



Date: December 17, 2024

To: Honorable Mayor and Members of the City Council

From: Crystal Cammarota, Deputy City Clerk III

By: Rebecca Poirier

Subject: SECOND AND FINAL READING OF **ORDINANCE 3940**

RECOMMENDATION

Second and Final Reading of **ORDINANCE NO. 3940** Granting to Zenith Energy West Coast Terminals LLC, a Franchise to Construct, Lay, Operate, Test, Maintain, Use, Renew, Repair, Replace, Move, Change the Size and Number of, and Remove or Abandon in Place a System of Pipelines and Appurtenances, for the Purpose of Conducting, Transporting, Conveying and Carrying Gas, Oil, Petroleum Products and Water, On, Along, In, Under and Across Public Streets, Ways, Alleys and Places Within the City Of Torrance and Approve an Ordinance Summary for Publication. This item is for consideration of adoption of the ordinance only.

The item was previously discussed, and action was taken at a prior council meeting.

FUNDING

None Required.

DISCUSSION

At the regular meeting of the City Council held on the 19th of November, 2024 this Ordinance was discussed, introduced, and approved for its first reading by the following roll call vote:

AYES:	COUNCILMEMBERS	Gerson, Kaji, Kalani, Lewis, Mattucci, and Mayor Chen.
NOES:	COUNCILMEMBERS	None.
ABSTAIN:	COUNCILMEMBERS	None.
ABSENT:	COUNCILMEMBERS	Sheikh.

ATTACHMENTS

1. Ordinance 3940
2. Ordinance Summary

ORDINANCE NO. 3940

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TORRANCE, CALIFORNIA, GRANTING TO ZENITH ENERGY WEST COAST TERMINALS LLC, A FRANCHISE TO CONSTRUCT, LAY, OPERATE, TEST, MAINTAIN, USE, RENEW, REPAIR, REPLACE, MOVE, CHANGE THE SIZE AND NUMBER OF, AND REMOVE OR ABANDON IN PLACE A SYSTEM OF PIPELINES AND APPURTENANCES, FOR THE PURPOSE OF CONDUCTING, TRANSPORTING, CONVEYING AND CARRYING GAS, OIL, PETROLEUM PRODUCTS AND WATER, ON, ALONG, IN, UNDER AND ACROSS PUBLIC STREETS, WAYS, ALLEYS AND PLACES WITHIN THE CITY OF TORRANCE

WHEREAS, Franchise Ordinance No. 3474 was granted to Southern California Edison Company, a California Corporation, on September 21, 1999 and became effective on October 21st, 1999 for a 25-year term; and

WHEREAS, Franchise Ordinance No. 3474 operates 16-inch and 12-inch fuel oil pipelines at 26,515 feet in length and at 511 feet in length, respectively; and

WHEREAS, On February 1, 2002, Southern California Edison Company assigned its rights and interests of the 16-inch fuel oil pipelines under that certain City of Torrance Franchise Ordinance No. 3474 to Pacific Terminals LLC but retained its rights for the 12-inch Fuel Oil pipelines; and

WHEREAS, Southern California Edison Company subsequently abandoned in place the 12-inch Fuel Oil pipelines in accordance with applicable conditions prescribed in the Franchise Ordinance; and

WHEREAS, on June 1, 2009, Pacific Terminals LLC changed its name to Plains West Coast Terminals LLC; and

WHEREAS, on October 16th, 2020, the name Plains West Coast Terminals LLC was changed to Zenith Energy West Coast Terminals LLC; and

WHEREAS, Zenith Energy West Coast Terminals LLC has been assigned and has assumed of contracts pertaining to Franchise Ordinance No. 3474; and

WHEREAS, the current Franchise Ordinance No. 3474 expired on October 21, 2024; and

WHEREAS, Zenith Energy West Coast Terminals LLC has applied for a new 10-year term with one 10-year option to extend; and

WHEREAS, the adoption of this Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the State CEQA Guidelines, and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TORRANCE DOES ORDAIN AS FOLLOWS:

Section 1 DEFINITIONS: Whenever in this Ordinance the words or phrases defined in this Section are used, it is intended that they will have the respective meanings assigned to them in the following definitions (unless, in the given instance, the context in which they are used clearly imports a different meaning):

- (a) The word "Grantee" means legal person, corporation or entity to which the Franchise contemplated in this Ordinance is granted and its lawful successors and assigns.
- (b) The word "City" means the City of Torrance, 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" means the public streets, ways, alleys and places as the same now or may hereafter exist within the City.
- (d) The phrase "pipes and appurtenances" means pipe, pipeline, cable, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, appurtenance and any other property located or to be located in, upon, along, across, under or over the streets of the City, and used or useful in, or in carrying on the business of, conducting, transporting, conveying and carrying gas, oil, petroleum products and water.
- (e) The phrase "lay and use" means to lay, construct, excavate, erect, install, encroach, operate, maintain, use, repair, replace, relocate, or remove.
- (f) The word "Franchise" means and includes any authorization granted by this Ordinance in terms of a franchise, privilege, permit, license or otherwise to lay and use a system of pipes and appurtenances for conducting, transporting, conveying, and carrying gas, oil, petroleum products and water for any and all purposes in, along, across, upon, over, and under streets within the City. Any authorization, in whatever terms granted, means and includes any license or permit required for the privilege of transacting and carrying on the Grantee's pipeline business within the City.
- (g) The phrase "Pipeline Safety Act" means the Elder California Pipeline Safety Act of 1981 (Government Code §51010, et seq.).
- (h) The phrase "Community Development Director" is the Community Development Director of the City of Torrance or designee.

