvania Avenue
- Pennsylvania Avenue - between Garrard Boulevard and Fifteenth Street
- Fifteenth Street - between Pennsylvania Avenue and Costa Avenue
- Costa Avenue – between Fifteenth Street and Eighteenth Street and City Limit
- Blume Drive – between approximately 450' south of Richmond Parkway to City Limit

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RICHMOND
DOES ORDAIN AS FOLLOWS:**

SECTION 1.

The right, privilege and franchise is hereby granted by the City of Richmond (“City”) to PHILLIPS 66 CO. (“Grantee”), duly authorized and existing under and by virtue of the laws of the State of Delaware, its successors and assigns, for a period of ten (10) years, from and after the effective date of this ordinance, to lay, construct, maintain, operate, repair, renew, and remove or abandon in place, any given pipeline not to exceed 6 inches in nominal internal diameter, for the 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, conduits, valves, appurtenances and service connections, appliance, attachments and appurtenances (hereinafter referred to as “appurtenances”) necessary or convenient to properly maintain and operate said pipelines, including any facilities necessary for cathodic protection of said pipeline, in, under, along and across those certain public streets within the City of Richmond as identified and described as follows:

- Canal Boulevard - between Phillips 66 Richmond and West Cutting Boulevard
- West Cutting Boulevard – between Canal Boulevard and approximately 480’ west of Canal Boulevard
- South Garrard Boulevard - between approximately 520’ north of West Cutting Boulevard and West Ohio Avenue
- Garrard Boulevard - between West Ohio Avenue and Pennsylvania Avenue
- Pennsylvania Avenue - between Garrard Boulevard and Fifteenth Street
- Fifteenth Street - between Pennsylvania Avenue and Costa Avenue
- Costa Avenue – between Fifteenth Street and Eighteenth Street and City Limit
- Blume Drive – between approximately 450’ south of Richmond Parkway to City Limit

SECTION 2.

This franchise is granted and shall be held and enjoyed upon the terms and conditions herein contained and it shall not become effective until the Grantee shall file with the City Clerk of the City of Richmond a written acceptance of such terms and conditions. This written acceptance shall be made within fifteen (15) days after the adoption of the Ordinance granting the franchise.

SECTION 3.

For the rights and privileges herein granted, the Grantee shall pay to the City of Richmond the following sums at the following times:

1. The Grantee shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of the franchise. Such payment shall be made within thirty (30) days after the City furnishes the Grantee with a written statement of the expenses.
2. The Grantee shall, during the life of this franchise, pay to the City an annual franchise fee, for each pipeline installed, maintained and operated under the terms of this franchise, an annual franchise fee calculated in accordance with the provisions of California Public Utilities Code Section 6231.5. Annual payments shall be due and payable on or before the first day of March each year. In the year of commencement and termination of this franchise, said annual payment shall be prorated in accordance with the period of time said pipelines are maintained during such respective years. Said annual payments shall be accompanied by a verified statement showing the total length of the pipelines maintained pursuant to this franchise, the rate per foot and the total amount due. After each

anniversary hereof, this fee shall be recalculated to allow for increases corresponding to the overall percentage increase, if any, during the preceding year in the Consumer Price Index ("CPI") for the San Francisco Bay Area as published by the U.S. Bureau of Labor Statistics.

SECTION 4.

As used in this section:

"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).

"Quarterly payment amount" means the payment of one quarter of the annual franchise fee payments paid to City pursuant to a franchise.

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.

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 Finance Director 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.

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.

The City Finance Director, 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 Richmond Municipal Code (RMC) Section 13.47.050 (a)(2).

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.

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.

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 RMC Section 13.47.270 hereof.

SECTION 5.

Grantee shall have the right, subject to such ordinances and regulations of the City as are now or may hereinafter be in force, to make all necessary excavations in said streets for the maintenance, operation, renewal, repair and removal of said pipelines and appurtenances as may be necessary and convenient. Grantee shall secure from the City necessary permits for such construction and the required fees shall be paid to the City. All pipes and materials used in constructing and maintaining said pipelines and appurtenances shall be on first class material satisfactory to the City Engineer and all construction work shall be done in accordance with City standards. All excavations shall be backfilled and the surface of said streets shall be placed in as good a condition as it was prior to the construction. All appurtenances shall be kept flush with the surface of said streets and so located as to conform to any order of the City Engineer. All construction shall be conducted with the least possible hindrance to the use of said streets for travel. The City shall reserve the right to restrict hours of construction and to impose regulations relative to traffic control as needed.

SECTION 6.

Grantee shall be responsible for maintenance of street surfaces and other surface improvements over any trench areas that may settle or be otherwise displaced as a result of settlement, displacement or other failure within any trench construction of said pipelines and appurtenances. Grantee shall pay to the City on demand the cost of all repairs to public property owned by the City or other governmental entity created or activated by the Council of the City or the City Charter made necessary by the activities of Grantee under this franchise.

