

24-0663

1                                   BEFORE THE BOARD OF SUPERVISORS  
 2                                   OF THE COUNTY OF FRESNO  
 3                                   STATE OF CALIFORNIA  
 4                                   ORDINANCE NUMBER 24-018

5  
 6                   AN ORDINANCE GRANTING TO TORO ENERGY OF CALIFORNIA  
 7                   AA, LLC, THE NON-EXCLUSIVE FRANCHISE TO CONSTRUCT,  
 8                   MAINTAIN AND USE PIPES AND APPURTENANCES FOR  
 9                   TRANSMITTING DERIVED GAS FOR ANY AND ALL PURPOSES  
 10                  IN, ALONG, ACROSS, UPON, AND UNDER CERTAIN PUBLIC  
 11                  STREETS AND HIGHWAYS WITHIN THE UNINCORPORATED  
 12                  AREA OF FRESNO COUNTY.

13  
 14                  The Board of Supervisors of the County of Fresno ordains as follows:

15  
 16   SECTION 1.    DEFINITIONS

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

21                   (a)    The word "Grantee" shall mean Toro Energy of California AA, LLC;

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

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

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

1 (e) The word "franchise" shall mean and include any authorization  
2 granted hereunder, which shall be on a non-exclusive basis, in terms of a franchise,  
3 including, the privilege, permit, license, or otherwise, to construct, maintain and use pipes  
4 and appurtenances for transmitting derived gas from Grantee's landfill-gas-to-energy  
5 project at the County's American Avenue Disposal Site ("County's AADS") for all purposes  
6 in, along, across, upon, or under the public streets described within the "franchise area,"  
7 and shall include and be in lieu of any existing or future County requirement to obtain a  
8 license or permit for the privilege of transacting and carrying on a business for such  
9 purposes within the County, except for any County-approved conditional use permit and/or  
10 road permit condition as may be required by the County with respect to the matters  
11 described herein;

12 (f) The phrase "franchise area" shall mean that area in, along, across,  
13 upon, and under the following public streets and highways within the unincorporated area  
14 of Fresno County: from Grantee's landfill-gas-to-energy project at the County's American  
15 Avenue Disposal Site ("County's AADS") at 18950 W. American Ave, Kerman, eastward  
16 on W. American Avenue for approximately 4 miles, and then southward on S. Madera  
17 Avenue for approximately 4 miles, to a PG&E connection location approximately a half of  
18 a mile north of W. Manning Avenue, just east of S. Madera Avenue/SR 145, Kerman;  
19 provided that, in the event of any discrepancy between the foregoing description of such  
20 public streets and highways within the unincorporated area, and the legal descriptions of  
21 such public streets and highways within the unincorporated areas, the legal descriptions  
22 of such public streets and highways within the unincorporated areas shall prevail;

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

28 (h) The word "gas" shall mean derived gas from Grantee's landfill-gas-  
29 to-energy project at the County's AADS;

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

1 (j) The phrase "gross annual receipts" shall mean all income received by  
2 Grantee under that certain Revenue Agreement between Toro Energy of California AA,  
3 LLC and the County, dated April 22, 2022, as such agreement may be amended by the  
4 parties from time to time, for the County's sale to Grantee of landfill gas as renewable  
5 energy at the County's AADS (collectively, the "Revenue Agreement"), and without any  
6 deductions, offsets or credits described in section 1.25 of the Revenue Agreement, and  
7 separate from other payments, reimbursements, or franchise fees payable or paid to the  
8 County. Notwithstanding this definition, the parties understand and agree that Grantee's  
9 current intention is to gather said gas, transmit it to a central site within Fresno County,  
10 and after it is upgraded and cleaned, that it shall be injected into an on-site PG&E gas line  
11 within Fresno County, for further transmission. The transfer of said gas derived within  
12 Fresno County and transmitted within the County streets, roads and other rights of way,  
13 by Grantee, includes whether transmitted to a wholesale or retail customer, another gas  
14 transmitter or distributor, or to another use not currently contemplated by the parties  
15 because it does not yet exist or has not yet been implemented on a commercial scale,  
16 including but not limited to the connection of Grantee's pipes and appurtenances into  
17 another system, whether wholly contained within the territorial boundaries of the County  
18 of Fresno or extending outside thereof.

