

ORDINANCE NO. 24-0007

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH, CALIFORNIA, EXTENDING THE TERM OF A PIPELINE FRANCHISE PREVIOUSLY GRANTED TO ZENITH ENERGY WEST COAST TERMINALS, LLC, ITS SUCCESSORS AND ASSIGNS, FOR AN ADDITIONAL TERM OF 25 YEARS, TO OPERATE, TEST, MAINTAIN, USE, RENEW, REPAIR, REPLACE AND REMOVE OR ABANDON IN PLACE A SYSTEM OF PIPELINES AND APPURTENANCES, FOR THE PURPOSE OF CONDUCTING, TRANSPORTING, CONVEYING, AND CARRYING GAS, OIL, PETROLEUM PRODUCTS, WATER, WASTE WATER, AND OTHER SUBSTANCES, ON, ALONG, IN, UNDER AND ACROSS CERTAIN SPECIFIED PUBLIC STREETS, WAYS, ALLEYS AND PLACES WITHIN MANHATTAN BEACH, SUPERSEDING ORDINANCE NO. 2002, AND ADOPTING A FINDING OF EXEMPTION FROM CEQA UNDER CEQA GUIDELINES SECTION 15301

The Manhattan Beach City Council does ordain as follows:

SECTION 1. FINDINGS.

A. On April 19, 1967, the Manhattan Beach City Council approved a pipeline franchise agreement with Southern California Edison (“SCE”) to operate a pipeline carrying petroleum products between SCE facilities within the City’s boundaries.

B. On July 20, 1999, the City Council adopted Ordinance No. 2002, granting a franchise under the Franchise Act of 1937 (Cal. Pub. Util. Code Section 6201 *et seq.*) to Southern California Edison (“SCE”), to operate, test, maintain, use, renew, repair, replace, and remove or abandon in place an existing system of pipelines already laid and constructed as designated in Exhibit A, attached hereto, together with such valves, fittings, manholes, vaults, pumps and other appliances, appurtenances, attachments or equipment as SCE, its successors and assigns may deem necessary or convenient for the purpose of conducting, transporting, conveying and carrying gas, oil, petroleum products, water, waste water, and excepting the carrying of any Class 1 flammable liquids that are not crude oils, or flammable gases, on, along, in, under and across the public streets, ways, alleys and places within Manhattan Beach (“City”) as designated on said Exhibit A and incorporated herein by reference (the “Franchise”).

C. The term of the Franchise is for 25 years from the effective date of Ordinance No. 2002, and is set to expire on August 19, 2024.

D. On or about July 31, 2023, SCE assigned all of its rights under the Franchise to Pacific Terminals LLC, a Delaware limited liability company, and an oil pipeline public utility subject to the jurisdiction of the California Public Utility Commission (“Pacific

Terminals”), pursuant to an sale of SCE’s assets to Pacific Terminals, LLC; and on or about August 5, 2003, SCE gave notice of assignment to the City.

E. In June 2009, Pacific Terminals, LLC notified the City that Pacific Terminals, LLC had changed its name to Plains West Terminals LLC, a Delaware limited liability company.

F. On or about October 15, 2020, Plains West Coast Terminals LLC filed a Certificate of Amendment with the State of Delaware in which changed its name to Zenith West Coast Terminals LLC, a Delaware Limited Liability Company; and on or about October 16, 2020 Plains West filed a Name Change Amendment and Amended Certificate of Registration with the California Secretary of State, changing its name to Zenith Energy West Coast Terminals, LLC.

G. By acknowledging this change of control and name, the Manhattan Beach City Council acknowledges the transfer of the Franchise with its applicable obligations and rights to Zenith Energy West Coast Terminals, LLC, as grantee.

H. Zenith Energy West Coast Terminals, LLC filed an application with the City of Manhattan Beach requesting that the City extend the Franchise for an additional term of 25 years.

I. The City Council finds that the extension of the Franchise (“Project”) was reviewed in accordance with the California Environmental Quality Act of 1970 (“CEQA”) and the Guidelines thereunder, and that there is no substantial evidence that the Project will have a significant effect on the environment. The City Council further finds that the Project is exempt from CEQA pursuant to Section 15301 (“Existing Facilities”) of the CEQA Guidelines, and that this Categorical Exemption, incorporated herein by reference, reflects the independent judgment of the City Council. Based thereon, the City Council hereby adopts the Categorical Exemption for the Project.

J. On June 18, 2024, the City Council adopted Resolution No. 24-0077, declaring its intention to adopt this ordinance granting an extension of the Franchise to Zenith Energy West Coast Terminals, LLC, as grantee, setting the public hearing on the proposed extension of the Franchise for July 16, 2024, and directing that a notice of public hearing be published in accordance with said Resolution.

K. On July 16, 2024, the City Council conducted a duly-noticed public hearing on the proposed extension of the Franchise, and received input and protests on the proposed extension of the Franchise, and following the close of the public hearing, considered and overruled all protests.

SECTION 2. DEFINITIONS.

