

APPROVED 7-0
FOR INTRODUCTION
2-3-2014 ADOPTED 7-0



CITY OF HUNTINGTON BEACH REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 1/21/2014

SUBMITTED TO: Honorable Mayor and City Council Members

SUBMITTED BY: Fred A. Wilson, City Manager

PREPARED BY: Kenneth A. Domer, Assistant City Manager

SUBJECT: Approve for introduction Ordinance No. 4008 and authorize execution of a Pipeline Franchise Agreement with Paramount Petroleum Corporation for the operation and maintenance of a pipeline system for the transportation of oil, gas, and other hydrocarbon substances in an existing pipeline system previously owned by Cenco Refining

Statement of Issue:

The City Council is asked to approve a Franchise Agreement between the City and Paramount Petroleum Corporation for the operation and maintenance of an existing pipeline system for the transportation of oil, gas, and other hydrocarbon substances.

Financial Impact:

The City will receive an initial Base Grant Fee (\$11,470), Base Annual Fee (\$117,024 prorated to 75% during inactive status), and a Reinstatement Fee (\$639,753.92 paid over 120 months), to the General Fund (Account Number 10000100.41230). Annual revenue is estimated at \$151,743 and the contract value is estimated at \$1,528,903.

Recommended Action:

A) Approve for introduction Ordinance No. 4008, "An Ordinance of the City of Huntington Beach Amending Ordinance No. 2615 Which Granted An Oil Pipeline Franchise;" and,

B) Approve and authorize the Mayor and City Clerk to execute the "Franchise Agreement Between the City of Huntington Beach and Paramount Petroleum Corporation."

Alternative Action(s):

Do not approve the Agreement and direct staff accordingly.

Analysis:

City Council is asked to approve a Franchise Agreement between the City and Paramount Petroleum Corporation (Paramount) for the operation and maintenance of an existing pipeline system used for the transportation of oil, gas, and other hydrocarbon substances. The pipeline system consists of approximately 86,400 linear feet of 6-inch, 10-inch and 12-inch diameter pipe.

Cenco Refining, the former pipeline owner, held the last valid franchise agreement, which expired on December 31, 2005. In August 2006, Alon USA Energy, Inc., the parent company of Paramount, purchased the rights to the pipeline. The pipeline has been idle since its acquisition and is expected to remain idle for the next five to ten years. The proposed Franchise Agreement would allow Paramount to maintain the pipeline on standby and to preserve the pipeline for future use. Without

the implementation of a Franchise Agreement, Paramount would be required to abandon the pipeline and lose its ability to reactive the pipeline in the future.

The proposed Agreement incorporates the changes made to Chapter 3.44 - Pipeline Franchises of the Huntington Beach Municipal Code in 2010. Terms of the proposed Franchise Agreement include:

- Term: 10 years
- Base Grant Fee: \$11,470
- Base Annual Fee: 2014 fee estimated at \$117,024 (75% of Base Annual Fee will be collected during inactive status)
- Maximum Inactive Status Period: 10 years
- Reinstatement Fee: \$639,753.92 (paid over 120 monthly payments of \$5,331.28)
- Corporate Surety Bond of \$100,000
- Liability, Environmental and Workers Compensation Insurance

Staff recommends approval of the Franchise Agreement. The agreement provides substantial general fund revenue, estimated at \$151,743 annually for a ten year period, and ensures continued maintenance and responsibility for a vast pipeline network currently present within City right-of-way.

Environmental Status:

Exempt from CEQA pursuant to Section 15301.

Strategic Plan Goal:

Improve long-term financial sustainability

Attachment(s):

1. Ordinance No. 4008, "An Ordinance of the City of Huntington Beach Amending Ordinance No. 2615 Which Granted An Oil Pipeline Franchise"
2. "Franchise Agreement Between the City of Huntington Beach and Paramount Petroleum Corporation"
3. Faithful Performance Bond
4. Insurance Certificate

AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING ORDINANCE NO. 2615 WHICH GRANTED
AN OIL PIPELINE FRANCHISE

WHEREAS, in 1983 the City Council adopted Ordinance No. 2615 which granted a franchise for the construction, operation and maintenance of a pipeline for the transportation of oil; and

Paramount Petroleum Corporation subsequently became successor in interest as the franchisee,

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. The terms and conditions of the franchise awarded by this ordinance are contained in the Franchise Agreement between the City of Huntington Beach and Paramount Petroleum Corporation, a copy of which is attached hereto as Exhibit "A" and incorporated by this reference as though set forth herein.

SECTION 2. The City Clerk shall cause this ordinance to be posted in three places designated by the City Council within the City and to be published by title with a brief summary at least once within fifteen days after its adoption in a daily, semi-weekly or weekly newspaper, published in the County of Orange or the City and circulated in the City, which is selected by the City Council for that purpose.

SECTION 3. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 3rd day of February, 2014.



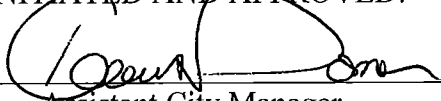
Mayor

ATTEST:



City Clerk

INITIATED AND APPROVED:



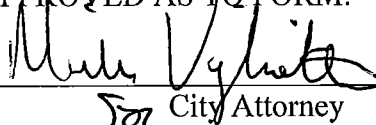
Assistant City Manager

REVIEWED AND APPROVED:



City Manager

APPROVED AS TO FORM:



For City Attorney



12700 Park Central Dr.
Suite 1600
Dallas, TX 75251

February 14, 2014

Huntington Beach City Clerk
2000 Main Street
Huntington Beach, CA 92648

Re: Pipeline Franchise Agreement
Huntington Beach, California

To Whom It May Concern,

Pursuant to Section 21 of the Franchise Agreement between the City of Huntington Beach and Paramount Petroleum Corporation ("PPC"), PPC hereby accepts the franchise and will comply with the terms and conditions of the Franchise Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read 'James A. Ranspot', with a long horizontal flourish extending to the right.

James A. Ranspot
Senior Vice President & General Counsel

FRANCHISE AGREEMENT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
PARAMOUNT PETROLEUM CORPORATION

THIS FRANCHISE AGREEMENT (this "Franchise") is made and entered into this day of FEB. 14, 2014 by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California (hereinafter referred to as "City" or "Grantor"), and PARAMOUNT PETROLEUM CORPORATION, a Delaware corporation (hereinafter referred to as "PARAMOUNT PETROLEUM" or "Grantee"), pursuant to the City's "Pipeline Franchise Ordinance" as set forth in Chapter 3.44 of the Huntington Beach Municipal Code (Section 3.44.010, et seq.).

RECITALS

1. By Ordinance No. 315, the Orange County Board of Supervisors granted a franchise for the construction, operation and maintenance of a pipeline system for the transportation of oil, gas and other hydrocarbon substances.
2. Subsequently, the City was vested with the rights and benefits of the County of Orange under said franchise.
3. Since then, there have been transfers and assignments, including litigation and settlements regarding rights and remedies of the subject pipeline system.
4. This Ordinance and Franchise Agreement in part will remedy unpaid fees and corrects the record as to the pipelines depicted in Exhibit A and clearly sets out future franchise fees and requirements as to the pipelines contained therein.
5. The City's consent to the assignment and amendment of any previous franchise agreement as to the pipelines depicted in Exhibit A is granted upon and subject

to the rules, regulations, restrictions, terms and conditions of the City's Pipeline Franchise Ordinance set forth in Chapter 3.44 of the Huntington Beach Municipal Code (HBMC).

NOW, THEREFORE, the City and PARAMOUNT PETROLEUM agree 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 meaning 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) The word "grantee" shall mean PARAMOUNT PETROLEUM and its lawful successors or assigns;

(b) The word "City" shall mean the City of Huntington 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) The word "streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within the City, including state highways, now or hereafter established within the City, and freeways hereafter established within the City;

(d) The word "franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to construct, maintain and use pipes and appurtenances for the business of transmitting and distributing oil for all purposes under, along, across or upon the public streets, ways, alleys and places in the City, and shall include and be in lieu of any existing or future City requirement to obtain a license or permit for the privilege of transacting and carrying

on a business within the City;

(e) The phrase "pipes and appurtenances" shall mean pipes, pipelines, mains, services, traps, vents, cables, conduits, vaults, manholes, meters, appliances, associated communications infrastructure, attachments, appurtenances, and any other property located or to be located in, upon, along, across, or under property of the City, and used or useful in the transmitting and/or distributing of oil;

(f) The word "oil" shall mean natural or manufactured oil, or a mixture of natural and manufactured oil;

(g) The phrase "construct, maintain, and use" shall mean to construct, erect, install, lay, operate, maintain, use, repair, or replace; and

(h) The phrase "gross annual receipts" shall mean gross operating receipts received by Grantee from the sale of oil to Grantee's customers less uncollectible amounts and less any refunds or rebates made by Grantee to such customers pursuant to California Public Utilities Commission orders or decisions.

SECTION 2. PURPOSE and GRANT

That the right, privilege and franchise, subject to each and all of the terms and conditions contained in this Agreement, and pursuant to the provisions of 6231 of the Public Utilities Code of the State of California, and Huntington Beach Municipal Code 3.44.040 be and the same is hereby granted to Grantee to construct, maintain and use pipes and appurtenances for transmitting and distributing oil for any and all purposes, under, along, across or upon the streets of the City. The City hereby grants to Grantee the right, privilege and franchise to lay, construct, maintain, operate, renew, repair, change the size of, remove or abandon in place one or more existing pipes and pipelines for the collection, transportation or distribution of oil, water, gas, gasoline, petroleum, wet gas,

or other hydrocarbon substances, together with all manholes, valves, appurtenances and service connections necessary or convenient for the operation of said pipes or pipelines including conduits, cathodic protection devices, wires, cables and other appurtenances necessary or convenient for the exercise of Grantee's business, in, under and along certain streets, roads, highways, alleys, lanes and other public ways within City as herein designated or as may subsequently be authorized pursuant to Section 3.44.330 of the HBMC.

SECTION 3. APPLICATION OF GRANT

This Amendment and the Franchise Agreement shall apply to that portion of the pipeline system within the territorial limits of City in existence on the date this Agreement is approved by the City Council as follows:

Six-inch oil pipeline as follows:

39,425 linear feet of six inch oil pipeline running from Golden West and Garfield to Huntington Beach Terminal as depicted on those certain alignment drawings titled Gold West Refining Company and comprised of drawing numbers 5522-2, sheet 1 of 3 and 5522-3, sheet 2 of 3 (Exhibit B).

Running from Huntington Beach to Santa Fe Springs as depicted on those certain alignment drawings titled Gulf Oil Company-U.S. and comprised of drawing numbers 3347, sheet 7 of 9 and sheet 8 of 9 (Exhibit B).

Ten-inch oil pipeline as follows:

7,409 linear feet of ten inch oil pipeline running from Huntington Beach to Santa Fe Springs as depicted on those certain alignment drawings titled Gulf Oil Company-U.S. and comprised of drawings number 3347, sheet 9 of 9 (Exhibit B) and in the City of Huntington Beach, Gold West Refining Company comprised of drawing number 7133, sheet 1 of 2 (Exhibit B).

Twelve-inch oil pipeline as follows:

39,584 linear feet of twelve inch oil pipeline running from Huntington Beach to Santa Fe Springs as depicted on those certain alignment drawings titled Golden West Refining Company and comprised of drawing numbers 4978, sheets 2 of 19, 3 of 19, 4 of 19 and 5 of 19 (Exhibit B).

SECTION 4. INCORPORATION OF OIL PIPELINE FRANCHISE ORDINANCE

The City's grant of this Franchise Agreement is granted upon and subject to the rules, regulations, restrictions, terms and conditions of the City's "Pipeline Franchise Ordinance" as recently amended and set forth in Chapter 3.44 of the HBMC, a copy of which is attached hereto as Exhibit "C," and incorporated herein by this reference. All references in this Franchise Agreement to specific sections of the HBMC are references to those sections as they now exist and are reflected in said Exhibit "C." The words and phrases in this Franchise Agreement shall have the identical meaning as provided in Section 3.44.040 of the HBMC. If any terms referenced in the Franchise Agreement or the HBMC are in conflict with this Amendment the terms of this Amendment shall govern, followed by the HBMC, followed by the Franchise Agreement, except that any term more protective of the City's rights and remedies shall govern regardless of which agreement or code sections are thereby referenced.

SECTION 5. TERM

Said franchise shall be for a ten (10) year term from and after the effective date hereof; and shall endure in full force and effect thereto, 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, all

property actually used and useful in the exercise of said franchise and situate in the territorial limits of the state, municipal, or public corporation purchasing or condemning such property, or until said franchise shall be forfeited for non-compliance with its terms by the Grantee.

SECTION 6. COMPENSATION TO CITY

Grantee shall pay the following fees to the City with respect to the rights and privileges granted to Grantee hereunder:

6.1 Base Granting Fee. Grantee shall pay the City the sum of Eleven Thousand Four Hundred Seventy Dollars (\$11,470.00) as a one-time base granting fee within thirty (30) days following the execution of this Agreement.

6.2 Base Annual Fee and Adjustments and Reinstatement Fee. In addition to all fees provided herein, the Grantee shall pay \$639,753.92 in a Reinstatement Fee that shall cover past due fees including penalties and interest until December 31, 2013. Reinstatement Monthly Payments may be paid in one month installment payments of \$5,331.28 per month for a consecutive 120 month period. The amount shall be paid pursuant to the schedule set forth in Exhibit D attached hereto and incorporated herein. Beginning January 1, 2014, a base annual fee shall be paid within thirty (30) days after the end of each calendar year during the term of the Franchise Agreement, as amended herein, as follows:

| <u>Pipeline Size and Type</u> | <u>Length (A) (in feet)</u> | <u>Fee (B) per linear foot</u> | <u>Fee Formula</u> |
|-------------------------------|-----------------------------|--------------------------------|---------------------------------------|
| 6" oil | 39,425' | \$0.895 x CPI adjustment | (A ₁) x (B ₁) |
| 10" oil | 7,409' | \$1.485 x CPI adjustment | (A ₂) x (B ₂) |
| 12" oil | <u>39,584'</u> 86,418' | \$1.787 x CPI adjustment | (A ₃) x (B ₃) |

See HBMC Section 3.44.290 when calculating annual adjustments to the Base Annual Fee using the Consumer Price Index-Los Angeles-Riverside-Orange County area (1982-1984=100).

