BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF FRESNO
STATE OF CALIFORNIA
ORDINANCE NUMBER _____

AN ORDINANCE GRANTING TO RT DIVERSIFIED, INC, THE NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES FOR TRANSMITTING WATER AND WASTEWATER TO SERVICE CLOVIS UNIFIED SCHOOL DISTRICT'S TERRY BRADLEY EDUCATION CENTER IN, ALONG, ACROSS, UPON, AND UNDER CERTAIN PUBLIC STREETS AND HIGHWAYS WITHIN THE UNINCORPORATED AREA OF FRESNO COUNTY.

The Board of Supervisors of the County of Fresno ordains as follows:

SECTION 1. DEFINITIONS

Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meaning assigned to them in the following definitions (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

(a) The word "Grantee" shall mean RT Diversified, Inc.;

(b) The word "County" shall mean the County of Fresno, a political subdivision of the State of California;

(c) The word “Director” shall mean the Director of the Department of Public Works and Planning, or, if there is no office of Director of the Department of Public Works and Planning, such other officer of the County who shall succeed to the office of the Director of the Department of Public Works and Planning, or any part thereof, and shall have the responsibility for administering this ordinance on behalf of the County, and the determination of such other officer as to such authority shall be conclusive;

(d) The word "streets" shall mean those public streets and highways, including ways and places, within the unincorporated area of the County;

(e) The word “franchise” shall mean and include any authorization granted hereunder, which shall be on a non-exclusive basis, in terms of a franchise, including, the privilege, permit, license, or otherwise, to construct, maintain and use pipes and appurtenances for transmitting derived water and wastewater to service Clovis Unified School District’s Terry Bradley Education Center (“Bradley Center”) in, along, across, upon, or under the public streets described within the “franchise area,” and shall include and be in lieu of any existing or future County requirement to obtain a license or permit for the privilege of transacting and carrying on a business for such purposes within the County, except for any County-approved conditional use permit and/or road permit condition as may be required by the County with respect to the matters described herein;

(f) The phrase “franchise area” shall mean approximately 4.8 miles of the following public streets and highways within the unincorporated area of Fresno County: from the existing City of Fresno water main at McKinley Avenue, east of Temperance Avenue, eastward on E. McKinley Avenue, and then Northward on N. Leonard Avenue, to Shields Avenue, westward on Shields Avenue to a Shields and Locan terminus where the City is in the process of installing water and sewer mains, and along the streets surrounding the Bradley Center of Leonard, Weldon, Highland, and Princeton Avenues; provided that, in the event of any discrepancy between the foregoing description of such public streets and highways within the unincorporated area, and the legal descriptions of such public streets and highways within the unincorporated areas, the legal descriptions of such public streets and highways within the unincorporated areas shall prevail;

(g) The phrase "pipes and appurtenances" or “facilities” shall mean pipes, pipelines, mains, traps, vents, cables, conduits, vaults, manholes, meters, appliances, attachments, appurtenances, and any other property located or to be located in, along, across, upon, or under the public streets described in the franchise area, in the unincorporated area of the County, and used or useful in the transmitting of water and wastewater;

(h) The word "water" shall mean potable water;

(i) The phrase “wastewater” shall mean all water that has been used and disposed of in a legally allowable method, and shall include metabolic waste, sewage, gray water, and wastewater derived from industrial or business applications;

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

(k) The phrase "gross annual receipts" shall mean all income received by Grantee associated with the franchise facilities, and separate from other payments, reimbursements, or franchise fees payable or paid to the County. Notwithstanding this definition, the parties understand and agree that Grantee's current intention is to transmit water and wastewater to service the Bradley Center.

SECTION 2. PURPOSE

That the franchise, including the privileges and rights, subject to each and all of the terms and conditions contained in this ordinance, and pursuant to the provisions of Division 3, Chapter 2 of the Public Utilities Code of the State of California, known as the Franchise Act of 1937, be and the same is hereby granted to Grantee to construct, maintain and use pipes and appurtenances for transmitting water and wastewater for any and all purposes, in, along, across, upon, and under the streets described in the Franchise Area, subject to any County-approved conditional use permit and/or road encroachment permit as may be required by the County with respect to the matters described herein.