Whenever in this Ordinance the words or phrases set forth hereinafter in this section are used, it is intended that they shall have the respective meanings assigned to them in the following definitions (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

A. "Applicable Law" means all present or future federal, state, municipal, or local laws, rules, regulations, ordinances, codes, orders, fees, permit requirements, judgments, injunctions, or decrees, or any judgment or order or decree by a court and/or the California Public Utilities Commission applicable to the Grantee or any of Grantee's Pipes, Facilities and Appurtenances, including successor versions of any of the foregoing.

B. "City" means the City of Manhattan Beach, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.

C. "City Manager" means the Manhattan Beach City Manager or his or her designee.

D. "Contaminant" means:

(1) Any substance or constituent, material, chemical, or waste, whether solid, liquid, semisolid, or gaseous in nature:

(a) 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

(b) 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 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; or

(c) Is listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the Environmental Protection Agency (EPA) or any successor agency, as hazardous substances [40 CFR Part 301] or designated pursuant to 33 USCS § 1321 or listed pursuant to 33 USCS § 1317; and

(2) The presence of which:

(a) 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

(b) 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

(c) Causes or threatens to cause a nuisance or a trespass on, beneath or emanating from the street 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 the Property by Grantee or any third party, or migrates onto the route of any pipeline constructed or operated pursuant to this franchise.

E. "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.

F. "Environmental Damage Claims" means 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 environmental requirements 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, without limitation, claims brought by or on behalf of the Grantee's employees;

(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 costs reasonably incurred in connection with the investigation or remediation of Contaminants or violations of Applicable Law, including, without limitation, preparation of studies or reports or the performance of cleanup, remediation, 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 this 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 Facility, 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 as a result of the Grantee's use and operations of its facilities and the exercising of the rights granted under this franchise. Diminution in property value shall be determined by an independent appraiser. The selected appraiser shall not be a party to a contract between the Grantee or property owner. The selected appraiser shall be licensed by the California Office of Real Estate Appraisers.

G. "Fire Chief" means the Manhattan Beach Fire Chief , or his or her designee.

H. "Franchise" means and includes any authorization granted hereunder in terms of a franchise, privilege, permit, or otherwise to use an existing system of pipelines and appurtenances for conducting, transporting, conveying, and carrying gas, oil, petroleum products, water, wastewater, and other substances, except Class I flammable liquids that are not crude oils, or flammable gases, along, across, upon, over, and under Streets within the City as set forth in Exhibit A, which is attached hereto and incorporated herein by reference. Any authorization, in whatever terms granted, shall mean and include any license or permit required for the privilege of transacting and carrying on a business within the City.

I. "Grantee" means Zenith Energy West Coast Terminals, LLC, a Delaware limited liability company authorized to do business in California and an oil pipeline public utility under the jurisdiction of the California Public Utilities Commission, and its lawful and authorized successors and/or assigns.

J. "Ordinance" means this Ordinance granting an extension of the Franchise to Zenith Energy West Coast Terminals, LLC, unless otherwise noted.

K. "Person" means any individual, person, firm, partnership, corporation or limited liability company.

L. "Pipes, Facilities and Appurtenances" means all property of the Grantee, including, without limitation, pipes, pipelines, cables, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances, facilities and any other property located or to be located in, upon, along, across, under or over the streets of the City, and used or useful in, or in carrying on the business of, conducting, transporting, conveying and carrying gas, oil, petroleum products, water, waste water, and other substances pursuant to any right or privilege granted by this Franchise, and , 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)].

M. “Public Work” or “Public Works” means the erection, construction, alternation, repair or improvement of any kind with public funds.

N. “Public Works Director” means the Manhattan Beach Public Works Director , or his or her designee.

O. “PUC” means the California Public Utilities Commission.

P. “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, without limitation, 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 predesign, design, construction, operations, maintenance and monitoring of any remedial actions;

(2) All actions, investigations and inquiries to properly remediate, clean up, 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 street, 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, without limitation, 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, clean-up 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. This 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 non-governmental 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.

Q. "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, without limitation, the following:

(1) All "Response" (as that term is defined in Section 101(25) of CERCLA) 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 or costs recoverable under Section 107 of CERCLA;

(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 attorneys' 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.

R. “Streets” means the public streets, ways, alleys and places as the same now or may hereafter exist within said City.

SECTION 3. GRANT OF EXTENSION OF FRANCHISE.

A. The right, privilege, and franchise, subject to each and all of the terms and conditions contained in this Ordinance and pursuant to the provisions of Division 3, Chapter 2, of the Public Utilities Code of the State of California, known as the Franchise Act of 1937, is hereby granted to the Grantee, to operate, test, maintain, use, renew, repair, replace, and remove or abandon in place an existing system of pipelines already laid and constructed as designated in Exhibit A, together with such valves, fittings, manholes, vaults, pumps and other appliances, appurtenances, attachments, equipment or facilities as the Grantee, its successors and assigns may deem necessary or convenient for the purpose of conducting, transporting, conveying and carrying gas, oil, petroleum products, water, waste water, and excepting the carrying of any Class 1 flammable liquids that are not crude oils, or flammable gases, on, along, in, under and across the public streets, ways, alleys and places within the City of Manhattan Beach as designated on Exhibit A.