19  
20 SECTION 2. PURPOSE

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

29 The franchise is granted upon the express condition that it shall not be  
30 deemed or held to be an exclusive franchise and shall not in any manner prohibit the  
31 County from granting other and future franchises in, along, across, upon, and under, or

1 over, any of the public streets, ways, alleys, and places in the unincorporated area of the  
2 County, including the franchise area.

3  
4 SECTION 3. TERM

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

11 (a) Termination of the Revenue Agreement;

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

14 (c) The franchise shall be voluntarily surrendered or abandoned by  
15 Grantee; or

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

21 Upon the expiration of the franchise period, or earlier termination thereof  
22 under this Section 3, the Director or his or her designee, shall have the right to record  
23 notice of termination of the franchise in the Office of County Recorder. The Director or his  
24 or her designee will promptly thereafter provide a copy of such recorded notice to Grantee.  
25

26 SECTION 4. CONSIDERATION

27 (a) Grantee of the franchise shall, during the term thereof, pay to the  
28 County at the times hereinafter specified, in lawful money of the United States, a sum  
29 annually which shall be equivalent to two percent (2%) of the gross annual receipts of  
30 Grantee, commencing on the first date when Grantee receives gas pursuant to Section  
31 1.26 of the Revenue Agreement, arising from the use, operation or possession of the

1 franchise, plus any surcharges, if applicable to Grantee, under the Public Utilities Code,  
2 sec. 6350, et seq., successor legislation, or other legislation applicable to franchisee or  
3 derived gas enacted by the State of California.

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

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

18 (d) Grantee shall, at least thirty (30) days before any permit is granted by  
19 the County for Grantee to commence construction within the franchise area defined in  
20 Section 1(f), file with the Clerk of the Board of Supervisors a bond running to the County  
21 of Fresno in the penal sum of One Hundred Thousand Dollars (\$100,000), in the form and  
22 with the terms and conditions required by law; the bond shall be issued by a bonding  
23 company authorized to do business in the State of California, and be upon terms and  
24 conditions, all of which shall be acceptable to the Director. Grantee shall simultaneously  
25 file a copy of such bond with the Director. The bond shall be effective not later than the  
26 date that such permit is granted by the County for Grantee to commence such construction  
27 within the franchise area. At least fifteen (15) days after such bond has been filed, the  
28 Director shall provide written notice to Grantee whether the Director has accepted or  
29 rejected the bond so filed; and in the event of such rejection, the Director shall provide the  
30 reason therefor, and Grantee shall promptly file a new bond, satisfying the requirements  
31 of this subsection 4(g), with the Clerk, and a copy thereof simultaneously filed with the

1 Director. Within a reasonable time after receiving the new bond, the Director shall provide  
2 written notice to Grantee whether the Director has accepted or rejected the new bond so  
3 filed. The County shall not be obligated to issue any such construction permit to Grantee  
4 unless and until Grantee files a bond that is accepted by the Director.  
5

6 SECTION 5. OTHER FRANCHISES

7 The grant of franchise is made in lieu of all other franchises owned by  
8 Grantee, or by any successor of Grantee to any rights under the franchise, for transmitting  
9 gas within the unincorporated areas of the County, as said areas now or may hereafter  
10 exist, and the acceptance of the franchise shall operate as an abandonment of all such  
11 franchises within the limits of this County, as such limits now or may hereafter exist.  
12

13 SECTION 6. OBLIGATIONS OF GRANTEE

14 (a) All facilities or equipment of Grantee shall be constructed, installed  
15 and maintained only within the franchise area and in accordance with and in conformity  
16 with all of the ordinances, rules and regulations heretofore, or hereafter adopted by Board  
17 of Supervisors of the County in the exercise of its police powers and not in conflict with the  
18 paramount authority of the State of California, and, as to state highways, subject to the  
19 provisions of the general laws relating to the location and maintenance of such facilities.  
20

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

27 All work shall be performed by Grantee in a good and workmanlike manner  
28 to the reasonable satisfaction of the Director or his or her designee. All materials shall  
29 meet industry standards within the State of California for the transportation of gas. On all  
30 pipelines installed over drainage ways, waterways, or bridges, shut-off valves shall be  
31 installed wherever and to the extent necessary to protect life and property from fire or  
contamination in the event of a leak or break in said line.

