



Legislation Details (With Text)

File #:	CB 120543	Version:	1	Name:	CB 120543
Type:	Ordinance (Ord)	Status:	Passed	In control:	City Clerk
On agenda:	5/9/2023				
Final Action:	5/17/2023	Ord. No.	Ord 126815		
Title:	AN ORDINANCE granting SeaPort Midstream Partners, LLC permission to maintain and operate a pipeline system in, under, along, and across Southwest Florida Street, between 13th Avenue Southwest and 16th Avenue Southwest, for a 30-year term, renewable for two successive 15-year terms; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.				
Sponsors:	Alex Pedersen				
Indexes:					
Attachments:	1. Summary and Fiscal Note, 2. Summary Att A - SeaPort Midstream Partners Area Map, 3. Summary Att B - SeaPort Midstream Partners Pipeline Fee Assessment, 4. Central Staff Memo, 5. Presentation (5/2/23), 6. Signed Ordinance 126815, 7. Affidavit of Publication				

Date	Ver.	Action By	Action	Result
5/17/2023	1	City Clerk	attested by City Clerk	
5/17/2023	1	Mayor	returned	
5/17/2023	1	Mayor	Signed	
5/11/2023	1	City Clerk	submitted for Mayor's signature	
5/9/2023	1	City Council	passed	Pass
5/2/2023	1	Transportation and Seattle Public Utilities	pass	Pass
4/11/2023	1	City Council	referred	
3/30/2023	1	Council President's Office	sent for review	
3/22/2023	1	City Clerk	sent for review	
3/22/2023	1	Mayor	Mayor's leg transmitted to Council	

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE granting SeaPort Midstream Partners, LLC permission to maintain and operate a pipeline system in, under, along, and across Southwest Florida Street, between 13th Avenue Southwest and 16th Avenue Southwest, for a 30-year term, renewable for two successive 15-year terms; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

WHEREAS, by Ordinance 110519, The City of Seattle ("City") granted permission to Atlantic Richfield

Company to construct, maintain, and operate a pipeline system in, under, and across Southwest Florida Street; and

WHEREAS, BP West Coast Products LLC obtained the property now known as King County Parcel Numbers 7666702900 and 7666701680 from Atlantic Richfield Company, a Delaware corporation, Atlantic Richfield Company, a Pennsylvania corporation, The Atlantic Refining Company, a Pennsylvania corporation, and Richfield Oil Corporation, a Delaware corporation, effective as of December 31, 2001, and BP West Coast Products LLC, indirectly transferred ownership of the pipeline system to SeaPort Midstream Partners, LLC in 2017; and

WHEREAS, the permission authorized by Ordinance 110519 was amended by Ordinance 119397 and was renewed by Resolution 28646, and the permission ended on December 31, 2001; and

WHEREAS, the obligations of Ordinance 110519 remain in effect after the ordinance term expires until the encroachment is removed, or SeaPort Midstream Partners, 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 all renewals allowed by Ordinance 110519 are exhausted and a new ordinance is required to repermit the existing pipeline system in the right-of-way; and

WHEREAS, SeaPort Midstream Partners, LLC has applied for permission to maintain and operate the existing pipeline system (including four 10-inch pipelines) in, under, along, and across Southwest Florida Street, on a 10-foot-wide strip of land between 13th Avenue Southwest and 16th Avenue Southwest for the purposes of transmitting petroleum products between their oil storage plant facilities (Plant 1 and Plant 2) on Harbor Island; and maintain and operate a pipeline system in, under, and across Southwest Florida Street (“pipeline system”); and

WHEREAS, the existing pipeline system located in, under, along, and across Southwest Florida Street, between 13th Avenue Southwest and 16th Avenue Southwest (“encroachment”) has not been removed and

remains in the right-of-way;

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

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. **Permission.** Subject to the terms of the ordinance, permission is granted to SeaPort Midstream Partners, LLC (“Permittee”) and its successors and assigns, to maintain, operate, renew, repair, change the size and number of, and/or remove a system of pipelines (“pipeline system”), under, along, across, and in Southwest Florida Street between 13th Avenue Southwest and 16th Avenue Southwest, adjacent to:

Parcel 1

Lots 1 through 14, inclusive, in Block 405 of Seattle Tide Lands, Extension No. 1, according to the maps on file in the Office of the Commissioner of Public Lands in Olympia, King County, Washington; together with the Southerly 50 feet, in width, of vacated West Florida Street adjoining on the North.

