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CITY OF SEATTLE
ORDINANCE 127176
COUNCIL BILL 120846

AN ORDINANCE granting Triton West LLC permission to maintain and operate a pipeline system in, under, along, and across 13th Avenue Southwest and Southwest Florida Street, for a twenty-year term; repealing Section 8 of Ordinance 123990; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

WHEREAS, by Ordinance 123990, The City of Seattle (“City”) granted permission to Equilon Enterprises LLC dba Shell Oil Products US to maintain and operate a pipeline system in, under, and across 13th Avenue Southwest and Southwest Florida Street at Harbor Island; and

WHEREAS, Triton West LLC assumed ownership of property known as King County parcel number 7666702650 from Equilon Enterprises LLC in 2018; and

WHEREAS, the permission authorized by Ordinance 123990 ended on February 28, 2022; and

WHEREAS, the obligations of Ordinance 123990 remain in effect after the ordinance term expires until the encroachment is removed, or Triton West LLC is relieved of the obligations by the Seattle Department of Transportation Director, or the Seattle City Council passes a new ordinance to renew the permission granted; and

WHEREAS, Triton West LLC has applied for permission to continue to maintain and operate the existing pipeline system in, under, along, and across 13th Avenue Southwest and Southwest Florida Street at Harbor Island, for the purposes of transmitting petroleum products between the oil storage plant and dock site on Harbor Island (“pipeline system”); and

1 WHEREAS, the existing pipeline system located in, under, along, and across 13th Avenue
2 Southwest and Southwest Florida Street (encroachment) has not been removed and
3 remains in the right-of-way; and

4 WHEREAS, the adoption of this ordinance is the culmination of the approval process for the
5 pipeline system to legally occupy a portion of the public right-of-way;

6 NOW, THEREFORE,

7 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

8 Section 1. **Permission.** Subject to the terms of the ordinance, permission is granted to
9 Triton West LLC (Permittee) and its successors and assigns, to maintain, operate a system of
10 pipe lines, together with all manholes, valves, appurtenances and service connections, including
11 telephone lines in conduits, used in connection with and necessary for the operation of the pipe
12 lines (pipeline system), under, along, across, and in 13th Avenue Southwest and Southwest
13 Florida Street, all within the following described property:

14 (a) a strip of land 20 feet in width, the center line of which is described as follows:
15 Beginning at a point 21.58 feet due South of the Northeast corner of Lot 47, Block 403,
16 Seattle Tidelands, as shown in the official records of the City of Seattle, County of King,
17 State of Washington; thence North 76°42'13" East, a distance of 20.55 feet to a point;
18 thence North 45°00' East, a distance of 84.85 feet; thence due North a distance of 232.65
19 feet to a point on the North boundary line produced, of Southwest Florida Street located
20 10.28 feet South 76°42'13" West of the Northeast corner of Southwest Florida Street and
21 13th Avenue Southwest; and

22
23 (b) a strip of land 13 feet in width, the center line of which is described as follows:
24 Beginning at a point on the North boundary line produced, of Southwest Florida Street
25 and located 6.68 feet South 76°42'13" West of the Northeast corner of Southwest Florida
26 Street and 13th Avenue Southwest; thence due North parallel to the East line of 13th
27 Avenue Southwest and distant westerly therefrom 6.5 feet, a distance of 862.2 feet more
28 or less to a point in the South line of Lot 2, Block G, of the Frink Waterfront Addition,
29 located 34.42 feet North 76°42'13" East of the Southwest corner of the above described
30 Lot 2; and
31

1 (c) a strip of land 60 feet in width, the center line of which is described as follows:
2 Beginning at a point on the North boundary line produced, of Southwest Florida Street
3 which is 13.36 feet South 76°42'13" West of the Northeast corner of Southwest Florida
4 Street and 13th Avenue Southwest; thence due North parallel with the East line of 13th
5 Avenue Southwest and distant westerly therefrom 13 feet, a distance of 105 feet the true
6 point of the beginning of the centerline; thence West 67 feet to the West line of 13th
7 Avenue Southwest and the terminus of the centerline;

8
9 Connecting and adjacent in whole or in part to the properties described as:

10
11 Lot 47, Block 403, plat of Seattle Tidelands, King County, Washington as recorded in
12 Special Warranty Deed No. 9904192410; and

13
14 That portion of Lot 1, Block F, lying east of the prolongation of the west line of 13th
15 Avenue Southwest, Frink's Waterfront Addition, according to the plat recorded in
16 Volume 12 of Plats, page 89, in King County, Washington as recorded in Special
17 Warranty Deed No. 9904192410.