B. Under no circumstances may the Grantee install any new Pipes, Facilities and Appurtenances except upon the City’s prior written consent pursuant to the terms of this Franchise. The City, in its sole discretion, may require such consent to be set forth in an ordinance.

SECTION 4. TERM. The original term of said Franchise, set to expire on August 19, 2024, is and shall be hereby extended from and including August 19, 2024 for a term of 25 years from and after the effective date of the adoption of this Ordinance, or until it is voluntarily surrendered or abandoned by the Grantee, or until the State 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 until such franchise is forfeited for noncompliance with its terms by Grantee.

SECTION 5. SCOPE OF FRANCHISE. The Grantee shall have the right to construct and maintain such Pipes, Facilities and Appurtenances as may be necessary or convenient for the proper maintenance and operation of the pipelines under said Franchise and so located as to conform to any order of the Public Works Director and/or Applicable Law in regard thereto. The Grantee shall have the right subject to such

ordinances, fees, rules, or regulations and other provisions of Applicable Law as are now or may hereafter be in force, to make all necessary excavations in said Streets, for the construction, location, installation, testing, operation, maintenance and repair of new or existing Pipes, Facilities and Appurtenances, subject to the terms, provisions and conditions of this Ordinance.

SECTION 6. FRANCHISE FEE.

A. The Grantee shall pay to the City at the times hereinafter specified, in lawful money of the United States, a sum annually which shall be equivalent to the base rate revised annually, as provided in Section 6231.5 of the Public Utilities Code, arising from the use, operation or possession of said Franchise; and further that in the event the Legislature shall amend the Franchise Act of 1937 (Public Utilities Code Section 6201-6302) to permit a franchise payment greater than the percentage formula currently specified herein, the Franchise fee agreed upon herein shall be automatically changed to the level expressed by the Legislature in amending such Act. The Grantee shall file a verified statement memorializing charges due Grantor to City, within three months after the expiration of the calendar year, or any fractional year following the effective date of this Ordinance, and within three months after the expiration of each subsequent calendar year, or fraction thereof, during which this Franchise is in effect, based upon calculations specified in Public Utilities Code Section 6231.5, or any amended or successor statute or other provisions of Applicable Law.

B. It shall be the duty of the Grantee to pay to the City within 15 days after the time for filing such statement in lawful money of the United States, the amount due as the Franchise Fee, as determined by said statement. Any neglect, omission or refusal by said Grantee to file such verified statement, or to pay said amount, at the times or in the manner or amount provided in this agreement, shall be grounds for the declaration of a forfeiture of this Franchise and of all rights hereunder. The City Manager shall have the power and authority to reasonably dispute any verified statement and to require additional proof with respect to any matters set forth in said verified statement and in addition shall have the power, in addition to any other rights, of inspection of records of the Grantee which may elsewhere be covered by this Ordinance, to examine any books or records of the Grantee, upon which any verified statement is based.

C. Nothing herein shall affect any debt of the Grantee to pay franchise fees heretofore accrued but not paid to the City, or to comply with any other requirement of Applicable Law or this Ordinance.

SECTION 7. ABANDONMENT.

A. Upon expiration without renewal of this Franchise or the revocation or termination of this Franchise, or the permanent discontinuance of use of the Pipes, Facilities, and Appurtenances, or any portion thereof, the Grantee shall, within 20 days thereafter, make written application to the Public Works Director for authority to either (1) abandon all, or a portion, of such Pipes, Facilities and Appurtenances in place, or (2) remove all, or a portion, of such Pipes, Facilities and Appurtenances. The application

shall describe the location of the Pipes, Facilities and Appurtenances desired to be abandoned or removed, and the relative physical condition of such Pipes, Facilities and Appurtenances. The Public Works Director shall determine whether the abandonment or removal may be effected without detriment to the public interest and under what conditions and terms and whether the proposed abandonment or removal may be safely effected, and shall then notify the Grantee of such requirements. The Grantee shall, within 90 days thereafter, either remove all or such portions of such Pipes, Facilities and Appurtenances or abandon in place all or a portion of such Pipelines, Facilities and Appurtenances, as directed by the Public Works Director.

B. If any Pipes, Facilities and Appurtenances that are to be abandoned in place and subject to prescribed conditions are not abandoned in accordance with all such conditions, the Public Works Director may make additional orders including, if desirable, an order that the Grantee remove all such Pipes, Facilities, and Appurtenances in accordance with applicable requirements. In the event the Grantee fails to remove any Pipes, Facilities and Appurtenances in accordance with such applicable requirements within the time prescribed by the Public Works Director, then the City may remove such Pipes, Facilities and Appurtenances and the Grantee shall thereafter pay to the City the actual cost thereof, plus the City's reasonable overhead expenses. Any decision of the Public Works Director with respect to conditions, interpretations of plans, specifications, rules, regulations, and/or standards shall be final.

