

ORDINANCE NO. 2001-11-081

AN ORDINANCE GRANTING OLYMPIC PIPE LINE COMPANY, A CORPORATION, ITS SUCCESSORS, GRANTEES AND ASSIGNS THE NONEXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT, OPERATE, MAINTAIN, REMOVE, REPLACE, AND REPAIR EXISTING PIPELINE FACILITIES, TOGETHER WITH EQUIPMENT AND APPURTENANCES THERETO, FOR THE TRANSPORTATION OF PETROLEUM PRODUCTS WITHIN AND THROUGH CERTAIN RIGHTS OF WAY, STREETS AND PUBLIC PROPERTY WITHIN THE CITY OF BELLINGHAM.

WHEREAS, Olympic Pipe Line Company (hereinafter "Grantee") has applied for a nonexclusive franchise to operate and maintain an existing petroleum pipeline through certain public rights of way and property within the City of Bellingham (hereinafter the "City" or "Grantor"); and,

WHEREAS, the Bellingham City Charter authorizes the City to grant nonexclusive franchises for the use of City rights of way, streets and public property;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Purpose.

The City grants this nonexclusive franchise to Grantee to operate and maintain its existing pipeline and related facilities necessary to operate and maintain the pipeline as a liquid petroleum product delivery system for Grantee's business. This franchise is conditioned upon the terms and conditions contained herein and Grantee's compliance with any applicable federal or state regulatory programs that currently exist or may hereafter be enacted by any federal or state regulatory agencies with jurisdiction over the Grantee. The purpose of this franchise is to delineate the conditions relating to Grantee's use of the public's rights of way, streets and property and to create a foundation for the parties to work cooperatively in the public's best

interests after this ordinance becomes effective. By granting this franchise, the City is not assuming any risks or liabilities therefrom, which shall be solely and separately borne by Grantee.

Section 2. Right Conveyed.

2.1 Grantor hereby grants, under the terms and conditions contained herein, to Grantee, a corporation organized and existing under and by virtue of the laws of the State of Delaware, and which is authorized to transact business within the State of Washington, its successors and assigns, which shall be bound hereto, the right, privilege, authority and franchise to construct, operate, maintain, remove, replace and repair its pipeline, together with all equipment and appurtenances as may be necessary thereto, for the transportation and handling of any petroleum product or byproduct thereof, except natural gas, in, through and under the streets, avenues, drives and other public lands within the City of Bellingham, such lands being more particularly described in Schedule I, which is attached hereto and expressly incorporated herein by this reference (the "Franchised Area").

2.2 This franchise is only intended to convey a limited right and interest as to that public property and those rights of way in which the City has an actual interest. It is not a warranty of title or interest in City road rights of way. None of the rights granted herein shall affect the City's ability or jurisdiction over its property, streets or rights of way.

Section 3. Term.

Each of the provisions of this franchise shall become effective upon Grantee's acceptance of the terms and conditions of this franchise (the "Effective Date") and shall remain in effect for ten (10) years thereafter. Subsequently, and in accordance with Bellingham Charter Article XI,

Section 11.05, City Council will consider renewing this franchise, at the written request of Grantee, for an additional ten (10) year renewal period at any time within three (3) years before the end of the franchise's original ten (10) year term, unless either party expresses its intention in writing to terminate this franchise at the conclusion of the original ten (10) year term.

Section 4. Compliance with Laws and Standards.

Grantee shall, in carrying out any authorized activities under the privileges granted herein, comply with all applicable federal, state and local laws of any governmental entity with jurisdiction over the pipeline and its operation, including, but not limited to, Title 49 Code of Federal Regulations, Part 195 - Transportation of Hazardous Liquids. This shall include all applicable laws, rules and regulations existing at the Effective Date of this franchise or that may be subsequently enacted by any governmental entity with jurisdiction over Grantee and/or the pipeline. In addition, Grantee's activities shall comply with all applicable commercially acceptable industry standards.