18
19 Section 2. **Term.** The permission granted to the Permittee is for a term of twenty years,
20 starting on the effective date of this ordinance, and ending at 11:59 on the last day of the
21 twentieth year. This is the final term authorized by Ordinance 123990, subject to the right of the
22 City to require the removal of the pipeline system or to revise by ordinance any of the terms and
23 conditions of the permission granted by this ordinance. The Permittee shall submit any
24 application for a new permission no later than one year prior to the expiration of the then-
25 existing term.

26 Section 3. **Protection of utilities.** The permission granted is subject to the Permittee
27 bearing the expense of any protection, support or relocation of existing utilities deemed
28 necessary by the owners of the utilities and the Permittee being responsible for any damage to
29 the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of
30 the pipeline system, and for any consequential damages that may result from any damage to
31 utilities or interruption in service caused by any of the foregoing.

1 Section 4. **Removal for public use or for cause.** The permission granted is subject to use
2 of the street right-of-way or other public place (collectively, “public place”) by the City and the
3 public for travel, utility purposes, and other public uses or benefits. The City expressly reserves
4 the right to deny renewal, or terminate the permission at any time prior to expiration of the initial
5 term or any renewal term, and require the Permittee to remove the pipeline system, or any part
6 thereof or installation on, in or under the public place, at the Permittee’s sole cost and expense in
7 the event that:

8 A. The City Council determines by ordinance that the space occupied by the pipeline
9 system is necessary for any public use or benefit or that the pipeline system interferes with any
10 public use or benefit; or

11 B. The Director determines that use of the pipeline system has been abandoned; or

12 C. The Director determines that any term or condition of this ordinance has been violated,
13 and the violation has not been corrected by the Permittee by the compliance date after a written
14 request by the City to correct the violation (unless a notice to correct is not required due to an
15 immediate threat to the health or safety of the public).

16 A City Council determination that the space is needed for, or the pipeline system
17 interferes with, a public use or benefit is conclusive and final without any right of the Permittee
18 to resort to the courts to adjudicate the matter.

19 Section 5. **Permittee’s obligation to remove and restore.** If the permission granted is
20 not renewed at the expiration of a term, or if the permission expires without an application for a
21 new permission being granted, or if the City terminates the permission, then within 90 days after
22 the expiration or termination of the permission, or prior to any earlier date stated in an ordinance
23 or order requiring removal of the pipeline system, the Permittee shall, at its own expense, remove

1 the pipeline system and all of the Permittee’s equipment and property from the public place and
2 replace and restore all portions of the public place that may have been disturbed for any part of
3 the pipeline system in as good condition for public use as existed prior to construction of the
4 pipeline system and in at least as good condition in all respects as the abutting portions of the
5 public place as required by Seattle Department of Transportation (SDOT) right-of-way
6 restoration standards.

7 Failure to remove the pipeline system as required by this section is a violation of Chapter
8 15.90 of the Seattle Municipal Code (SMC) or successor provision; however, applicability of
9 Chapter 15.90 does not eliminate any remedies available to the City under this ordinance or any
10 other authority. If the Permittee does not timely fulfill its obligations under this section, the City
11 may in its sole discretion remove the pipeline system and restore the public place at the
12 Permittee’s expense, and collect such expense in any manner provided by law.

13 Upon the Permittee’s completion of removal and restoration in accordance with this
14 section, or upon the City’s completion of the removal and restoration and the Permittee’s
15 payment to the City for the City’s removal and restoration costs, the Director shall then issue a
16 certification pursuant to Section 8 of this ordinance. Upon prior notice to the Permittee and entry
17 of written findings that it is in the public interest, the Director may, in the Director’s sole
18 discretion, conditionally or absolutely excuse the Permittee from compliance with all or any of
19 the Permittee’s obligations under this section.

20 Section 6. **Repair or reconstruction.** The pipeline system shall remain the exclusive
21 responsibility of the Permittee and the Permittee shall maintain the pipeline system in good and
22 operational condition to ensure the continued use of the City’s right-of-way for the traveling
23 public. The Permittee shall not reconstruct or repair the pipeline system except in strict

1 accordance with plans and specifications approved by the Director including but not limited to
2 approved traffic management plans that ensure continued use of the rights-of-way during any
3 construction or modification of the pipeline system. The Director may, in the Director's
4 judgment, order the pipeline system reconstructed or repaired at the Permittee's cost and expense
5 because of: the installation, construction, reconstruction, maintenance, operation, or repair of any
6 municipally-owned public utilities; to ensure that individuals may continue to use the City right-
7 of-way for travel or for any other cause.