SECTION 8. GRANTEE'S DUTIES AND RESPONSIBILITIES. In addition to any other duties or responsibilities of the Grantee under this Ordinance and Applicable Law, including but not limited to Section 6, the Grantee shall comply with the following requirements:

A. The Grantee shall construct, install, test, and maintain all Pipes, Facilities and Appurtenances in accordance with and in conformity with all of the ordinances, fees, permits, rules and regulations heretofore, or hereafter adopted by the legislative body of this City in the exercise of its police powers and not in conflict with the paramount authority of the State of California, and, as to State highways, subject to the provisions of Applicable Law relating to the construction, installation, testing location and maintenance of such Pipes, Facilities and Appurtenances.

B. The Grantee shall pay to the City, on demand, the cost of all repairs to public property made necessary by any operations of the Grantee under this Franchise, and all associated fees and permits for such repairs, in accordance with the provisions of this Ordinance.

C. The Grantee shall be liable to the City for damage to City property, including but not limited to any street, or any other cost incurred by the City caused by Grantee, any of Grantee's Facilities or by any Person acting on Grantee's behalf. The Grantee's liability shall extend to any damages incurred by the City, and to any reasonable costs, including but not limited to remediation costs required pursuant to Applicable Law, incurred by the City for control or abatement of any release of contaminants, remedial

work or any adverse environmental condition resulting from any activity conducted by or on behalf of Grantee pursuant to the Franchise.

D. If any portion of any street or other public right-of-way or facilities within said right-of-way shall be damaged by reason of defects in any of the Pipes, Facilities and Appurtenances maintained or constructed under this grant, the Grantee shall, at its own cost and expense, immediately repair any such damage and restore such street, or portion of street, to current City standards, such work to be done under the direction of the Public Works Director, and to his or her reasonable satisfaction, and in accordance with any and all City rules, regulations, ordinances, standards, and/or specifications and other provisions of Applicable Law.

E. To the fullest extent permitted by law, the Grantee shall provide defense and indemnification of the City and its elected and appointed officers, employees, agents, consultants, attorneys, representatives, and those City agents serving as independent contractors in the role of City officials, in accordance with the following requirements:

(1) Indemnity for Design Professional Services. To the fullest extent permitted by law, the Grantee shall, at its sole cost and expense, protect, indemnify, and hold harmless the City and its elected and appointed officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith, and reimbursement of attorney's fees and costs of defense (collectively "Liabilities"), whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of the Grantee, its officers, agents, servants, employees, subcontractors, material men, consultants or their officers, agents, servants or employees (or any entity or individual that the Grantee shall bear the legal liability thereof) in the performance of design professional services under this Franchise by a "design professional," as the term is defined under California Civil Code Section 2782.8(c).

(2) Other Indemnities.

(a) Other than in the performance of design professional services, and to the fullest extent permitted by law, the Grantee shall, at its sole cost and expense, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Claims"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of the Grantee, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that the Grantee shall bear the legal liability thereof) in the

performance of this Franchise, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the City and the Grantee. The Grantee shall defend the Indemnitees in any action or actions filed in connection with any Claim with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. The Grantee shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.

(b) The Grantee shall pay all required taxes on amounts paid to the Grantee under this Franchise, and indemnify and hold the City harmless from any and all taxes, assessments, penalties, and interest asserted against the City by reason of the independent contractor relationship created by this Franchise. The Grantee shall fully comply with the workers' compensation law regarding the Grantee and the Grantee's employees. The Grantee shall indemnify and hold the City harmless from any failure of the Grantee to comply with applicable workers' compensation laws. The City may offset against the amount of any fees due to the Grantee under this Franchise any amount due to the City from the Grantee as a result of the Grantee's failure to promptly pay to the City any reimbursement or indemnification arising under this subparagraph (E)(2)(b).

(3) The Grantee shall obtain executed indemnity agreements with provisions identical to those in this Section 8(E) from each and every subcontractor or any other person or entity involved by, for, with or on behalf of the Grantee in the performance of this Franchise. If the Grantee fails to obtain such indemnities, the Grantee shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of the Grantee's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that the Grantee's subcontractor shall bear the legal liability thereof) in the performance of this Franchise, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the City and the Grantee.

(4) **Workers' Compensation Acts not Limiting.** The Grantee's obligations under this Section 8(E), or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. The Grantee expressly waives its statutory immunity under such statutes or laws as to the City, its officers, agents, employees and volunteers.

(5) **Insurance Requirements not Limiting.** The City does not, and shall not, waive any rights that it may possess against the Grantee because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Franchise. The hold harmless and indemnification provisions in this Section 8(E) shall apply regardless of whether or not any insurance policies are

determined to be applicable to the Liabilities, Claims, tax, assessment, penalty or interest asserted against the City.

(6) Survival of Terms. The indemnification in this Section 8(E) shall survive the expiration or termination of this Franchise.