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

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

11 (b) If any portion of any street shall be damaged by reason of defects in  
12 any of the pipes and appurtenances maintained or constructed under the grant of  
13 franchise, or by reason of any other cause arising from the operation or existence of any  
14 pipes and appurtenances constructed or maintained under the grant of franchise, Grantee  
15 shall, at its own cost and expense, immediately repair any such damage and restore such  
16 portion of such damaged street to as good condition as existed before such defect or other  
17 cause of damage occurred.

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

21 (d) Except for such losses or damages caused by the willful misconduct  
22 of County and any officers and employees, Grantee of the franchise shall indemnify, save,  
23 and hold harmless, County and any officers and employees thereof against and from any  
24 and all losses, damages, claims, demands, injuries, fines, penalties, judgments, decrees,  
25 costs (including attorney fees and costs) and expenditures which County, or such officer  
26 or employee, may suffer, or which may be recovered from, or obtainable against County,  
27 or such officer or employee, for, or by reason of, or growing out of or resulting from the  
28 exercising by Grantee of any or all of the rights or privileges under the franchise, or  
29 performing any or all of obligations of Grantee hereunder, or by reason of any act or  
30 omission of Grantee or its contractors, employees, servants, or agents in exercising the  
31 franchise, or performing any or all of obligations of Grantee hereunder, and Grantee shall

1 defend any suit that may be instituted against County, or any officer or employee thereof,  
2 by reason of or growing out of or resulting from the exercise by Grantee of any or all of the  
3 rights or privileges under the franchise, or by reason of any act or omission of Grantee, or  
4 its contractors, employees, servants, or agents, in exercising the franchise, or performing  
5 any or all of obligations of Grantee hereunder. The provisions of this paragraph shall  
6 survive the termination of the franchise.

7  
8 SECTION 7. REMOVE, LOCATE OR RELOCATE FACILITIES

9 (a) County reserves the right for itself to lay, construct, erect, install, use,  
10 operate, repair, replace, remove, relocate, or maintain below surface or above surface  
11 facilities, including improvements, of any type or description in, upon, along, across, under,  
12 or over the streets of the County, including in the franchise area. County further reserves  
13 the right to lawfully change the grade, alignment, or width of any street, including in the  
14 franchise area. If the necessary exercise of the aforementioned reserved rights by County  
15 conflicts with any pipes and appurtenances over, of Grantee constructed, maintained, and  
16 used pursuant to the provisions of the franchise, whether previously constructed,  
17 maintained and used or not, Grantee shall, without cost or expense to County within ninety  
18 (90) days after written notice from the Director, or his designee, and request so to do,  
19 begin the physical field construction of changing the location of all facilities or equipment  
20 so conflicting. Grantee shall proceed promptly to complete such required work. It is agreed  
21 by the parties that the decision by County whether the exercise of such reserved rights by  
22 County is necessary is within the County's sole and absolute discretion.

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



1 of any private developer or other third party.

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

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

11  
12 SECTION 8. INDEPENDENT CONTRACTOR

13 In performance of the work, duties and obligations assumed by Grantee  
14 under the franchise, it is mutually understood and agreed that Grantee, including any and  
15 all of Grantee's officers, agents, and employees will at all times be acting and performing  
16 as an independent contractor, and shall act in an independent capacity and not as an  
17 officer, agent, servant, employee, joint venture, partner, or associate of the County.