8 **Section 7. Failure to correct unsafe condition.** After written notice to the Permittee and
9 failure of the Permittee to correct any unsafe conditions within the time stated in the notice, the
10 Director may order that the pipeline system be closed or removed at the Permittee's expense if
11 the Director deems that the pipeline system has become unsafe or creates a risk of injury to the
12 public. If there is an immediate threat to the health or safety of the public, a notice to correct is
13 not required.

14 **Section 8. Violation of any term or condition of the ordinance.** After written notice to
15 the Permittee that a term or condition of this ordinance has been violated and failure of the
16 Permittee to correct the violation within the time stated in the notice, the Director may order the
17 pipeline system be decommissioned and closed-in-place or removed at the Permittee's expense.

18 **Section 9. Continuing obligation to remove and restore.** Notwithstanding termination
19 or expiration of the permission granted, or closure or removal of the pipeline system, the
20 Permittee shall remain bound by its obligation under this ordinance until:

21 A. The pipeline system and all its equipment and property are removed from the street
22 right-of-way;

1 B. The area is cleared and restored in a manner and to a condition satisfactory to the
2 Director; and

3 C. The Director certifies that the Permittee: (i) has fulfilled its removal and restoration
4 obligations under this ordinance; and (ii) has discharged its obligations under this ordinance for
5 occurrences after the date of the certificate.

6 Notwithstanding the issuance of that certification, the Permittee shall continue to be bound
7 by the obligations in Section 9 and 10 of this ordinance and shall remain liable for any unpaid
8 fees assessed under Section 17 of this ordinance.

9 Upon prior notice to the Permittee and entry of written findings that it is in the public
10 interest, the Director may, in the Director's sole discretion, conditionally or absolutely excuse the
11 Permittee from compliance with all or any of the Permittee's obligations to remove the pipeline
12 system and its property and to restore any disturbed areas, including, for the avoidance of doubt,
13 Permittee's obligations under Section 5 of this ordinance.

14 Section 10. **Release, hold harmless, indemnification, and duty to defend.** The pipeline
15 system shall remain the exclusive responsibility of the Permittee, and the Permittee agrees to
16 maintain the pipeline system in good and safe condition. The Permittee, by accepting the terms
17 of this ordinance and the permission granted, releases the City, its officials, officers, employees,
18 and agents from any and all claims, actions, suits, liability, loss, costs, expense, attorney's fees,
19 or damages of every kind and description arising out of or by reason of the pipeline system or
20 this ordinance, including but not limited to claims resulting from injury, damage, or loss to the
21 Permittee or the Permittee's property.

22 The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its
23 officials, officers, employees, and agents from and against all claims, actions, suits, liability,

1 loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only
2 damages that may result from the sole negligence of the City, that may accrue to, be asserted by,
3 or be suffered by any person or property including, without limitation, damage, death or injury to
4 members of the public or to the Permittee's officers, agents, employees, contractors, invitees,
5 tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

6 A. The existence, condition, construction, reconstruction, modification, maintenance,
7 operation, use, or removal of the pipeline system;

8 B. Anything that has been done or may at any time be done by the Permittee by reason of
9 this ordinance; or

10 C. The Permittee failing or refusing to strictly comply with every provision of this
11 ordinance; or arising out of or by reason of the pipeline system, or this ordinance in any other
12 way.

13 If any suit, action, or claim of the nature described above is filed, instituted, or begun
14 against the City, the Permittee shall upon notice from the City defend the City, with counsel
15 acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is
16 rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment
17 within 90 days after the action or suit has been finally determined, if determined adversely to the
18 City. If it is determined by a court of competent jurisdiction that Revised Code of Washington
19 (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or
20 result from the concurrent negligence of the City, its agents, contractors, or employees, and the
21 Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and
22 enforceable only to the extent of the negligence of the Permittee or the Permittee's agents,
23 contractors, or employees.