The base annual fee shall be subject to proration pursuant to Section 3.44.300 of the HBMC (HBMC fee). The base annual fee shall be 75% of the total amount provided in the HBMC Section 3.44 for the full term of this Franchise Agreement beginning January 1, 2014 through December 31, 2023 because of the inactive status of the pipeline. In the event the Grantee activates the pipeline and begins to reuse said lines for oil or other product distribution, the grantee shall immediately notify the City and agrees to pay the full HBMC fee including annual adjustments set forth in the HBMC. If the Grantee activates the line and does not inform the City, Grantee shall pay a penalty each month the line(s) is active in the amount of 75% of the existing HBMC franchise fee in addition to the fee itself.

6.3. Base Construction Charges. Pursuant to HBMC Section 3.44.280, Grantee shall pay at the time of installation, relocation or replacement of any pipeline or other facility covered by the Franchise Agreement, a base construction charge established, and amended from time to time, by resolution of the City Council.

6.4 Payments to City. Payment is due thirty (30) days after the City's invoice date and a ten percent (10%) per month late penalty or fraction thereof beyond the payment date shall be charged, but in no event shall said penalty exceed fifty (50) percent. In addition an eighteen percent (18%) annual interest cost will be charged for any delinquent payment. The City will also withhold any permits and/or not renew licenses if any payment is delinquent. Payments should be mailed to the City Treasurer, City of Huntington Beach, P.O. Box 711, Huntington Beach, CA 92648-0711.

HBMC Section 3.44.290 shall govern when calculating annual adjustments to the Base Annual Fee using the Consumer Price Index-Los Angeles-Riverside-Orange County area (1982-1984=100).

The base annual fee shall be subject to proration pursuant to Section 3.44.300 of the HBMC.

SECTION 7. FAITHFUL PERFORMANCE BOND

On or before the effective date of this Amendment, Grantee shall file and thereafter at all times during the term of the Franchise Agreement keep on file with the City Treasurer a corporate surety bond approved by the City Attorney running to the City in the penal sum of One Hundred Thousand Dollars (\$100,000). In the event that said bond, after it has been so filed, shall at any time during the term of the Franchise Agreement become insufficient, in the sole opinion of the City Council, Grantee agrees to renew said bond within ten (10) days after written notice to do so from the City Treasurer. At such time, the bond shall be increased by a rate set forth by the City Council, with a surety to be approved by the City Attorney, conditioned that Grantee shall well and truly observe, fulfill and perform each condition of the Franchise

Agreement, as amended, 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 said bond is not filed prior to the effective date of this Amendment, the approval of this Amendment may be denied and the ordinance granting the Franchise Agreement repealed at any time prior to the filing of said bond and any money paid.

SECTION 8. OTHER FRANCHISES

This grant is made in lieu of all other oil utility franchises or leased easement agreements owned by the Grantee, or by any successor of the Grantee to any rights under this franchise, for transmitting and distributing oil within the limits of the City, as said limits now or may hereafter exist, and the acceptance of the franchise hereby granted shall operate as an abandonment of all such oil utility franchises, leases or easements within the limits of this City, as such limits now or may hereafter exist, in lieu of which this franchise is granted.

SECTION 9. OBLIGATIONS OF GRANTEE

(a) All facilities or equipment of Grantee shall be constructed, installed and maintained in accordance with and in conformity with all of the ordinances, 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 the general laws relating to the location and maintenance of such facilities.

(b) If any portion of any street shall be damaged by reason of defects in any of the pipes and appurtenances maintained or constructed under this grant, or by reason of

any other cause arising from the operation or existence of any pipes and appurtenances constructed or maintained under this grant, Grantee shall, at its own cost and expense, immediately repair any such damage and restore such portion of such damaged street to as good condition as existed before such defect or other cause of damage occurred.

(c) 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.

(d) Grantee shall indemnify, save, and hold harmless, City and any officers and employees thereof against and from all damages, judgments, decrees, costs and expenditures which City, or such officer or employee, may suffer, or which may be recovered from, or obtainable against City, or such officer or employee, for, or by reason of, or growing out of or resulting from the exercising by Grantee of any or all of the rights or privileges granted hereby, or by reason of any act or acts of Grantee or its servants or agents in exercising the franchise granted hereby, and Grantee shall defend any suit that may be instituted against City, or any officer or employee thereof, by reason of or growing out of or resulting from the exercise by Grantee of any or all of the rights or privileges granted hereby, or by reason of any act or acts of Grantee, or its servants or agents, in exercising the franchise granted hereby.

SECTION 10. REMOVE OR RELOCATE FACILITIES

(a) City reserves the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate or maintain below surface or above surface improvements of any type or description in, upon, along, across, under or over the streets of the City. City further reserves the right to lawfully change the grade, alignment or width of any street. If the necessary exercise of the aforementioned reserved rights

conflicts with any pipes and appurtenances of Grantee constructed, maintained, and used pursuant to the provisions of the franchise granted hereby, Grantee shall, without cost or expense to City within ninety (90) days after written notice from the City Manager, or his designated representative, and request so to do, begin the physical design and field construction of changing the location of all facilities or equipment so conflicting. Grantee shall proceed promptly to complete such required work.

(b) Irrespective of any other provision of this ordinance, Grantee's right to construct, maintain, and use, or remove pipes and appurtenances thereto shall be subject at all times to the right of the City, in the exercise of its police power, to require the removal or relocation of said pipes and appurtenances thereto at the sole cost and expense of Grantee, except (1) as the law may otherwise provide or, (2) except where Grantee's right to possession is pursuant to instruments evidencing right-of-way, easements or other interest in real property, or (3) except where the removal or relocation is made at the request of the City on behalf of or for the benefit of any private developer, CalTrans, or other third party.

(c) In the event that the City is made aware of a project developed by a governmental agency, water company, private party or the City that would be located within five hundred feet of a regulator station or other major oil facilities, City shall notify Grantee and initiate discussions among the implicated parties in order to assess potential economic and community impacts and facilitate coordinated and economically reasonable outcomes.

SECTION 11. TRANSFER OR SALE OF FRANCHISE

This franchise may not be transferred (voluntarily, involuntarily, or by operation of law), leased or assigned by the Grantee except by written consent of the City Council, which may be withheld or conditioned at the City's sole discretion, and unless the transferee or assignees thereof shall agree to be bound by the terms and conditions of this Agreement. Grantee of the franchise granted hereby shall file with the City Manager and the legislative body of the City within thirty (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.

SECTION 12. FORFEITURE

This franchise is granted upon each and every condition herein contained. Nothing shall pass by the franchise granted hereby to Grantee unless it be granted in plain and unambiguous terms. Each of said conditions is a material and essential condition to the granting of the franchise. If Grantee shall fail, neglect or refuse to comply with any of the conditions of the franchise granted hereby, and if such failure, neglect or refusal shall continue for more than thirty (30) days after written demand by the City Manager for compliance therewith, then City, by the City Council, in addition to all rights and remedies allowed by law, thereupon may terminate the rights, privilege, and franchise granted in and by this ordinance, and all the rights, privileges and the franchise of Grantee granted hereby shall thereupon be at an end. Thereupon and immediately, Grantee shall surrender all rights and privileges in and to the franchise granted hereby. No provision herein made for the purpose of securing the enforcement of the terms and conditions of the franchise granted hereby shall be deemed an exclusive remedy or to

afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies and procedure outlined herein or provided, including forfeiture, shall be deemed to be cumulative.

SECTION 13. LIABILITY INSURANCE

The policy of liability insurance required by HBMC Chapter 3.44 shall be issued to Grantee and name the City and its officers, agents, and employees as additional insureds. It shall further indemnify for all liability for personal and bodily injury, death and damage to property arising from activities conducted pursuant to the Franchise Agreement by providing coverage thereof, including but not limited to:

(a) Negligent acts or omissions of Grantee and the agents, servants and employees thereof, committed in the conduct of operations under the Franchise Agreement.

(b) Provide combined single limit liability insurance in the amount of five million dollars (\$5,000,000).

(c) Be noncancellable without thirty (30) days written notice thereof directed to the City.

SECTION 14. ENVIRONMENTAL IMPAIRMENT LIABILITY INSURANCE

The policy of environmental impairment liability insurance or other environmental insurance policy as approved at the sole discretion of the City as required by HBMC Chapter 3.44 shall insure liability for environmental impairment including cleanup cost endorsed for "Sudden and Accidental" contamination or pollution. Such coverage shall be in an amount and form to meet all applicable state and federal requirements but in no event less than five million dollars (\$5,000,000) per occurrence.

(a) If written with an annual aggregate limit, the policy limit must be three (3) times the above-required occurrence limit.

(b) If written on a claims made form, such insurance shall be endorsed to provide an extended reporting period of not less than two (2) years following termination or cancellation of the Franchise Agreement.

SECTION 15. WORKERS' COMPENSATION INSURANCE

The policy of workers' compensation insurance, shall:

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

(b) Cover all employees of Grantee who in the course and scope of their employment conduct or do work involving operations under the Franchise Agreement.

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

(d) Be noncancellable without thirty (30) days written notice thereof directed to the City.

SECTION 16. INSURANCE POLICY REQUIREMENT

Grantee shall file with the City prior to commencement of any franchise operations either certified copies of said policies or a certificate of insurance for each of the required policies executed by the company issuing the policy, certifying that the policy is in force and providing the following information:

(a) The policy number.

(b) The date upon which the policy will become effective and the date upon which it will expire.

- (c) The names of the insured and any additional insureds.
- (d) Subject of the insurance.
- (e) The type of coverage provided by the insurance.
- (f) Amount of limit of coverage provided by the insurance.
- (g) A description of all endorsements that form a part of the policy.
- (h) In addition to the insurance requirements in this section the insured shall also agree to defend, indemnify and hold harmless City against loss, damage or expense by reason of any suits, claims, demands, judgments caused by insured in the performance of the franchise as provided in HBMC Chapter 3.44. Any franchise operation shall not commence until Grantee has complied with the aforementioned provisions of this section, and any such operation shall be suspended during any period that Grantee fails to maintain said policies in full force and effect.

SECTION 17. FORCE MAJEURE

The obligations of any party hereunder, other than the obligation to pay money, shall be suspended for so long as such party is unable, in whole or in part, to carry out its obligations under this Amendment and the Franchise Agreement by reason of an act of God, strike, walkout or other industrial disturbance, act of the public enemy, war, blockade, public riot, lightning, fire, storm, flood, explosion governmental action, governmental delay, restraint or inaction, the unavailability of equipment or materials, or any other cause, whether similar or dissimilar to the types specifically enumerated above, which is beyond the reasonable control of the party claiming the right to suspend its obligations. Such affected party shall provide prompt written notice to the other of the details of the "force majeure," and shall use all reasonable diligence to remove, eliminate or otherwise minimize the force majeure situation as quickly as is practicable. Nothing herein contained shall require a party to settle a labor dispute contrary to the wishes of such party.

SECTION 18. ACQUISITION AND VALUATION

The franchise granted 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 herein contained shall be construed to contract away or to modify or to abridge, either for a term or in perpetuity, the City's right of eminent domain in respect to the Grantee; nor shall this franchise ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the Grantee of the necessary publication and any other sum paid by it to the City therefor at the time of the acquisition thereof.

SECTION 19. PUBLICATION COSTS

The Grantee of said franchise shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting thereof, such payment to be made within thirty (30) days after the City shall have furnished such Grantee with a written statement of such expenses.

SECTION 20. EFFECTIVE DATE

The franchise granted hereby shall not become effective until written acceptance thereof shall have been filed by the Grantee with the City Clerk. 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 shall likewise be deemed to be abandoned within the limits of the additional territory.

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SECTION 21. WRITTEN ACCEPTANCE

After the publication of the ordinance related to this Franchise, the Grantee shall file with the City Clerk a written acceptance of the franchise hereby granted, and an agreement to comply with the terms and conditions hereof.

SECTION 22. PUBLICATION

The City Clerk shall certify to the adoption of this ordinance, and within fifteen (15) days after its adoption, shall cause the same (with a list of the councilmembers voting for and against) to be published in the Huntington Beach Independent, a newspaper of general circulation published and circulated in the City.

SECTION 22. AUDIT OF RECORDS

The City Treasurer, or any certified public accountant, or qualified person designated by the City, at any reasonable time during business hours, may make an examination at the Grantee's office of its books, accounts, and records, germane to and for the purpose of verifying the data set forth in the statement required by Section 4(b) and for any other purpose relating to the rendition of oil service by the Grantee within the City, or the charges to be made.

IN WITNESS WHEREOF, the parties hereto have caused this Franchise Agreement to be executed by and through their authorized offices the day, month and year first above written.