The franchise is granted upon the express condition that it shall not be deemed or held to be an exclusive franchise and shall not in any manner prohibit the County from granting other and future franchises in, along, across, upon, and under, or over, any of the public streets, ways, alleys, and places in the unincorporated area of the County, including the franchise area.

SECTION 3. TERM

The franchise shall be for a period not to exceed twenty-five (25) years from and after the date that, after Grantee has provided a bond to the County and accepted by the Director under Section 4, the County has issued a permit for Grantee to commence construction within the franchise area defined in Section 1(f) and the franchise period shall endure in full force and effect for that time period, or until the occurrence of earliest of one of the following before expiration of the franchise period:

(a) Acceptance of the franchise area facilities into a City's operational system;

(b) The franchise shall be forfeited for non-compliance with its terms or conditions by Grantee;

(c) The franchise shall be voluntarily surrendered, abandoned, or transferred by Grantee; or

(d) The state or any municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of the franchise and situated in the territorial limits of the state, municipal, or public corporation purchasing or condemning such property.

Upon the expiration of the franchise period, or earlier termination thereof under this Section 3, the Director or his or her designee, shall have the right to record notice of termination of the franchise in the Office of County Recorder. The Director or his or her designee will promptly thereafter provide a copy of such recorded notice to Grantee.

SECTION 4. CONSIDERATION

(a) Grantee of the franchise shall, during the term thereof, pay to the County at the times hereinafter specified, in lawful money of the United States, a sum annually which shall be equivalent to two percent (2%) of the gross annual receipts of Grantee, arising from the use, operation or possession of the franchise, under Public Utilities Code section 6231, or other legislation applicable to franchisee, water or wastewater, enacted by the State of California.

(b) Grantee shall file with the Clerk of the Board of Supervisors of the County, with a copy thereof filed with the Director, within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the granting hereof, and within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross annual receipts of such Grantee during the preceding calendar year, or such fractional calendar year, from the sale of water and wastewater within the County, in connection with this franchise. Grantee shall pay to the County within fifteen (15) days after the time for filing such statement, in lawful money of the United States, the aforesaid percentage of Grantee's gross annual receipts for such calendar year, or such fractional calendar year, covered by such statement.

(c) In the event Grantee fails to make payments for the franchise on or before the dates due as herein provided, Grantee shall pay to the County as additional consideration a sum of money equal to one percent (1%) of the amount due for each month or fraction thereof in which the payment has not been made.

(d) Grantee shall, within sixty (60) days of the adoption of this ordinance, file with the Clerk of the Board of Supervisors a bond running to the County of Fresno in the penal sum of One Hundred Thousand Dollars ($100,000), in the form and with the terms and conditions required by law; the bond shall be issued by a bonding company authorized to do business in the State of California, and be upon terms and conditions, all of which shall be acceptable to the Director. Grantee shall simultaneously file a copy of such bond with the Director. The bond shall be effective not later than the date that such permit is granted by the County for Grantee to commence such construction within the franchise area. At least fifteen (15) days after such bond has been filed, the Director shall provide written notice to Grantee whether the Director has accepted or rejected the bond so filed; and in the event of such rejection, the Director shall provide the reason therefor, and Grantee shall promptly file a new bond, satisfying the requirements of this subsection 4(d), with the Clerk, and a copy thereof simultaneously filed with the Director. Within a reasonable time after receiving the new bond, the Director shall provide written notice to Grantee whether the Director has accepted or rejected the new bond so filed. The County shall not be obligated to issue any such construction permit to Grantee unless and until Grantee files a bond that is accepted by the Director.

SECTION 5. OTHER FRANCHISES

The grant of franchise is made in lieu of all other franchises owned by Grantee, or by any successor of Grantee to any rights under the franchise, for transmitting water and wastewater within the unincorporated areas of the County, as said areas now or may hereafter exist, and the acceptance of the franchise shall operate as an abandonment of all such franchises within the limits of this County, as such limits now or may hereafter exist.