Section 5. Construction on Public Properties.

5.1 This Section 5 shall apply to all construction done by Grantee in the Franchised Area. Except in the event of an emergency, Grantee shall provide Grantor at least ten (10) calendar days written notice prior to any alteration, integrity testing, repair, replacement, removal, or other substantial activity, other than routine inspections and maintenance, by Grantee, its agents, employees or contractors on Grantee's pipeline or appurtenant structures on Grantor's property. Said written notice shall include, at a minimum, detailed plans and specifications, if any, and a detailed description of the proposed work and anticipated time of the work. Such work shall only commence upon the issuance of applicable permits by the City,

which permits shall not be unreasonably withheld or delayed. In the event of an emergency requiring immediate action by Grantee for the protection of the pipeline, Grantor's property or other persons or property, Grantee may take such action upon such notice to Grantor as is reasonable under the circumstances.

5.2 All work done hereunder by Grantee or upon Grantee's direction or on Grantee's behalf shall be undertaken and completed in a workmanlike manner and in accordance with the descriptions, plans and specifications provided to Grantor. Grantee's activities shall be conducted in such a manner as to avoid damage or interference with other utilities, drains or other structures, and to interfere as little as possible with public travel, park uses or other municipal uses and the free use of adjoining property and so as to provide safety for persons and property. The Grantee's construction, maintenance and repairs shall be in compliance with all applicable laws and regulations of governmental agencies with jurisdiction. Markers demarcating the pipeline's location shall be placed on the surface so as to provide clear warning of the presence of the pipeline but in a manner that does not interfere with trails or other public uses in that area. Additionally, Grantee shall place markers underground demarcating the pipeline's location each time Grantee digs to the pipeline for any reason.

5.3 The City may condition the granting of any permit or other approval that is required under this Franchise, at any time, on any lawful condition or regulation, unless such condition or regulation is in conflict with a federal directive, as may be reasonably necessary to the management of the public right-of-way or the Grantor's property, including, by way of example and not limitation, bonding, maintaining proper distance from other utilities, protecting

the continuity of pedestrian and vehicular traffic and protecting any right-of-way improvements, private facilities and public safety.

5.4 Whenever it shall be necessary in constructing, maintaining, repairing, removing or replacing any of the Grantee's pipeline or structures in any street or public property, the Grantee shall without delay, as soon as is commercially reasonable, and at Grantee's sole expense, remove all debris and restore the surface of the street, or public property as nearly as practicable to as good or better condition as it was in before the work began. Grantee shall replace any property corner monuments, survey reference or hubs that were disturbed or destroyed during Grantee's work in the areas covered by this franchise. Such restoration shall be done in a manner consistent with applicable codes and laws, under the supervision of the City's Director of Public Works or his authorized designee and to the City's reasonable satisfaction and specifications. Whenever restoration is required hereunder, the restoration shall be done under a bond in an amount appropriate to guarantee adequate restoration.

5.5 Grantee shall continuously be a member of the State of Washington one number locator service under RCW 19.122, or approved equivalent, and shall comply with all such applicable rules and regulations. Grantee shall provide reasonable notice to the City prior to commencing any work or construction under this Franchise and additionally to those owners or other persons in control of property abutting the Franchise area when such work or construction will affect access to such property or otherwise impact such property or the private or public improvements within said area.

5.6 Upon acceptance of this franchise by Grantee, and as a condition of this Franchise, Grantee shall make available to the City, upon the City's written request and at no cost

to the City, within twenty (20) working days, relevant as-built plans, maps and records revealing the current location and condition of Grantee's facilities within the public rights-of-way and public places. All repairs must comply with the procedures defined in ASME B31.4 and all testing shall comply with the procedures as outlined in Title 49, Code of Federal Regulations, Part 195.305, as currently enacted or hereafter amended.