F. The Grantee shall remove or relocate, at the request of the City, and without expense to the City, any Pipes, Facilities and Appurtenances installed, used and maintained under this Franchise if and when made necessary by and lawful change of grade, alignment or width of any public street, way, alley or place, or any other Public Work by the City or other proper governmental use of the Streets; provided, however, that the Grantee shall not be required to bear the expense of any removal or relocation made at the request of the City on behalf or for the benefit of any private developer or other non-governmental third party.

G. Subject to Subparagraphs (1), (2) and (3) of this Subsection, the Grantee file with the legislative body of the City within 30 days after any sale, transfer, assignment or lease of this franchise, or any part thereof, or of any of the rights or privileges granted thereby, written evidence of the same, certified thereto by the Grantee or its duly authorized officers.

(1) Notwithstanding the foregoing, if any transfer, assignment, lease, or sale of the Franchise is to a Person that is a non-public utility pipeline, then City approval is required. Such transfer, assignment, lease or sale shall be made by filing with the City Council a copy of the duly executed instrument of such transfer, assignment, lease or sale and a written request for the consent of the City Council of such transfer, assignment, lease, or sale. As a condition of the granting of consent to such transfer, assignment, lease, or sale, the City may impose such reasonable additional terms and conditions upon the Franchise and upon the Grantee and/or assignee, which the City Council may deem to be in the public interest. Such additional terms and conditions shall be expressed by ordinance. If the City approves that sale, transfer, assignment, or lease of this Franchise, then the City may change the annual Franchise payment to an amount otherwise authorized by applicable state law. Upon approval, the new Grantee shall pay to the City all fees, expenses, attorneys' fees and other costs incurred by the City in connection with the approval of the sale, transfer, assignment, or lease of this Franchise. Such fees, expenses, attorneys' fees and other costs are estimated as of the effective date of this Ordinance to be a minimum of \$3,000.00. The Grantee shall make full payment to the City within 30 days after the City shall have furnished said Grantee with a written statement of such fees, expenses, attorneys' fees and other costs.

(2) The Grantee shall have no right to transfer, assign, lease or sell the Franchise, or any part thereof, except in the manner aforesaid, unless as otherwise permitted by Applicable Law.

(3) This Subsection (G) applies to any sale, transfer, assignment or lease, whether by operation of law, by a voluntary act of the Grantee, or otherwise.

H. Prior to the effective date of this Ordinance, the Grantee shall procure and provide satisfactory proof of insurance that complies with the City's requirements, and maintain such insurance during the term of the Franchise, in accordance with the following provisions.

(1) Minimum Scope and Limits of Insurance. The Grantee shall procure and at all times during the term of the Franchise carry, maintain and keep in full force and effect such insurance as follows:

(a) Commercial General Liability Insurance with a minimum limit of \$5,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$10,000,000.00 per project or location. If the Grantee is a limited liability company, the commercial general liability coverage shall be amended so that the Grantee and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

(b) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Franchise with a combined single limit of \$25,000,000.00 per accident for bodily injury and property damage. If the Grantee does not use any owned, non-owned or hired vehicles in the performance of the Franchise, the Grantee shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under Subparagraph (1) of this Subsection (H).

(c) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease.

(d) Professional Liability/Errors & Omissions Insurance with minimum limits of \$25,000,000.00 per claim and in aggregate as applicable for any and all third party architects, engineers, surveyors, or other professional hired to conduct or perform services or work pursuant to the Franchise operations.

(e) Contractors Pollution Liability applicable to the services or work being performed, with a limit no less than \$5,000,000.00 per claim or occurrence and \$5,000,000.00 aggregate per policy period of one year.

(2) Acceptability of Insurers. The insurance policies required under this Subsection (H) shall be issued by an insurer authorized to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Subsection (H).

(3) Additional Insured. The commercial general liability policy shall contain an endorsement naming the City, its officers, employees, agents and volunteers as additional insureds.

(4) Primary and Non-Contributing. The insurance policies required under this Subsection (H) shall apply on a primary non-contributing basis in relation to

any other insurance or self-insurance available to the City. Any insurance or self-insurance maintained by the City, its officers, employees, agents or volunteers, shall be in excess of the Grantee's insurance and shall not contribute with it.

(5) Contractor's Waiver of Subrogation. The insurance policies required under this Subsection (H) shall not prohibit the Grantee and the Grantee's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. The Grantee hereby waives all rights of subrogation against the City.

(6) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, the Grantee shall either reduce or eliminate the deductibles or self-insured retentions with respect to the City, or the Grantee shall procure a bond guaranteeing payment of losses and expenses.