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

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

29  
30 SECTION 9. INSURANCE

31 Without limiting the County's right to obtain indemnification from Grantee or

1 any third parties, Grantee, at its sole expense, shall maintain in full force and effect the  
2 following insurance obligations throughout the term of the franchise:

3 A. Commercial General Liability

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

10 B. Automobile Liability

11 Comprehensive Automobile Liability insurance with limits for bodily injury of  
12 not less than Two Hundred Fifty Thousand Dollars (\$250,000) per person, Five Hundred  
13 Thousand Dollars (\$500,000) per accident and for property damages of not less than Fifty  
14 Thousand Dollars (\$50,000), or such coverage with a combined single limit of Five  
15 Hundred Thousand Dollars (\$500,000). Coverage should include owned and non-owned  
16 vehicles used in connection with the franchise.

17 C. Worker's Compensation

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

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

30 Grantee shall, at least thirty (30) days before any permit is granted by the  
31 County for Grantee to commence construction within the franchise area defined in Section

1 1(f), Grantee shall provide certificates of insurance and endorsements as stated above  
2 for all of the foregoing policies, as required herein, to County of Fresno, Director of Public  
3 Works and Planning, 2220 Tulare Street, 6<sup>th</sup> Floor, Fresno, CA 93721, stating that such  
4 insurance coverage have been obtained and are in full force; that the County of Fresno,  
5 its officers, agents, and employees will not be responsible for any premiums on the  
6 policies; that such General Liability insurance names the County of Fresno, its officers,  
7 agents and employees, individually and collectively, as additional insured, but only insofar  
8 as the operations under the franchise are concerned; that such coverage for additional  
9 insured shall apply as primary insurance and any other insurance, or self-insurance,  
10 maintained by County of Fresno, its officers, agents and employees, shall be excess only  
11 and not contributing with insurance provided under Grantee's policies herein; and that this  
12 insurance shall not be cancelled or changed without a minimum of thirty (30) days  
13 advance, written notice given to County.

14 In the event Grantee fails to keep in effect at all times insurance coverage  
15 as herein required, County may, in addition to other remedies it may have, terminate the  
16 franchise upon the occurrence of such event in accordance with the provisions in Section  
17 11, "Forfeiture".

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

21  
22 **SECTION 10. ASSIGNMENT OR TRANSFER OF FRANCHISE**

23 Neither the franchise nor any right or privilege or obligation of Grantee  
24 thereunder may be assigned or transferred, nor may any obligation of Grantee under the  
25 franchise be delegated, in whole or in part, to another firm, person or entity, without the  
26 prior express written consent of the County; provided, however, that Grantee, upon thirty  
27 (30) days written notice to the County, shall be permitted to: (i) collaterally assign the  
28 franchise to a wholly owned subsidiary or an entity for which it has majority control for the  
29 purpose of securing third party financing for the Project (as defined in the Revenue  
30 Agreement) on condition that such collateral assignment does not allow a third party to  
31 assume the obligations of the franchise or of the Revenue Agreement and Ground Lease

1 (as defined in the Revenue Agreement) in the event of default of the Developer (as defined  
2 in the Revenue Agreement) under the Revenue Agreement; (ii) assign the franchise to a  
3 wholly owned subsidiary or an entity in which Grantee has majority control and the wholly  
4 owned subsidiary or entity has the equivalent expertise, experience, and assets; or (iii) to  
5 any entity or organization with the equivalent expertise, experience, and assets, subject to  
6 review and written approval by the County, in performing the duties and obligations of the  
7 franchise, the Revenue Agreement and Ground Lease. Notwithstanding anything to the  
8 contrary in this ordinance, including the franchise, such other firm, person or entity who  
9 may be the assignee or transferee of the franchise under this Section 10, shall be the  
10 same firm, person or entity who may be an assignee or transferee of the Revenue  
11 Agreement under Section 39.1 thereof.