PARAMOUNT PETROLEUM CORPORATION

CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California

By: Michael Oster

print name

ITS: (circle one) Chairman/President/Vice President

Mayor

AND

By: Shirley Even

print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst. Secretary - Treasurer

City Clerk

INITIATED AND APPROVED:

Assistant City Manager

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

City Manager

JW

City Attorney

11-19-13

uw 11-19-13

Exhibits:

- A. Depiction of Pipeline System
- B. Pipeline Network Alignment Drawings
- C. HBMC Chapter 3.44
- D. Reinstatement Monthly Payment Schedule

COUNTERPART

PARAMOUNT PETROLEUM CORPORATION

CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California

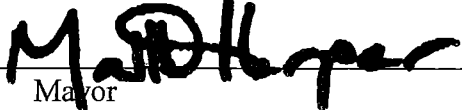
By: _____
_____ print name

ITS: (circle one) Chairman/President/Vice President

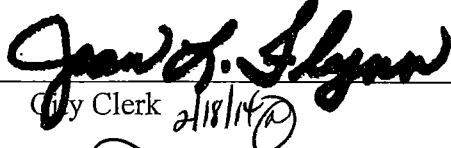
AND

By: _____
_____ print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst. Secretary - Treasurer



Mayor



City Clerk 11/18/13

INITIATED AND APPROVED:



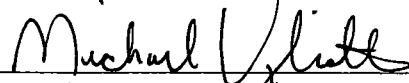
Assistant City Manager

REVIEWED AND APPROVED:



City Manager

APPROVED AS TO FORM:



for City Attorney
11-19-13

Exhibits:

- A. Depiction of Pipeline System
- B. Pipeline Network Alignment Drawings
- C. HBMC Chapter 3.44
- D. Reinstatement Monthly Payment Schedule

COUNTERPART

EXHIBIT A—PIPELINE NETWORK

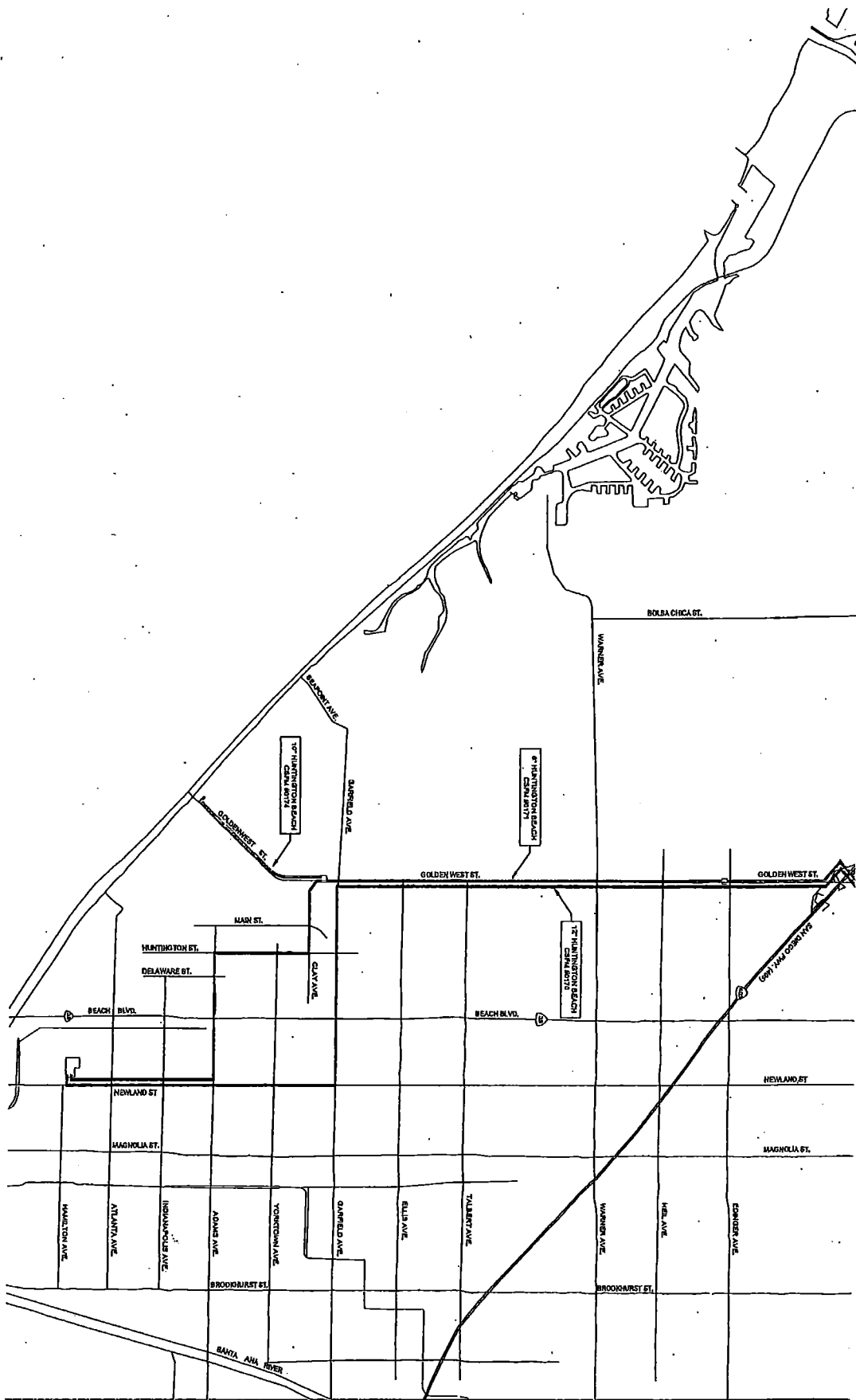
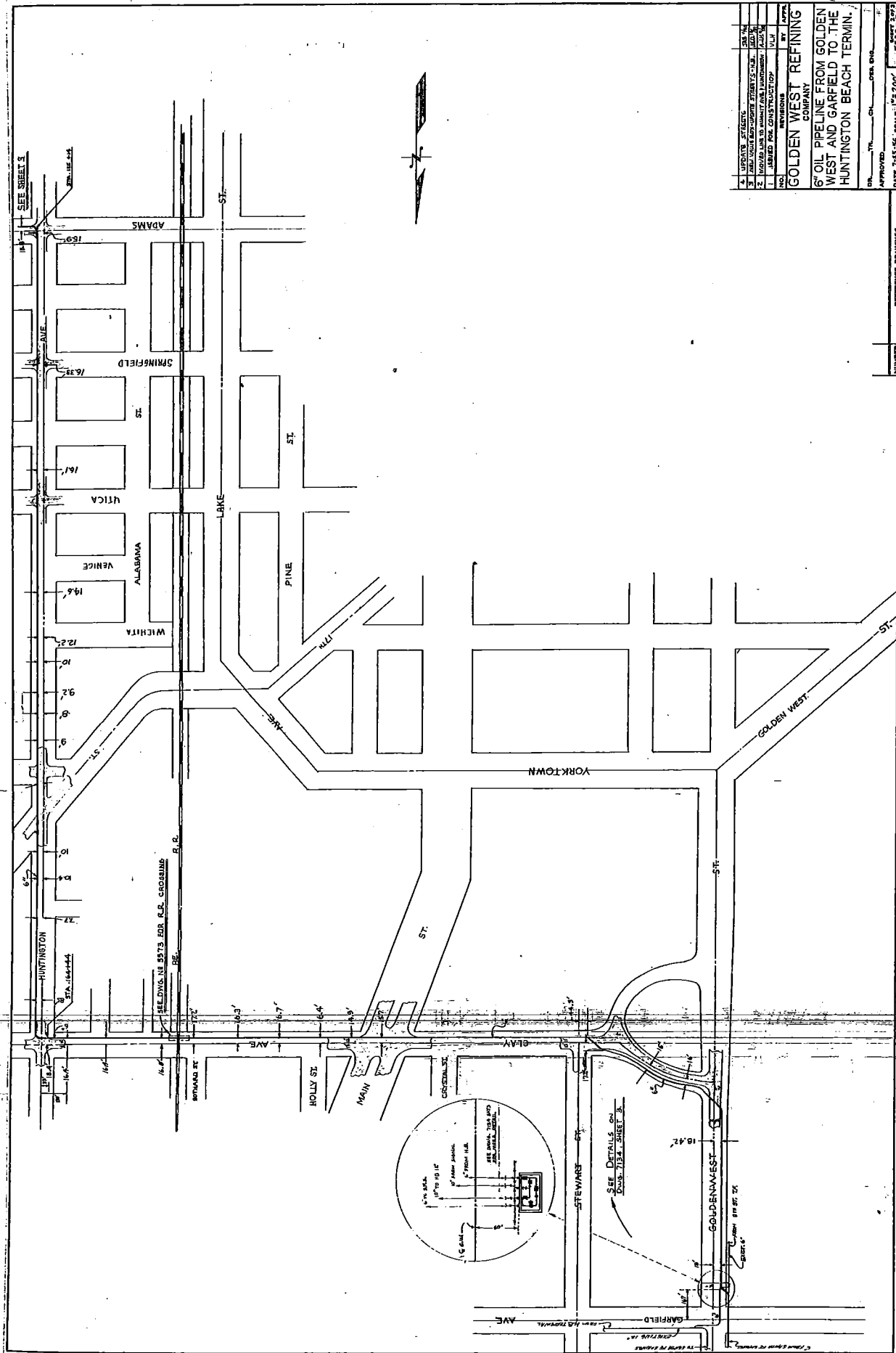
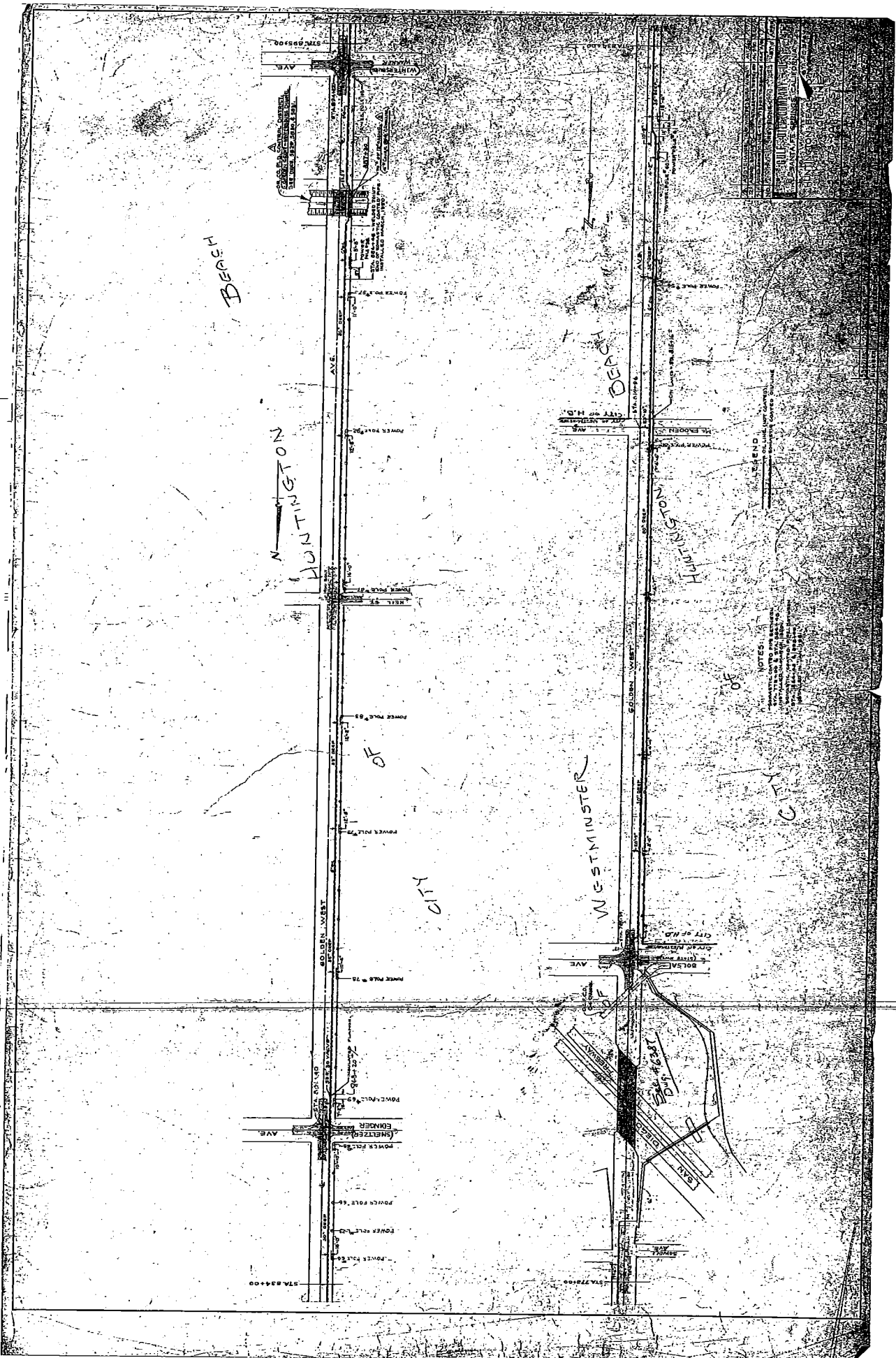


EXHIBIT 'B'





BIRCH

HUNTINGTON

OF

WESTMINSTER

BIRCH

HUNTINGTON

OF

CITY

NOTES:
1. ALL WORK TO BE DONE IN ACCORDANCE WITH THE CITY OF HUNTINGTON SPECIFICATIONS AND STANDARDS.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY ENGINEER AND THE STATE DEPARTMENT OF TRANSPORTATION.
3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
4. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES AND STRUCTURES.
5. THE CONTRACTOR SHALL MAINTAIN ADEQUATE TRAFFIC CONTROL DURING THE COURSE OF THE WORK.