SECTION 6. OBLIGATIONS OF GRANTEE

(a) All facilities or equipment of Grantee shall be constructed, installed and maintained only within the franchise area and in accordance with and in conformity with all of the ordinances, rules and regulations heretofore, or hereafter adopted by Board of Supervisors of the County in the exercise of its police powers and not in conflict with the paramount authority of the State of California, and, as to state highways, subject to the provisions of the general laws relating to the location and maintenance of such facilities.

Grantee has the right and privilege under the franchise to enter the County road right of way for the purpose of constructing, installing, replacing, or repairing its facilities on the condition that it obtains encroachment permits as required by the County. Any work performed, whether by Grantee, its contractors, or third parties, shall include necessary paving, patching, compacting, grading, and any other necessary repair or restoration to the work area in the County right of way.

All work shall be performed by Grantee in a good and workmanlike manner to the reasonable satisfaction of the Director or his or her designee. All materials shall meet industry standards within the State of California for the transportation of water and wastewater. On all pipelines installed over drainage ways, waterways, or bridges, shut-off valves shall be installed.

All encroachment permits for the construction, installation, maintenance, or repair of Grantee's system shall be applied for and given in the name of Grantee, who will be responsible for all work done under the permit. Grantee remains responsible whether the work is performed by Grantee, its contractors, or by third parties.

If Grantee, its contractors, or third parties working under permit should fail to restore the work area in the County road rights of way to the satisfaction of the Director or his or her designee as required herein, the County may make such repairs or restorations to the work area as are necessary to return the County road rights of way to pre-work condition. Upon presentation of an itemized bill for repairs or restorations of the work area, including costs of labor and equipment, Grantee shall pay the bill within thirty (30) days.

(b) If any portion of any street shall be damaged by reason of defects in any of the pipes and appurtenances maintained or constructed under the grant of franchise, or by reason of any other cause arising from the operation or existence of any pipes and appurtenances constructed or

maintained under the grant of franchise, Grantee shall, at its own cost and expense, immediately repair any such damage and restore such portion of such damaged street to as good condition as existed before such defect or other cause of damage occurred.

(c) Grantee shall pay to the County, on demand by the Director or his designee, the cost of all repairs to public property made necessary by any operations of Grantee under the franchise.

(d) Except for such losses or damages caused by the willful misconduct of County and any officers and employees, Grantee of the franchise shall indemnify, save, and hold harmless, County and any officers and employees thereof against and from any and all losses, damages, claims, demands, injuries, fines, penalties, judgments, decrees, costs (including attorney fees and costs) and expenditures which County, or such officer or employee, may suffer, or which may be recovered from, or obtainable against County, or such officer or employee, for, or by reason of, or growing out of or resulting from the exercising by Grantee of any or all of the rights or privileges under the franchise, or performing any or all of obligations of Grantee hereunder, or by reason of any act or omission of Grantee or its contractors, employees, servants, or agents in exercising the franchise, or performing any or all of obligations of Grantee hereunder, and Grantee shall defend any suit that may be instituted against County, or any officer or employee thereof, by reason of or growing out of or resulting from the exercise by Grantee of any or all of the rights or privileges under the franchise, or by reason of any act or omission of Grantee, or its contractors, employees, servants, or agents, in exercising the franchise, or performing any or all of obligations of Grantee hereunder. The provisions of this paragraph shall survive the termination of the franchise.

SECTION 7. REMOVE, LOCATE OR RELOCATE FACILITIES

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

reserved rights by County conflicts with any pipes and appurtenances over, of Grantee constructed, maintained, and used pursuant to the provisions of the franchise, whether previously constructed, maintained and used or not, Grantee shall, without cost or expense to County within ninety (90) days after written notice from the Director, or his designee, and request so to do, begin the physical field construction of changing the location of all facilities or equipment so conflicting. Grantee shall proceed promptly to complete such required work. It is agreed by the parties that the decision by County whether the exercise of such reserved rights by County is necessary is within the County's sole and absolute discretion.

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

(c) Upon request from Director or his designee, Grantee shall provide copies of construction plans and drawings for Grantee's facilities showing their location within the road right of way. Plans and drawings shall include the distance from the edge of pavement or road right-of-way and the depth of their facilities. At Grantee's expense, Grantee shall verify the location and depth of their facilities by pot-holing when requested to do so by County.