Section 2 - NATURE OF FRANCHISE: A Franchise is granted to Zenith Energy West Coast Terminals LLC, its successors and assigns, to construct, lay, operate, test, maintain, use, renew, repair, replace, move, change the size and number of and remove or abandon in place a system of pipes and appurtenances, not to exceed sixteen (16) inches in internal diameter, including any pipes and appurtenances already laid and constructed, together with such valves, fittings, manholes, vaults, pumps and other appliances, appurtenances, attachments or equipment as the Grantee, its successors and assigns may deem necessary or convenient for the purpose of conducting, transporting, conveying and carrying gas, oil, petroleum products and water, on, along, in, under, over and across the public streets, ways, alleys and places within the City of Torrance, County of Los Angeles, State of California, described on the attached Exhibit A, which is incorporated into this Ordinance by this reference, upon the terms and conditions set forth in the Franchise Act of 1937.

The pipelines and appurtenances will be operated, maintained, replaced or repaired in conformity with all ordinances, rules or regulations in effect at the time of granting of this Franchise, or as prescribed by the City Council and in accordance with the terms and conditions of any permit issued by the City.

Section 3 LOCATION OF PIPES AND APPURTENANCES: So far as is practicable, any pipes and appurtenances laid pursuant to this Franchise will be located along the edge or shoulder of the streets or in the parking areas adjacent to the streets so as not to unreasonably disturb the flow of traffic and where possible will be laid in the unpaved portion of the street.

If the pipes and appurtenances are laid across or along the paved portion of a street, the repair of the street, after the pipes and appurtenances have been laid, will be made by the Grantee at the expense of the Grantee. In the event of an emergency or if the Grantee fails or neglects to make the repairs within, thirty (30) days after notice is given to the Grantee by the City, the City may repair the street at the expense of the Grantee, including, but not limited to, reasonable overhead expenses in the sum no greater than an additional 30% of the actual cost of such work and upon presentation of a bill for the expense, the Grantee will pay the bill within thirty (30) days. The amount chargeable to the Grantee will be the actual and reasonable cost of the repair.

All pipes and appurtenances will be located in conformity with the orders of the Community Development Director of the City of Torrance.

Section 4 RIGHT TO CONSTRUCT AND MAINTAIN PIPES AND APPURTENANCES:

The Grantee will have the right to construct and maintain pipes and appurtenances as may be necessary or convenient for the proper maintenance and operation of the pipes and appurtenances under the Franchise. The Grantee has the right, subject to the terms of the Franchise and such applicable ordinances, rules, or regulations as are now or may hereafter be in force, to make all necessary excavations in the streets, for the construction, testing, and repair of new or existing pipes and appurtenances.

Section 5 TERM: The term of the Franchise is ten (10) years, commencing on the Effective Date, as provided by Section 30, unless the Franchise is forfeited prior to the end of the term. The Grantee shall have the right to renew the Franchise for an additional 10-year period with at least 60 days prior notice to the Community Development Director. The City of Torrance shall reserve the right to make reasonable changes to the Franchise at such time when the renewal request is made.

Section 6 COMPENSATION:

As consideration for the Franchise herewith granted, the Grantee shall pay to the City on or before the effective date of this Ordinance a granting fee in the amount of Fifteen Thousand Dollars (\$15,000.00).

The Grantee will pay to the City a sum equivalent to the base rate revised annually, as provided in Section 6231.5 of the Public Utilities Code, arising from the use, operation or possession of Franchise. If the Grantee sells, transfers, assigns, or leases this Franchise, in compliance with Section 17, to an entity or individual that will not operate the pipes and appurtenances as a public utility pipeline, then the City may change the annual payment to an amount otherwise authorized by applicable state or local law.

In the event Section 6231.5 of the Public Utilities Code is amended to allow the payment of a greater fee by Grantee, the fee for this Franchise shall be increased to the maximum amount allowed by such amendment. Said increase in the fee for the Franchise shall automatically be in effect on the effective date of said legislation mandating such increase. In the event that the Section 6231.5 of the Public Utilities Code is repealed, then City shall prescribe a rate of payment for the Franchise to an amount otherwise authorized by applicable state or local law. The determination by the City Council in this regard shall be final.

