City Council Agenda
December 2, 2015

Date: November 20, 2015

To: Mayor and City Council

From: Michael Chandler, Senior Management Analyst

Subject: Plains Products Terminals, LLC Franchise Application

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Recommendation
Conduct a Public Hearing, find the project categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301, 15302 and 15061(b)(3), for the reasons indicated in the staff report, approve a revised and extended Pipeline Franchise Agreement and introduce an Ordinance granting the revised and extended Pipeline Franchise to Plains Products Terminals.

Background
The City entered into Pipeline Franchise Agreement pursuant to Ordinance No. 1225 C.S. with Wickland Oil Martinez, LP, and its successors and assigns effective September 11, 1995, for a 20-year term. The franchise was subsequently transferred to Shore Terminals, LLC, in December 1998 by assignment, and then purchased by Pacific Atlantic Terminals, LLC, in 2005. Pacific Atlantic Terminals, LLC, merged with Plains All-American Pipeline, LP, in November 2006. Plains Products Terminals, LLC ("Plains"), the parent corporation of Plains All-American Pipeline, LP, formally requested renewal of the franchise for a 20-year term in a letter to the City dated July 15, 2015. The franchise expired under its own terms and conditions on September 11, 2015, but was extended by both parties through the end of 2015 in order to permit the parties to negotiate the revised and extended franchise agreement.

The existing pipeline agreement allows four (4) pipelines, as follows: up to three (3) pipelines with maximum diameter of 16" transporting various liquid products, and one (1) pipeline with maximum diameter of 12" transporting natural gas. Pipelines subject to the franchise renewal include a system of three (3) pipelines located west of the Martinez Plains Terminal (2801 Waterfront Road), and a portion of relocated pipeline located east of the Plains Terminal. The westerly pipelines are located within the Marina Vista Avenue right of way, entering the City and Franchise Area at the limit line at the intersection of Marina Vista Avenue and the Interstate 680 overpass and exiting the Franchise area at various points along the frontage of the Shell refinery.

A relocated pipeline east of the terminal is in the shoulder of Waterfront Road, entering the City boundary at the foot of the bridge over the Union Pacific Railroad and running easterly until it exits the Franchise area at the eastern City limit. This pipeline was formerly located in Pacheco Marsh within County Flood Control District property but moved into the City's right-of-way as a means of improving visibility and access to the pipeline in case of a problem or to identify a general need for maintenance.

Plains and the City held a public workshop at City Hall on Wednesday, October 15, 2015, to provide information on Plains' application for a renewed franchise. No members of the public attended the workshop.

The City Council Franchise Subcommittee met October 22, 2015, to hear a presentation from Plains and discuss Plains' application for a renewed franchise. The Subcommittee recommended forwarding the item to Council for consideration. Subsequently, the Planning Commission met October 27, 2015, and adopted a finding of General Plan consistency to allow the proposed franchise renewal as required by Section 65402 of the Government Code.

The City Council approved Resolution No. 103-15 at the November 4, 2015 Council Meeting indicating its intention to grant a new pipeline franchise to Plains and setting the pubic hearing date as required by State law.

Discussion

The new 20-year franchise agreement contains several adjustments and enhancements compared to its predecessor Franchise Ordinance No. 1225 C.S.:

Franchise Fee Base Rate: Negotiated increase from current rate of $1.88/cubic foot to $2.50/cubic foot of pipe (subject to annual 3% increases every year thereafter). Based on discussions with other area jurisdictions, the City and Contra County previously had the highest local franchise fee rates for "non-public utility" pipeline franchises (which are subject to negotiation between the parties, unlike "public utility" pipeline franchises, which are subject to a prescribed and significantly lower rate schedule per Section 6231.5 of the California Public Utilities Code). With this increase, Martinez will have established a new Base Rate approximately 33% higher than the County's.

Community Benefit Payment: Negotiated a voluntary payment to the City in the amount of $25,000, payable in three installments (the first of which will be on the effective date of the new franchise), for the purpose of supporting a community benefit project. The City will acknowledge Plains' contribution at such a time as a project or projects utilizing these funds have been approved by the City.

Reactivation of Idle Pipeline: Established provision requiring Plains to notify the City in writing at least 90 days in advance of reactivating an idle pipeline and provide the City with an approval letter from the California State Fire Marshal, Pipeline Safety Division certifying the pipeline is safe to operate.

Indemnification/Insurance: Updated indemnification language to afford greater protection to City and match current standards. Also increased Plains' liability insurance obligations from $5,000,000 to $10,000,000 per occurrence.

Surety Bond: Negotiated bond increase from $67,000 to $75,000, subject to City review for inflation-based adjustment every 5 years.

Hazardous Condition Reporting: Established noticing requirements related to (among others) any hazardous releases; claims or allegations of violations; or filing or commencement of any judicial or administrative proceeding.

Transfer/Assignment Fees: Established administrative transfer fee to the City of $15,000 if transfer occurs during first 10 years of the franchise and $25,000 if transfer occurs during second 10 years of the franchise.

The new franchise also updates, expands and clarifies regulations for permitted construction and maintenance activity, and future removal or relocation of the pipelines.

Fiscal Impact

The annual franchise fee for Pipeline 1225 C.S. (last paid in September 2015 for $17,962.74) is calculated on an effective "base rate" of approximately $1.88 per cubic foot of pipe and adjusted annually to reflect increases in the Consumer Price Index for the 3 existing pipelines under the franchise. The annual franchise fee calculated on the new base rate of $2.50 per cubic foot will result in a new fee of approximately $23,900 for the 3 existing pipelines, and $4,100 for the section of relocated pipe, for a total estimated new franchise fee starting at $28,000 per year. The new franchise fee will be paid on or before January 16, 2016 and by January 16 of every year thereafter.