STA. 23+00

STA. 77+00

AVENUE

ENRDER

POWER POLE # 83

POWER POLE # 82

POWER POLE # 81

POWER POLE # 80

POWER POLE # 79

POWER POLE # 78

POWER POLE # 77

POWER POLE # 76

POWER POLE # 75

POWER POLE # 74

POWER POLE # 73

POWER POLE # 72

POWER POLE # 71

POWER POLE # 70

POWER POLE # 69

POWER POLE # 68

POWER POLE # 67

POWER POLE # 66

POWER POLE # 65

POWER POLE # 64

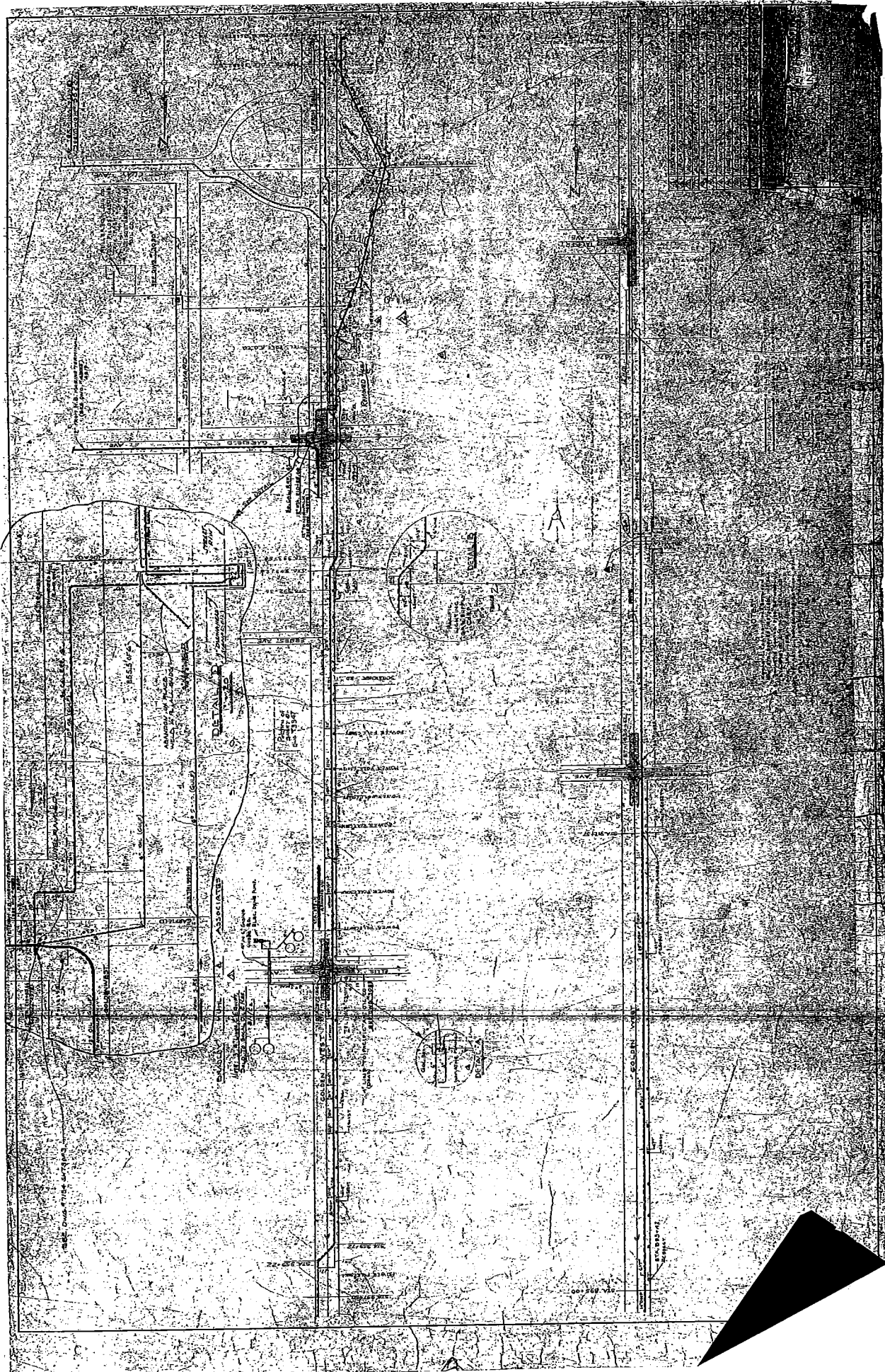
POWER POLE # 63

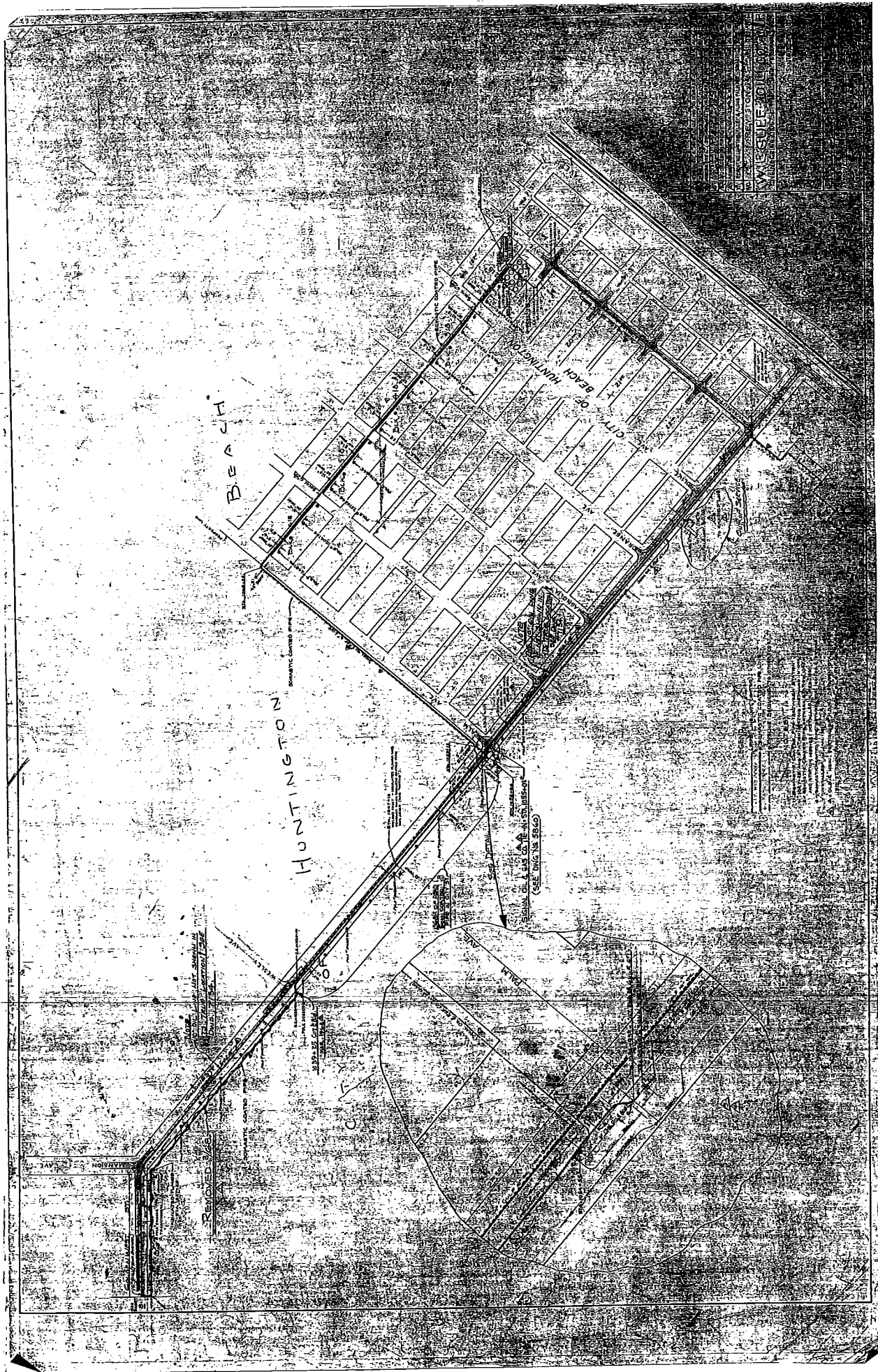
POWER POLE # 62

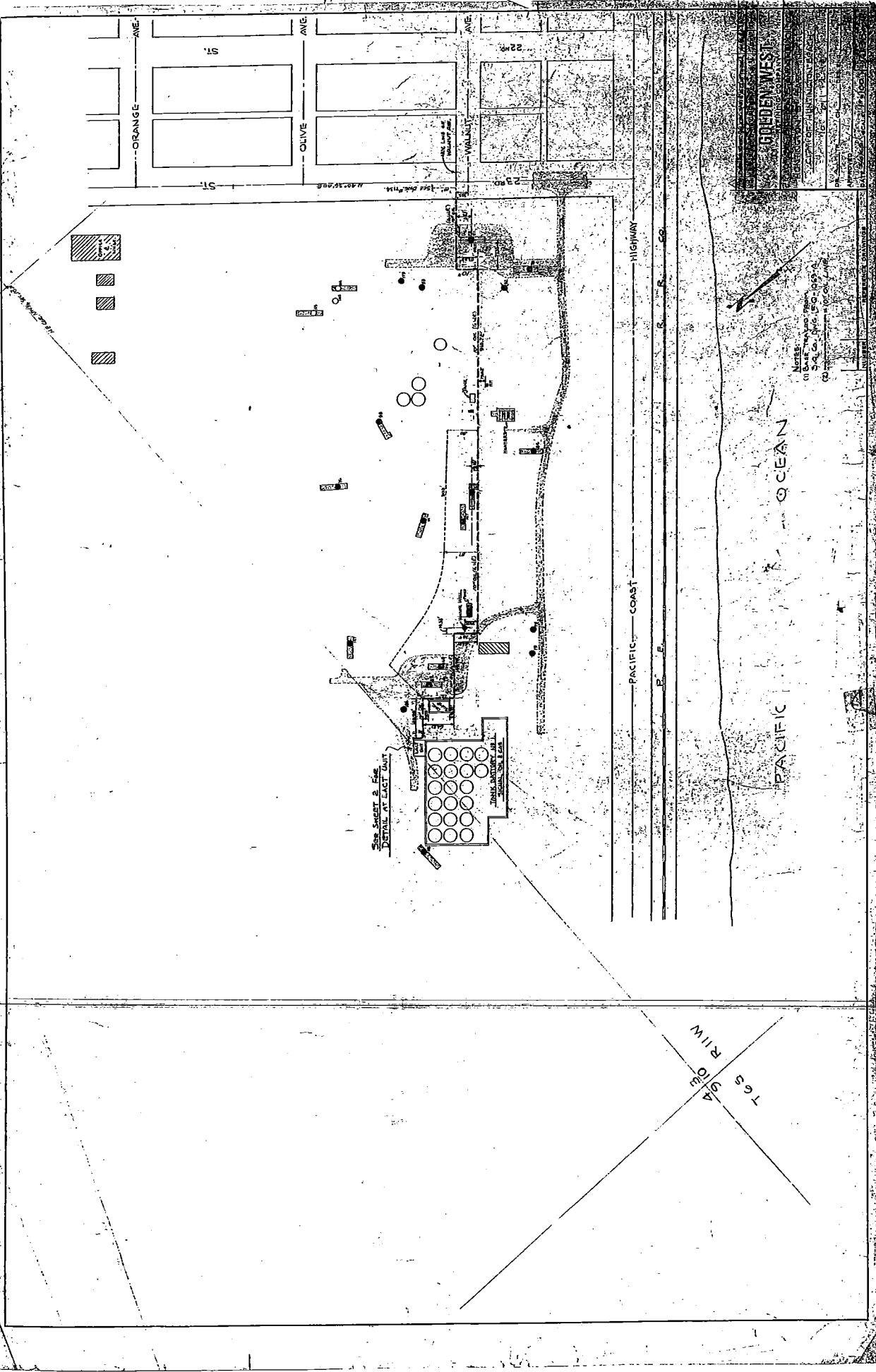
POWER POLE # 61

POWER POLE # 60

POWER POLE # 59



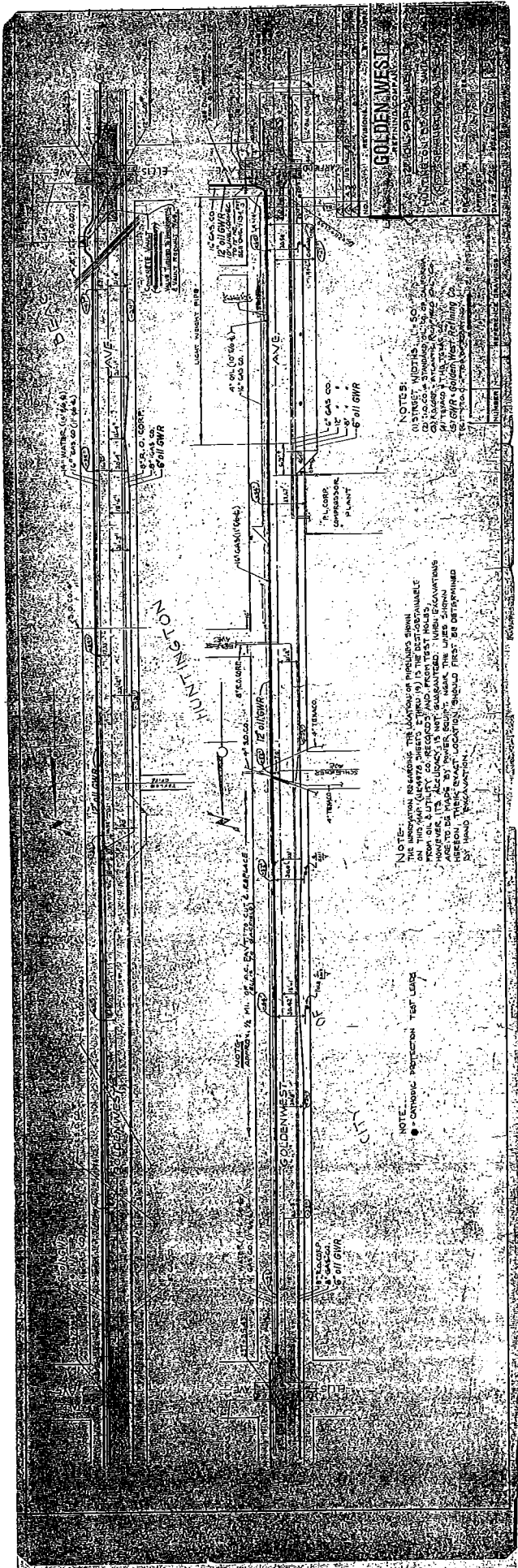




GRIFFIN WEST
 ARCHITECTS
 1234 5th St. S.W.
 SEASIDE, CALIF. 92082
 Phone: (619) 435-1234
 Fax: (619) 435-5678

NOTES:
 (1) See Section 2, Etc. DETAIL AT EAST GATE
 (2) See Section 3, Etc. DETAIL AT EAST GATE
 (3) See Section 4, Etc. DETAIL AT EAST GATE

T-65
 5/4
 0/2
 RLIW



NOTES:

- 1. STREET WIDTHS 12' 6" TO 16' 0"
- 2. ALL UTILITIES TO BE INSTALLED IN ACCORDANCE WITH THE CITY ENGINEER'S SPECIFICATIONS
- 3. ALL UTILITIES TO BE INSTALLED IN ACCORDANCE WITH THE CITY ENGINEER'S SPECIFICATIONS
- 4. ALL UTILITIES TO BE INSTALLED IN ACCORDANCE WITH THE CITY ENGINEER'S SPECIFICATIONS
- 5. ALL UTILITIES TO BE INSTALLED IN ACCORDANCE WITH THE CITY ENGINEER'S SPECIFICATIONS

NOTE: THE LOCATION OF THE UTILITIES SHOWN ON THIS MAP (EXCEPT WHERE SHOWN OTHERWISE) IS THE BEST AVAILABLE FROM ALL UTILITIES CO. RECORDS AND SHOWN AS TO BE MADE BY POWER SUPPLY. THE EXACT LOCATION OF THE UTILITIES SHOULD FIRST BE DETERMINED BY HAND INVESTIGATION.

NOTE: ALL UTILITIES TO BE INSTALLED IN ACCORDANCE WITH THE CITY ENGINEER'S SPECIFICATIONS.