Parcel 2

Parcel B of Lot Boundary Adjustment No. 9806472 recorded April 12, 1999 under Recording No. 9904129014, in King County, Washington.

Section 2. **Term.** The permission granted to the Permittee is for a term of 30 years, starting on the effective date of this ordinance, and ending at 11:59 p.m. on the last day of the thirtieth year. Upon written application of the Permittee at least one year before expiration of the term, the Director or the City Council may renew the permit for two successive 15-year terms, subject to the right of the City to require the removal of the pipeline system or to revise by ordinance any of the terms and conditions of the permission granted by this ordinance. The total term of the permission as originally granted and extended shall not exceed 60 years. The Permittee shall submit any application for a new permission no later than one year prior to the expiration of the then-existing term.

Section 3. **Protection of utilities.** The permission granted is subject to the Permittee bearing the expense of any protection, support or relocation of existing utilities deemed necessary by the owners of the utilities and the Permittee being responsible for any damage to the utilities due to the repair, reconstruction,

maintenance, or operation of the pipeline system, and for any consequential damages that may result from any damage to utilities or interruption in service caused by any of the foregoing.

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

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

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

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

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

Section 5. **Permittee’s obligation to remove and restore.** If the permission granted is not renewed at the expiration of a term, or if the permission expires without an application for a new permission being granted, or if the City terminates the permission, then within 90 days after the expiration or termination of the permission, or prior to any earlier date stated in an ordinance or order requiring removal of the pipeline system, the Permittee shall, at its own expense, remove the pipeline system and all of the Permittee’s equipment and property from the public place and replace and restore all portions of the public place that may have been

disturbed for any part of the pipeline system in as good condition for public use as existed prior to construction of the pipeline system and in at least as good condition in all respects as the abutting portions of the public place as required by Seattle Department of Transportation (SDOT) right-of-way restoration standards.

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

Upon the Permittee's completion of removal and restoration in accordance with this section, or upon the City's completion of the removal and restoration and the Permittee's payment to the City for the City's removal and restoration costs, the Director shall then issue a certification pursuant to Section 8 of this ordinance.

Section 6. **Repair, reconstruction, readjustment or relocation.** The pipeline system shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the pipeline system in good and safe condition for the protection of the public.

Except where necessary to respond to an emergent and imminent threat to property or human safety, the Permittee shall not reconstruct, relocate, readjust, or repair the pipeline system except under the supervision of the Director and in strict accordance with plans and specifications approved by the Director. The Director may, in the Director's judgment, order the pipeline system reconstructed, relocated, readjusted, or repaired at the Permittee's own cost and expense because of: the deterioration or unsafe condition of the pipeline system or any part thereof or installation thereon; grade separations; the installation, construction, reconstruction, maintenance, operation, or repair of any municipally owned public utilities; or for any other cause.

Section 7. **Failure to correct unsafe condition.** After written notice to the Permittee and failure of the Permittee to correct any unsafe conditions within the time stated in the notice, the Director may order that the

pipeline system be closed or removed at the Permittee's expense if the Director deems that the pipeline system has become unsafe or creates a risk of injury to the public. If there is an immediate threat to the health or safety of the public, a notice to correct is not required.

Section 8. **Continuing obligation to remove and restore.** Notwithstanding termination or expiration of the permission granted, or closure or removal of the pipeline system, the Permittee shall remain bound by its obligation under this ordinance until:

- A. The pipeline system and all its equipment and property are removed from the street right-of-way;
- B. The area is cleared and restored in a manner and to a condition satisfactory to the Director; and
- C. The Director certifies that the Permittee: (1) has fulfilled its removal and restoration obligations under this ordinance; and (2) has discharged its obligations under this ordinance for occurrences after the date of the certificate.

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

Section 9. **Release, hold harmless, indemnification, and duty to defend.** The pipeline system shall remain the exclusive responsibility of the Permittee, and the Permittee agrees to maintain the pipeline system in good and safe condition. The Permittee, by accepting the terms of this ordinance and the permission granted, releases the City, its officials, officers, employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense, attorney's fees, or damages of every kind and description arising out of or by reason of the pipeline system or this ordinance, including but not limited to claims resulting from injury, damage, or loss to the Permittee or the Permittee's property.