(d) With respect to the Regional Notification Center, Grantee shall comply with all requirements of Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code.

SECTION 8. <u>INDEPENDENT CONTRACTOR</u>

In performance of the work, duties and obligations assumed by Grantee under the franchise, it is mutually understood and agreed that Grantee, including any and all of Grantee's officers,

agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of the County.

Grantee and County shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, Grantee shall have absolutely no right to employment rights and benefits available to County employees. Grantee shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Grantee shall be solely responsible and save County harmless from all matters relating to payment of Grantee's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of the franchise, Grantee may be providing services to others unrelated to the County or to the franchise.

SECTION 9. INSURANCE

Without limiting the County's right to obtain indemnification from Grantee or any third parties, Grantee, at its sole expense, shall maintain in full force and effect the following insurance obligations throughout the term of the franchise:

A. Commercial General Liability

Commercial General Liability insurance with the limits of not less than One Million Dollars ($1,000,000) per occurrence and an annual aggregate of Two Million Dollars ($2,000,000). County may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability, pollution liability, or any other liability insurance deemed necessary because of the nature of the franchise.

B. Automobile Liability

Comprehensive Automobile Liability insurance with limits for bodily injury of not less than Two Hundred Fifty Thousand Dollars ($250,000) per person, Five Hundred Thousand Dollars ($500,000) per accident and for property damages of not less than Fifty Thousand Dollars ($50,000), or

such coverage with a combined single limit of Five Hundred Thousand Dollars ($500,000). Coverage should include owned and non-owned vehicles used in connection with the franchise.

C. Worker's Compensation

Grantee shall provide Worker's Compensation coverage in accordance with applicable law. Grantee shall indemnify and hold harmless the County from any workers compensation claims to which Grantee may become subject during the term of the franchise.

Grantee shall obtain endorsements to the Commercial General Liability insurance naming the County of Fresno, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under the franchise are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by County, its officers, agents, and employees shall be excess only and not contributing with insurance provided under Grantee's policies herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written notice given to County.

Grantee shall, at least thirty (30) days before any permit is granted by the County for Grantee to commence construction within the franchise area defined in Section 1(f), Grantee shall provide certificates of insurance and endorsements as stated above for all of the foregoing policies, as required herein, to County of Fresno, Director of Public Works and Planning, 2220 Tulare Street, 6th Floor, Fresno, CA 93721, stating that such insurance coverage have been obtained and are in full force; that the County of Fresno, its officers, agents, and employees will not be responsible for any premiums on the policies; that such General Liability insurance names the County of Fresno, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under the franchise are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by County of Fresno, its officers, agents and employees, shall be excess only and not contributing with insurance provided under Grantee's policies herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days advance, written notice given to County.

In the event Grantee fails to keep in effect at all times insurance coverage as herein required, County may, in addition to other remedies it may have, terminate the franchise upon the

occurrence of such event in accordance with the provisions in Section 11, “Forfeiture”.

All policies shall be with insurers authorized to do business in the State of California. Insurance purchased shall be from companies possessing a current A.M. Best, Inc. rating of “A, FSC VII” or better.

SECTION 10. ASSIGNMENT OR TRANSFER OF FRANCHISE

Neither the franchise nor any right or privilege or obligation of Grantee thereunder may be assigned or transferred, nor may any obligation of Grantee under the franchise be delegated, in whole or in part, to another firm, person or entity, without the prior express written consent of the County; provided, however, that Grantee, upon thirty (30) days written notice to the County, shall be permitted to: (i) collaterally assign the franchise to a wholly owned subsidiary or an entity for which it has majority control for the purpose of securing third party financing for the Project (as defined in the Revenue Agreement) on condition that such collateral assignment does not allow a third party to assume the obligations of the franchise in the event of any default; (ii) assign the franchise to a wholly owned subsidiary or an entity in which Grantee has majority control and the wholly owned subsidiary or entity has the equivalent expertise, experience, and assets; or (iii) to any entity or organization with the equivalent expertise, experience, and assets, subject to review and written approval by the County, in performing the duties and obligations of the franchise, the Revenue Agreement and Ground Lease.