1 Section 11. **Environmental Indemnity Agreement.** The permission granted is subject to
2 the Permittee executing a separate Environmental Indemnity Agreement in a form provided by
3 the City. The Permittee shall, within 60 days of the effective date of this ordinance, deliver to the
4 Director upon a form to be supplied by the Director, an environmental indemnity agreement
5 imposing the obligations and conditions set forth in this ordinance, signed and acknowledged by
6 the Permittee. The Director shall file the environmental indemnity agreement with the City
7 Clerk.

8 Section 12. **Insurance.** For as long as the Permittee exercises any permission granted by
9 this ordinance and until the Director has issued a certification that the Permittee has fulfilled its
10 removal and restoration obligations under Section 8 of this ordinance, the Permittee shall obtain
11 and maintain in full force and effect, at its own expense, insurance and/or self-insurance that
12 protects the Permittee and the City from claims and risks of loss from perils that can be insured
13 against under commercial general liability (CGL) insurance policies in conjunction with:

14 1. Reconstruction, modification, operation, maintenance, use, existence, or removal of the
15 pipeline system, as well as restoration of any disturbed areas of the public place in connection
16 with removal of the pipeline system;

17 2. The Permittee’s activity upon or the use or occupation of the public place described in
18 Section 1 of this ordinance; and

19 3. Claims and risks in connection with activities performed by the Permittee by virtue of
20 the permission granted by this ordinance.

21 No Limitation of Liability - Insurance coverage and insurance limits of liability as
22 specified herein are minimum coverage and limit of liability requirements only. Nothing in the

1 City of Seattle’s requirements for minimum insurance coverage shall be interpreted to limit or
2 release liability of the Consultant or any of the Consultant’s insurers.

3 Minimum insurance requirements are CGL insurance written on an occurrence form at
4 least as broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance
5 coverage to be placed with an insurer admitted and licensed to conduct business in Washington
6 State or with a surplus lines carrier pursuant to chapter 48.15 RCW. If coverage is placed with
7 any other insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject
8 to the provisions of this ordinance regarding self-insurance.

9 Permittee shall maintain in full force and effect at Permittee’s sole cost and expense, and
10 Permittee shall ensure that its contractors and subcontractors of all tiers contracted for
11 reconstruction, modification, operation, maintenance, use, existence or removal of the pipeline
12 system in accordance with this Ordinance shall maintain in full force and effect during the
13 periods stated, minimum types of insurance coverages with such minimum limits of liability and
14 meeting such general conditions as are set forth below.

15 Minimum limits of liability shall be \$5,000,000 per Occurrence; \$10,000,000 General
16 Aggregate; Contractual Liability and may be in any combination of primary and umbrella/excess
17 liability policies. Coverage shall include the “City of Seattle, its officers, officials, employees
18 and agents” as additional insureds for primary and non-contributory limits of liability subject to a
19 Separation of Insureds clause.

20 If the reconstruction, modification, operation, maintenance, use, existence, or removal of
21 the pipeline system is contracted, applicable minimum coverages and limits of liability may be
22 evidenced by any contractor or subcontractor provided that such insurance fully meets the
23 applicable requirements set forth herein.

1 Notwithstanding, Permittee shall have authority to determine and adjust insurance
2 coverage and limits for contractor or subcontractors contracted for reconstruction, modification,
3 operation, maintenance, use, existence or removal of the pipeline system, provided that any
4 adjustment or modification to subcontractor insurance requirements shall not reduce or modify
5 Permittee’s obligations under this Agreement.

6 CGL insurance must include coverage for:

- 7 1. Premises/Operations;
- 8 2. Personal/Advertising Injury;
- 9 3. Contractual;
- 10 4. Independent Contractors; and
- 11 5. Stop Gap (unless insured as Employers Liability under Part B. of a Workers
12 Compensation Insurance Policy).

13 Such insurance must provide a minimum limit of liability of \$1,000,000 each Occurrence
14 Combined Single Limit Bodily Injury and Property Damage (CSL) except \$1,000,000 each
15 Offense Personal/Advertising Injury and \$1,000,000 each Accident/ Disease – Policy Limit/
16 Disease – each Employee Stop Gap or Employers Liability. Permittee’s, and, if applicable, its
17 contractor’s or subcontractor’s, CGL insurance must not exclude perils generally known as XCU
18 (Explosion, Collapse and Underground Property Damage), Subsidence, Absolute Earth
19 Movement (except as respects earthquake peril only) or any equivalent peril.