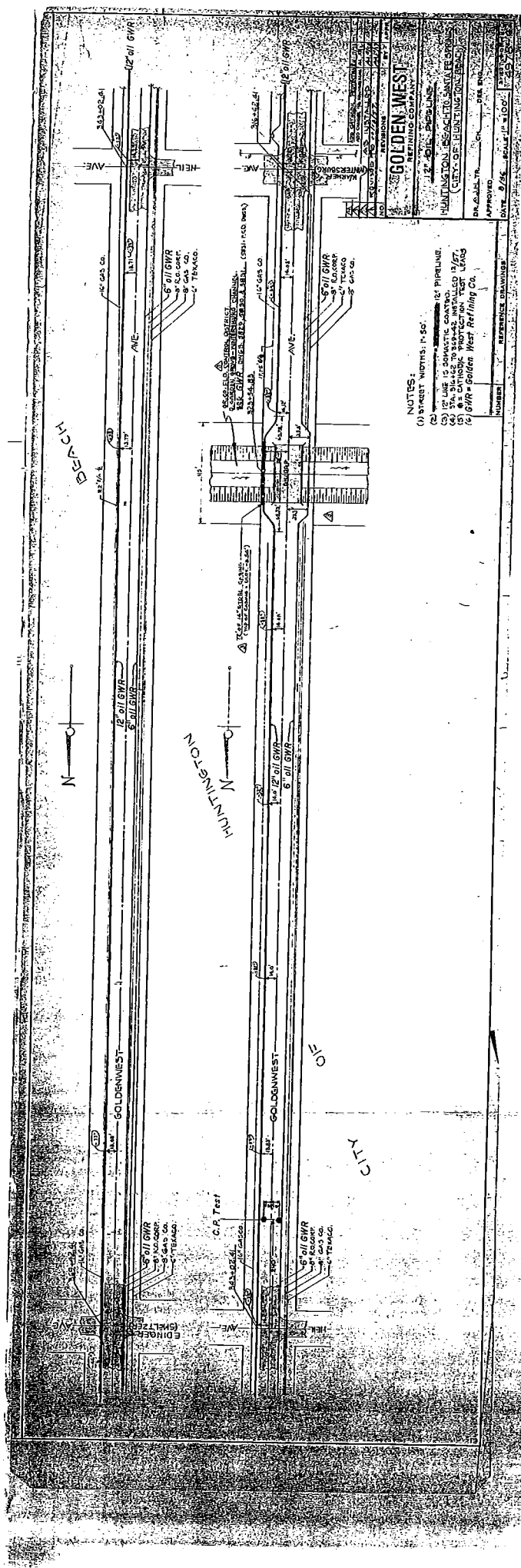
NOTE: ALL UTILITIES TO BE INSTALLED IN ACCORDANCE WITH THE CITY ENGINEER'S SPECIFICATIONS.

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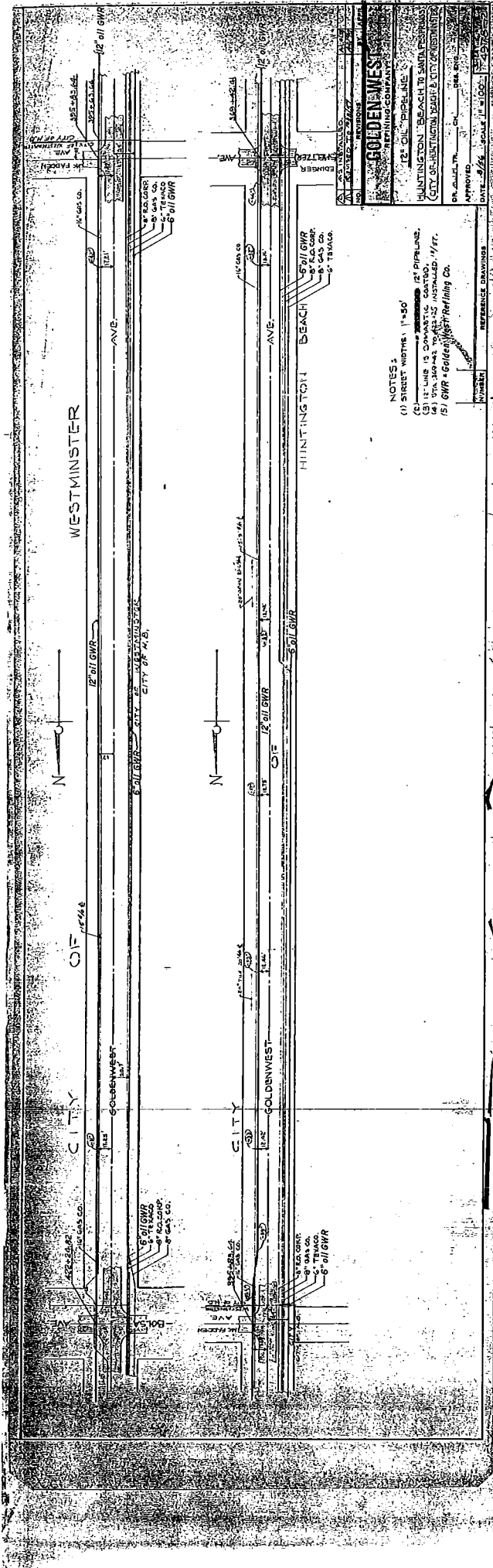
NOTE: ALL UTILITIES TO BE INSTALLED IN ACCORDANCE WITH THE CITY ENGINEER'S SPECIFICATIONS.

NOTE: ALL UTILITIES TO BE INSTALLED IN ACCORDANCE WITH THE CITY ENGINEER'S SPECIFICATIONS.



NOTES:
(1) STREET WIDTHS: 14.50'
(2) 12\"/>

GOLDEN WEST
HUNTINGTON BEACH, CALIF.
(CITY OF HUNTINGTON BEACH)
APPROVED: _____ DATE: 9/24/54
DRAWN BY: _____



NOTES:
 (1) STREET WIDTHS: 1'-50'
 (2) LINE IS TO BE INSTALLED IN TRENCHES
 (3) 12\"/>

GOLDENWEST
 ENGINEERING
 122 OIL PIPELINE
 HUNTINGTON BEACH TO SANTA FE
 CITY OF HUNTINGTON BEACH & CITY OF WESTMINSTER

APPROVED: _____ DATE: 3/2/56

REFERENCE DRAWINGS

| NUMBER | DESCRIPTION |
|--------|-------------|
| | |
| | |
| | |

EXHIBIT 'C'

Chapter 3.44

PIPELINE FRANCHISES

(2319-10/78, 2676-2/84, 3850-1/10, 3889-9/10)

Sections:

I. GENERAL PROVISIONS AND DEFINITIONS

- 3.44.010 Short Title
- 3.44.020 General Provisions
- 3.44.025 Franchise Required When
- 3.44.030 Pole Lines
- 3.44.040 Definitions
- 3.44.050 Term
- 3.44.060 Acceptance of Franchise Agreement
- 3.44.070 Nonexclusive Franchise
- 3.44.080 Maps
- 3.44.090 Repealed – Ordinance No. 3889-9/10
- 3.44.100 Liability Insurance
- 3.44.105 Environmental Impairment Liability Insurance
- 3.44.110 Workers' Compensation Insurance
- 3.44.120 Insurance--Filing
- 3.44.130 Faithful Performance Bond
- 3.44.140 Repealed – Ordinance No. 3889-9/10
- 3.44.150 Repealed – Ordinance No. 3889-9/10
- 3.44.160 Forfeiture
- 3.44.170 Value of Franchise
- 3.44.180 State Highways
- 3.44.190 Eminent Domain
- 3.44.200 Publication Date
- 3.44.210 Assignment
- 3.44.220 Hold Harmless
- 3.44.230 Standards
- 3.44.231 Conflicting Improvements
- 3.44.240 Defective Facilities
- 3.44.250 Hazardous Substances
- 3.44.251 Damage to Public Property Generally

II. COMPENSATION

- 3.44.252 Public Utility Not Transmitting Oil or Products Thereof
- 3.44.253 Length
- 3.44.255 Public Utility Transmitting Oil or Products Thereof
- 3.44.256 Non-Public Utility Franchises
- 3.44.260 Basic Granting Fee
- 3.44.270 Base Annual Fee
- 3.44.271 Payments to City
- 3.44.280 Base Construction Charges
- 3.44.290 Adjustments--Base Annual Fee
- 3.44.300 Proration of Payments
- 3.44.310 Records

III. CONSTRUCTION

- 3.44.320 Construction Requirements
- 3.44.330 New Installation or Replacement
- 3.44.340 Permits

- 3.44.350 Work On and Restoration of Streets
- 3.44.360 Failure to Comply Timely
- 3.44.370 Completion Statement
- 3.44.371 Responsibility
- 3.44.380 Facilities
- 3.44.386 Shoring
- 3.44.390 Ordinary Repair
- 3.44.400 Breaks or Leaks
- 3.44.410 Emergency Equipment
- 3.44.420 Removal or Abandonment of Facilities
- 3.44.430 Failure to Comply
- 3.44.440 Abandonment "In Place" Conditions
- 3.44.447 Operation After Franchise Expiration – Revocable License

IV. SPECIAL PROVISIONS FOR PETROLEUM PIPELINES

- 3.44.450 Rights Granted
- 3.44.460 Materials Used
- 3.44.470 Approvals
- 3.44.480 Reports
- 3.44.490 Payments Due
- 3.44.500 Cost of Relocation

I. GENERAL PROVISIONS AND DEFINITIONS

3.44.010 Short Title. This chapter shall be known and cited as "Pipeline Franchise Ordinance." (2319-10/78)

3.44.020 General Provisions. Every franchise hereafter granted by the City to lay, construct, maintain, operate, renew, repair, change the size of, remove or abandon in place pipes and pipelines for the collection, transportation or distribution of oil, gas, gasoline, petroleum, wet gas, hydrocarbon substances, or other substances, together with all manholes, valves, appurtenances and service connections necessary or convenient for the operation of said pipes or pipelines including conduits, cathodic protection devices, wires, cables and other appurtenances necessary or convenient for the exercise of the franchisee's business, in, under, along or across any and all streets within the City of Huntington Beach except as otherwise provided in the particular franchise agreement, shall be granted upon and be subject to the rules, regulations, restrictions and terms and conditions of this chapter, in addition to those rules, regulations, restrictions, terms and provisions set forth in the particular franchise agreement. (2319-10/78, 3889-9/10)

3.44.025 Franchise Required When. It is unlawful for any person, firm or corporation to exercise any privilege or franchise to lay or maintain any pipes or conduits in or under any public street, or alley in the City, for the transmission of gas, water, heat, steam, or other substance or to exercise any franchise or privilege for the erection or maintenance, in or upon any public street or alley in the City, of any telephone, telegraph, electric light or power poles, wires, or system, or for the erection of any pole or wire for the purpose of transmitting electrical energy or current, without first having procured a franchise to do so unless such person, firm or corporation is entitled to do so by direct and unlimited authority of the Constitution of the state or the Constitution of the laws of the United States. (3850-1/10)

3.44.030 Pole Lines. Nothing in this chapter or in any franchise agreement granting such a franchise shall be construed to permit the grantee to construct new poles or other facilities aboveground. (2319-10/78)

3.44.040 Definitions. For the purpose of this chapter, the following terms, phrases, words and their derivations shall have the meaning given herein:

- (a) "Council" shall mean City Council of the City of Huntington Beach. (3889-9/10)
- (b) "Code" shall mean the Huntington Beach Municipal Code.
- (c) "Department" shall mean the Public Works Department of the City of Huntington Beach. (3889-9/10)
- (d) "Director" shall mean the Public Works Director of the City of Huntington Beach. (3889-9/10)
- (e) "Franchisee" or "grantee" shall mean the person to whom the franchise is granted, and any person to whom it is lawfully assigned.
- (f) "Facilities" or "appurtenances" shall mean all property owned or used by the franchisee, in connection with the franchise, including but not limited to, pipelines, pump stations, and service connection with the franchisee's facilities, whether installed by the franchisee as named or originally granted under this franchise or its predecessors or assignors, erected, constructed, laid, operated or maintained in, upon, over, under, along or across any street pursuant to any right or privilege granted by the franchise. (3889-9/10)
- (g) "Franchise payment period" shall mean the time period between the effective date of the franchise agreement granting the franchise and December 31 of the same calendar year, and each calendar year thereafter, during the life of the franchise. (3889-9/10)
- (h) "Franchise report period" in all cases shall mean the time period between the effective date of the franchise agreement granting the franchise through and including December 31 of that calendar year, and each calendar year thereafter, during the life of the franchise. (3889-9/10)
- (i) "Highway" or "street" shall mean any public highway, freeway (except a state freeway), street, road, alley, lane or court or other public easement, and above and below the same, which now exists or which may hereafter exist in the City of Huntington Beach. (3889-9/10)
- (j) "Main" shall mean any pipeline or conduit laid in, along or approximately parallel with any street for the collection, transmission or distribution of any hydrocarbon substances.
- (k) "Major street" shall mean any street or portion thereof designated as a major secondary highway in the circulation element of the Huntington Beach General Plan.
- (l) "Minor street" shall mean all streets in the City other than those designated as "major" or "secondary highways" in the circulation element of the Huntington Beach General Plan. (3889-9/10)
- (m) "Person" shall mean any individual, person, firm, partnership or corporation.
- (n) "Section" shall mean a section of the Huntington Beach Municipal Code, unless some other code or statute is mentioned.
- (o) "Service connection" shall mean the wire, pipes, or conduits connecting the building or place where the service or hydrocarbons supplied by the franchisee is used or delivered, or is made available for use or delivery, with the supply line or supply main in the highway or with such supply line or supply main on private property. (2319-10/78)
- (p) "Shall" is mandatory; "May" is permissive. (3889-9/10)

3.44.050 Term. Unless the franchise agreement granting the franchise provides otherwise, the term of the franchise shall be fifteen (15) years. (2319-10/78, 3889-9/10)

3.44.060 Acceptance of Franchise Agreement. The franchisee shall enter into a written agreement with the City of Huntington Beach which grants the franchise and sets forth the terms and provisions therein. The franchisee shall, within thirty (30) days after the passage of the ordinance granting the franchise, file with the City Clerk of the City of Huntington Beach a written acceptance of the terms and conditions of said ordinance. The franchise shall be null and void if the written acceptance is not filed within the prescribed time. (2319-10/78, 3889-9/10)

3.44.070 Nonexclusive Franchise. The granting of the franchise shall not be construed to prevent the City from granting identical or similar franchise to any person other than the franchisee. Nothing herein contained shall ever be construed so as to exempt the franchisee from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are not inconsistent with the terms of the franchise. (2319-10/78, 3889-9/10)

3.44.080 Maps. Within ninety (90) days following the date on which any facilities or appurtenances have been laid, removed or abandoned under the franchise, the franchisee shall file a map or maps with the Department showing the accurate "as built" location, depth, and size of the facilities or appurtenances so laid, removed or abandoned. (2319-10/78, 3889-9/10)

3.44.100 Liability Insurance. The policy of liability insurance required by this chapter shall be issued to franchisee and name the City and its officers, agents, and employees as additional insureds. It shall further indemnify for all liability for personal and bodily injury, death and damage to property arising from activities conducted pursuant to the franchise by providing coverage thereof, including but not limited to: (3889-9/10)