The City will also receive one-time "catch-up" payments (at the current base rate) of approximately $6,000 to account for the time between the expiration of the old anniversary date of September 11, 2015 and the new effective date (projected January 16, 2016), and $3,000 for the section of relocated pipe to account for and reflect its December 2014 in-service date. The City will also receive its first annual franchise fee payment as calculated under the new base rate on the effective date of the renewed franchise.

Plains also agreed to pay the City, on a voluntary basis, a one-time Community Benefit Payment in the amount of $25,000, payable in three annual installments, the first of which will be $10,000 in January 2016, followed by a second $10,000 payment in January 2017 and a final payment of $5,000 in January 2018.

Plains executed a Letter of Agreement with the City on July 13, 2015, and included the required $10,000 chargeable deposit against which the City is recovering its staff and legal costs related to Plains' franchise application.

Environmental Impact

The project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15301, 15302 and 15061(b)(3) in that the Facility which is the subject of the Franchise Agreement is existing pipeline currently operating under an existing franchise.

Modifications or replacement of the existing pipeline will be placed on the same site as the existing facilities and will have substantially the same purpose and capacity as the facility being replaced, within the meaning of CEQA Guidelines Section 15302. The revision and extension of the existing pipeline franchise will not permit any new construction in new areas, thus it can be seen with certainty there is no possibility the approval thereof will have a significant effect on the environment.

Attachment

- Plains Pipeline Franchise Ordinance (with Exhibit A)

PIPELINE ORDINANCE NO. C.S.

AN ORDINANCE GRANTING A FRANCHISE TO PLAINS PRODUCTS TERMINALS, LLC, DOING BUSINESS AS PLAINS ALL-AMERICAN PIPELINE, LP, ITS SUCCESSORS AND ASSIGNS, TO CONSTRUCT, MAINTAIN, USE, OPERATE, REPAIR, REPLACE, RENEW, AND REMOVE PIPELINES AND APPURTENANCES WHICH MAY BE USED FOR THE TRANSPORTATION OF PETROLEUM LIQUIDS OXYGENATES, ADDITIVES, BLENDSTOCKS, GAS AND THEIR DERIVATIVES CONNECTED WITH THE PRIMARY BUSINESS OF THE FRANCHISE HOLDER, TOGETHER WITH ALL MANHOLES, SERVICE CONNECTIONS, AND OTHER APPURTENANCES NECESSARY OR CONVENIENT FOR THE OPERATION OF SAID PIPELINES UNDER, ALONG, ACROSS OR UPON THE PUBLIC ROADS, STREETS, HIGHWAYS, WAYS, ALLEYS, CITY PROPERTY, AND OTHER PLACES AS THE SAME NOW EXIST WITHIN THE CITY OF MARTINEZ

The City Council of the City of Martinez does ordain as follows:

SECTION 1. DEFINITIONS

Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions:

(a) The word “Grantee” shall mean Plains Products Terminals, LLC, d.b.a. Plains All-American Pipeline, LP, and its lawful successors or assigns; and

(b) The word "City" shall mean the City of Martinez, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form; and

(c) The word "streets" shall mean the public rights of way, roads, streets, highways, ways, alleys, City easements, and City property and places as the same now exist within City, including state highways and freeways now established within City in, under, over, along, across or upon which the pipelines and appurtenances which are the subject of this Ordinance may be located and as more particularly shown on and/or described in Exhibit "A" attached hereto and made a part hereof; and

(d) The phrase "pipelines and appurtenances" shall mean pipes, pipelines and their respective components attached to said pipelines necessary or convenient for their operation, including but not limited to service connections, manholes, mains, services, traps, vents, vaults, meters, gauges, regulators, valves, conduits, appliances, attachments, fittings, cathodic protection systems, pipe markers, and maintenance stations, and without limitation to the foregoing, any other property now located or to be located in, under, along, across or upon the streets of City, as the same now exist within City, which may be used for the transportation of petroleum liquids, oxygenates, additives, blendstocks, gas

and their derivatives connected with the primary business of the franchise holder, together with all manholes, service connections, and other appurtenances necessary or convenient for the operation of said pipelines, provided that all such pipelines and appurtenances shall be underground or flush with the surface of the streets or ground upon which they are located; and

(e) The phrase "franchise property" means all property constructed, installed, operated or maintained pursuant to this franchise; and

(f) The phrase "install, maintain and use" shall mean to lay, construct, erect, install, operate, maintain, use, remove, repair or replace, but shall not mean or include to abandon, unless approved by the City pursuant to Section 2.

SECTION 2. FRANCHISE

(a) The right, privilege and franchise is hereby granted by the City to Grantee, duly authorized and existing under and by virtue of the laws of the State of Delaware, its successors and assigns, for a twenty (20) year period of time, from and after the effective date of this ordinance, as long as this franchise is accepted in writing, by the Grantee in accordance with the terms and conditions herein, to install, maintain and use:

i. up to three (3) pipelines having a maximum diameter of 16” each, and related appurtenances which may be used or useful in transmitting, distributing and supplying petroleum liquids, oxygenates, additives, blendstocks and their derivatives to Grantee and/or its customers which can be transported through a pipeline and connected with the primary business of the franchise holder, together with all manholes, service connections, and other appurtenances necessary or convenient for the operation of said pipelines.

ii. one (1) gas line having a maximum diameter of 12” and related appurtenances which may be used or useful in transmitting, distributing and supplying gas and its derivatives to Grantee and/or its customers which can be transported through a pipeline.