Payment is due annually in arrears within ninety (90) days after the end of each calendar year. Grantee will provide city with a statement setting forth the computation of the annual fee as provided for by this Section 6 of this Ordinance and Section 6231.5 of the Public Utilities Code. Grantee's failure to file a statement, or to pay the compensation due, at the time prescribed by this Section 6, will be grounds for the declaration of forfeiture of this Franchise and of all rights under this Franchise.

A penalty at the rate of 2% per month or fraction thereof beyond the date any payment is due will be charged. The payment or acceptance of such penalty will not operate to limit the City's ability to exercise any rights hereunder or pursuant to law relating to collection or cancellation and/or forfeiture of this Franchise for late payments or failure to pay by the Grantee.

Proration of Payments: In the event of abandonment or removal of pipes and appurtenances with the approval of the City as stated elsewhere in this Franchise, construction of new pipes and appurtenances as provided for elsewhere in this Franchise, or in the event that Grantee has paid franchise fees for any of the pipes and appurtenances under a previous franchise agreement with the City, the annual franchise fee required by this Franchise for impacted pipes and appurtenances for the calendar year of such occurrence shall be prorated based on the date of completion for removal or abandonment work, date of commencement of any new construction, or the date payments for pipeline and appurtenances ceased under a previous franchise agreement.

Section 7 MAPS AND CAPITAL IMPROVEMENT PLAN: Within ninety (90) days following the date in which any pipes and appurtenances or additional pipes and appurtenances have been laid or constructed under this Franchise, the Grantee will file a map or maps in such forms as may be required by the Community Development Director showing the accurate location and size of all its pipes and appurtenances then in place, and will, upon installation of any additional pipes and appurtenances, or upon removal, change, or abandonment of all or any portion of the pipes and appurtenances, file a revised map or maps showing the location and size of all such additional, removed, or abandoned pipes and appurtenances as of that day.

Annually, prior to January 1st, the Grantee will submit a projected five-year capital improvement plan for its facilities subject to this Franchise. Scheduling for repair, replacement or modifications will be described by year and location in order to provide information to the City for coordination with its public works capital improvement program. Projects not on such a schedule may be denied a permit unless the work is an emergency or the need was unforeseen. Justification may be required from the Grantee.

Section 8 CONSTRUCTION OF PIPES AND APPURTENANCES:

A. Terms of Construction. The pipes and appurtenances constructed or maintained pursuant to Section 4 of this Franchise will be constructed and maintained in a good, workmanlike manner and in conformity with all applicable ordinances, rules or regulations now or subsequently adopted or prescribed by the City Council. Grantee will only construct pipelines laid under this Franchise that are subject to the jurisdiction of the State Fire Marshal pursuant to the Pipeline Safety Act and will meet State Fire Marshal standards, and no pipe laid under this Franchise may exceed sixteen (16) inches in internal diameter. All new pipes and appurtenances laid under this Franchise shall only be constructed in approved locations and under the terms and conditions of a Construction – Excavation Permit granted by the City, in its sole discretion.

Except in an emergency, the Grantee may not excavate in a City street right-of-way without having first applied for and obtained a Construction - Excavation Permit from the City. Such application may include a traffic control plan and other information as required by the Community Development Director. The Grantee will pay any fees (including inspection) required by such permit. In event of an emergency, the Grantee will apply for a Construction - Excavation Permit from the City no later than the business day following commencement of such emergency work.

B. Restoration of Streets. The work of constructing, maintaining or repairing all pipes and appurtenances will be conducted with the least practicable hindrance to the use of the streets for purposes of travel, and as soon as such work is completed, all portions of the street that have been excavated or otherwise damaged will be placed in as good condition as they were before the commencement of such work, to the satisfaction of the Community Development Director. All street repair work will be made by the Grantee at the expense of the Grantee in accordance with the ordinances of the City and the conditions of the Construction – Excavation Permit issued by the City.

If the pipelines and appurtenances are laid across or along the paved portion of a street, the repair of the street, after the pipelines and appurtenances have been laid, will be made by the Grantee at the expense of the Grantee. If the Grantee fails or neglects to make the repairs, then 30 days after notice is given to the Grantee by the City or if an emergency necessitates immediate repair of the damage, the City may, in its sole discretion, repair the street at the expense of the Grantee, and upon presentation of a bill for the expense, the Grantee will pay the bill at once. The amount chargeable to the Grantee will be the cost of the repair including reasonable overhead expenses attributed to such repairs in the sum no greater than an additional 30% of the actual cost of such repairs.

C. Certified Test Results: Conformance Requirements.

(1) Certified Test Results: For those pipes and appurtenances subject to the provisions of the Pipeline Safety Act the testing will be performed in accordance with State Fire Marshal requirements, and certified test results will be requested by the City from the Fire Marshal. In the event the State Fire Marshal fails to provide certified test results to the City, Grantee will provide the test results to the City upon request.