20 Automobile Liability for owned, non-owned, hired, and leased vehicles, as applicable, with
21 a minimum limit of liability of \$1,000,000 CSL. If pollutants are to be transported, MCS 90 and
22 CA 99 48 endorsements are required on the Automobile Liability insurance policy unless in-transit
23 pollution risk is covered under a Pollution Liability insurance policy.

1 Permittee, and, if applicable, its contractors or subcontractors, must comply with Workers'
2 Compensation coverage as required by Title 51 RCW (Industrial Insurance).

3 Permittee, and, if applicable, its contractors or subcontractors, shall provide a Pollution
4 Liability policy for pollutants that are or may be remediated on or off-site covering claims,
5 including investigation, defense, or settlement costs and expenses that involve bodily injury and
6 property damage (including natural resources damages and loss of use of tangible property that
7 has not been physically injured) covering:

8 1. Pollution conditions caused or made worse by Permittee, and, if applicable, its
9 contractors or subcontractors, including clean-up costs for a newly caused condition or a
10 historical condition that is made worse.

11 2. In-Transit Pollution Liability.

12 3. The vicarious liability of contractors or subcontractors of any tier (if applicable).

13 Such Pollution Liability insurance shall provide a minimum limit of liability of
14 \$5,000,000 each claim with a minimum aggregate limit of 200 percent of each claim limit. With
15 respect to any reconstruction project for the pipeline system, there shall be no requirement for a
16 dedicated reconstruction project aggregate limit provided that Permittee, its contractors or
17 subcontractors shall (1) cause to be submitted to the City prior to the Notice to Proceed date with
18 its insurance certification a written statement from its authorized insurance representative that the
19 full minimum aggregate limit is available and has not been impaired by any claims reserved on
20 another project, and (2) thereafter, until the completion of the reconstruction project, Permittee,
21 its contractors or subcontractors shall provide notice in writing to the City within ten days of
22 Permittee's, contractor's or subcontractor's constructive knowledge of any pending or actual
23 impairment of the aggregate limit. If in-Transit Pollution Liability is required but it is not

1 provided under the Automobile Liability, then Permittee, and, if applicable, its contractors or
2 subcontractors, must provide evidence of In-Transit Pollution Liability transportation coverage
3 under Permittee's, and, if applicable, its contractor's or subcontractor's, Pollution Liability
4 policy.

5 Permittee, and, if applicable, its contractors or subcontractors, shall provide minimum
6 Excess or Umbrella Liability coverage limits of \$5,000,000 each occurrence in excess of the
7 primary CGL and Automobile liability insurance limits specified in Section 10. The minimum
8 total limits requirement of \$5,000,000 may also be satisfied with primary CGL and/or
9 Automobile liability insurance limits or any combination of primary and excess/umbrella limits.

10 Prior to mobilization on-site of its contractor or any subcontractor of any tier contracted
11 for reconstruction of the pipeline system, Permittee shall maintain, or cause to be maintained by
12 its contractor, not at City's expense, Builder's Risk Property insurance, and Permittee shall
13 ensure that such insurance shall be in effect at all times during new construction or structural
14 alteration and shall not be terminated until the physical completion thereof. Such insurance shall:

15 1. Cover all portions of the pipeline system subject to such reconstruction,
16 including all new structures and existing structures that are to be structurally altered (but
17 excluding existing structures to be demolished) and all materials, equipment, supplies and
18 temporary structures being built or stored at or near the construction site, or while in transit;

19 2. Provide "All Risk" coverage in an amount equal to the current 100 percent
20 completed value replacement cost of all property on the pipeline system subject to such
21 reconstruction required to be covered, including the value of existing structures that have been
22 structurally altered (including allowance for "soft costs") against loss from the perils of fire and

1 other risks of direct physical loss not less broad than provided by the insurance industry standard

2 Causes of Loss – Special Form CP 10 30;

3 3. If so required in writing by the City, include earth movement including
4 earthquake and flood perils and such other endorsements and coverages as the City may from
5 time to time reasonably require and any other insurance required by law or by the terms of this
6 ordinance;

7 4. Remain in force until coverage for Permittee’s Permanent Property Insurance
8 complying with this section is bound;

9 5. Provide that payment of deductibles are the responsibility of Permittee, and, if
10 applicable, its contractor or subcontractors, except for: (i) earth movement including earthquake
11 or flood claims: or (ii) all risks claims to the extent damage is not caused by the negligent acts of
12 Permittee, and, if applicable, its contractor or any subcontractor;

13 6. Include the City of Seattle as loss payee as its interest may appear; and

14 7. Be endorsed to cover the interests, as they may appear, of contractors and
15 subcontractors of all tiers (if applicable).