(b) Said right, privilege and franchise shall apply to said pipelines and appurtenances installed, maintained and used in, under, over, along, across or upon those certain streets shown and described in Exhibit "A" and no others. The rights and privileges granted herein shall not be exclusive nor shall they include the right to increase the number or the size of the pipelines and/or appurtenances described hereinabove without the written consent of the City and subject to the terms specified in Section 5.

(c) The right, privilege and franchise granted hereunder shall not include the right to abandon said pipelines and appurtenances unless abandoned as provided for herein. Should the Grantee wish to no longer use any or all of the pipelines or appurtenances, it may do so only after delivering written notice to the City of the Grantee's intention to no longer use same at least 90 days in advance of the date on which same are intended to be no longer used. Said notice shall also advise the City when and where the pipelines and appurtenances will no longer be used and shall describe, in detail, the Grantee's plan for abandoning or removing the same, which said plan is subject to City approval and which said plan must, in the case of Grantee's proposed removal of the pipelines and appurtenances, require Grantee to remove said pipelines and appurtenances within a time period agreed to by the City. In the event that Grantee proposes to abandon said franchise property in the streets, and the City approves said proposal – which said approval is left to the sole discretion of the City – the City may:

i. deny the request to abandon in place the said property in which case the Grantee shall remove same within a reasonable time period determined by the City and in which case Grantee shall be liable for payment of the franchise fee until such time as the pipelines and appurtenances are removed to the satisfaction of the City Engineer, all existing improvements damaged as a result of the removal are restored to the same or better condition as prior to the removal, and the annual franchise fee then in effect shall be prorated as of the date of completion of said removal; or

ii. permit the abandonment in place of the said property without the City assuming any ownership thereof or liability therefore and, in said event, the Grantee shall continue to be obligated hereunder for said property, except that the annual franchise fee then in effect shall be prorated as of the effective date of abandonment as approved by the City; or

iii. permit the abandonment in place and assume ownership thereof and liability therefore, in which case:

aa. the Grantee shall execute all documents, conduct all required testing, and take all actions reasonably necessary to effect the conveyance of said ownership to the City; and

bb. the Grantee shall have no further liability arising out of or in any way connected with the franchise property except for Grantee's obligations described in Section 9.

(d) The Grantee shall become a member of the "Underground Service Alert." Grantee shall be responsible to locate and mark their facilities at their own expense.

SECTION 3. ACCEPTANCE

This franchise is granted and shall be held and enjoyed upon the terms and conditions herein contained and it shall not become effective until all of the conditions precedent described below are satisfied:

(a) thirty days have passed after this Ordinance's adoption without a referendum petition being filed as provided by law; and

(b) within twenty (20) days after this Ordinance's adoption, the Grantee has filed with the City Clerk a written acceptance of this franchise and all its terms and conditions; and

(c) within twenty (20) days after this Ordinance's adoption, Grantee shall deliver to the City satisfactory evidence of Grantee's insurance policies as is required under 9(e), below; and

(d) Grantee shall have posted with the City the Seventy Five Thousand Dollars ($75,000) Bond described in Section 15, below.

SECTION 4. FEE AND COMPENSATION

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

(a) Commencing on the date of Grantee's acceptance of this Ordinance, and annually thereafter during the life of this franchise, the Grantee shall pay an annual franchise fee on or before the 16th day of January to the City in an amount determined as follows:

i. The Grantee shall pay an amount for the street space required (as that term is defined below) based on the following assumptions:

aa. that the length of the pipelines and other facilities described in subsection 4(a)(ii) shall be shown on Exhibit "A" and any changes to the length and/or locations of the pipelines shall be so annotated in an updated Exhibit "A" provided by the Grantee.

bb. that the diameter and number of pipelines shall be the maximum size and number, respectively, permitted under Section 2. The franchise fee shall be calculated and based upon the actual number, length and size of the pipelines and appurtenances installed in the streets.

ii. For the street space required for franchise property, the rate of $2.50 (Two Dollars and Fifty Cents) per cubic foot – the "base rate" – will be applied pursuant to subsection (iii). For purposes of this subsection when calculating

the cubic feet of pipe, the street space required for a pipeline or conduit together with protective covering, pipe connections, cathodic protection facilities, pipe casings and other minor appurtenances shall be taken as equivalent to the volume occupied by a cylinder of equal length having a diameter one inch (1") greater than the nominal internal diameter of the pipe or conduit but in no case with an equivalent cylinder diameter less than six inches (6"), and the payment rate therefore shall be computed to the nearest tenth of a cent per cubic foot of pipe.

iii. The Base Rate shall be increased annually by three percent (3%) each year upon the anniversary of the effective date to determine the "cubic foot multiple" to be applied to the cubic feet of pipe as specified in subsection 4(a)(ii) and calculate the payment due the City for the forthcoming year.

iv. Grantee agrees to pay the City a one-time "catch-up" payment to account for any unpaid franchise fees Grantee, as successor in interest to Grantee as set forth in Martinez Ordinance No. 1225 C.S., owes the City for pipelines and appurtenances within the City's rights-of-way which had not been paid as of the effective date of this Ordinance. Such catch-up payment shall be calculated based upon fees owed for Pipeline 191 from the in-service date of said Pipeline to the effective date of this Ordinance, plus fees owed for all other pipelines from September 11, 2015 through the effective date of this Ordinance. Said one-time catch-up payment shall be made on a pro-rated basis at the same rate and calculation as set forth and applied within Section 4(b) of Ordinance No. 1225 C.S., including any annual adjustments.

v. In consideration for the franchise renewal, Grantee also agrees to pay the City a one-time sum in the amount of twenty-five thousand dollars ($25,000) for the purposes of a City-approved community benefit project. Said community benefit project payment shall be paid by Grantee to City on the following schedule, or sooner if so elected by Grantee:

January 16, 2016: $10,000
January 16, 2017: $10,000
January 16, 2018: $ 5,000

City agrees to acknowledge Grantee's contribution to the community benefit project at such a time as said project has been approved by the City.

vi. Upon termination of the franchise under Section 14 or for any reason whatsoever, including voluntary abandonment consistent with Section 2(c), Grantee's obligation to pay the franchise fee shall cease and the annual franchise fee shall be prorated as of the effective date of termination.