In the event that any pipes and appurtenances cease to be subject to the jurisdiction of the State Fire Marshal pursuant to the Pipeline Safety Act, Grantee will immediately notify the City by written notice. The City reserves the right to require Grantee, at its expense, to abandon or remove any pipes and appurtenances not subject to the jurisdiction of the State Fire Marshal pursuant to the Pipeline Safety Act in a manner as prescribed in Section 12. In lieu of abandonment or removal provided for in this paragraph, the City, in its sole discretion and where not in conflict with Federal or State law, may accept Grantee's written response plan for such pipes and appurtenances that will include monitoring of pipeline location in compliance with Federal 49CFR195.442 and State law 1CCR4216. Grantee acknowledges that all pipelines abandoned under this franchise shall be subject to Section 11 and 12 of this Ordinance and shall remain the property of Grantee until such time as the pipes or appurtenance have been removed from their existing location or transfer of ownership has occurred.

(2) Conformance Requirements: The pipes and appurtenances will be operated, maintained, replaced or repaired in accordance with the latest applicable revision of the "American National Standard Code for Pressure Piping ANSI/ASME B31.4-2006;" the American Petroleum Institute Standard 1104; the Code of Federal Regulations, Part 195, Title 49 U.S.C. or other applicable standards and codes, whichever is the most stringent. The pipes and appurtenances will further be operated, maintained, replaced or repaired in accordance with all applicable Federal and/or State standards for the construction of intrastate pipelines as set forth in Federal laws, rules and regulations. Whenever there is a conflict in Federal or State standards, the more stringent standard will prevail. Grantee will provide the City a complete copy of the most current contingency plan required by California Government Code Section 51015, upon request of the City.

Section 9 EMERGENCY EQUIPMENT AND CREWS: At all times during the term of this Franchise, the Grantee will maintain on a twenty-four hour a day basis adequate equipment and a properly trained crew, or qualified contractors, with the ability to quickly shut off the pressure and the flow of contents of the pipes and appurtenances in the event of an emergency resulting from an earthquake, act of war, civil disturbance, flood, computer malfunction or other cause.

Section 10 BREAKS OR LEAKS: If any portion of any street is damaged by reason of breaks or leaks in any pipe or appurtenance constructed under this Franchise, the Grantee will, at its own expense, immediately following written or oral notification, repair any such damage and put the street in as good condition as it was in before the break or leak, to the satisfaction of the Community Development Director. In the event of an emergency or if the Grantee fails or neglects to make the repairs within thirty (30) days after notice is given to the Grantee by the City, the City may repair the street at the expense of the Grantee including, but not limited to, reasonable overhead expenses in the sum no greater than an additional 30% of the actual cost of such work, and upon presentation of a bill for the expense, the Grantee will pay the bill within thirty (30) days.

Section 11 REARRANGEMENT OF PIPES AND APPURTENANCES:

A. Expense of Grantee.

(1) If any of the Grantee's pipes and appurtenances endanger the public in the use of the public streets or interfere with or obstruct the use of any street by the public or for the public purposes, the City will have the right to require the Grantee, at the Grantee's expense, to move, alter or relocate the pipes and appurtenances (the "rearrangement") to avoid such danger, interference or obstruction, in conformity with the written notice of the Community Development Director.

(2) Whenever, during the existence of this Franchise, the City changes the grade, width or location of any street or improves any street in any manner, including the laying of any city sewer, storm drain, conduits, gas, water or other pipes, or construct any pedestrian tunnels, or other work of the City, (the right to do all of which is specifically reserved to the City without any admission on its part that it would not otherwise have such rights) and such work will, in the opinion of the Community Development Director, render necessary any change in the position or location of any pipes and appurtenances of the Grantee in the street, while such work is being done or performed, the Grantee will, at its own cost and expense, do any and all things reasonable to effect such change in position, in conformity with the written notice of the Community Development Director if the work is for City purposes, including relocation to alternative streets; provided, however, that the City will not require the Grantee to remove its conduits or lines entirely from the streets.

(3) In case the Grantee fails to commence work in compliance with written notice provided in work referenced in subsection A(1), within thirty (30) days after service of the notice upon Grantee, (unless Grantee is unable to comply with such notice by reason of strikes, riots, acts of God, or acts of public enemies), the Community Development Director may cause the work required in the notice to be done to be performed by the City or, at the election of the City, by a qualified private contractor. City will pay for, or cause the entity who performs the work to pay for, the cost to effect such change in position. The Grantee agrees to pay all costs attributed to the work including, but not limited to, reasonable overhead expenses in the sum no greater than an additional 30% of the actual cost of such work, within sixty (60) days after delivery of an itemized bill. The cost of doing the work will be considered the actual cost. If the Grantee is dissatisfied with any determination of the Community Development Director permitted by this Section, it may petition the City Manager to review the Community Development Director's decision within ten (10) days after the Community Development Director's decision. During the pendency of such petition, the work required to be done will be suspended.

B. City Utility Systems; Rearrangement at Expense of Others.

(1) The City will have the right to require the Grantee to rearrange any part of the Grantee's pipes and appurtenances for the accommodation of the City when such rearrangement is done for the accommodation of any water, electric, gas or other utility system now or hereafter owned or operated by the City. Except as otherwise provided in subsection B(2) of this Section 11, such rearrangement will be at the Grantee's expense.