16 Failure on the part of Permittee, and, if applicable, its contractors or subcontractors, to
17 maintain the insurance as required constitutes a material breach of this ordinance, on which the
18 City may, after giving five business days’ notice to Permittee, and, if applicable, its contractor or
19 subcontractor, to correct the breach, may immediately terminate the ordinance or, at its
20 discretion, procure or renew such insurance and pay any and all premiums in connection
21 therewith, with any sums so expended to be repaid to the City on demand.

22 Unless otherwise approved in advance by the City’s Risk Manager in writing, any
23 deductible in excess of \$50,000 or self-insured retention (SIR) in excess of \$50,000 that is not

1 fronted by an insurer must be disclosed and is subject to the City’s Risk Manager’s approval.
2 Upon request by the City, Permittee, and, if applicable, its contractors or subcontractors, must
3 furnish financial information that the City may reasonably require to assess Permittee’s, and, if
4 applicable, its contractor’s or subcontractor’s risk bearing capacity, and must provide a written
5 statement that Permittee, and, if applicable, its contractors or subcontractors, will defend and
6 indemnify the City against any claim within Permittee’s, and, if applicable, its contractor’s or
7 subcontractor’s, SIR and is responsible for the cost of any payments for defense and indemnity
8 falling within the SIR at least to the same extent that coverage would be afforded to the City
9 under the relevant insurance policy meeting the requirements stated herein.

10 Insurers shall be licensed to do business in the State of Washington and shall maintain
11 not less than an A- VII A.M. Best’s ratings unless coverage is procured as surplus lines under
12 chapter 48.15 RCW (“Unauthorized Insurers”). Coverage shall not be cancellable without at least
13 30 days’ advance written notice of cancellation, except ten days with respect to cancellation for
14 non-payment of premium. CGL, Auto, and Employer’s Liability insurance required to be
15 maintained by Permittee hereunder shall contain a waiver of subrogation in favor of the City.
16 CGL insurance maintained by Permittee shall include the “City, its officers, elected officials,
17 employees, agents, and volunteers” as additional insureds for primary and non-contributory
18 limits of liability.

19 The Permittee shall each deliver to the City Certificates of Liability Insurance issued in
20 conformance with prevailing established market practice evidencing compliance with the
21 minimum levels of coverages and limits of liability and meeting general conditions stated herein,
22 including but not limited to provision for notice of cancellation as specified herein. At any time

1 upon the City’s request, Permittee, and, if applicable, its contractors or subcontractors, must
2 forward to the City a true and certified copy of any insurance policy(s).

3 Within 60 days after the effective date of this ordinance, the Permittee shall provide to
4 the City, or cause to be provided, certification of insurance coverage including an actual copy of
5 the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement
6 or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to
7 SDOT at an address as the Director may specify in writing from time to time. The Permittee shall
8 provide a certified complete copy of the insurance policy to the City promptly upon request.

9 If the Permittee is self-insured, a letter of certification from an authorized representative
10 of the Permittee may be submitted in lieu of the insurance coverage certification required by this
11 ordinance, if approved in writing by the City’s Risk Manager. The letter of certification must
12 provide all information required by the City’s Risk Manager and document, to the satisfaction of
13 the City’s Risk Manager, that self-insurance equivalent to the insurance requirements of this
14 ordinance is in force. After a self-insurance certification is approved, the City may from time to
15 time subsequently require updated or additional information. The approved self-insured
16 Permittee must provide 30 days’ prior notice of any cancellation or material adverse financial
17 condition of its self-insurance program. The City’s Risk Manager may at any time revoke
18 approval of self-insurance; provided that in order to make any such revocation, the City must, in
19 its reasonable discretion, determine that circumstances exist that would materially and adversely
20 affect Permittee’s ability to sustain its previously approved self-insurance, and following such
21 revocation, the City shall require the Permittee to obtain and maintain insurance as specified in
22 this ordinance.

1 In the event that the Permittee assigns or transfers the permission granted by this
2 ordinance, the Permittee shall maintain in effect the insurance required under this section until
3 the Director has approved the assignment or transfer pursuant to Section 16 of this ordinance.