SECTION 5. CONSTRUCTION, PERMITS AND LOCATIONS

(a) Grantee shall have the right, subject to such ordinances and regulations of the City as are now or may hereafter be in force, to make all necessary excavations in said streets for the construction, installation, maintenance, operation, repair, replacement and removal of said pipeline and appurtenances as may be necessary and convenient. Grantee shall secure from the City necessary permits, bonds, insurance certificates and endorsements relating to said construction, and the required fees and security deposits shall be paid to the City. All pipe and materials used in constructing and maintaining said pipeline and appurtenances shall be of a quality reasonably satisfactory to the City Engineer and all construction work shall be done in accordance with City standards and shall be performed in a workmanlike manner. All excavations shall be backfilled and the surface of said streets shall be placed in substantially the same 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 to the extent practicable, 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 reasonably necessary.

(b) All franchise property shall be placed so as not to substantially interfere with the use of City streets by the traveling public or for the other public purposes, and all shall conform to all applicable laws. The City Engineer shall approve all franchise property location work plans prior to commencement of any construction or work thereon.

(c) At least forty-five (45) days prior to Grantee's installation, maintenance, replacement, removal, erection, improvement, repair or construction of the franchise property described in Section 2 in the streets, Grantee shall provide to the City at least three (3) copies of the final plans and specifications pertinent to such activity. Within said forty-five (45) day period, the City Engineer shall be entitled to review and comment upon said plans and specifications and Grantee shall consider said comments before commencing of the activities of which said plans and specifications were developed. In the event that the City Engineer fails to comment in a timely manner, it will be deemed that the City Engineer has no such comments.

(d) Prior to the installation, erection, improvement, replacement, maintenance, removal, repair (including road maintenance) or construction of the franchise property described in Section 2 in the streets (hereinafter in this Section 5 referred to as “street work"), Grantee shall be required to apply for and be issued by the City an encroachment permit. The City shall be entitled to impose reasonable conditions upon said permit's issuance, with which said conditions Grantee shall comply. Along with an application for said encroachment permit, Grantee shall submit to the City a traffic control plan which

shall be subject to the City's approval. Grantee shall implement and follow the traffic control plan as part of its street work.

(e) As part of any encroachment permit issued by the City for any street work, the Grantee shall be required to repave, in accordance with plans and specifications approved by the City Engineer:

i. the full width (median curb or centerline to shoulder curb or shoulder edged line) of the street in which the street work occurs; and

ii. the length of the street in which the street work occurs for the full length of the franchise property which is the subject of the street work. All roadway structural sections shall be reconstructed by Grantee to the then exact City standards, or as per plans and specifications approved by the City Engineer.

(f) If at any time the Grantee performs street work which requires the relocation of any then existing storm drain system (s), waterline or other City owned utilities located in the streets, Grantee shall pay all of the costs incurred by any party or entity in relocating said storm drain system(s), waterline(s) and/ or utilities.

(g) Grantee may not install, maintain or use any franchise property other than that described in Section 2 in the streets without seeking and securing an amendment to this Ordinance, which said amendment may or may not be approved by the City exercising its unfettered discretion.

SECTION 6. MAINTENANCE

(a) Grantee shall be responsible for the maintenance, repair and replacement of Grantee's pipelines and appurtenances located in the franchise property in good condition and repair at all times and shall keep the same at all time in full and complete compliance with all applicable laws. Grantee shall, within thirty (30) days of the effective date of this ordinance, provide to City relevant maps, records and reports regarding the physical location and characteristics of the pipeline and all appurtenances, including but not limited to, information regarding the following:

i. the product type and quantity transported;

ii. the capacity and operating pressure of the pipelines and appurtenances;

iii. the materials the pipelines and appurtenances are made of and the manufacturer;

iv. the method of welding used in pipeline connections;

v. the precise location of the pipeline, all appurtenances and all shut-off valves;

vi. the location of the nearest operation or utility yard of Grantee with personnel qualified to shut of the product conveyed via the pipeline who are available to service the pipeline in the event of an emergency 24 hours a day – and their contact information;

vii. a copy of Grantee's required emergency/safety plan; and

viii. a copy of Grantee's public awareness program plan.

In the event that any such information changes at any time, during the term hereof, Grantee shall notify the City, in writing, immediately of any such change.

(b) Grantee shall meet with City no less frequently than annually to review Grantee's emergency/safety plan, emergency response and shut off procedures. Grantee agrees to participate in any emergency response exercise or training exercise conducted in Contra Costa County at the request of City.

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

SECTION 7. CITY CONSTRUCTION AND RELOCATION

(a) In the event of future street widening, street improvements, potholing and street vacation, change of grade, alignment or width of any street, underground work or the installation of grade separations, the installation or reconstruction of water mains and storm drains or other projects of the City or other public entity which involve said streets and necessitate removal or relocation of said pipeline and appurtenances, such removal or relocation shall be promptly 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 or the other public entity's project.

(b) Notwithstanding this franchise, the City may improve any City street including the widening, change of grade, construction or reconstruction of such street, or any portion thereof, and the City and/or any municipal corporation, political subdivision or public

body authorized by the City may construct, reconstruct, install, repair and maintain any public improvement in any City street or portion thereof.

