ANALYSIS

This ordinance grants a water pipeline franchise to the City of Norwalk ("Franchisee"), to transport and distribute water for a period of fifteen (15) years.

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County Counsel

By FOR
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Senior Deputy County Counsel
Contracts Division

GVC:mm
Requested: (08/19/10)
Revised: (08/19/10)

ORDINANCE NO. 2010-0043F

An ordinance granting a water pipeline franchise to the City of Norwalk, for the transportation and distribution of water for a period of fifteen (15) years.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Franchise Term, Grant.

The right, privilege, and franchise is granted to the City of Norwalk ("Franchisee"), and its successors and assigns, for a period of fifteen (15) years, beginning on October 25, 2010, the operative date of this franchise, to lay, construct, reconstruct, maintain, operate, renew, repair, change the size of, remove, or abandon in place pipes and pipelines for the transportation of water, waste water, mud, and other liquid substances, including those substances that are generally accepted as appropriate for the treatment of water, excluding any hazardous substances or hazardous waste within the meaning of the "Comprehensive Environmental Response Compensation and Liability Act of 1980," 42 U.S.C. 9601 et seq., and amendments thereto (provided, however, that this exclusion shall not apply to substances in such amounts that are generally accepted as appropriate for the treatment of water), together with all manholes, valves, cathodic protection systems, appurtenances, and service connections necessary or appropriate for the operation of said pipes or pipelines, adjunct communication lines, including poles, conduits, wires, cables, or other appurtenances and equipment for telegraph or telephone lines, or both, necessary or appropriate solely for the Franchisee's operations in, under, along, or across any

and all highways as defined in Section 16.36.080 of the Los Angeles County Code, now or hereafter dedicated to public use in the unincorporated territory of the County of Los Angeles ("County"), State of California, located within the Norwalk-Cerritos Island unincorporated area, as depicted on the exhibit map(s) attached hereto.

SECTION 2. Consideration; Payment of Fees.

Franchisee shall not be responsible for the payment of any granting fee, annual franchise fee, or other fee for the grant of, or exercise of rights under this franchise, but shall be required to comply with all the terms and conditions hereof as consideration for the rights conveyed to Franchisee.

SECTION 3. Reports.

The Franchisee shall during the life of the franchise:

A. File with the County Chief Executive Officer ("CEO"), Director of Real Estate, a report indicating the length of the Franchisee's main lines in highways in the unincorporated areas of Los Angeles, the nominal internal diameter of such main lines and the points where they enter and exit the County unincorporated highways.

B. In the report prepared pursuant to subsection 3.A above, Franchisee shall also show: any change in franchise footage since the end of the most recent franchise report period, if any, segregating such footage as to new main lines laid, old main lines removed, old main lines abandoned in place, including the internal diameter of such main lines laid, removed, and/or abandoned in place; the footage of new conduits laid for wires, cables, telegraph, or telephone lines, old conduits removed, old conduits abandoned in place; the diameter of such conduits laid, removed, and/or abandoned in

place; and the footage and internal diameter of main lines in territory annexed or incorporated since the last day of the most recent franchise report period.

SECTION 4. Indemnification and Insurance.

A. This ordinance excludes the incorporation by reference of those provisions in the County Master Pipeline Franchise Ordinance, Chapter 16.52 of the Los Angeles County Code ("Code"), requiring the Franchise to comply with the indemnification, insurance, and bonding requirements set forth in Code Sections 16.52.100, 16.52.110, and 16.52.180.

B. Franchisee shall indemnify, defend, and hold harmless the County and its special districts, elected and appointed officers, employees, and agents ("County's agents") from and against any and all liability and expense, including claims and lawsuits for injuries or damages of any nature whatsoever, including but not limited to bodily injury, death, personal injury, or property damage, including property of the Franchisee, and including pollution liability, defense costs, legal fees, and workers' compensation benefits, based upon, arising from, or relating to either: (1) Franchisee's operations or the services provided by Franchisee, its employees, agents, servants, receivers, contractors, subcontractors, successors, or assignees ("Franchisee's agents") in connection with this franchise; and/or (2) the acts or omissions of Franchisee, Franchisee's agents, or any person in connection with activities or work conducted or performed pursuant to this franchise and arising out of such activities or work. Franchisee shall also indemnify, defend, and hold harmless the County and the County's agents from and against any and all pollution liability, contamination, or

environmental degradation liability, including any and all expenses, claims, and lawsuits for injuries or damages of any nature whatsoever, defense costs, legal fees, and workers' compensation benefits, arising from or relating to any threatened, actual, or alleged discharge, dispersal, release, or escape of any substance into or upon any person, thing, or place, including the land, soil, atmosphere, man-made structure, and/or any above-ground or below-ground watercourse or body of water, in connection with this franchise. The Franchisee shall not be obligated to indemnify the County and County's agents for liability and expense arising from the active negligence of the County or County's agents.