4 Notwithstanding anything to the contrary contained herein, any of the insurance required
5 to be held by Permittee pursuant to this ordinance may be covered under an umbrella, blanket, or
6 similar policy.

7 Section 13. **Contractor insurance.** The Permittee shall contractually require that all of
8 its contractors performing work on the pipeline system name the “City of Seattle, its officers,
9 officials, employees and agents” as an additional insureds for primary and non-contributory
10 limits of liability on all CGL, Automobile and Pollution liability insurance and/or self-insurance.
11 Permittee shall also include in all contract documents with its contractors performing work on
12 the pipeline system a third-party beneficiary provision extending to the City construction
13 indemnities and warranties granted to Permittee.

14 Section 14. **Performance bond.** Within 60 days after the effective date of this ordinance,
15 the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond
16 executed by a surety company authorized and qualified to do business in the State of Washington
17 that is: in the amount of \$524,000 and conditioned with a requirement that the Permittee shall
18 comply with every provision of this ordinance and with every order the Director issues under this
19 ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued
20 a certification that the Permittee has fulfilled its removal and restoration obligations under
21 Section 8 of this ordinance. An irrevocable letter of credit approved by the Director in
22 consultation with the City Attorney’s Office may be substituted for the bond. In the event that
23 the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall

1 maintain in effect the bond or letter of credit required under this section until the Director has
2 approved the assignment or transfer pursuant to Section 16 of this ordinance.

3 Section 15. **Adjustment of insurance and bond requirements.** The Director may adjust
4 minimum liability insurance levels and surety bond requirements during the term of this
5 permission. If the Director determines that an adjustment is necessary to fully protect the
6 interests of the City, the Director shall notify the Permittee of the new requirements in writing.
7 The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted
8 insurance and surety bond levels to the Director.

9 Section 16. **Consent for and conditions of assignment or transfer.** When the Property
10 is transferred, the permission granted by this ordinance shall be assignable and transferable by
11 operation of law pursuant to Section 22 of this ordinance. Prior to transfer, the successor owner
12 of the Property shall accept all of the terms and conditions of the permission granted by this
13 ordinance and the new owner of the Property shall be conferred with the rights and obligations of
14 Permittee by this ordinance. Other than a transfer to a new owner of the Property, Permittee shall
15 not transfer, assign, mortgage, pledge or encumber the same without the Director's consent,
16 which the Director shall not unreasonably refuse. The Director may approve assignment or
17 transfer of the permission granted by this ordinance to a successor entity when the new owner
18 has provided, at the time of the acceptance, the bond and certification of insurance coverage
19 required under this ordinance; and has paid any fees due under Section 16 and Section 18 of this
20 ordinance. Upon the Director's approval of an assignment or transfer, the rights and obligations
21 conferred on the Permittee by this ordinance shall be conferred on the successors and assigns.
22 Any person or entity seeking approval for an assignment or transfer of the permission granted by

1 this ordinance shall provide the Director with a description of the current and anticipated use of
2 the pipeline system.

3 Section 17. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or
4 successor provision, pay the City the amounts charged by the City to inspect the pipeline system
5 during construction, reconstruction, repair, annual inspections, and at other times deemed
6 necessary by the City. An inspection or approval of the pipeline system by the City shall not be
7 construed as a representation, warranty, or assurance to the Permittee or any other person as to the
8 safety, soundness, or condition of the pipeline system. Any failure by the City to require correction
9 of any defect or condition shall not in any way limit the responsibility or liability of the Permittee.
10 The Permittee shall pay the City the amounts charged by the City to review the inspection reports
11 required by Section 18 of this ordinance.

12 Section 18. **Inspection reports.** The Permittee shall submit to the Director, or to SDOT
13 at an address specified by the Director, an inspection report that:

- 14 A. Describes the physical dimensions and condition of all load-bearing elements;
15 B. Describes any damages or possible repairs to any element of the pipeline system;
16 C. Prioritizes all repairs and establishes a timeframe for making repairs; and
17 D. Is stamped by a professional structural engineer licensed in the State of Washington.

18 A report meeting the foregoing requirements shall be submitted within 60 days after the effective
19 date of the ordinance; subsequent reports shall be submitted every two years, provided that, in
20 the event of a natural disaster or other event that may have damaged the pipeline system, the
21 Director may require that additional reports be submitted by a date established by the Director.
22 The Permittee has the duty of inspecting and maintaining the pipeline system. The responsibility
23 to submit structural inspection reports periodically or as required by the Director does not waive

1 or alter any of the Permittee’s other obligations under this ordinance. The receipt of any reports
2 by the Director shall not create any duties on the part of the Director. Any failure by the Director
3 to require a report, or to require action after receipt of any report, shall not waive or limit the
4 obligations of the Permittee.