(c) City (on behalf of itself and/or any municipal corporation, political subdivision or public body) shall provide Grantee with ten (10) days' advance written notice of the fact that work is to be done pursuant to any right reserved in this section, specifying the general nature of the work and the areas in which it is to be done. Grantee shall do all things necessary to protect its franchise property during the progress of such work. If required by the City, the Grantee shall temporarily disconnect or temporarily remove or relocate its franchise property to such extent, in such manner, and for such period as may be necessary to permit the performance of such work in accordance with generally recognized engineering and construction methods, and to permit the maintenance, operation and use of such public improvement or of the street as so improved. All of such things to be done and work to be performed by the Grantee, and any and all losses incurred by Grantee as a result of this work, shall be at its sole cost and expense.

(d) If the City or any municipal corporation, political subdivision or public body authorized by the City shall hereafter construct, install, reconstruct or repair any bridge, culvert, storm drain, sanitary sewer or other facility owned or operated by any of such agencies over, on, in, or underlying any City street in which the Grantee's franchise property is located, and if the cost of such work as may reasonably be required is increased in order to provide for the installation, maintenance or operation of Grantee's franchise property in or on the area covered by or underlain by said bridge, other artificial support, or facility, then the Grantee shall pay to such public agency doing such work the full amount of such cost increase, upon completion of such work. The City or any municipal corporation, political subdivision, or public body shall not be liable for any damages incurred by the Grantee as a result of taking its facilities out of service.

(e) If the Grantee fails to comply, or to commence and diligently proceed toward compliance, with any directives of the City with respect to the location of any of said franchise property or the repair of any damage to streets, alleys, highways or other public facility within the City's street rights of way within ten (10) days after written notice to do so, then the City may immediately cause to be done whatever work is necessary to carry out the directive at the cost and expense of the Grantee, which cost the Grantee agrees to pay upon demand.

SECTION 8. REACTIVATION OF IDLE PIPELINE

(a) Grantee shall notify the City in writing at least ninety (90) days in advance of its intention to reactivate an idle pipeline that has been dormant (meaning no product has moved through the pipeline) for a period of 12 months or more. The notification shall include the rationale and procedures to be employed for the reactivation.

(b) Grantee shall be required to obtain all necessary federal, state, and local regulatory approvals and inspections prior to reactivating the pipeline, including, but not limited to, any and all compliance necessary pursuant to the California Environmental Quality Act (CEQA). Grantee shall provide the City with an approval letter from the California State Fire Marshal, Pipeline Safety Division that certifies the pipeline is safe to operate.

SECTION 9. INDEMNITY

(a) Grantee shall be strictly liable for any and all damages, costs, injury or death in any way connected with or arising out of the use or operation of this franchise, or any pipeline or appurtenance or other facility failure regardless of whether such damage, cost, injury or death was wholly or partially caused by City or any other third party. Grantee shall indemnify, defend with counsel reasonably acceptable to the City and hold harmless the City and its officials, officers, agents, and employees from any and all claims, losses, costs or liability accruing or resulting to any person, firm, corporation or other public or private entity for damages of any kind, including but not limited to personal injury, and/or property damage arising from or in any way connected with any of Grantee's activities arising out of or authorized by this franchise, including, without limitation:

i. all damages arising out of the use, generation, storage or disposal of hazardous materials waste or substances (as defined by any law), by Grantee, its officials, officers, agents, contractors, subcontractors, employees, successors or assigns; and

ii. the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the presence or use, generation, storage, release, threatened release or disposal of hazardous materials, wastes, or substances by the Grantee and/or its officials, offers, agents, contractors, subcontractors, employees, successors and assigns on, from, across, along, in, under or above City property.

(b) Grantee warrants that it will comply with all applicable laws in effect during the term of this ordinance, including implementing regulations, as they may from time to time be amended, specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") 1 42 D.S.C. 9601 et seq., the Resource Conservation and Recovery Act, 42 D.S.C. 69011 et seq. ("RCRA"), the California Integrated Waste Management Act of 1989, and all other applicable laws of the State of California, the County of Contra Costa, ordinances of the City, hazardous waste, substances, or materials laws, the requirements of Local Enforcement Agencies and other agencies with jurisdiction relating to the activities of Grantee under this ordinance. Grantee shall comply with all final and binding judgments entered against Grantee regarding its performance under this ordinance.

(c) Grantee shall defend with counsel reasonably acceptable to the City and indemnify the City from and against any and all liabilities, costs, claims and damages which are caused by Grantee's failure to comply with the laws described in Section 9 (b).

(d) Grantee shall indemnify and hold City harmless for all costs, attorney's fees and expenses incurred by the City in enforcing the aforesaid indemnification obligations.

(e) Grantee shall procure and maintain at its own cost and expense during the life of this franchise commercial general liability insurance covering and insuring against any injuries or death of persons and damage to property resulting from any activities of Grantee arising out of or authorized by this franchise, which insurance shall be at least in the aggregate sum of Ten Million Dollars ($10,000,000) per occurrence combined single-limit coverage. Such insurance shall be with insurers and under forms of policies satisfactory in all respects to the City and shall provide that notice must be given to City at least thirty (30) days prior to cancellation. The following endorsements or their equivalent shall be attached to or included in the policy:

i. Policy shall cover on an "occurrence" basis.

ii. Policy must cover personal injuries as well as bodily injuries and shall include products and completed operations coverage. Exclusion of contractual liability must be eliminated from personal injury endorsement.

iii. Broad form property damage endorsement must be attached.

iv. Policy must cover contractual liability by amending the definition of "incidental contract" to include any written contract.

v. City, its officials, officers, agents and employees shall be named as an additional insured as respects Grantee’s obligations under this franchise, and the policy shall stipulate that this insurance will operate as primary insurance and that no other insurance affected by the City will be called upon to contribute to a loss suffered by Grantee hereunder.