C. The County shall be immediately notified by Franchisee of all discharge, release, or escape of any water, waste water, mud, or other substances from Franchisee's pipelines and appurtenances within the franchise area. All actions to investigate, remove, or remediate any substance reasonably demonstrated to be discharged, dispersed, released, or escaped from Franchisee's pipelines, and to repair or restore Franchisee's pipelines and appurtenances, shall be the sole responsibility of Franchisee and shall be conducted by Franchisee or Franchisee's Agents, in conformance with any and all laws, ordinances, rules, regulations, requirements, and orders whatsoever, present or future, of the federal, state, County, or other applicable local government at Franchisee's sole cost and expense, and shall be immediately undertaken. If Franchisee fails to take any action required pursuant to this section, County may, but shall not be obligated to, take all actions it deems appropriate at Franchisee's expense. Upon written demand by County, Franchisee shall reimburse

County for all County expenses reasonably incurred in connection with County's actions including, but not limited to, all direct and indirect costs relating to investigation, remediation, and removal.

D. During the term of this Franchise, Franchisee shall maintain a program of insurance coverage as described below. Franchisee, at its sole option, may satisfy all or any part of this insurance requirement through use of a program of self insurance (self-funding of its liabilities). Certificate evidencing coverage or letter evidencing self-funding will be provided to Franchisor after execution of this agreement.

1. Commercial General Liability Insurance: Such coverage shall provide scope of coverage equivalent to ISO policy form CG 00 01, naming Franchisor and its Agents as an additional insured, with limits of not less than:

General Aggregate:	$ 2 million
Products/Completed Operations Aggregate:	$ 1 million
Personal and Advertising Injury:	$ 1 million
Each Occurrence:	$ 1 million

2. Automobile Liability Insurance: Such coverage shall be written on ISO form CA 00 01 or its equivalent. Such insurance shall include coverage for all "owned," "hired," and "non-owned" automobiles, or coverage for "any auto" with minimum coverage limit of not less than $1,000,000 per accident.

3. Workers Compensation and Employers Liability Insurance: Such coverage shall provide workers compensation benefits, as required by the Labor Code of the State of California. Such policy shall be endorsed to waive subrogation against

the County for injury to the Franchisee's employees. In all cases, the above insurance shall include Employers Liability coverage with limits not less than:

Each accident:	$1 million
Disease – policy limit:	$1 million
Disease – each employee:	$1 million

4. Pollution Liability Insurance: Such insurance shall cover liability for personal injury and property damage arising from the release, discharge, escape, dispersal, or emission of pollutants, whether gradual or sudden, and include coverage for the costs and expenses associated with voluntary clean-up, testing, monitoring, and treatment of asbestos in compliance with governmental mandate or requests. Franchisee shall maintain limits of not less than $2,000,000.

SECTION 5. Transfers and Assignments.

A. Franchisee shall not sell, transfer, assign, lease, hypothecate, place in trust, or change the control of the franchise or any part thereof (each of which is hereinafter referred to as an "assignment"), to any other person or entity ("transferee") except as provided herein, without the prior written consent of the CEO, and after the proposed transferee's payment of a transfer fee as detailed in subsection 5.G. As used in this section, "transfer" includes stock transfer and "control" includes actual working control in whatever manner exercised.

B. Franchisee shall give notice to the CEO of any pending assignment, except as excluded in subsection 5.E, and shall provide all documents requested by the CEO, as set forth in subsection 5.F, on which the assignment is predicated. Consent

from the CEO shall be subject to the provisions of subsection 5.D, and shall beconditioned upon the consummation of the assignment on the terms and conditions set forth in the assignment documents delivered to County, the assumption by the transferee, as applicable, of all the Franchisee's covenants and obligations under the franchise, and all information provided CEO under subsection 5.F, below, being true and correct as of the time of the consummation of the assignment. Upon receipt of such consent from the CEO, Franchisee may proceed to consummate the assignment.

C. Franchisee shall file with the CEO within thirty (30) days after the effective date of any such assignment, a certified copy of the duly executed instrument(s) which officially evidences such assignment. If such duly executed instrument(s) is not filed with the CEO within thirty (30) days after the effective date of such assignment, or if the conditions to consent by the CEO have not been met, then upon expiration of said thirty (30) days, the CEO may notify the Franchisee and the proposed transferee that the assignment is not approved by the County. The CEO may then administratively determine that the assignment has no force or effect or that the franchise is forfeited and the Board may repeal this franchise.