(2) When such rearrangement is done for the accommodation of any person, firm or corporation other than one of the utility systems owned or operated by the City, the cost of such rearrangement will be borne by the accommodated party. The accommodated party, in advance of any rearrangement, will deposit with the Grantee or the City Clerk cash or a corporate surety bond in an amount based upon an itemized statement of costs for the rearrangement, as prepared by Grantee, required to pay the costs of such rearrangement and such accommodated party will execute an instrument agreeing to indemnify and hold harmless the Grantee and the City from any and all damages or claims caused by the rearrangement.

(3) The rearrangement referred to in subsection (1) of this subsection B of this Section 11 will be accomplished in conformity with the written notice of the Community Development Director. In case the Grantee fails to commence work in compliance with the written notice within 120 days after service of the notice upon the Grantee (unless the Grantee is unable to comply with the notice by reason of strikes, riots, acts of God, or acts of public enemies), the Community Development Director may cause the work required in the notice to be done to be performed by the City or, at the election of the City, by private contractor. The Grantee agrees to pay to the City within sixty (60) days after delivery of an itemized bill covering the cost attributed to the work including, but not limited to, reasonable overhead expenses in the sum no greater than an additional 30% of the actual cost of such work. If the Grantee is dissatisfied with any determination of the Community Development Director permitted by this Section, it may petition the City Manager to review the decision within ten (10) days after the determination. The decision of the City manager will be final and conclusive City action.

C. Rearrangements of the Pipes and Appurtenances of Others: Nothing in this Franchise will be construed to require the City, or any person, firm or corporation now or hereafter owning a public utility system of any type or nature, to move, alter or relocate any part of its system upon the streets for the convenience, accommodation or necessity of the Grantee.

D. Notice: Grantee will be given not less than 120 days written notice of any rearrangement of pipes and appurtenances, which Grantee is required to make under this Franchise. The notice will specify in reasonable detail the work to be done by the Grantee and will specify the time that the work is to be accomplished. In the event that the City changes the provisions of any such notice given to Grantee, the Grantee will be given an additional period not less than thirty (30) days to accomplish the work.

Section 12 REMOVAL OR ABANDONMENT OF PIPES AND APPURTENANCES: At the time of expiration, revocation, or termination of this Franchise or of the permanent discontinuance of the use of its pipes and appurtenances, the Grantee will, within thirty (30) days thereafter, make a written application to the Community Development Director for authority to engage in one, or a combination, of the following: (1) abandon all, or a portion, of such pipes and appurtenances in place; (2) remove all, or a portion, of such pipes and appurtenances; or (3) to transfer ownership of the pipes and appurtenances to the City to use as a conduit. Such application will describe the pipes and appurtenances desired to be abandoned by reference to the map or maps required by Section 7 of this Franchise and will also describe with reasonable accuracy the relative physical condition of the pipes and appurtenances. Thereupon, the Community Development Director will determine whether any abandonment, removal or transfer that is proposed may be effected without detriment to the public interest or under what conditions the proposed abandonment, removal or transfer may be safely effected and will then notify the Grantee of any such requirements and to either remove all, or a portion of such pipes and appurtenances, abandon in place all, or a portion, of such pipes and appurtenances, or transfer ownership of the pipes and appurtenances to the City to use as a conduit. If abandonment in place is approved, Grantee will pay the City an abandonment fee of Thirty-Two Dollars (\$32.00) per linear foot of pipe so abandoned.

If, for any reason, Grantee suspends operations of any of the pipes and appurtenances contained in this Franchise for a period in excess of ninety (90) days, Grantee will notify the Community Development Director. During this period of suspended operations, the Grantee will maintain said pipes and appurtenances in accordance with all applicable Federal and/or State standards as directed by the California State Fire Marshal.

If any pipes and appurtenances to be abandoned in place subject to prescribed conditions are not abandoned in accordance with all such conditions, then the Community Development Director may make additional appropriate orders at his or her sole discretion, including, an order that the Grantee remove all such pipes and appurtenances in accordance with applicable requirements. In the event the Grantee fails to remove any pipes and appurtenances which it is obligated to remove in accordance with such applicable requirements within such time as may be prescribed by the Community Development Director, then the City may remove such pipes and appurtenances at the Grantee's expense and the Grantee will pay to the City within 60 days after delivery of an itemized bill the cost of removal including, but not limited to, reasonable overhead expenses in the sum no greater than an additional 30% of the actual cost of such work.