5 Section 19. **Annual fee.** Beginning on the effective date of this ordinance the Permittee
6 shall pay an Issuance Fee, and annually thereafter, the Permittee shall promptly pay to the City,
7 upon statements or invoices issued by the Director, an Annual Renewal Fee, and an Annual Use
8 and Occupation fee of \$20,809.86 or as adjusted annually thereafter, for the privileges granted by
9 this ordinance.

10 Adjustments to the Annual Use and Occupation Fee shall be made in accordance with a
11 term permit fee schedule adopted by the City Council and may be made every year. In the
12 absence of a schedule, the Director may only increase or decrease the previous year’s fee to
13 reflect any inflationary changes so as to charge the fee in constant dollar terms. This adjustment
14 will be calculated by adjusting the previous year’s fee by the percentage change between the two
15 most recent year-end values available for the Consumer Price Index for the Seattle-Tacoma-
16 Bellevue Area, All Urban Consumers, All Products, Not Seasonally Adjusted. Permittee shall
17 pay any other applicable fees, including fees for reviewing applications to renew the permit after
18 expiration of the first term. All payments shall be made to the City Finance Director for credit to
19 the Transportation Fund.

20 Section 20. **Compliance with other laws.** Permittee shall maintain and operate the
21 pipeline system in compliance with all applicable federal, state, County and City laws and
22 regulations. Without limitation, in all matters pertaining to the pipeline system, the Permittee
23 shall comply with the City’s laws prohibiting discrimination in employment and contracting

1 including Seattle’s Fair Employment Practices Ordinance, Chapter 14.04, and Fair Contracting
2 Practices code, Chapter 14.10 (or successor provisions).

3 Section 21. **Acceptance of terms and conditions.** The Permittee shall provide evidence
4 of insurance coverage required by Section 12 of this ordinance, the bond as required by Section
5 14 of this ordinance, and the covenant agreement required by Section 22 of this ordinance within
6 60 days after the effective date of this ordinance. Continued occupation of the right-of-way
7 constitutes the Permittee’s acceptance of the terms of this ordinance.

8 Section 22. **Obligations run with the Property.** The obligations and conditions imposed
9 on the Permittee by and through this ordinance are covenants that run with the land and bind
10 subsequent owners of the property adjacent to the pipeline system and legally described in
11 Section 1 of this ordinance (the “Property”), regardless of whether the Director has approved
12 assignment or transfer of the permission granted herein to such subsequent owner(s). At the
13 request of the Director, Permittee shall provide to the Director a current title report showing the
14 identity of all owner(s) of the Property and all encumbrances on the Property. The Permittee
15 shall, within 60 days of the effective date of this ordinance, and prior to conveying any interest in
16 the Property, deliver to the Director upon a form to be supplied by the Director, a covenant
17 agreement imposing the obligations and conditions set forth in this ordinance, signed and
18 acknowledged by the Permittee and any other owner(s) of the Property and recorded with the
19 King County Recorder’s Office. The Director shall file the recorded covenant agreement with the
20 City Clerk. The covenant agreement shall reference this ordinance by its ordinance number. At
21 the request of the Director, Permittee shall cause encumbrances on the Property, excluding, for
22 the avoidance of doubt, any encumbrances previously granted by Permittee to be subordinated to
23 the covenant agreement.

1 Section 23. **Repealing Section 8 of Ordinance 123990.** Section 8 of Ordinance 123990
2 is repealed.

3 Section 24. **Section titles.** Section titles are for convenient reference only and do not
4 modify or limit the text of a section.

5 Section 25. This ordinance shall take effect as provided by Seattle Municipal Code
6 Sections 1.04.020 and 1.04.070.

7 Passed by the City Council the 28th day of January, 2025,
8 and signed by me in open session in authentication of its passage this 28th day of
9 January, 2025.

10 

11 President _____ of the City Council

Approved / returned unsigned / vetoed this 30th day of January, 2025.

12 

13 Bruce A. Harrell, Mayor

14 Filed by me this 30th day of January, 2025.

15 

16 Scheereen Dedman, City Clerk

17 (Seal)