D. As a condition to the granting of consent to such assignment, the Board may impose such additional terms and conditions upon this franchise, and upon the proposed transferee which the CEO recommends or the Board deems to be in the public interest. Such additional terms and conditions shall be expressed by ordinance. Nothing contained herein shall be construed to grant Franchisee the right to complete

an assignment except in the manner aforesaid. This section applies to any assignment, whether by operation of law, by voluntary act of the Franchisee, or otherwise.

E. Notwithstanding the foregoing, shareholders, partners, and/or any other person or entity owning an interest in Franchisee may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, divestment, or other change is effected in such a way as to give control of, or a twenty-five percent (25%) or more interest in, Franchisee, to any person or persons, corporation, partnership, or legal entity other than the person or entity with the controlling interest in the Franchisee on the effective date of the franchise or the effective date of the last approved assignment, consent thereof shall be required as otherwise provided in this Section 5.

F. Upon notice by Franchisee of any pending assignment, the proposed transferee shall submit an assignment application to the CEO, which shall contain, at a minimum:

1. Identification of the proposed transferee which indicates the corporate or business entity organization, including the submission of copies of the corporate or business formation papers (e.g., articles of incorporation and by-laws, limited partnership agreements, operating agreements), and the names and addresses of any parent or subsidiary of the proposed transferee(s), or any other business entity owning or controlling the proposed transferee in part or in whole;

2. A current financial statement, which has been audited by a certified public accountant demonstrating conclusively to the satisfaction of the CEO that the

proposed transferee has all the financial resources necessary to carry out all of the terms and conditions of the franchise. The financial statement shall include a balance sheet, profit and loss statement for at least the three (3) most recent years, and a statement of changes in financial position; however, if the proposed transferee has been in existence for less than three (3) years, then for such period of existence;

3. A copy of the proposed agreement of sale, letter of understanding, or other documentation which details the pending assignment ("assignment documents"); and

4. Other information which may be required by the CEO to assess the capability of the proposed transferee to operate and maintain the franchise.

G. The proposed transferee's payment of the transfer fee shall be submitted with the Franchisee's request for the County's consent to any assignment described in subsection 5.A and shall be determined as follows:

1. Consent to assignment or any other action, in which the County does not elect to modify the franchise by adoption of an amending ordinance: two thousand five hundred dollars ($2,500).

2. Consent to assignment or any other action, in which the County elects to modify the franchise by adoption of an amending ordinance: five thousand dollars ($5,000).

3. In the event County's actual costs to process the proposed assignment application, including any consultant's fees incurred by the County to assist in evaluating the application, exceed the fees detailed above, the proposed transferee

may be required to pay any additional costs incurred by the County in processing the Franchisee and/or proposed transferee's request for assignment. Such costs shall be paid by the proposed transferee prior to final consideration of the request by the CEO or the Board, as applicable.

SECTION 6. Relocation of Pipelines.

In the event the Franchisee receives notice to relocate its pipelines and appurtenances pursuant to Section 16.52.290 of the County Code, in addition to all obligations of Franchisee and rights of the County under Sections 16.38.450 and 16.52.290 of the County Code, if Franchisee neglects or fails to relocate its facilities in a timely manner after receipt of any such notice, Franchisee shall be responsible for, and shall reimburse the County, city, or other applicable public entity, for any and all additional costs or expenses incurred by the County, city, or other applicable public entity due to, or resulting from, such delay in relocation of the facilities.

SECTION 7. Pipeline Franchise Ordinance.