- (a) Negligent acts or omissions of franchisee and the agents, servants and employees thereof, committed in the conduct of franchise operations.
- (b) Provide a combined single limit liability insurance in the amount of five million dollars (\$5,000,000). (3889-9/10)
- (c) Be noncancellable without thirty (30) days written notice thereof directed to the City of Huntington Beach. (2319-10/78, 3889-9/10)

3.44.105 Environmental Impairment Liability Insurance. The policy of environmental impairment liability insurance or other environmental insurance policy as approved at the sole discretion of the City as required by this Chapter shall insure liability for environmental impairment including cleanup cost endorsed for "Sudden and Accidental" contamination or pollution. Such Coverage shall be in an amount and form to meet all applicable state and federal requirements but in no event less than five million dollars \$5,000,000 per occurrence. (3889-9/10)

- (a) If written with an annual aggregate limit, the policy limit should be three (3) times the above-required occurrence limit. (3889-9/10)
- (b) If written on a claims made form, such insurance shall be endorsed to provide an extended reporting period of not less than two (2) years following termination or cancellation of this franchise. (3889-9/10)

3.44.110 Workers' Compensation Insurance. The policy of workers' compensation insurance, required by this chapter, shall:

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

- (b) Cover all employees of franchisee who in the course and scope of their employment to conduct or do work pursuant to the franchise operations. (3889-9/10)
- (c) Provide for every benefit and payment presently or hereinafter conferred by Division 4 of the Labor Code of the State of California upon an injured employee, including vocational rehabilitation and death benefits. (3889-9/10)
- (d) Be noncancellable without thirty (30) days written notice thereof directed to the City of Huntington Beach.
(2319-10/78, 3889-9/10)

3.44.120 Insurance--Filing. Franchisee shall file with the City Clerk prior to commencement of any franchise operations either certified copies of said policies or a certificate of insurance for each of the required policies executed by the company issuing the policy, certifying that the policy is in force and providing the following information: (3889-9/10)

- (a) The policy number.
- (b) The date upon which the policy will become effective and the date upon which it will expire.
- (c) The names of the insured and any additional insureds.
- (d) Subject of the insurance.
- (e) The type of coverage provided by the insurance.
- (f) Amount of limit of coverage provided by the insurance.
- (g) A description of all endorsements that form a part of the policy.
- (h) In addition to the insurance requirements in this section the insured shall also agree to defend, indemnify and hold harmless the City of Huntington Beach against loss, damage or expense by reason of any suits, claims, demands, judgments caused by insured in the performance of the franchise as provided in Section 3.44.220. (3889-9/10)

Any franchise operation shall not commence until franchisee has complied with the aforementioned provisions of this section, and any such operation shall be suspended during any period that franchisee fails to maintain said policies in full force and effect. (2319-10/78)

3.44.130 Faithful Performance Bond. On or before the effective date of the franchise agreement granting the franchise, franchisee shall file and thereafter at all times during the life of the franchise keep on file with the City Treasurer a corporate surety bond approved by the City Attorney running to the City in the penal sum of One Hundred Thousand Dollars (\$100,000). In the event that said bond, after it has been so filed, shall at any time during the life of the franchise become insufficient, in the sole opinion of the City Council, the franchisee agrees to renew said bond within ten (10) days after written notice to do so from the City Treasurer. At such time, the bond shall be increased by a rate set forth by City Council, with a surety to be approved by the City Attorney, conditioned that franchisee shall well and truly observe, fulfill and perform each condition of the 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 said bond is not filed prior to the effective date of the ordinance granting the franchise, the award of the franchise may be set aside and the ordinance granting the franchise repealed at any time prior to the filing of said bond and any money paid in consideration for said award of franchise shall be deemed forfeited. In the event that said bond, after it has been so filed, shall at any time during the life of the franchise become insufficient, franchisee agrees to renew said bond, subject to the approval of the City Attorney, within ten (10) days after written notice to do so from the Director. (2319-10/78, 3889-9/10)

3.44.160 Forfeiture. The franchise is granted and shall be held and enjoyed upon each and every condition contained in the franchise agreement, including such conditions contained herein as are incorporated by reference in said franchise agreement, and shall be strictly construed against the grantee. Any neglect, failure or refusal to comply with any of the terms and provisions of the franchise agreement shall constitute grounds for the suspension or forfeiture of the franchise, shall give to the grantee not less than thirty (30) days notice in writing of any default thereunder. If the grantee does not, within the noticed period, begin the work of compliance or after such beginning does not prosecute the work with due diligence to completion, the Council may hold a hearing, at which the grantee shall have the right to appear and be heard, and thereupon the Council may determine whether such conditions are material and essential to the franchise and whether the grantee is in default with respect thereto and may declare the franchise suspended or forfeited. Notice of said hearing shall be given to the grantee by certified mail not less than five (5) days before said hearing. (2319-10/78)

3.44.170 Value of Franchise. The grantee of any franchise awarded to a public utility, by accepting the terms and conditions thereof, stipulates and agrees that in any proceeding for the purpose of adjusting the rates of the grantee, no greater value shall be placed upon the franchise than the actual cash paid therefor by the grantee. (2319-10/78)

3.44.180 State Highways. If any street or portion thereof becomes a state highway, except for the right to continue to collect franchise payments in such other rights as by law remain with the City, the state shall succeed to all rights reserved to the City by the franchise. (2319-10/78, 3889-9/10)

3.44.190 Eminent Domain. No franchise granted by the City shall in any way impair or affect the right of the City or any successor in authority to acquire the property of the grantee by purchase or condemnation, and nothing contained in such a franchise shall be construed to contract away, modify or abridge either for a term or in perpetuity the City's right of eminent domain in respect to any public utility. (2319-10/78, 3889-9/10)

3.44.200 Publication Costs. The grantee shall pay to the City within thirty (30) days after receiving a statement therefore, all advertising and publishing costs, including the cost of publishing the granting of the franchise, if necessary. (2319-10/78, 3889-9/10)

3.44.210 Assignment. The grantee shall not directly or indirectly sell, transfer, assign or lease the franchise or any part thereof, or allow any other person or entity to operate any pipeline or related facility subject to the franchise, except with the written approval of the Council which may be withheld at its sole and absolute discretion. Such sale, transfer, assignment, or lease shall be made only by filing with the Council a copy of the duly executed instrument of such sale, transfer, assignment or lease and a written request for the consent of the Council to such sale, transfer, assignment or lease. If such duly executed instrument and such written request is not filed with the Council before the expiration of thirty (30) days after the effective date of such sale, transfer, assignment or lease, then, upon the expiration of said thirty (30) days, the franchise shall be subject to forfeiture and the Council may, without notice, revoke the franchise. As a condition to the granting of consent to such sale, transfer, assignment or lease, the Council may impose such additional terms and conditions upon the franchisee and upon the grantee or assignee, which the Council may deem to be in the public interest. Such additional terms and conditions shall be expressed by Council resolution. Nothing herein contained shall be construed to grant to the grantee the right to sell, transfer, assign or lease the franchise, or any part thereof, except in the manner aforesaid. This section applies to any assignment, whether by operation of law, by a voluntary act of the grantee or otherwise and includes a transfer of more than fifty percent (50%) of the voting stock of any corporate grantee or the change in identity of any general partner of a franchisee which is a partnership, whether to a third party or to any subsidiary, parent, or affiliated agency of franchisee. (2319-10/78, 3889-9/10)

3.44.220 Hold Harmless. The grantee shall be responsible to the City and shall defend, indemnify and hold harmless the City and its officers and employees from all damages or liability

arising from the use, operation or maintenance of the facilities erected, constructed, laid, operated or maintained thereunder. (2319-10/78, 3889-9/10)

Franchisee hereby agrees to protect, defend, indemnify and hold harmless City, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all, claims, damages, losses, expenses, judgments, demands defense costs, and consequential damage or liability of any kind or nature, however caused, including those resulting from death or injury to franchisee's employees and damage to franchisee's property, arising directly or indirectly out of the obligations or operations herein undertaken by franchisee, caused in whole or in part by any negligent act or omission of the franchisee, any subfranchisees, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including but not limited to concurrent active or passive negligence, except where caused by the active negligence, sole negligence, or willful misconduct of the City. Franchisee shall conduct all defense at its sole cost and expense and City shall approve selection of franchisee's counsel. City shall be reimbursed for all costs and attorney's fees incurred by City in enforcing this obligation. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitations upon the amount of indemnification to be provided by franchisee. (3889-9/10)

3.44.230 Standards. All facilities erected, constructed, laid, operated or maintained under the provisions of the franchise shall be erected, constructed, laid, operated or maintained in accordance with and conforming to all the ordinances, codes, rules and regulations now or hereafter adopted by or prescribed by the Council. (2319-10/78)

3.44.231 Conflicting Improvements. If the City or any other public entity constructs or maintains any storm drain, sewer structure, or other facility or improvement under or across any facility of the grantee maintained pursuant to the ordinance, the grantee shall provide at no expense to the City or other public entity such support as shall be reasonably required to support, maintain and protect grantee's facility. (3889-9/10)

3.44.240 Defective Facilities. If any portion of any street shall be damaged by reason of defective facilities laid or constructed under the franchise, the grantee shall, at its own expense, repair any such defect and put such street in as good condition as it was before such damage was incurred, to the satisfaction of the City. If the grantee, within ten (10) days after receipt of written notice from the City, instructing it to repair such damage, shall fail to commence to comply with such instructions, or, thereafter, shall fail diligently to prosecute such work to completion, then the City immediately may do whatever work is necessary to carry out said instructions at the cost and expense of the grantee, which cost and expense, by the acceptance of the franchise, the grantee agrees to pay upon demand. If such damage constitutes an immediate danger to the public health or safety requiring the immediate repair thereof, the City without notice may repair such damage and the grantee agrees to pay the reasonable cost thereof upon demand. (2319-10/78, 3889-9/10)

3.44.250 Hazardous Substances. Prior to the issuance of any excavation permit for the construction or installation of any pipeline for the transmission of flammable liquids or gases, written approval shall be obtained from the Director. Said approval may be withheld at the sole and absolute discretion of the Director. Said approval may be based on the determination that no undue fire hazard will be created to life or property in the areas through which the proposed pipeline will be located. To make such determination, consideration shall be given to: (3889-9/10)

- (a) Type of hydrocarbon to be transmitted.
- (b) Density of population or structural development in the area through which the pipeline will be located.
- (c) Adequacy of water supplies for fire control purposes.

- (d) Extent of available public fire protection facilities.
- (e) Number and location of shutoff valves in line. (2319-10/78)

3.44.251 Damage to Public Property Generally. Any damage done directly or indirectly to any public property by grantee, in exercising directly or indirectly any right, power, or privilege under this franchise, or in performing any duty under or pursuant to the provisions of this section, shall be promptly repaired by grantee at its sole cost and expense to as good a condition as it was before such damage was incurred, and to the satisfaction of the Director. If the franchisee, within ten (10) days after receipt of written notice from the City, instructing it to repair such damage, shall fail to commence to comply with such instructions, or thereafter, shall fail to diligently prosecute such work to completion, the City immediately may do work necessary to carry out said instructions and the cost and expense of the franchisee, which cost and expense, by the acceptance of the franchise, the franchisee agrees to pay upon demand. If such damage constitutes an immediate danger to the public health or safety requiring the immediate repair thereof, the City without notice may repair such damage and the franchisee shall pay all costs incurred. (3889-9/10)

II. COMPENSATION

3.44.252 Public Utility Not Transmitting Oil or Products Thereof. The franchisee of any franchise awarded to a public utility or non-public utility not transmitting oil or products thereof, as consideration for such franchise, shall annually pay to the City in lawful money of the United States, within thirty (30) days after the end of each calendar year and during the life of the franchise for each and every year, including the year of granting the franchise a franchise fee negotiated as part of the franchise agreement (unless preempted by State Law) arising from the use, operation or possession of the franchise. (3889-9/10)

3.44.253 Length. Whenever the length of any wire, pipe or conduit is a factor in calculating any payment due under any franchise granted by the, all service connections shall be excluded in determining such lengths. (3889-9/10)

3.44.255 Public Utility Transmitting Oil or Products Thereof. The franchisee of any franchise awarded for a pipeline transmitting oil or products thereof which has been determined by the Public Utilities Commission to be a public utility, as consideration for such franchise, shall, within thirty (30) days after the end of each calendar year and during the life of the franchise for each and every year, including the year of granting the franchise, annually pay to the City in lawful money of the United States, a fee in the following amounts as required by State law. In the event these referenced fees increase pursuant to State law, the fees referenced herein shall increase by the same: (3889-9/10)

| Pipelines with an Internal Diameter of: | Base Rate Per Lineal Foot |
|---|---------------------------|
| 0-4 inches | .088 |
| 6 inches | .132 |
| 8 inches | .176 |
| 10 inches | .220 |
| 12 inches | .264 |
| 14 inches | .308 |
| 16 inches | .352 |
| 18 inches | .396 |
| 20 inches | .440 |
| 22 inches | .484 |
| 24 inches | .528 |
| 26 inches | .572 |
| 28 inches | .616 |
| 30 inches | .660 |

(3889-9/10)

For pipelines with an internal diameter not listed above, the fees shall be in the same proportion to the fees of a twelve (12)-inch-diameter pipe as the diameter of the unlisted pipe is to twelve (12) inches. (3889-9/10)

The amount of the fee or charge provided for in this paragraph shall be multiplied by the Consumer Price Index, all Urban Consumers (CPI-U) for the Los Angeles-Riverside-Orange County Area for the month of September immediately preceding the month in which payment is due and payable, and divided by the Consumer Price Index, All Urban Consumers (CPI-U for the Los Angeles-Riverside-Orange County Area for June 30, 1989, (1982-84=100.0)). (3889-9/10)

3.44.256 Non-Public Utility Franchises. The franchisee of any franchises awarded to other than a public utility transmitting oil or oil products thereof, as further consideration for such franchise including the extension, renewal, or continuation of a previously granted franchise, shall pay to the City in lawful money of the United States the following fees: (3889-9/10)

3.44.260 Basic Granting Fee. In the event of an initial grant of franchise or franchises which extend, renew, or continue previously granted franchises, a base granting fee shall be required as established, and amended from time to time, by resolution of the City Council. (2319-10/78, 2676-2/84)