(f) Grantee shall deliver to the City certificates, endorsements and/or other evidence reasonably satisfactory to the City of such insurance coverage before this franchise becomes effective and annually thereafter.

(g) All of the indemnity provisions of this Section 9 shall survive the end of the term and any termination of this franchise, regardless of the reason for said termination.

SECTION 10. HAZARDOUS CONDITION.

(a) If any hazardous condition is caused by a release from any of Grantee's pipelines or appurtenances, then Grantee shall, to the extent required by law, immediately undertake to investigate and remediate or remove such hazardous condition at its sole cost and expense. Grantee shall also immediately determine the source of the release and cause its repair and restoration at its sole cost and expense, except that Grantee retains the right to pursue reimbursement from other persons who are responsible for such release. For purposes of this franchise, "hazardous condition" shall mean any release of substance from Grantee's pipelines or appurtenances that is in any way toxic, explosive, or which requires investigation or remediation under any federal, state or local law, statute, regulation or ordinance including, but not limited to, all natural gas products and their component "parts," and "release" shall mean any spill, leak or other means of escape from the Grantee's pipelines or appurtenances, whether or not sudden or gradual, whether known or unknown and whether or not due to the negligence, willful act or other fault of any person or entity. In addition, for purposes of this franchise, it is a presumption that natural gasses which are found in the soil, air, water or groundwater beneath or immediately adjacent to Grantee's pipelines have been released from Grantee's pipelines. The burden of rebutting such presumption shall be borne by Grantee.

(b) All actions to investigate, remove and remediate the hazardous condition and repair or restore Grantee's pipelines and appurtenances as provided in the preceding paragraph shall be the sole responsibility of Grantee and shall be conducted by Grantee or its employees, agents, contractors, subcontractors, or suppliers in conformance with any and all laws, ordinances, rules, regulations, requirements, and orders whatever, present or future, of the federal, state, county, or other local government at Grantee's sole expense. If Grantee fails to take any action required by Section 10 (a) of this Ordinance, City may, but shall not be obligated to, take all actions it deems appropriate with respect to the hazardous condition, at Grantee's expense, except that Grantee retains the right to pursue reimbursement from other persons who are responsible for such release. Upon written demand by City, Grantee shall reimburse City for all of City's expenses incurred in connection with City's actions including, but not limited to, all direct and indirect costs relating to investigation, remediation, and removal.

(c) Grantee shall deliver to City written notice of:

i. any release from the Grantee's pipelines and/or other facilities or the presence of a hazardous condition in or adjacent to the franchise area within three (3) business days of Grantee's discovery thereof; and

ii. any notice, claim, or allegation of any violation relating to Grantee's pipelines and appurtenances or other facilities within the franchise area received from

any federal, state or local governmental agency or authority or any non-governmental person or entity or the filing or commencement of any judicial or administrative proceeding by any such agency or authority or non-governmental that relates to or is a result of Grantee's activities in the franchise area within twenty (20) business days of Grantee's receipt thereof or sooner to the extent reasonably practicable as well as any reports filed with any environmental agency relating thereto.

iii. all safety-related reports and communications filed by Grantee with respect to Grantee's pipelines and appurtenances or other facilities within the franchise area with any and all regulatory agencies, including but not limited to the California Public Utilities Commission.

SECTION 11. TRANSFERABILITY OF FRANCHISE.

(a) Grantee shall not transfer or assign this franchise or any rights or privileges granted hereby without the written consent of the City, which said consent may not be withheld unreasonably; provided, however, that Grantee may freely assign this franchise and each of its rights and responsibilities without the written consent of the City as long as:

i. the assignment is to a parent, subsidiary or an affiliate of the Grantee or in which the Grantee owns a controlling interest; and

ii. the Grantee remains liable for each and every obligation to be performed by Grantee hereunder; and

iii. the Grantee gives written notice to the City of the assignment at least thirty (30) days in advance of the effective date of the assignment; and

iv. the assignee agrees, in writing, to assume and perform each and every obligation imposed upon the Grantee hereunder at which time Grantee shall no longer be required to maintain a bond pursuant to Section15 hereof; and

v. the assignee supplies the requisite bonds and insurance required hereunder.

(b) Before any transfer or assignment of this franchise or any rights and privileges granted hereby shall be complete, Grantee shall pay a transfer fee to the City for administrative costs associated with the transfer or assignment of either of the following amounts: Fifteen Thousand Dollars ($15,000), if the transfer occurs during the first 10 years of the term of the agreement; or Twenty-Five Thousand Dollars ($25,000), if the transfer occurs during the second 10 years of the term of the agreement.

(c) Any franchise property may be owned partly or wholly by persons, firms or corporations other than the Grantee, but the Grantee shall be solely responsible for the operation and maintenance of such franchise property and the Grantee holds itself responsible to City for the full performance and observance of the terms and conditions of this franchise by such other owners. The provisions of this franchise and all rights, obligations and duties hereunder shall inure to and be binding upon the Grantee, its successors and assigns as provided herein. This franchise and any rights or privileges granted hereunder shall be freely assignable by Grantee, without the written consent of the City, for financing and security purposes of Grantee.

SECTION 12. OWNERSHIP OF FRANCHISE PROPERTY

Grantee shall remain the owner of said pipeline and appurtenances and shall have the right to remove said pipeline and appurtenances from the City streets in accordance with the terms and conditions hereof.

SECTION 13. COMPLIANCE WITH CITY REGULATIONS

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 of said pipeline and appurtenances. Nothing herein shall limit the ability of Grantee to contest, in good faith, the validity or applicability of any laws, regulations or ordinances.