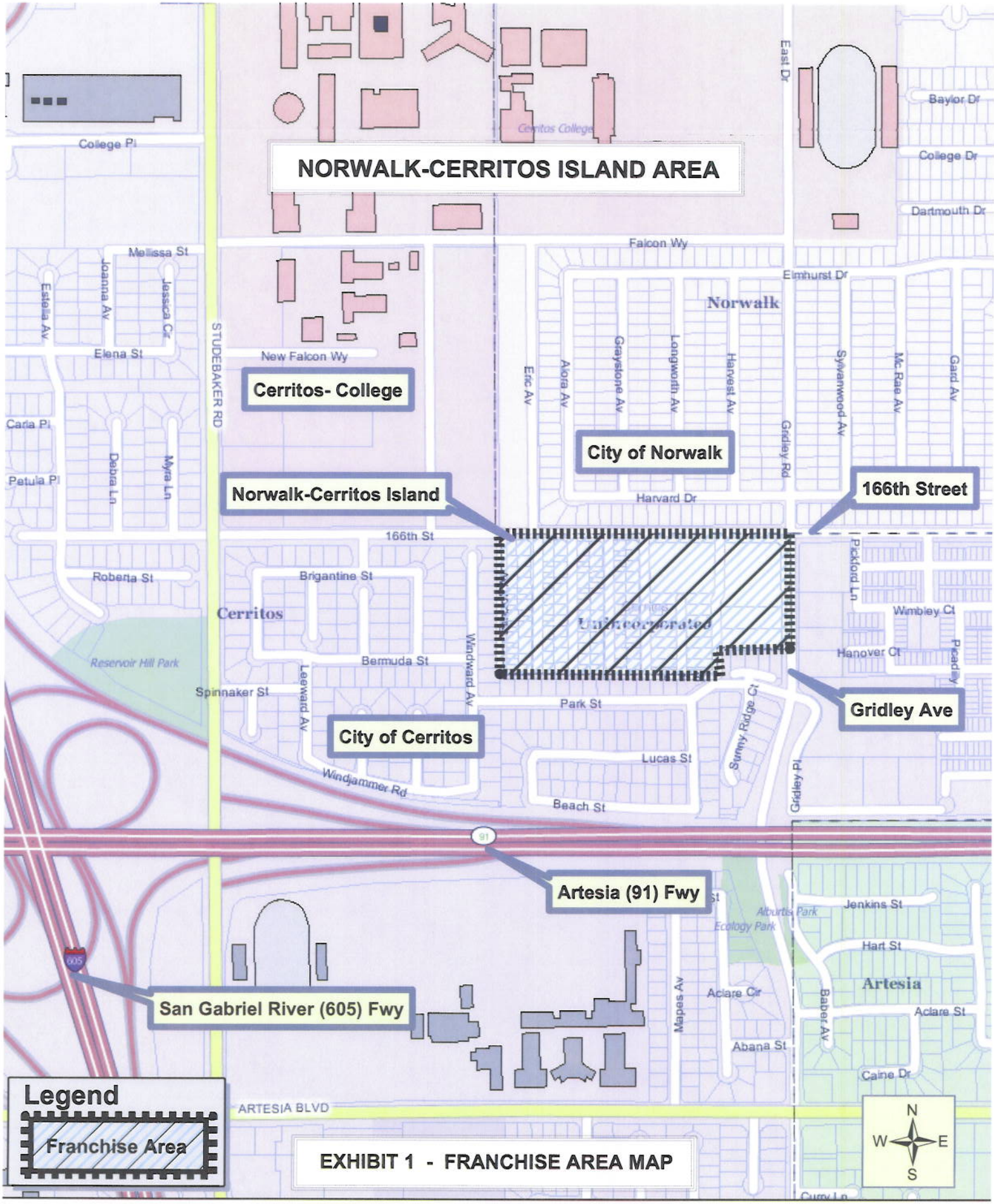
Pipeline Franchise Ordinance.

In addition to the terms and conditions stated herein, and except as expressly excluded herein, this franchise is granted under all of the terms and conditions contained in the County Pipeline Franchise Ordinance, Title 16, Division 3A, of the Los Angeles County Code, as codified in 1978 and amended to date, which is incorporated herein by reference, as it may hereafter be amended. In the event the terms and conditions of this franchise conflict with the terms of the County Pipeline Franchise Ordinance, the terms and conditions hereof shall control.

SECTION 8. Franchise Operative Date.

The operative date of this franchise shall be October 25, 2010.

[NORWALKWATERPIPEFRNGCCC]



Date June 2010	COUNTY OF LOS ANGELES - CHIEF EXECUTIVE OFFICE WATER PIPELINE FRANCHISE CITY OF NORWALK	County Water Co. Renew 85-0151F
Fourth Sup. District		Agent

SECTION 9. This ordinance shall be published in The Daily Commerce a newspaper printed and published in the County of Los Angeles.

Chair

ATTEST:

Sachi A. Hamai
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

I hereby certify that at its meeting of September 28, 2010 the foregoing ordinance was adopted by the Board of Supervisors of said County of Los Angeles by the following vote, to wit:

	Ayes		Noes
Supervisors	Mark Ridley-Thomas	Supervisors	None
	Zev Yaroslavsky		
	Don Knabe		
	Michael D. Antonovich		
	Gloria Molina		

Effective Date: October 28, 2010

Operative Date: October 25, 2010

Sachi A. Hamai
Executive Officer -
Clerk of the Board of Supervisors
County of Los Angeles

I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:
ANDREA SHERIDAN ORDIN
County Counsel

By _____
Leela Kapur
Chief Deputy County Counsel

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