Should any pipes and appurtenances abandoned under this Franchise interfere at a future time with any public works project, Grantee will, upon request of the Community Development Director, remove the pipes and appurtenances and restore the streets and other public property at Grantee's expense. Following completion of the removal of the pipelines and appurtenances and restoration of the streets to the satisfaction of the Community Development Director, the City will reimburse to the Grantee any abandonment fees paid to the City attributed to the facilities removed. In the event the Grantee fails to remove any pipelines and appurtenances as prescribed by the Community Development Director, then the City may remove such pipes and appurtenances at the Grantee's expense and the Grantee will pay to the City within 60 days after delivery of an itemized bill the cost of removal including, but not limited to, reasonable overhead expenses in the sum no greater than an additional 30% of the actual cost of such work, less any abandonment fees paid to the City attributed to the facilities removed.

This Section 12 will survive the termination or expiration of this Franchise.

Section 13 COMPLETION OF WORK: Whenever the Grantee fails to complete any work required of the Grantee by the terms of this Franchise within the time limits required under this Franchise, the City may cause the work to be completed by the City or, at the election of the City, by a qualified private contractor. The Grantee agrees to pay to the City within sixty (60) days after delivery of an itemized bill covering the costs attributed to the work including, but not limited to, reasonable overhead expenses in the sum no greater than an additional 30% of the actual cost of such work. If the Grantee is dissatisfied with the determination of the amount, it may petition the City Manager to review the amount within ten (10) days after such determination. The decision of the City Manager will be final and conclusive City action.

Section 14 FAITHFUL PERFORMANCE BOND:

A. Delivery of Performance Bond. Prior to the effective date of any sale, transfer, assignment, or lease of this Franchise, or any part thereof, to a person or entity that is not either an affiliate of Grantee or a public utility pipeline, the buyer, transferee, assignee, or lessee (hereinafter referred to as the Grantee) will deliver to City a performance bond in the sum of \$100,000, which secures the faithful performance of the Grantee's obligations under this Franchise. The bond will contain the original notarized signature of an authorized officer of the surety. The bond will be unconditional and remain in full force and effect during the remaining term of this Franchise and will be null and void at the conclusion of the term of this Franchise only if Grantee promptly and faithfully performs all terms and conditions of this Franchise.

B. Forfeiture. In the event Grantee for any reason becomes unable to, or fails in any way to, perform as required by this Franchise, City may declare the portion of the performance bond that is necessary to recompense and make whole the City, forfeited to the City. Upon partial or full forfeiture of the performance bond, Grantee will promptly take all steps necessary to restore the performance bond to its face amount.

Section 15 INSURANCE:

A. Grantee must maintain at its sole expense the following insurance, subject to self-insurance provisions:

(1) Automobile Liability, including owned, non-owned and hired vehicles with at least the following limits of liability:

(a) Primary Bodily Injury with limits of at least \$250,000 per person, \$500,000 per occurrence; and

(b) Primary Property Damage of at least \$100,000 per occurrence, or combined single limits of at least \$1,000,000.

(2) General Liability (GL) including coverage for premises, products and completed operations, independent contractors/vendors, sudden and accidental pollution liability equivalent in scope to the ISO 1971 version of the contamination and pollution exclusion endorsement with a sudden and accidental pollution exception in the then current GL policy, explosion, collapse, and underground (XCU) perils coverage, and personal injury and contractual obligations with combined single limits of coverage of at least \$10,000,000 per occurrence.

(3) Pollution Liability including coverage for bodily injury or property damage arising out of the sudden and accidental or gradual pollution, discharge, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere, or any watercourse or bodies of water with combined single limits of coverage of at least \$5,000,000. If pipelines permitted **only** transport water, Section 15.A.(3) does not apply. If pipelines permitted **only** transport natural gas (gaseous methane and methane-containing gaseous mixtures), Section 15.A.(3) does not apply, and the Section 15.A.(2) limits are increased to at least \$15,000,000 per occurrence.

B. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least \$1,000,000. *City of Torrance, a municipal corporation of the State of California, the City Council, and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer* must be named as additional insured under the liability policies.

C. Except as permitted in subsection "F" of this Section 15, Grantee must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance at the request of the City Clerk.

D. Each insurance policy required by this Section must contain a provision that no termination, cancellation or charge of coverage can be made without 20 days' notice to City.

E. Insurance required by this Franchise will be satisfactory only if issued by companies admitted to do business in California, and/or surplus lines approved carriers, rated "A-" or better in the most recent edition of Best's Key Rating Guide, and/or the equivalent with other established rating agencies, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of City ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that an increased or decreased risk of loss is posed to City, Grantee agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that Grantee will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

F. Grantee will have the option to self-assume such risks and insurance obligations, for which Grantee will, at the request of the City, provide its standard letter of self-assumption, in a form acceptable to City, for risks and insurance obligations agreed to under this Franchise. If, in the sole discretion of the Risk Manager, the Grantee does not have sufficient assets to guarantee self-assumption of such risks and insurance obligations, the Risk Manager may reject or rescind any previous approval by written notice to the Grantee and the Grantee shall obtain the required insurance and provide the City proof of insurance within ten (10) days of receiving notice of such determination from the City. Grantee will have the right to appeal a determination of rejection or rescinding a self-assumption approval from the Risk Manager to the City Council of the City within 10 days of receipt of notice from the Risk Manager.