3.44.270 Base Annual Fee. A base annual fee shall be paid by franchisee within thirty (30) days after the end of each calendar year including the year of granting the franchises, according to the franchise payment period as defined in this chapter, in the following amounts: (2319-10/78, 2676-2/84, 3889-9/10)

| Pipelines with an Internal Diameter of: | Amount Per Lineal Foot |
|---|------------------------|
| 0-4 inches | .590 |
| 6 inches | .895 |
| 8 inches | 1.197 |
| 10 inches | 1.485 |
| 12 inches | 1.787 |
| 14 inches | 2.092 |
| 16 inches | 2.377 |
| 18 inches | 2.682 |
| 20 inches | 2.984 |
| 22 inches | 3.272 |
| 24 inches | 3.574 |
| 26 inches | 3.879 |
| 28 inches | 4.164 |
| 30 inches | 4.469 |

The base annual rate applicable to pipelines with an internal diameter falling between incremental size categories shall pay a rate determined by adding the price corresponding to the lower size to a figure computed by multiplying the difference between the higher and lower price times the multiplier. The multiplier will be determined by dividing the difference between the size of the pipe and the lower size category by the difference between the two size categories. In determining the number of feet of pipeline upon which the annual fee will be computed, the greatest number of feet of pipeline covered by the franchise during the calendar year for which payment is due will be utilized. The base annual fee shall be paid no later than 30 days and a penalty at the rate of ten (10) percent per month or fraction thereof beyond the payment date shall be charged, but in no event shall said penalty exceed fifty (50) percent. (3889-9/10)

The City reserves the right to adjust the base fees established hereunder at any time after the effective date of the ordinance. (3889-9/10)

3.44.271 Payments to City. Payment is due 30 days after the City's invoice date and a 10% per month late penalty and 18% annual interest cost will be charged for any delinquent payment. The City will also withhold any permits/not renew licenses if any payment is delinquent. Payments should be mailed to the City Treasurer, City of Huntington Beach, P.O. Box 711, Huntington Beach, CA 92648-0711. (3889-9/10)

3.44.280 Base Construction Charges. The holder of the franchise shall pay at the time of installation, relocation or replacement of any segment of pipe or pipeline, or any other facility covered by the franchise agreement, a base construction charge established, and amended from time to time, by resolution of the City Council. (2319-10/78, 2676-2/84)

3.44.290 Adjustments--Base Annual Fee.

The amount of each base annual fee as specified in the above section shall be revised every year, in accordance with the following formula: (3889-9/10)

- (a) The Consumer Price Index, All Urban Consumers (CPI-U) for the Los Angeles-Riverside-Orange County area (1982-84=100) as published by the United States Bureau of Labor Statistics ("Bureau"), shall be defined as the "index," and such index as it stands on August 1, 2010 shall be defined as the "base index" and the index for the month of September immediately preceding the fee payment date shall be defined as the "current index;" (3889-9/10)
- (b) If the current index differs from the base index, then the base annual fee shall increase or decrease by the percentage increase or decrease between the current index and the base index, provided that, if the current index drops below the base index, no adjustment shall be made. The base annual fee shall be multiplied by an adjustment factor determined by dividing the current index by the base index. (3889-9/10)

For example, if the base index is 185.0 and the current index is 190.5, the annual franchise fee shall be (i.e. $190.5/185.0 = 1.0297$), times the base annual fee, provided however, under no circumstances shall the multiplying factor be less than one, nor shall the annual franchise fee calculated using said factor, be less than the base annual fee. If the Bureau shall revise the index, the parties hereto shall accept the method of revision for conversion recommended by the Bureau; and (3889-9/10)

- (c) If the Bureau discontinues the preparation or publication of the CPI-U, All Urban Consumers for the Los Angeles-Riverside-Orange County area (1982-84=100), and if no transposition table prepared by the Bureau is available, then the amount of each annual franchise fee shall be computed by reference to such other price index as may be chosen by the City, and the City shall be the sole judge of comparability of successive indices and its determination on this point shall be final and conclusive. In no event shall the annual franchise fee adjustment by reference to such other price index be less than the base annual fee as set forth herein. (3889-9/10)
- (d) **Publication and Administrative Issuance Costs.** The franchisee shall pay to the City within thirty (30) days after receiving a statement therefore, all administrative and other costs incurred by the City processing the application for a franchise, including but not limited to the preparation of any reports, statements or studies pursuant to the California Environmental Quality Act (Public resources Code Section 21000, et seq.) and any similar federal statute, or any successor statute, and for any and all advertising and publishing costs, including the cost of publishing the ordinance, if necessary, incurred in connection with the granting of the franchise. (3889-9/10)
- (e) The base annual fee may also be amended from time to time by resolution of the City Council. (3889-9/10)

3.44.300 Proration of Payments. In the event of abandonment of facilities with the approval of the City as elsewhere in this chapter provided, or in the event of removal of such facilities by the franchisee, or in the event of the grant of a franchise with an initial franchise payment period of less than one year, the annual franchise fee required under the aforementioned sections shall be prorated for the calendar year in which such removal or abandonment or grant occurs as of the end of the calendar month in which removed, abandoned or granted. (2319-10/78, 3889-9/10)

3.44.310 Records. Franchisee shall keep and preserve for a period of five (5) years subsequent to the date of the most recent franchise fee determination all the records necessary to determine the amount of such franchise fee.

At all reasonable times, the franchisee shall permit the City or its duly authorized representative to examine all property of the franchisee erected, constructed, laid, operated or maintained pursuant to the franchise, together with any appurtenant property of the franchisee, and to examine and transcribe any and all books, accounts, papers, maps, and other records kept or maintained by the franchisee or under its control which concern the operations, affairs, transactions, property or financial condition of the franchisee with respect thereto. Said records shall be made available to the City at a location in the County of Orange. (2319-10/78, 3889-9/10)

III. CONSTRUCTION

3.44.320 Construction Requirements. Pipelines and appurtenances shall be constructed and maintained in a good workmanlike manner in conformity with applicable law and the terms and conditions of any City ordinance, rule or regulation now, or as hereafter amended, adopted or prescribed by the City. All pipes pipelines and appurtenances will be installed in accordance with the latest revision of the "American Standard Code of Pressure Piping ASA B31.4." (2319-10/78, 3889-9/10)

3.44.330 New Installation or Replacement. New installations or replacements of pipelines and appurtenances and all other facilities necessary for the installation, operation, maintenance, and safety of pipelines and conduits shall be laid and maintained only pursuant to applicable law and permit issued by the Department. All such installations or replacements shall be reviewed by the Director as to the most desirable location in the streets of the City and his decision shall be final and binding on the franchisee. (2319-10/78, 3889-9/10)

3.44.340 Permits. Where the provisions of any City ordinance, resolution or regulation, which shall be in force at that time, require the issuance of an excavation, encroachment or other type of permit, the franchisee shall not commence any excavation or encroachment work under the franchise until it shall have obtained such permit from the Department except in cases of emergency affecting public health, safety or welfare or the preservation of life or property, in which case the franchisee shall apply for such permit not later than the next business day. (3889-9/10)

The application of the franchisee for such permit shall show the following facts: the length and proposed location of the pipeline and/or appurtenance intended to be installed, and such other facts as the Department may require. The franchisee shall pay any and all permit inspection fees required by the Department. (2319-10/78, 3889-9/10)

3.44.350 Work On and Restoration of Streets. The work of constructing, laying, replacing, maintaining, repairing or removing all pipelines and appurtenances authorized under the provisions of this chapter in, over, under, along or across any street shall be conducted with the least possible hindrance to the use of the street for purposes of travel. As soon as such work is completed, all portions of the street which have been excavated or otherwise damaged thereby shall promptly and in a workmanlike manner be repaired, replaced or restored and placed in as good condition as before the commencement of such work and shall be done to the satisfaction of the Director at the expense of the franchisee, and in accordance with the terms and conditions of any City ordinance, resolution or regulation. For streets that have been rehabilitated within three

(3) years prior to the proposed work, the City shall require the resurfacing, or other treatment, of the entire lane widths of the street as directed by the Director. For those streets that have not been rehabilitated by the City within three (3) years prior to the proposed work, the restoration shall be in full compliance with City requirements. All restoration, repair or replacement work shall be done to the satisfaction of the Director at the expense of the franchisee in accordance with all applicable law. In the event that the franchisee shall fail or neglect to make such highway repair, replacement or restoration work, ten (10) days after notice therefore has been given franchisee by the Director, the City may repair, replace or restore said highway at the expense of franchisee. Franchisee agrees to pay to the City the cost of performing such work. The amount so chargeable shall be the direct cost of such work plus the current rate of overhead being charged by the City for reimbursable work. (2319-10/78, 3889-9/10)

3.44.360 Failure to Comply Timely. In the event that the franchisee fails to complete the work within the time specified in the permit, the City may require the franchisee to pay to the City not more than five hundred dollars (\$500) per day as liquidated damages for each day construction extends beyond the time specified in the permit. (3889-9/10)

Whenever the franchisee fails to complete any work required by the terms and provisions of the franchise, and the permits issued thereunder, within the time limits required thereby, the City may complete or cause to be completed any and all such work at the expense of the franchisee. The franchisee agrees to pay to the City the cost of performing such work. The amount so chargeable to franchisee shall be the direct cost of such work plus the current rate of overhead being charged by the City for reimbursable work. (2319-10/78, 3889-9/10)

3.44.370 Completion Statement. Upon the completion of the construction of any pipelines or other facilities constructed pursuant to said franchise, the franchisee shall submit a statement to the Director, identifying the permit or permits issued by the Department, the total length of pipeline, pipeline material, diameter of pipeline, the construction of which was authorized under such permit or permits, and the total length of pipeline or facilities actually laid and as-built drawings. (2319-10/78, 3889-9/10)

3.44.371 Responsibility. In addition to any indemnification set forth herein, franchisee shall be specifically responsible to the City and shall save the City, its officers, agents, and employees, free and harmless from all damages or liability arising from any damage or injury suffered by any person by reason of any excavation or obstruction being improperly guarded during any work authorized pursuant to the franchise or the failure to neglect of the franchisee to properly perform, maintain, or protect any phase of such work. (3889-9/10)

3.44.380 Facilities. The franchisee shall have the right to construct, maintain and repair such traps, manholes, conduits, valves, appliances, attachments and other facilities as may be necessary or convenient for the proper maintenance and operation of the pipelines under said franchise, and said facilities shall be kept flush with the surface of the street and so located as to conform to applicable law including any ordinance, resolution or regulation of the City, or of any permit issued by the Department in regard thereto and shall not interfere with the use of the street for travel. The franchisee shall have the right subject to such ordinances, resolutions and regulations as are now or may hereafter be in force, to make all necessary excavations in said street for the construction, maintenance and repair of said facilities; provided, however, that the franchisee shall first obtain an excavation permit from the Department for doing any such work. (2319-10/78, 3889-9/10)

3.44.386 Shoring. The franchisee shall provide at its sole cost such shoring or other support as shall be reasonably required to support, maintain, and protect franchisee's facilities in connection with any storm drain or sewer construction by the City or in connection with any facility constructed by City, or by any successor agency. (3889-9/10)

3.44.390 Ordinary Repair. The franchisee shall be privileged to excavate in the road or street for line repair for the number of days agreed upon by the franchisee and the Department

provided, however, that the franchisee shall first obtain an excavation permit from the Department for the doing of any such work. (2319-10/78, 3889-9/10)

3.44.391 Relocation of Pipelines and Facilities. The City reserves the right to change the grade, to change the width or to alter or change the location of any street over which the franchise is granted. If any of the pipelines, facilities or appurtenances heretofore or hereafter constructed, installed or maintained by the franchisee pursuant to the franchise on, along, under, over, in, upon or across any street are located in a manner which conflict in any way with the change of grade, traffic needs, operation, maintenance, improvements, repair, construction, reconstruction, widening, alteration or relocation of the street, the franchisee shall relocate permanently or temporarily any such facility at no expense to the City upon receipt of a written request from the Director to do so, and shall commence such work on or before the day specified in such written request which date shall be not less than thirty (30) days from receipt of such written request. Franchisee shall thereafter diligently prosecute such work to completion. (3889-9/10)

The City reserves the right for itself, and all other public entities which are now or may later be established, to lay, construct, repair, alter, relocated and maintain subsurface or other facilities or improvements of any type or description in a governmental but not proprietary capacity within the streets over which the franchise is granted. If the City or any other public entity finds that the location or relocation of such facilities or improvements conflicts with the facilities laid, constructed or maintained under the franchise, whether such facilities were laid before or after the facilities of the City or such other public entity were laid, the franchisee of such franchise shall at no expense to the City or public entity, on or before the date specified in a written request from the Director, which date shall be not less than thirty (30) days after the receipt of such notice and request to do so, commence work to change the location either permanently or temporarily of all facilities so conflicting with such improvements to a permanent or temporary location in said streets to be approved by the Director and thereafter diligently prosecute such work to completion. (3889-9/10)

3.44.400 Breaks or Leaks. If any portion of the street shall be damaged by reason of breaks or leaks in any pipe, conduit, or appurtenance constructed or maintained under the franchise, the franchisee thereof shall, at its own expense, immediately following written or oral notification thereof, promptly repair any such damage and put such street in as good condition as it was in before such damage or leak, all to the satisfaction of the Department. The franchisee shall obtain an excavation permit from the Department for the doing of any such work. (2319-10/78, 3889-9/10)

3.44.410 Emergency Equipment. At all times during the term of this franchise, the franchisee shall maintain or arrange for, on a twenty-four (24) hour a day basis adequate emergency equipment and a properly trained emergency crew within a radius of twenty-five (25) miles from any facilities installed or maintained pursuant hereto for the purpose of shutting off the pressure and the flow of contents of such facilities in the event of an emergency resulting from an earthquake, act of war, civil disturbance, fire, flood, or any other cause or nature whatsoever. (2319-10/78)

3.44.420 Removal or Abandonment of Facilities.

- (a) At the expiration, revocation or termination of this franchise or the permanent discontinuance of the use of all or a portion of its facilities, the franchisee shall, within thirty (30) days thereafter make written application to the Director for authority either: (1) to abandon all or a portion of such facilities in place; or (2) to remove all or a portion of such facilities. Such application shall describe the facilities desired to be abandoned or removed by reference to the map or maps required by Section 3.44.080 and shall also describe with reasonable accuracy the physical condition of such facilities. The Director shall determine whether any abandonment or removal which is thereby proposed may be effected without detriment to the public interest and under what conditions such proposed abandonment or removal may be safely effected and shall then notify the franchisee of his determination. The franchisee shall

pay to the City the cost of all tests required to determine the disposition of the application for abandonment removal. (3889-9/10)

- (b) Within thirty (30) days after receipt of such notice, the franchisee shall apply for a permit from the Department to abandon or remove the facility and shall pay all fees and costs related thereto. Such permit is to contain the conditions of abandonment or removal as may be prescribed by the Director. Any abandonment shall be conditioned, in part, upon the franchisee's compliance with the provisions set forth in this Chapter. (3889-9/10)