The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its officials, officers,

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

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

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

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

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

Section 10. **Insurance.** For as long as the Permittee exercises any permission granted by this ordinance and until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 8 of this ordinance, the Permittee shall obtain and maintain in full force and effect, at

its own expense, insurance and/or self-insurance that protects the Permittee and the City from claims and risks of loss from perils that can be insured against under commercial general liability (CGL) insurance policies in conjunction with:

1. Reconstruction, modification, operation, maintenance, use, existence, or removal of the pipeline system, as well as restoration of any disturbed areas of the public place in connection with removal of the pipeline system;
2. The Permittee's activity upon or the use or occupation of the public place described in Section 1 of this ordinance; and
3. Claims and risks in connection with activities performed by the Permittee by virtue of the permission granted by this ordinance.

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

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

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

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

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

A. Commercial General Liability (CGL) Insurance. CGL insurance must include coverage for:

1. Premises/Operations;
2. Personal/Advertising Injury;
3. Contractual;
4. Independent Contractors; and
5. Stop Gap (unless insured as Employers Liability under Part B of a Workers Compensation

Insurance Policy).

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

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

C. State of Washington Statutory Workers' Compensation Insurance. Permittee, and, if applicable, its contractors or subcontractors, must comply with Workers' Compensation coverage as required by Title 51 RCW (Industrial Insurance).

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

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

2. In-Transit Pollution Liability.

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

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

Liability transportation coverage under Permittee's, and, if applicable, its contractor's or subcontractor's, Pollution Liability policy.

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

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

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

2. Provide "All Risk" coverage in an amount equal to the current 100 percent completed value replacement cost of all property on the pipeline system subject to such reconstruction required to be covered, including the value of existing structures that have been structurally altered (including allowance for "soft costs") against loss from the perils of fire and other risks of direct physical loss not less broad than provided by the insurance industry standard Causes of Loss - Special Form CP 10 30;

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

4. Remain in force until coverage for Permittee's Permanent Property Insurance complying with this Section is bound;

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

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

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

G. General Conditions (Not Applicable to Washington State Workers Compensation)

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

2. Unless otherwise approved in advance by the City's Risk Manager in writing, any deductible in excess of \$50,000 or self-insured retention (SIR) in excess of \$50,000 that is not fronted by an insurer must be disclosed and is subject to the City's Risk Manager's approval. Upon request by the City, Permittee, and, if applicable, its contractors or subcontractors, must furnish financial information that the City may reasonably require to assess Permittee's, and, if applicable, its contractor's or subcontractor's risk bearing capacity, and must provide a written statement that Permittee, and, if applicable, its contractors or subcontractors, will defend and indemnify the City against any claim within Permittee's, and, if applicable, its contractor's or subcontractor's, SIR and is responsible for the cost of any payments for defense and indemnity falling within the SIR at least to the same extent that coverage would be afforded to the City under the relevant insurance

policy meeting the requirements stated herein.

3. Security of Insurers. Insurers shall be licensed to do business in the State of Washington and shall maintain not less than an A- VII A.M. Best's ratings unless coverage is procured as surplus lines under RCW Chapter 48.15 ("Unauthorized Insurers").

4. Cancellation. Coverage shall not be cancellable without at least 30 days' advance written notice of cancellation, except ten days with respect to cancellation for non-payment of premium.

5. Waiver of Subrogation. CGL, Auto, and Employer's Liability insurance required to be maintained by Permittee hereunder shall contain a waiver of subrogation in favor of the City.

6. CGL Insurance Additional Insured. CGL insurance maintained by Permittee shall include "the City, its officers, elected officials, employees, agents, and volunteers" as additional insureds for primary and non-contributory limits of liability.

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

8. At any time upon the City's request, Permittee, and, if applicable, its contractors or subcontractors, must forward to the City a true and certified copy of any insurance policy.

9. This Section 10 must survive the expiration or earlier termination of this ordinance.

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

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

In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the insurance required under this section until the Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.