SECTION 11. FORFEITURE

The franchise is granted upon each and every condition herein contained, and shall ever be strictly construed against Grantee. Nothing shall pass by the franchise to Grantee unless it be expressly granted in plain and unambiguous terms. Each of said conditions is a material and essential condition to the granting of the franchise. If Grantee shall fail, neglect or refuse to comply with any of the conditions of the franchise, and if such failure, neglect or refusal shall continue for more than thirty (30) days after written demand by County for compliance therewith, then County, by the Board of Supervisors, in addition to all rights and remedies allowed by law, thereupon may terminate the franchise, including the rights, privilege under the franchise, granted in and by this ordinance, and the franchise, including

the rights, privileges under the franchise, shall thereupon be at an end. Thereupon and immediately, Grantee shall surrender the franchise, including all rights and privileges under the franchise. No provision herein made for the purpose of securing the enforcement of the terms and conditions of the franchise shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies and procedure outlined herein or provided, including forfeiture, shall be deemed to be cumulative.

Grantee shall well and truly observe, fulfill, and perform each term and condition of the franchise, and that in case of any breach of condition of the bond the amount of the penal sum therein named shall be recoverable by the County.

SECTION 12. ACQUISITION AND VALUATION

The franchise granted hereunder shall not in any way or to any extent impair or affect the right of the County to acquire the property of Grantee hereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge, either for a term or in perpetuity, the County's right of eminent domain in respect to Grantee; nor shall the franchise ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to Grantee of the necessary publication and any other sum paid by it to the County therefore at the time of the acquisition thereof.

SECTION 13. ANNEXATION

Whenever any portion of the franchise area shall be annexed to, or otherwise become a part of any municipal corporation, or of any other county, or any other political subdivision of the State of California, the rights reserved under the franchise to the County, or any officer thereof shall inure to the benefit of such municipal corporation, county or political subdivision and its appropriate officers.

SECTION 14. AUDITS

Grantee shall make available to County, and County may examine at any time during business hours and as often as County deems necessary, all of Grantee's records and data with respect to the matters covered by this ordinance, excluding attorney-client privileged communications. Grantee shall, upon request by the Director or his designee, permit County to audit and inspect all of such records and data to ensure Grantee's compliance with the terms of this ordinance.

If the consideration to be paid by Grantee under this ordinance exceeds $10,000, Grantee is subject to the examination and audit of the California State Auditor, as provided in Government Code section 8546.7, for a period of three years after final payment under this ordinance.

This Section 14 survives the termination of this Ordinance.

SECTION 15. EFFECTIVE DATE

This ordinance shall take effect (the "Effective Date") and be in force and effect thirty (30) days after the second reading hereof by the Board of Supervisors and its passage.

SECTION 16. WRITTEN ACCEPTANCE

After the publication of this ordinance, Grantee shall file with the Clerk of the Board of Supervisors, and file a copy thereof with the Director, a written acceptance of the franchise. The franchise shall not become effective until written acceptance thereof shall have been filed by Grantee with the Clerk of the Board of Supervisors of the County, and a copy thereof filed with the Director.

SECTION 17. PUBLICATION

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

SECTION 18. PUBLICATION COSTS

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

SECTION 19. VALIDITY

If any section, subsection, sentence, clause, word, or phrase of this ordinance is held to be unconstitutional or otherwise invalid for any reason, such decision shall not affect the validity of the remainder of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause, word, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, words, or phrases be declared invalid or unconstitutional.

SECTION 20. DIRECTOR'S ADDRESS

The Director's address for Grantee's filing of any documents, copies of documents, or providing notices to the Director shall be:

Department of Public Works and Planning

2220 Tulare St, Ste. 600

Fresno CA 93721

Grantee's filing of any copies of documents with the Director shall not serve as a substitute for the Grantee's obligation to file the original thereof with the Clerk of the Board of Supervisors.

The County may change the Director's address by giving notice thereof to Grantee at Grantee's last address known to the Director.

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The foregoing was passed and adopted by the following vote of the Board of Supervisors of the County of Fresno this _____ day of _____, 2025, to wit:

AYES:

NOES:

ABSENT:

ABSTAINED:

_____
Ernest “Buddy” Mendes
Chairman of the Board of Supervisors
of the County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

_____
Deputy