Section 16 INDEMNIFICATION BY GRANTEE: Grantee will indemnify, defend, and hold harmless City, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss arising out of Grantee's exercise of its rights under this Franchise, unless caused by the negligence of the City. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of Grantee, its officers, employees, agents, subcontractors or vendors in the exercise of its rights under this Franchise. It is further agreed, Grantee's obligations to indemnify, defend and hold harmless will apply except to the extent of concurrent negligence, sole negligence, or willful misconduct, on the part of City, the City Council, each member thereof, present and future, or its officers, agents and employees. In the event of any dispute between Grantee and City, as to whether liability arises from the negligence of the City or its officers, employees, agents, subcontractors or vendors, Grantee will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as negligent.

Section 17 ASSIGNMENT:

A. Grantee will not sell, transfer, assign or lease the Franchise, or any part thereof, except with the consent of the City Council. Such sale, transfer, assignment or lease will be made only by filing with the City 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 are not filed with the City Council before the expiration of 30 days after the effective date of such sale, transfer, assignment or lease then, upon the expiration of said 30 days, the Franchise will be subject to forfeiture and the City Council may, without notice, by ordinance, repeal the Franchise.

B. 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 Franchise and upon the Grantee or assignee which the City Council may deem to be in the public interest. The City may also condition transfer upon payment of a transfer fee of \$15,000 to be paid by the transferee to the City. Such additional terms and conditions will be expressed by ordinance.

C. Nothing herein contained will 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 voluntary act of the Grantee or otherwise. No such consent will be required to any transfer of the Franchise in trust or by way of mortgage or hypothecation with all or a part of grantee's other property for the purpose of securing any indebtedness of Grantee. A merger will not be deemed a sale, transfer, assignment or lease of the Franchise under this Section.

Section 18 DEFAULT:

A. Noncurable Default.

In the event that the Grantee defaults in the performance of any of the terms, covenants or conditions contained in this Franchise and the default is not curable, the City may declare this Franchise forfeited. Upon giving written notice of the forfeiture to the Grantee, this Franchise will be void and the rights of the Grantee under this Franchise will cease and terminate and the Grantee will execute an instrument of surrender and deliver the surrender to the City. Upon termination, Grantee will begin the process of abandonment or removal of pipelines and appurtenances as provided for in Section 12.

B. Curable Default.

In the event that the Grantee defaults in the performance of any of the terms, covenants and conditions contained in this Franchise and the default is curable, the City will give written notice to the Grantee of the default. In the event that the Grantee does not commence the work necessary to cure the default within thirty (30) days after notice is sent or fails to prosecute the work diligently to completion, the City may declare this Franchise forfeited. Upon giving written notice of the forfeiture to the Grantee, this Franchise will be void and the rights of the Grantee under this Franchise will cease and terminate and Grantee will execute an instrument of surrender and deliver the surrender to the City. Upon termination, Grantee will begin the process of abandonment or removal of pipelines and appurtenances as provided for in Section 12.

C. Cumulative Remedies.

No provision made for the purpose of securing the enforcement of the terms and conditions of this Franchise will be deemed an exclusive remedy, or to afford the exclusive procedure, for the enforcement of the terms and conditions, but the remedies and procedure provided in this Franchise, in addition to those provided by law, will be deemed to be cumulative.

Section 19 SUPERSEDURE: This Franchise will be in lieu of any like franchise, if any has been previously granted by the City to the Grantee and any such other franchise, if any, will be deemed to be and will be repealed as of the date upon which the grant of this Franchise is effective, and the rights, liabilities and obligations of the Grantee under such other franchise will thereupon cease and terminate. Should the foregoing be applicable to the grant of this Franchise, the Grantee will pay to the City any and all amounts accrued up to the effective date of this Franchise under such other franchise so repealed as shown by statement of such amounts in the form required by such other franchise filed not later than ninety (90) days after this Ordinance becomes effective. Payment of such amounts will be made with the filing of such statement.

Section 20 SCOPE OF RESERVATION: Nothing contained in this Franchise will ever be construed so as to exempt the Grantee from compliance with all applicable ordinances of the City now in effect or which may be subsequently adopted which are not inconsistent with the terms of this Franchise. The enumeration in this Franchise of specific rights reserved will not be construed as exclusive, or as limiting the general reservation in the Franchise made or as limiting such rights as the City may now or hereafter have in law.

Section 21 NOTICE: Any notice required to be given under the terms of this Franchise, the manner of service of which is not specifically provided for, may be served as follows:

Upon the City, by serving the City Clerk personally, or by addressing a written notice to the City Clerk of the City of Torrance, City Hall, 3031 Torrance Boulevard, Torrance, California, 90503 and depositing such notice in the United States mail, postage prepaid.

Upon the Grantee by addressing a written notice to Grantee, addressed to Attn: Right Of Way Manager, 18000 Studebaker Rd., Suite 960, Cerritos, CA 90703 (or such other address as may from time to time be furnished in writing by one party to the other and depositing the notice in the United States mail, postage prepaid).