(7) Cancellations or Modifications to Coverage. The Grantee shall not cancel, reduce or otherwise modify the insurance policies required by this Subsection (H) during the term of the Franchise. The commercial general and automobile liability policies required under this Subsection (H) shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to the City. If any insurance policy required under this Ordinance is canceled or reduced in coverage or limits, the Grantee shall, within two business days of notice from the insurer, phone, fax or notify the City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

(8) City Remedy for Noncompliance. If the Grantee does not maintain the policies of insurance required under this Ordinance in full force and effect during the term of the Franchise, or in the event any of the Grantee's policies do not comply with the requirements under this Subsection (H), the City may either immediately terminate the Franchise or, if insurance is available at a reasonable cost, the City may, but has no duty to, take out the necessary insurance and pay, at the Grantee's expense, the premium thereon. The Grantee shall promptly reimburse the City for any premium paid by the City.

(9) Evidence of Insurance. Prior to the effective date of this Ordinance, the Grantee shall furnish the City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Subsection (H). The endorsements are subject to the City's approval. The Grantee may provide complete, certified copies of all required insurance policies to the City. The Grantee shall maintain current endorsements on file with the City's Risk Manager. The Grantee shall provide proof to the City's Risk Manager that insurance policies expiring during the term of the Franchise have been renewed or replaced with other policies providing at least the same coverage. The Grantee shall furnish such proof at least two weeks prior to the expiration of the coverages.

(10) Indemnity Requirements not Limiting. Procurement of insurance by the Grantee shall not be construed as a limitation of the Grantee's liability or as full

performance of the Grantee's duty to indemnify the City under Section 8(E) of this Ordinance.

(11) Broader Coverage/Higher Limits. If the Grantee maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Grantee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(12) Umbrella or Excess Policy. The Grantee may use Umbrella or Excess Policies to provide the liability limits as required in this Ordinance. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Grantee's primary and excess liability policies are exhausted.

(13) Subcontractor Insurance Requirements. The Grantee shall require each of its subcontractors that perform services or work under the Franchise to maintain insurance coverage that meets all of the requirements of this Subsection (H).

I. Without prior demand by the City, the Grantee shall submit to the City for review, the results of any and all testing of Pipes, Facilities and Appurtenances required to be performed pursuant to applicable federal or state law, by January 31 of every year during the term of this Franchise, or otherwise upon the request of the City. If such testing is not required by federal or state laws or regulations to be performed in any given year, then the Grantee shall report to the City in writing by January 31 that no testing is required during that year.

J. On or before the effective date of this Ordinance granting this Franchise, the Grantee shall file and thereafter annually during the life of this franchise keep on file with the Public Works Director, Director of Public Works and the Fire Chief, a Pipeline Emergency Plan, prepared pursuant to the requirements of federal regulations 49 CFR 195.402 and the State of California Pipeline Safety Act of 1981, as amended. Pipes, facilities and appurtenances shall be constructed and maintained in a good worker-like manner in conformity with the terms and conditions of all Applicable Law or any other ordinance, rule, or regulation, now, or as hereafter amended, adopted, or prescribed by the City. All pipes laid under this franchise shall be of first class material. All pipelines and appurtenances will be installed in accordance with the latest revision of the "American Standard Code of Pressure Piping ASA B31.4" and all Applicable Law.

K. Unless otherwise authorized in writing by the Fire Chief, the Grantee shall, at all times during the term of this franchise, maintain on a 24 hour-a-day basis, adequate

emergency equipment and properly trained emergency crew within a radius approved in writing by the Fire Chief, from any of the Pipes, Facilities and Appurtenances installed or maintained pursuant to this Franchise for the purpose of shutting off the pressure and the flow of the contents of such Pipes, Facilities and Appurtenances in the event of an emergency resulting from an earthquake, act of war, civil disturbance, flood, or other cause.

L. The Grantee shall comply with all requirements of the National Pollution Discharge Elimination System ("NPDES") permitting process for all activities involving water discharges, unless expressly exempted by an applicable NPDES Permit. The NPDES permitting process is a mandatory federal regulatory process designed to safeguard against water quality problems. Compliance with NPDES requirements will ensure that any water discharges will not have a significant impact on the environment. Nothing herein contained shall ever be construed so as to exempt the Grantee from compliance with all City ordinances, rules, or regulations now in effect or which may be hereafter adopted.

SECTION 9. FAITHFUL PERFORMANCE BOND. On or before the effective date of this Ordinance, the Grantee shall file and thereafter at all times during the life of the Franchise keep on file with the City Clerk a corporate surety bond approved by the City Attorney running to the City in the penal sum of \$500,000.00, with a surety licensed to do business in California and approved by the City Clerk. The bond shall provide that the Grantee shall well and truly observe, fulfill, and perform each term and condition of this Franchise and that in case of any breach of condition of the bond the whole amount of the penal sum shall be deemed to be liquidated damages and shall be recoverable from the principal and sureties of the bond. If the bond is not filed within five days after the effective date of this Ordinance granting this Franchise, or if the bond is not approved by the City, the award of this Franchise may be set aside and this Ordinance granting this Franchise repealed at any time prior to the filing of the bond and any money paid in consideration for the award of the Franchise and/or the extension of the Franchise shall be deemed forfeited and retained by the City. This clause shall in no way limit the Grantee's defense and indemnity obligations as required by Section 7(c) of Ordinance No. 2002, and shall in no way limit the coverage or applicability of the insurance policies provided by the Grantee as required under Section 8 of this Ordinance.