SECTION 7.

In the event of future street widening, street improvements, street vacation, underground work or the installation of grade separations, or the installation or reconstruction of sewers and storm drains or other projects of the City which involve said street and necessitates removal or relocation of said pipelines and appurtenances, such removal or relocation shall be performed by Grantee as directed by the City, at the sole expense of Grantee, and the necessary work involved in such removal or relocation shall be coordinated with City's project and completed so as to result in minimum delay of City's project.

SECTION 8.

The 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.

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.

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.

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.

SECTION 9.

Grantee shall remain the owner of said pipelines and appurtenances and shall have the right to remove said pipelines and appurtenances from the City streets. Grantee may with the prior approval of the City Engineer abandon in place, without removing, said pipeline or appurtenances maintained under this franchise. The length of any pipeline so abandoned in place shall not be considered in calculating annual payments due under this franchise except for the time during which such pipeline was maintained prior to such abandonment. In the event that Grantee desires to remove or abandon in place all or any portion of said pipelines so installed, the Grantee prior to such removal or abandonment, shall file with the City Engineer a statement in writing, giving in detail the location of the pipeline, or portion thereof, so removed or abandoned in place, and a map, or maps, showing the location and size of all pipes laid under this franchise not so removed or abandoned in place.

SECTION 10.

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.

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. 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.

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

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.

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.

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.

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. 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 RMC 13.47.110(c) and 13.47.110(d).

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.

SECTION 11.

Grantee shall comply with all laws, ordinances, rules and regulations heretofore or hereafter adopted by said City Council in the exercise of its police powers, governing the construction, maintenance, operation, repair, renewal and removal or abandonment of said pipelines and appurtenances.

SECTION 12.

If Grantee fails, neglects, or refuses to comply with any provisions or conditions of this franchise after receiving a fifteen (15) day written demand for compliance, the City may terminate this franchise. In the event this franchise is terminated, Grantee shall, at its sole expense, remove or abandon in place, at the option of the Public Works Department, said pipelines and appurtenances installed pursuant to this franchise and restore the said City street areas to their original condition.

SECTION 13.

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

SECTION 14.

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.

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.

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.

SECTION 15.

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.

SECTION 16.

The release of a contaminant from any facility is a trespass and a public nuisance. 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.

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.

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

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.

The Grantee shall be responsible for the performance of all operations and maintenance activities relating to the remedial work.

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.

SECTION 17.

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 RMC Section 13.47.190(a).

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.

Grantee will transmit the following documents to City: 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; 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 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.

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.

SECTION 18.

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.

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:

Claims and liability for damages resulting from any operations under a franchise granted under this chapter;

Environmental damage claims;

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;

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;

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

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.

Defense. 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.

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.

Grantee shall assume any liabilities or responsibilities which are assessed against the City in any action described under this section.

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.

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.

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.

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.

SECTION 19.

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.

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.

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.

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.

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). (v) Subject of the insurance. (vi) The type of coverage provided by the insurance. (vii) Amount of limit of coverage provided by the insurance. (viii) A description of all endorsements that form a part of the policy.

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.

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.

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.

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.

SECTION 20.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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 workman like 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.

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.

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.

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.

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.

SECTION 21.

The pipelines which are the subject of this franchise are already in place in the public right of way. The Grantee will continue use of the pipelines as previously approved. Accordingly, this franchise grant is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under the Class 1 exemption, "Existing

Facilities,” as defined in Section 15301(c) of the CEQA Guidelines (Title 14 of the California Code of Regulations). This grant of franchise involves no or negligible alteration of existing facilities involving no or negligible expansion of use beyond that existing at the time of the determination that the Categorical Exemption applies.

SECTION 22

The provisions of this Ordinance are declared to be separate and severable. The invalidity of any clause, sentence paragraph, subdivision, section or portion of this Ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this Ordinance, or the validity of its application to other persons or circumstances.

SECTION 23.

This ordinance shall take effect thirty (30) days after the date of its adoption.

First read at a regular meeting of the Council of the City of Richmond held November 7, 2017, and finally passed and adopted at a regular meeting thereof held November 21, 2017, by the following vote:

AYES:	Councilmembers Choi, Martinez, Myrick, Recinos, Willis, Vice Mayor Beckles, and Mayor Butt.
NOES:	None.
ABSTENTIONS:	None.
ABSENT:	None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:
TOM BUTT
Mayor

Approved as to form:
BRUCE GOODMILLER
City Attorney

State of California	}	
County of Contra Costa	}	: ss.
City of Richmond	}	

I certify that the foregoing is a true copy of **Ordinance No. 24-17 N.S.**, passed and adopted by the City Council of the City of Richmond at a regular meeting held on November 21, 2017.



Pamela Christian, City Clerk of the City of Richmond