The franchisee shall, within ninety (90) days after obtaining such permit commence and diligently prosecute to completion, the work authorized by the permit. If the franchisee applies for authority to abandon all or a portion of its facilities in place, and the Director determines that abandonment in place of all or part of the facilities may be affected without detriment to the public interest, the franchisee shall pay to the City a fee which shall be computed as follows:

| Pipelines with an Internal Diameter of | Amount per Lineal Foot |
|--|------------------------|
| 0-12 inches | \$15.00 |
| 14-18-inches | \$22.00 |
| 20-30 inches | \$28.00 |

(2319-10/78, 3889-9/10)

3.44.430 Failure to Comply.

- (a) If any facilities to be abandoned "in place" subject to prescribed conditions shall not be abandoned in accordance with all such conditions the Director may make additional appropriate orders, including an order that the franchisee shall remove any or all such facilities. The franchisee shall comply with such additional orders.
- (b) In the event that the franchisee shall fail to comply with the terms and conditions of abandonment or removal as may be required by this chapter and within such time as may be prescribed by the Director, the City may remove or cause to be removed such facilities at the franchisee's expense. The franchisee shall pay to the City the cost of such work plus the current rate of overhead being charged by the City for reimbursable work. (3889-9/10)
- (c) If, at the expiration, revocation or termination of this franchise, or of the permanent discontinuance of the use of all or a portion of its facilities, the franchisee shall, within thirty (30) days thereafter, fail or refuse to make written application for the abovementioned authority, the Director shall make the determination as to whether the facilities shall be abandoned in place or removed. The Director shall then notify the franchisee of his determination. The franchisee shall thereafter comply with the provisions of subsection (b) of section 3.44.420. (2319-10/78)

3.44.440 Abandonment "In Place" Conditions. Facilities abandoned "in place" shall be subject to the condition that if, at any time after the effective date of the abandonment, the Director determines that the facility may interfere with any public project, franchisee or its successor in interest must remove the facility at its expense when requested to do so by the City or to pay City for the cost of such removal. (2319-10/78, 3889-9/10)

3.44.447 Operation After Franchise Expiration – Revocable License. If a franchise is to expire within sixty days according to the franchise terms, and a new franchise has been requested, but has not yet been granted, the franchisee may request the Mayor and City Council to issue the franchisee a written revocable license, for a renewable term not to exceed one hundred twenty (120) days from the expiration of the franchise, permitting the franchisee to continue to locate its existing facilities in or upon public property in the City during the term of the license. The Mayor and City Council may issue such a revocable license, subject to any restrictions, terms, and conditions (including compensation), without limitation, that they deem

to be in the best interests of the City. Nothing herein requires the Mayor and City Council to grant such a revocable license, nor does the issuance of such a revocable license require that the Mayor and City Council grant the franchisee a new franchise. Upon request of the franchisee, the City Clerk shall provide a revocable license application form. (3850-1/10)

IV. SPECIAL PROVISIONS FOR PETROLEUM PIPELINES (3889-9/10)

3.44.450 Rights Granted. The franchisee granted a petroleum pipeline franchise shall have the right during the life thereof to transport oil, gas, gasoline, petroleum, wet gas and other hydrocarbon substances through the pipelines maintained under the franchise. If the franchisee or assignee later qualifies before the Public Utilities Commission of the State of California as a common carrier, the franchisee or assignee shall then have no right to continue to operate hereunder after the date of such qualification except with the consent of the Council, granted upon such additional terms and conditions as the Council may deem proper or as superseded by statute. Such additional terms and conditions shall be expressed by resolution.

(2319-10/78, 3889-9/10)

3.44.460 Materials Used. All pipelines used or to be used for the transportation of oil, gas, gasoline, petroleum, wet gas and other hydrocarbon substances shall be first class and standard material as set forth by current American Petroleum Institute pipeline specifications. (2319-10/78)

3.44.470 Approvals. On all pipelines laid pursuant to the franchise, the Director shall approve where flush-valve connections shall be placed in the line. The availability of adequate water supplies, the hydrocarbons transmitted in the line, and the location of control valves shall be considered when making such determination. Such flush-valve connections shall be installed in the manner prescribed by the Director. (2319-10/78)

3.44.480 Reports. The franchisee during the life of the franchise, within sixty (60) days after the expiration of each franchise payment period, shall:

- (a) File with the Director two copies of a verified report of the franchisee showing for the immediately preceding franchise period, the length of lines in streets, the internal diameter of such lines, the rate per foot per year and the total amount due the City. (3889-9/10)
- (b) File with the Director a report in triplicate, showing the permit number of each permit obtained for the installation of new mains during the immediately preceding franchise payment period, together with the length and size of said mains. On this report the franchisee shall show any change in franchise footage since the last franchise payment period segregating such footage as to new mains laid, old mains removed, old mains abandoned in place, and the footage of mains in territory annexed or incorporated since the last franchise payment period. (2319-10/78)
- (c) All payments should be mailed to the City Treasurer, City of Huntington Beach, P.O. Box 711, Huntington Beach, CA 92648-0711. (3889-9/10)

3.44.490 Payments Due. Except for pipelines lawfully maintained other than by the authority granted by the franchise, the semi-annual payments shall accrue from the respective dates of installation, whether before or after the effective date of the franchise agreement, and such payments, together with the initial construction charges, if any, shall be due and payable semi-annually. (2319-10/78, 3889-9/10)

3.44.500 Cost of relocation. Franchisee shall bear the costs of removing and relocating its facilities used and maintained under this franchise if made necessary by any lawful change of grade, alignment or width of any public street, way, alley or place, or for any public project, even if franchisee's facilities are located on a private easement. If the grantee after reasonable notice, fails or refuses to relocate permanently or temporarily its facilities located in, on, upon, along, under, over, across or above any highway or to pave, surface, grade, repave, resurface or regrade

as required, pursuant to any provision of the franchise, the City or other public entity may cause the work to be done and shall keep an itemized account of the entire cost thereof, and the grant shall hold harmless the City, its officers and employees from any liability which may arise or be claimed to arise from the moving, cutting, or alteration of any of the grantee's facilities, or the turning on or off of water, oil, or other liquid, gas, or electricity. (2319-10/78, 3889-9/10)

EXHIBIT D
REINSTATEMENT FEE PAYMENT SCHEDULE

INITIAL BALANCE: \$639,753.92

MONTHLY PAYMENT: \$5,331.28

| Month | Payment | Balance | Month | Payment | Balance | Month | Payment | Balance |
|-------|------------|--------------|-------|------------|--------------|-------|------------|--------------|
| 1 | \$5,331.28 | \$634,422.64 | 42 | \$5,331.28 | \$415,840.16 | 83 | \$5,331.28 | \$197,257.68 |
| 2 | \$5,331.28 | \$629,091.36 | 43 | \$5,331.28 | \$410,508.88 | 84 | \$5,331.28 | \$191,926.40 |
| 3 | \$5,331.28 | \$623,760.08 | 44 | \$5,331.28 | \$405,177.60 | 85 | \$5,331.28 | \$186,595.12 |
| 4 | \$5,331.28 | \$618,428.80 | 45 | \$5,331.28 | \$399,846.32 | 86 | \$5,331.28 | \$181,263.84 |
| 5 | \$5,331.28 | \$613,097.52 | 46 | \$5,331.28 | \$394,515.04 | 87 | \$5,331.28 | \$175,932.56 |
| 6 | \$5,331.28 | \$607,766.24 | 47 | \$5,331.28 | \$389,183.76 | 88 | \$5,331.28 | \$170,601.28 |
| 7 | \$5,331.28 | \$602,434.96 | 48 | \$5,331.28 | \$383,852.48 | 89 | \$5,331.28 | \$165,270.00 |
| 8 | \$5,331.28 | \$597,103.68 | 49 | \$5,331.28 | \$378,521.20 | 90 | \$5,331.28 | \$159,938.72 |
| 9 | \$5,331.28 | \$591,772.40 | 50 | \$5,331.28 | \$373,189.92 | 91 | \$5,331.28 | \$154,607.44 |
| 10 | \$5,331.28 | \$586,441.12 | 51 | \$5,331.28 | \$367,858.64 | 92 | \$5,331.28 | \$149,276.16 |
| 11 | \$5,331.28 | \$581,109.84 | 52 | \$5,331.28 | \$362,527.36 | 93 | \$5,331.28 | \$143,944.88 |
| 12 | \$5,331.28 | \$575,778.56 | 53 | \$5,331.28 | \$357,196.08 | 94 | \$5,331.28 | \$138,613.60 |
| 13 | \$5,331.28 | \$570,447.28 | 54 | \$5,331.28 | \$351,864.80 | 95 | \$5,331.28 | \$133,282.32 |
| 14 | \$5,331.28 | \$565,116.00 | 55 | \$5,331.28 | \$346,533.52 | 96 | \$5,331.28 | \$127,951.04 |
| 15 | \$5,331.28 | \$559,784.72 | 56 | \$5,331.28 | \$341,202.24 | 97 | \$5,331.28 | \$122,619.76 |
| 16 | \$5,331.28 | \$554,453.44 | 57 | \$5,331.28 | \$335,870.96 | 98 | \$5,331.28 | \$117,288.48 |
| 17 | \$5,331.28 | \$549,122.16 | 58 | \$5,331.28 | \$330,539.68 | 99 | \$5,331.28 | \$111,957.20 |
| 18 | \$5,331.28 | \$543,790.88 | 59 | \$5,331.28 | \$325,208.40 | 100 | \$5,331.28 | \$106,625.92 |
| 19 | \$5,331.28 | \$538,459.60 | 60 | \$5,331.28 | \$319,877.12 | 101 | \$5,331.28 | \$101,294.64 |
| 20 | \$5,331.28 | \$533,128.32 | 61 | \$5,331.28 | \$314,545.84 | 102 | \$5,331.28 | \$95,963.36 |
| 21 | \$5,331.28 | \$527,797.04 | 62 | \$5,331.28 | \$309,214.56 | 103 | \$5,331.28 | \$90,632.08 |
| 22 | \$5,331.28 | \$522,465.76 | 63 | \$5,331.28 | \$303,883.28 | 104 | \$5,331.28 | \$85,300.80 |
| 23 | \$5,331.28 | \$517,134.48 | 64 | \$5,331.28 | \$298,552.00 | 105 | \$5,331.28 | \$79,969.52 |
| 24 | \$5,331.28 | \$511,803.20 | 65 | \$5,331.28 | \$293,220.72 | 106 | \$5,331.28 | \$74,638.24 |
| 25 | \$5,331.28 | \$506,471.92 | 66 | \$5,331.28 | \$287,889.44 | 107 | \$5,331.28 | \$69,306.96 |
| 26 | \$5,331.28 | \$501,140.64 | 67 | \$5,331.28 | \$282,558.16 | 108 | \$5,331.28 | \$63,975.68 |
| 27 | \$5,331.28 | \$495,809.36 | 68 | \$5,331.28 | \$277,226.88 | 109 | \$5,331.28 | \$58,644.40 |
| 28 | \$5,331.28 | \$490,478.08 | 69 | \$5,331.28 | \$271,895.60 | 110 | \$5,331.28 | \$53,313.12 |
| 29 | \$5,331.28 | \$485,146.80 | 70 | \$5,331.28 | \$266,564.32 | 111 | \$5,331.28 | \$47,981.84 |
| 30 | \$5,331.28 | \$479,815.52 | 71 | \$5,331.28 | \$261,233.04 | 112 | \$5,331.28 | \$42,650.56 |
| 31 | \$5,331.28 | \$474,484.24 | 72 | \$5,331.28 | \$255,901.76 | 113 | \$5,331.28 | \$37,319.28 |
| 32 | \$5,331.28 | \$469,152.96 | 73 | \$5,331.28 | \$250,570.48 | 114 | \$5,331.28 | \$31,988.00 |
| 33 | \$5,331.28 | \$463,821.68 | 74 | \$5,331.28 | \$245,239.20 | 115 | \$5,331.28 | \$26,656.72 |
| 34 | \$5,331.28 | \$458,490.40 | 75 | \$5,331.28 | \$239,907.92 | 116 | \$5,331.28 | \$21,325.44 |
| 35 | \$5,331.28 | \$453,159.12 | 76 | \$5,331.28 | \$234,576.64 | 117 | \$5,331.28 | \$15,994.16 |
| 36 | \$5,331.28 | \$447,827.84 | 77 | \$5,331.28 | \$229,245.36 | 118 | \$5,331.28 | \$10,662.88 |
| 37 | \$5,331.28 | \$442,496.56 | 78 | \$5,331.28 | \$223,914.08 | 119 | \$5,332.28 | \$5,330.60 |
| 38 | \$5,331.28 | \$437,165.28 | 79 | \$5,331.28 | \$218,582.80 | 120 | \$5,330.60 | \$0.00 |
| 39 | \$5,331.28 | \$431,834.00 | 80 | \$5,331.28 | \$213,251.52 | | | |
| 40 | \$5,331.28 | \$426,502.72 | 81 | \$5,331.28 | \$207,920.24 | | | |
| 41 | \$5,331.28 | \$421,171.44 | 82 | \$5,331.28 | \$202,588.96 | | | |

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss:
CITY OF HUNTINGTON BEACH)

I, JOAN L. FLYNN, the duly elected, qualified City Clerk of the City of Huntington Beach, and ex-officio Clerk of the City Council of said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing ordinance was read to said City Council at a **Regular** meeting thereof held on **January 21, 2014**, and was again read to said City Council at a **Regular** meeting thereof held on **February 3, 2014**, and was passed and adopted by the affirmative vote of at least a majority of all the members of said City Council.

AYES: Sullivan, Hardy, Harper, Boardman, Carchio, Shaw, Katapodis

NOES: None

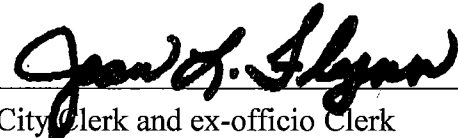
ABSENT: None

ABSTAIN: None

I, Joan L. Flynn, CITY CLERK of the City of Huntington Beach and ex-officio Clerk of the City Council, do hereby certify that a synopsis of this ordinance has been published in the Huntington Beach Fountain Valley Independent on February 13, 2014.
In accordance with the City Charter of said City

Joan L. Flynn, City Clerk

Senior Deputy City Clerk



City Clerk and ex-officio Clerk
of the City Council of the City
of Huntington Beach, California