SECTION 10. MISCELLANEOUS REQUIREMENTS AND DUTIES OF THE GRANTEE.

A. The Grantee shall erect, construct, install, operate and maintain all Pipes, Facilities and Appurtenances in accordance with City requirements and all other provisions of Applicable Law, including but not limited to, locate any Pipes, Facilities and Appurtenances in such location(s) as may be reasonably necessary to avoid sewers, gas lines, conduits or other structures lawfully in or under the streets; and before the work of construction of any Pipes, Facilities and Appurtenances is commenced, including construction of any appurtenances over or protruding into the public rights-of-way, the Grantee shall file with said Public Works Director plans showing the location thereof, which shall be subject to the approval of said Public Works Director (such approval not to

be unreasonably withheld); and all such construction shall be subject to the inspection of said Public Works Director and done to his or her reasonable satisfaction and in compliance with any and all City rules, regulations, ordinance, standards and specifications.

B. Within 90 days following the date on which any Pipes, Facilities and Appurtenances have been and/or constructed, or additional Pipes, Facilities and Appurtenances have been laid or constructed pursuant to this Franchise, the Grantee shall file a map or maps in such form as may be required by the Public Works Director showing the accurate location and size of all its Pipes, Facilities and Appurtenances then in place, and shall, upon installation of any additional Pipes, Facilities and Appurtenances, or upon removal, change, or abandonment of all or any portion thereof, file a revised map or maps showing the location and size of all such additional and/or abandoned Pipes, Facilities and Appurtenances as of that date.

SECTION 11. CITY'S RIGHT TO AUDIT. The City may, at any time, upon reasonable notice and during normal business hours, but no more than once a year, request an audit of the Grantee's accounting of the annual franchise fees paid to the City to confirm that the Grantee is accurately calculating the annual franchise fees paid to the City and that the Grantee is accurately reporting Grantee's gross annual receipts. Grantee shall not charge the City for such audit. Notwithstanding the foregoing, the City's option to audit may also be exercised upon termination of the Franchise, or at any time thereafter as long as the Grantee has pipelines or other appurtenances existing in the City. Unless otherwise required by law, City shall maintain confidentiality of all information provided by Grantee to City in connection with such audit that Grantee has informed City is confidential. Unless otherwise required by law, nothing herein shall be construed to require Grantee to make available to City, its officials, employees, agents or other representatives information which constitutes private or confidential information pertaining to specific customers of Grantee without the consent of such customers.

SECTION 12. FAILURE TO COMPLY. If the Grantee of this Franchise shall fail, neglect or refuse to comply with any of the provisions or conditions hereof, and shall not, within 10 days after written demand for compliance, begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then the City, by its legislative body, after a noticed public hearing, may declare this Franchise forfeited and commence and/or complete any such work. The Grantee shall be liable to the City for any and all costs and expenses incurred by the City in connection with any such work, including, without limitation, reasonable overhead expenses. Furthermore, this Franchise is granted and shall be held and enjoyed upon each and every condition contained in this Ordinance granting this Franchise, including such conditions contained herein as are incorporated by reference, and shall be strictly construed against the Grantee. No entitlement shall inure to the Grantee's benefit thereby unless it is granted in plain and unambiguous terms.

SECTION 13. EMINENT DOMAIN. The extension of the Franchise hereunder shall not in any way or to any extent impair or affect the right of the City to acquire the property of the Grantee hereof either by purchase or through the exercise of the right of

eminent domain, and nothing therein contained shall be construed to contract away or to modify, or to abridge, whether for a term or in perpetuity, the City's right of eminent domain in respect to the Grantee. This Franchise or the extension hereof shall not be given any value before any court or other public authority in any proceeding of any character in excess of the costs to the Grantee of the necessary costs of publication.

SECTION 14. COMPLIANCE WITH APPLICABLE LAW. Until such time as: (a) the Franchise terminates; and (b) the Grantee removes all of its Facilities; and (c) completes any necessary Remedial Work on any Pipes, Facilities and Appurtenances or relating to any Release, the Grantee will comply with all Applicable Law. Without limiting the foregoing:

A. All Pipes, Facilities and Appurtenances erected, constructed, laid, operated, or maintained under the provisions of this franchise shall be designed, erected, constructed, laid, operated, or maintained in accordance with and conforming to all the ordinances, codes, rules, and regulations now and hereafter adopted or prescribed by the City Council, and in accordance with all Applicable Law relating to such Pipes, Facilities and Appurtenances, and pipeline system design, construction, operation, and maintenance which is authorized under this Franchise, and all such state, federal and municipal law, along with implementing regulations, guidelines, and guidance, that may be enacted or issued during the term of this Franchise.