12  
13 SECTION 11. FORFEITURE

14 The franchise is granted upon each and every condition herein contained,  
15 and shall ever be strictly construed against Grantee. Nothing shall pass by the franchise  
16 to Grantee unless it be expressly granted in plain and unambiguous terms. Each of said  
17 conditions is a material and essential condition to the granting of the franchise. If Grantee  
18 shall fail, neglect or refuse to comply with any of the conditions of the franchise, and if such  
19 failure, neglect or refusal shall continue for more than thirty (30) days after written demand  
20 by County for compliance therewith, then County, by the Board of Supervisors, in addition  
21 to all rights and remedies allowed by law, thereupon may terminate the franchise, including  
22 the rights, privilege under the franchise, granted in and by this ordinance, and the  
23 franchise, including the rights, privileges under the franchise, shall thereupon be at an end.  
24 Thereupon and immediately, Grantee shall surrender the franchise, including all rights and  
25 privileges under the franchise. No provision herein made for the purpose of securing the  
26 enforcement of the terms and conditions of the franchise shall be deemed an exclusive  
27 remedy or to afford the exclusive procedure for the enforcement of said terms and  
28 conditions, but the remedies and procedure outlined herein or provided, including  
29 forfeiture, shall be deemed to be cumulative.

30 Grantee shall well and truly observe, fulfill, and perform each term and  
31 condition of the franchise, and that in case of any breach of condition of the bond the

1 amount of the penal sum therein named shall be recoverable by the County.

2  
3 SECTION 12. ACQUISITION AND VALUATION

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

12  
13 SECTION 13. ANNEXATION

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

19  
20 SECTION 14. AUDITS

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

27 If the consideration to be paid by Grantee under this ordinance exceeds  
28 \$10,000, Grantee is subject to the examination and audit of the California State Auditor,  
29 as provided in Government Code section 8546.7, for a period of three years after final  
30 payment under this ordinance.

31 This Section 14 survives the termination of this Ordinance.

1  
2 SECTION 15. EFFECTIVE DATE

3 This ordinance shall take effect (the "Effective Date") and be in force and  
4 effect thirty (30) days after the second reading hereof by the Board of Supervisors and its  
5 passage.  
6

7 SECTION 16. WRITTEN ACCEPTANCE

8 After the publication of this ordinance, Grantee shall file with the Clerk of the  
9 Board of Supervisors, and file a copy thereof with the Director, a written acceptance of the  
10 franchise. The franchise shall not become effective until written acceptance thereof shall  
11 have been filed by Grantee with the Clerk of the Board of Supervisors of the County, and  
12 a copy thereof filed with the Director.  
13

14 SECTION 17. PUBLICATION

15 The Clerk of the Board of Supervisors shall certify to the adoption of this  
16 ordinance, and within fifteen (15) days after its adoption, shall cause the same (with a list  
17 of the supervisors voting for and against) to be published in a newspaper of general  
18 circulation published and circulated in the County.  
19

20 SECTION 18. PUBLICATION COSTS

21 Grantee of the franchise shall pay to the County a sum of money sufficient  
22 to reimburse it for all publication expenses incurred by it in connection with the granting  
23 thereof, such payment to be made within thirty (30) days after the County shall have  
24 furnished such Grantee with a written statement of such expenses.  
25

26 SECTION 19. VALIDITY

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

1 sections, subsections, sentences, words, or phrases be declared invalid or  
2 unconstitutional.

3  
4 SECTION 20. DIRECTOR'S ADDRESS

5  
6 The Director's address for Grantee's filing of any documents, copies of documents,  
7 or providing notices to the Director shall be:

8 Department of Public Works and Planning  
9 2220 Tulare St, Ste. 600  
10 Fresno CA 93721

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

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

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1           The foregoing was passed and adopted by the following vote of the Board of  
2 Supervisors of the County of Fresno this 3rd day of December, 2024, to wit:

3  
4 AYES: Supervisors Brandau, Magsig, Mendes, Pacheco, Quintero

5 NOES: None

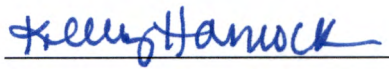
6 ABSENT: None

7 ABSTAINED: None

8 

9 \_\_\_\_\_  
10 Nathan Magsig, Chairman of the Board of Supervisors  
11 of the County of Fresno

12  
13  
14  
15 Attest:  
16 Bernice E. Seidel  
17 Clerk of the Board of Supervisors  
18 County of Fresno, State of California

19 By:   
20 Deputy