When the service of any such notice is made by mail, the time of such notice will begin with and run from the date of the deposit of the notice in the United States mail.

Section 22 SUCCESSORS: The terms and conditions of this Franchise will inure to the benefit of or will bind, as the case may be, the successors and assigns of the parties to this Franchise, subject, however, to the provisions of Section 17.

Section 23 ACCEPTANCE OF FRANCHISE: This Franchise is granted and will be held and enjoyed only upon the terms and conditions contained within this Franchise, and the Grantee must, within thirty (30) days after the passage of the Ordinance granting this Franchise, file with the City Clerk of the City of Torrance a written acceptance of the terms and conditions.

Section 24 FRANCHISE TO BE STRICTLY CONSTRUED AGAINST GRANTEE: This Franchise is granted upon each and every condition contained within this Franchise and will be strictly construed against Grantee. Nothing will pass hereby unless it be granted in plain and unambiguous terms. Each of the conditions is a material and essential condition to the granting of this Franchise.

Section 25 FORCE MAJEURE: The time within which Grantee is obligated under this Franchise to construct, erect, maintain, operate, repair, renew, change the size of and remove pipes and appurtenances or other improvements will be extended for a period of time equal in duration to, and performance in the meantime will be excused on account of and for and during the period of, any delay caused by strikes, threats of strikes, lockouts, war, threats of war, insurrection, invasion, acts of God, calamities, violent action of the elements, fire, action or regulation of any governmental agency, law or ordinance, impossibility of obtaining materials, or other things beyond the reasonable control of Grantee.

Section 26 DAMAGE TO PUBLIC PROPERTY: 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 Franchise, will be promptly repaired by Grantee at its sole cost and expense.

Section 27 RECORDS AND PERIODIC REPORTS: At all reasonable times and after prior written notice, Grantee will permit the City, at the request of the Community Development Director, to examine all property of Grantee erected, constructed, laid, operated or maintained pursuant to this Franchise, together with any appurtenant property of Grantee, and to examine and transcribe any and all books, accounts, papers, maps, and other records kept or maintained by Grantee or under its control, with regard to safety issues associated with this Franchise.

Annually during the life of this Franchise, and concurrently with provision of the annual payment pursuant to Section 6, Grantee will file with the Community Development Director, 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 to the City.

Section 28 PRIOR FRANCHISES: All pipes and appurtenances erected, constructed, laid, operated or maintained by Grantee in the streets, whether installed by Grantee or not, in the area described in and by virtue of the authority provided by the Ordinance granting this Franchise, prior to the effective date of this Ordinance, except those maintained under prior right other than franchise, will become subject to all the terms and conditions of this Ordinance upon its effective date. The parties intend by this provision to ensure that no lineal footage of pipes and appurtenances which is constructed, erected, maintained, operated, repaired, renewed, changed in size, or removed by Grantee within the streets of the City of Torrance is inadvertently omitted from this Franchise.

Section 29 SEVERABILITY: If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, the decision will not affect the validity of the remaining portions of the Ordinance. The City Council declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases are declared invalid or unconstitutional.

Section 30 EFFECTIVE DATE: This Ordinance will take effect thirty (30) days after the date of its adoption, provided Grantee files an acceptance of the Franchise as required by Section 23. Within fifteen (15) days following adoption, this Ordinance or a summary of this Ordinance, if authorized by the City Council, will be published at least once in the Daily Breeze, a newspaper of general circulation, published and circulated in the City of Torrance.

Section 31 ATTORNEY'S FEES: Except as provided for in Paragraph 16, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Franchise (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Franchise, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

INTRODUCED and **APPROVED** this 19th day of November, 2024

ADOPTED this 17th day of December, 2024.

Mayor George K. Chen

APPROVED AS TO FORM:

ATTEST:

Patrick Q. Sullivan, City Attorney

Rebecca Poirier, City Clerk

ORDINANCE NO. 3940 SUMMARY

On December 17, 2024, the City Council of the City of Torrance adopted Ordinance No. 3940, granting a ten-year franchise to Zenith Energy West Coast Terminals LLC, with on e ten-year option term for construction and operation of fuel oil pipelines to be located in public rights of way.

The existing sixteen-inch diameter pipelines enter the City at 238th Street and Fulmar Avenue. West in 239th Street to Crenshaw Boulevard. North in Crenshaw Boulevard to Sepulveda Boulevard. West in Sepulveda Boulevard to Madrona Avenue. North in Madrona Avenue to Torrance Boulevard. Leave City Streets and enter railroad right-of-way at Torrance Boulevard and Madrona Avenue.

And in 190th Street, Hawthorne Boulevard and 182nd Street where said streets cross the Atchison, Topeka and Santa Fe Railroad right-of-way.

An extension fee of \$15,000 and franchise fee as provided in Public Utilities Code section 6231.5 will be paid by the Grantee within 30 days after the Council adopts the Ordinance granting the Franchise.