B. The Grantee shall maintain all Pipes, Facilities and Appurtenances in good repair and condition at its own expense.

C. The Grantee shall not allow any Contaminant to be generated, used, stored for any period of time, Released on or under any Pipes, Facilities and Appurtenances, or arrange for another Person to do the same, except in full compliance with Applicable Law.

D. The Grantee shall not undertake any actions on any Pipes, Facilities and Appurtenances that might adversely affect the City's liability under Applicable Law.

E. The Grantee shall immediately notify the City in writing 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 Pipes, Facilities and Appurtenances by the Grantee, or by any person for whose conduct the Grantee is responsible, or which may result in a lien on any Pipes, Facilities or Appurtenances, or upon the Grantee's receipt of any notice to such effect from any governmental agency, or upon the 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 the Grantee may be liable, or for which expense a lien may be imposed upon any Pipes, Facilities and Appurtenances.

F. The Grantee shall comply with all Applicable Laws and good pipeline practices in its operations on or in the vicinity of any Pipes, Facilities and Appurtenances.

SECTION 15. NAME CHANGE. In the event that Grantee changes its legal name, the Grantee shall advise the City by written notice to the Manhattan Beach City Clerk before the expiration of 30 days after the effective date of such name change.

SECTION 16. NONEXCLUSIVE FRANCHISE. The granting of this Franchise shall not be construed to prevent the City from granting any identical or similar franchise to any person other than the Grantee.

SECTION 17. PRIOR FRANCHISES SUPERSEDED

A. Except as otherwise provided in this section, and as to the Pipes, Facilities and Appurtenances depicted in Exhibit A hereto, this Franchise is granted in lieu of all other franchises owned by the Grantee or any of the Grantee's successors and assigns to any rights under this Franchise, for transmitting and distributing gas, oil, petroleum products, water, waste water, and excepting the carrying of any Class 1 flammable liquids that are not crude oils, or flammable gases, within the City's limits, as said limits now or may hereafter exist, and the acceptance of the Franchise hereby granted shall operate as an abandonment of all such franchises within the City's limits, as such limits now or may hereafter exist, in lieu of which this Franchise is granted.

B. All Pipes, Facilities and Appurtenances erected, constructed, laid, operated, or maintained by the Grantee in the Streets, including services connected with the Grantee's Pipes, Facilities and Appurtenances, whether installed by the Grantee or not, in the area described in and by virtue of the authority provided by this Franchise, prior to the effective date of said Franchise, except those maintained under prior right other than by franchise, or by assignment or transfer expressly approved by the City, shall become subject to all the terms and conditions of this Franchise upon its effective date.

SECTION 18. ACCEPTANCE OF FRANCHISE. The Franchise extended hereby shall not become effective until written acceptance of this Ordinance shall have been filed by the Grantee with the Manhattan Beach City Clerk. The written acceptance shall be filed within 30 days of the second reading of this Ordinance. When so filed, such acceptance shall constitute a continuing agreement of the Grantee that if and when the City shall thereafter annex or consolidate with, additional territory, any and all franchise rights and privileges owned by the Grantee therein, other than a constitutional franchise, shall be deemed to be abandoned within the limits of such territory.

SECTION 19. ADMINISTRATIVE COSTS. 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 extension of this Franchise; said payment to be made within 30 days after the City shall have furnished said Grantee with a written statement of such expenses.

SECTION 20. ORDINANCE NO. 2002 AND URGENCY ORDINANCE NO. 24-0007-U SUPERSEDED; SAVINGS CLAUSE.

A. Ordinance No. 2002, as previously adopted by Manhattan Beach, is hereby superseded in its entirety; provided, however, that the adoption of this Ordinance, and/or the adoption of any amendment or repeal of any other ordinance or part or portion of any

ordinance previously in effect in the City shall not excuse in any manner any breach thereof occurring prior to the effective date of this Ordinance. All obligations of the Grantee under Ordinance No. 2002 shall continue without interruption and are deemed incorporated herein except to the extent modified by this Ordinance. The terms of this Franchise shall govern in the event of any conflict with the provisions of Ordinance No. 2002. The adoption of this Ordinance shall also not affect in any manner the prosecution of, any violation of Ordinance No. 2002, or any other City ordinance or provision of the Manhattan Beach Municipal Code, committed prior to the effective date of this Ordinance, nor be construed as a waiver of any license, fee or penalty or the penal provisions applicable to any violation thereof.

B. Upon its effective date, this Ordinance supersedes Urgency Ordinance No. 24-0007-U, adopted on July 16, 2024, and any provisions of the Manhattan Beach Municipal Code to the extent inconsistent with this Ordinance.

SECTION 21. CERTIFICATION. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause this Ordinance to be published within 15 days after its passage, in accordance with Section 36933 of the Government Code.

SECTION 22. EFFECTIVE DATE. This Ordinance shall take effect and be in full force at 12:01 a.m. on the 31st day after its passage.

ADOPTED on _____, 2024.

AYES:
NOES:
ABSENT:
ABSTAIN:

JOE FRANKLIN
Mayor

ATTEST:

LIZA TAMURA
City Clerk