SECTION 14. NON-COMPLIANCE, BREACH AND TERMINATION.

If Grantee fails, neglects or refuses to comply with any provisions or conditions of this franchise or remains in violation of any applicable law, rule or regulation after receiving a fifteen (15) day written demand for compliance, the City may terminate this franchise provided, however, that the period for compliance shall be extended so long as Grantee is diligently pursuing a cure. In the event this franchise is terminated, Grantee shall, at its sole expense, remove or abandon, at the option of the City Engineer, said pipeline and appurtenances installed pursuant to this franchise and restore the said City street areas to their original condition. Grantee shall be responsible for paying the franchise fee until the pipeline and all appurtenances are removed, or abandoned to the satisfaction of the City Engineer.

SECTION 15. BOND

This franchise is granted subject to the further condition that the Grantee shall at all times during the life of this franchise keep on file with the City a bond running to the City in the penal sum of Seventy Five Thousand Dollars ($75,000), with a sufficient surety, to be approved by the City, or a corporate surety bond in the same amount, conditioned that the said Grantee shall well and truly observe, fulfill, and perform each and every term and condition of this franchise,

and that in case of any breach of any condition of said bond, the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages and shall be recoverable from the principal and from the sureties upon said bond. The Grantee shall also be responsible for all bond collection fees charged. Notwithstanding the foregoing, the City's indemnification rights pursuant to Section 9 shall not be limited to the penal sum of the surety bond. The amount of this bond shall be reviewed every five (5) years and may be adjusted by the City according to the rate of inflation designated by the City.

SECTION 16. LIFE OF FRANCHISE

This franchise shall be for a period of twenty (20) years commencing upon the effective date of this ordinance, unless said franchise is voluntarily surrendered or abandoned by Grantee in a manner consistent with Section 2(c), or until the state or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain the pipeline and/or appurtenances or the streets or until said franchise is forfeited for noncompliance with its terms by the Grantee and thereby terminated by City pursuant to Section 14. In the event City vacates a street, City shall, at Grantee's request, reserve to Grantee an easement of duration equal to the term then remaining of this franchise for the purposes stated in Section 2 of this franchise.

SECTION 17. PROCEDURE FOR GRANTING FRANCHISE

Said franchise is granted pursuant to the Franchise Act of 1937.

SECTION 18. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

SECTION 19. EFFECTIVE DATE.

This ordinance shall become effective thirty (30) days after the date of adoption.

SECTION 20. POSTING.

The City Clerk shall cause this ordinance to be published and/or posted within fifteen days (15) after its adoption.

APPROVED:_____
Rob Schroder, Mayor

ATTEST:

_____
Mercy G. Cabral, Deputy City Clerk

* * * * * *

I HEREBY CERTIFY that the foregoing ordinance was duly and regularly introduced at a Regular Meeting of said Council held on the 2nd day of December, 2015, and duly passed and adopted at a Regular Meeting of said City Council held on the day of , 2015, by the following vote:

AYES:

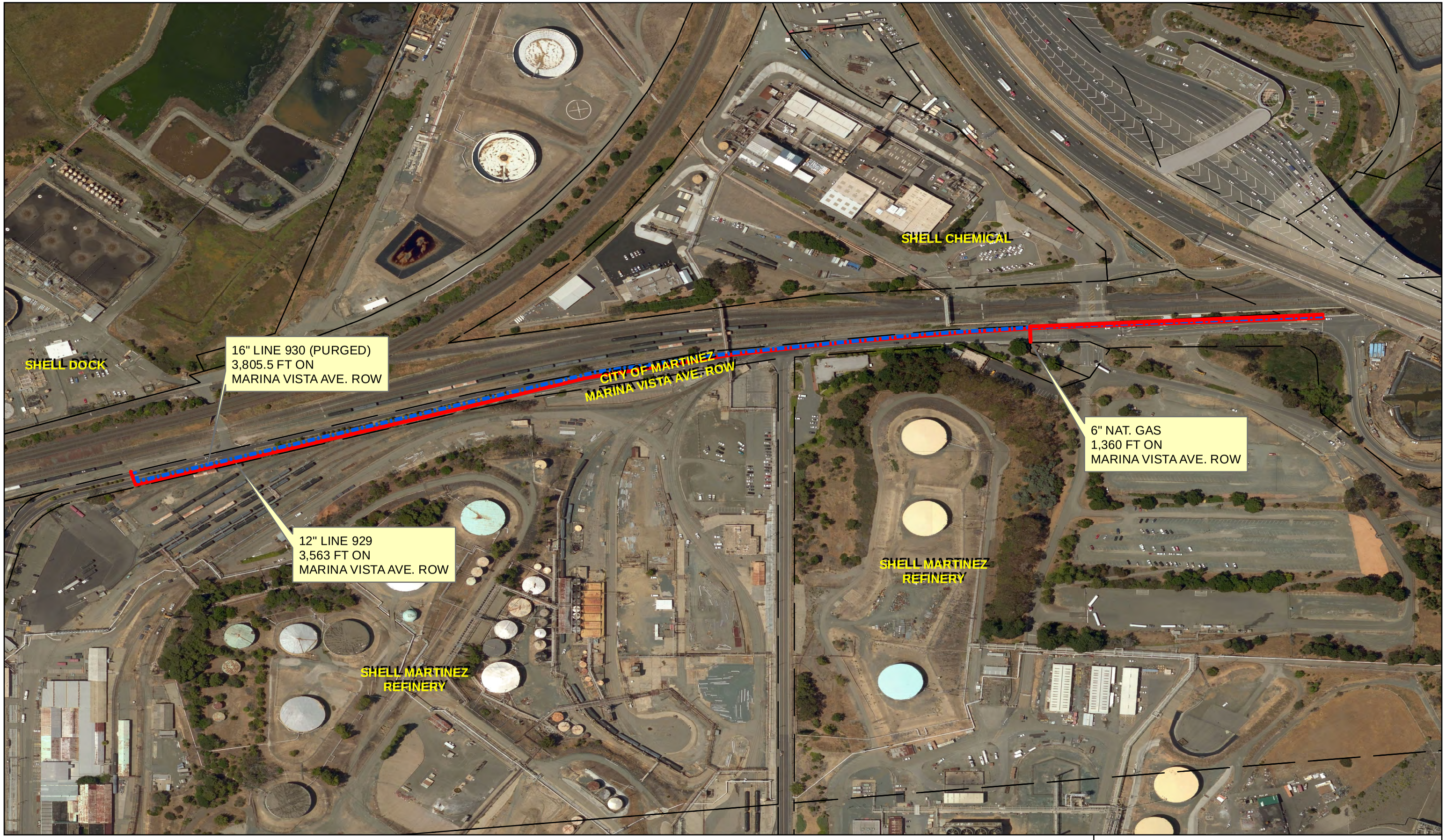
NOES:

ABSENT:

ABSTAIN:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

EXHIBIT A



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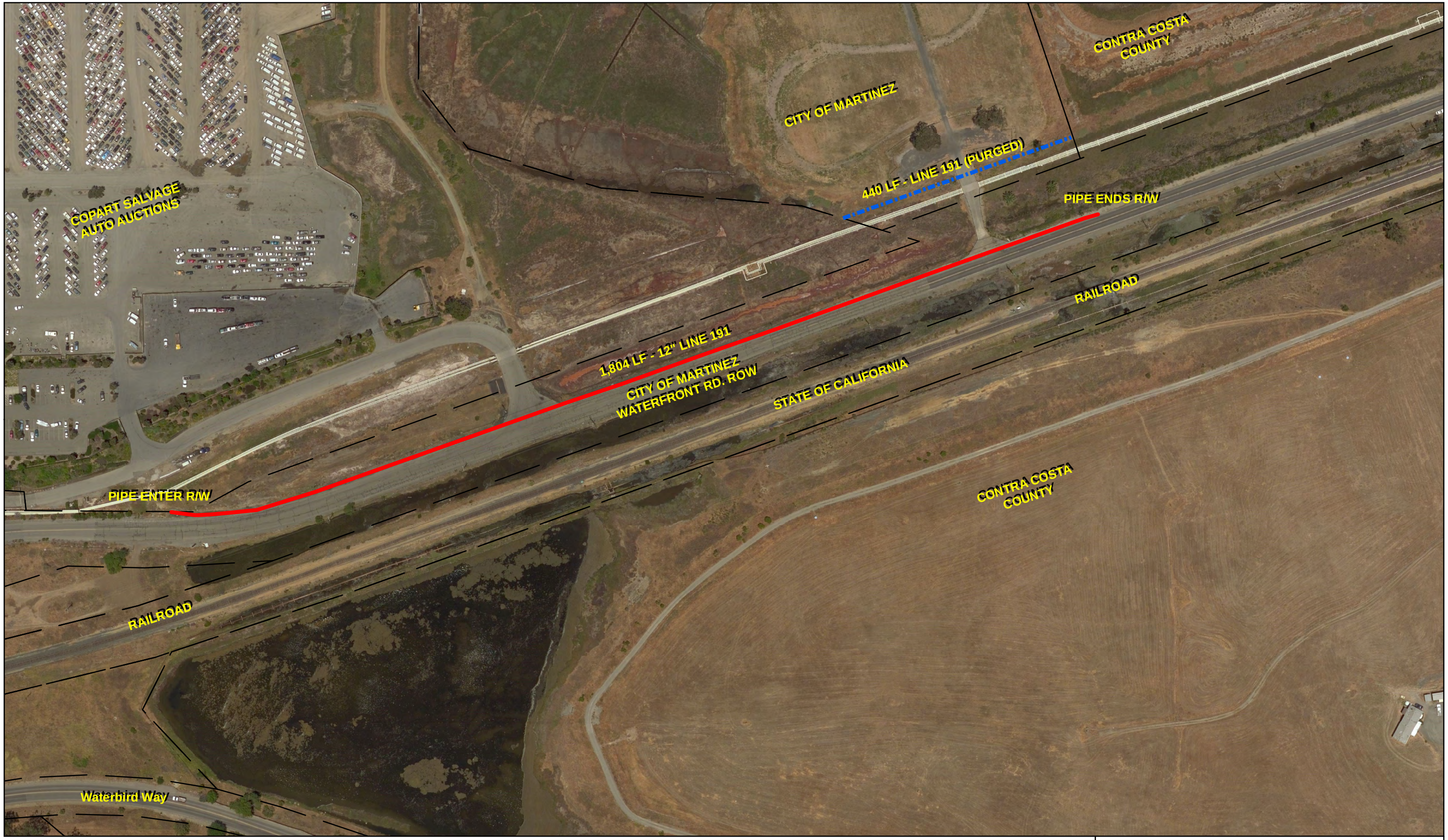
N W E S

PLAINS ALL AMERICAN PIPELINE, L.P.

PLAINS ATLANTIC TERMINALS	
FRANCHISE MAP	1:3,500
CITY OF MARTINEZ - WEST	Sheet No.: 2/2



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N W E S

PLAINS ALL AMERICAN PIPELINE, L.P.

PLAINS ATLANTIC TERMINALS	
FRANCHISE MAP	1:2,500
CITY OF MARTINEZ - WEST	Sheet No.: 2/2