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

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

Section 12. **Performance bond.** Within 60 days after the effective date of this ordinance, the Permittee

shall deliver to the Director for filing with the City Clerk a sufficient bond executed by a surety company authorized and qualified to do business in the State of Washington that is: in the amount of \$110,000 and conditioned with a requirement that the Permittee shall comply with every provision of this ordinance and with every order the Director issues under this ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 8 of this ordinance. An irrevocable letter of credit approved by the Director in consultation with the City Attorney's Office may be substituted for the bond. In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the bond or letter of credit required under this section until the Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.

Section 13. **Adjustment of insurance and bond requirements.** The Director may adjust minimum liability insurance levels and surety bond requirements during the term of this permission. If the Director determines that an adjustment is necessary to fully protect the interests of the City, the Director shall notify the Permittee of the new requirements in writing. The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted insurance and surety bond levels to the Director.

Section 14. **Consent for and conditions of assignment or transfer.** When the Property is transferred, the permission granted by this ordinance shall be assignable and transferable by operation of law pursuant to Section 20 of this ordinance. Prior to transfer, the successor owner of the Property shall accept all of the terms and conditions of the permission granted by this ordinance and the new owner of the Property shall be conferred with the rights and obligations of Permittee by this ordinance. Other than a transfer to a new owner of the Property, Permittee shall not transfer, assign, mortgage, pledge or encumber the same without the Director's consent, which the Director shall not unreasonably refuse. The Director may approve assignment or transfer of the permission granted by this ordinance to a successor entity when the new owner has provided, at the time of the acceptance, the bond and certification of insurance coverage required under this ordinance; and has paid

any fees due under Section 15 and Section 17 of this ordinance. Upon the Director's approval of an assignment or transfer, the rights and obligations conferred on the Permittee by this ordinance shall be conferred on the successors and assigns. Any person or entity seeking approval for an assignment or transfer of the permission granted by this ordinance shall provide the Director with a description of the current and anticipated use of the pipeline system.

Section 15. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or successor provision, pay the City the amounts charged by the City to inspect the pipeline system during construction, reconstruction, repair, annual inspections, and at other times deemed necessary by the City. An inspection or approval of the pipeline system by the City shall not be construed as a representation, warranty, or assurance to the Permittee or any other person as to the safety, soundness, or condition of the pipeline system. Any failure by the City to require correction of any defect or condition shall not in any way limit the responsibility or liability of the Permittee.

Section 16. **Inspection reports.** The Permittee shall submit to the Director, or to SDOT at an address specified by the Director, an inspection report that:

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

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

The receipt of any reports by the Director shall not create any duties on the part of the Director. Any failure by the Director to require a report, or to require action after receipt of any report, shall not waive or limit the obligations of the Permittee.

Section 17. **Annual fee.** Beginning on the effective date of this ordinance the Permittee shall pay an Issuance Fee, and annually thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the Director, an Annual Renewal Fee, and an Annual Use and Occupation Fee of \$728.43, or as adjusted annually thereafter, for the privileges granted by this ordinance. The Permittee shall also pay, on the effective date of this ordinance, \$5,221.86 in fees accrued but not paid from January 1, 2011, consistent with Ordinance 123485 authorizing fees for significant structure permits, beginning on January 1, 2011.

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

Section 18. **Compliance with other laws.** Permittee shall maintain and operate the pipeline system in compliance with all applicable federal, state, County and City laws and regulations. Without limitation, in all matters pertaining to the pipeline system, the Permittee shall comply with the City's laws prohibiting discrimination in employment and contracting including Seattle's Fair Employment Practices Ordinance, Chapter 14.04 SMC, and Fair Contracting Practices Code, Chapter 14.10 SMC (or successor provisions).

Section 19. **Acceptance of terms and conditions.** The Permittee shall provide evidence of insurance coverage required by Section 10 of this ordinance, the bond as required by Section 12 of this ordinance, and the

covenant agreement required by Section 20 of this ordinance within 60 days after the effective date of this ordinance. Continued occupation of the right-of-way constitutes the Permittee's acceptance of the terms of this ordinance.

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

Section 21. **Section titles.** Section titles are for convenient reference only and do not modify or limit the text of a section.

Section 22. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2023, and signed by
me in open session in authentication of its passage this _____ day of _____, 2023.

President _____ of the City Council

Approved / returned unsigned / vetoed this ____ day of _____, 2023.

Bruce A. Harrell, Mayor

Filed by me this ____ day of _____, 2023.

Elizabeth M. Adkisson, Interim City Clerk

(Seal)