5.7 Nothing in this franchise shall be deemed to impose any duty or obligation upon Grantor to determine the adequacy or sufficiency of Grantee's plans and designs or to ascertain whether Grantee's proposed or actual construction, testing, maintenance, repairs, replacement or removal is in conformance with the plans and specifications reviewed by Grantor. Grantee shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the franchise area, including safety of all persons and property during the performance of any work therein.

Section 6. Operations, Maintenance, Inspection and Testing.

6.1 Grantee shall operate, maintain, inspect and test its pipeline in full compliance with the applicable provisions of Title 49, Code of Federal Regulations, Part 195, as now enacted or hereafter amended, and any other current or future laws or regulations that are applicable to Grantee's pipeline. Grantee shall monitor its pipeline operations and pressure through control center personnel who are trained and retrained appropriately and regularly in compliance with any and all applicable laws, rules or regulations that currently exist or may hereafter be enacted. Grantee shall not operate its pipeline at pressures above those allowed by Title 49, Code of Federal Regulations, Part 195, as currently enacted or hereafter amended or any other applicable laws or regulations that may be enacted regarding pipeline pressure levels.

6.2 Grantee shall cause to be performed visual inspections of its pipeline route at least once every two weeks. Grantee shall also perform internal inspections of its pipeline using commercially appropriate state of the art internal inspection equipment or such other equipment as may be required by 49 C.F.R. §195 or such other applicable federal law or regulation at least once every five (5) years or at such other more frequent intervals as may be required by 49 C.F.R. §195 or such other applicable federal law or regulation. Further, if a third party conducts significant work (e.g. construction equipment) within ten (10) feet of the Grantee's pipeline, Grantee shall, upon Grantor's written request, conduct a reasonable visual inspection to determine that no damage was done to Grantee's pipeline. Upon written request, Grantee shall report to the Grantor as to its inspection and findings. After reviewing the report, the Grantor may request, in writing, to review the documents, including photographs, reflecting the inspection results.

6.3 Grantee shall notify the Grantor of any pipe integrity testing, including any internal inspection, conducted hereunder within the City's jurisdiction at least ten (10) days prior to said testing, except in an emergency, in which case, Grantee agrees to notify Grantor as soon as is practicable under the circumstances. Upon written request, Grantee agrees to report to Grantor the results of said testing as soon as is practicable, but, in no case, more than sixty (60) days after Grantee receives the results. After reviewing the report, the Grantor may request, in writing, to review the actual results, including raw data, and Grantee agrees to provide Grantor access to such results.

6.4 Upon Grantor's written request, the Grantee shall provide the Grantor with a copy of Grantee's most recent seismic assessment encompassing the City's jurisdiction. If the Grantee

does not have a seismic assessment that is less than ten (10) years old, Grantee will undertake to complete such a study within twelve (12) months of Grantor's written request. Grantee shall provide proposals and timeframes for seismically upgrading its facilities within the City, if such upgrades are recommended in any seismic assessment.

Section 7. Notice and Reporting.

Grantee shall submit an annual written report to the City regarding major maintenance, inspection and testing that is performed on Grantee's pipeline within the City's limits. Grantee shall submit this annual report to the Grantor no later than March 31 of the year following the year covered in the report. Said report shall be sufficient to provide the City with an accurate description of the location, results, and date of major maintenance, inspection and testing. Grantee shall also provide on an annual basis a list of reports relating to pipeline integrity within City limits that it has submitted to governmental entities during the previous year. Grantee shall provide Grantor with copies of any of such reports within sixty (60) days after Grantor has requested such report in writing.

Section 8. Relocation.

8.1 In the event that Grantor undertakes or approves the construction of or changes the grade or location of any water, sewer or storm drainage line, street, sidewalk or other similar City improvement project, and the Grantor determines that the project reasonably requires the relocation of Grantee's facilities, Grantor shall provide the Grantee at least one hundred and twenty (120) calendar days prior written notice or such additional time as may reasonably be required, of such improvement project requiring Grantee to relocate its facilities. Grantor shall further provide Grantee with copies of pertinent portions of the plans and specifications for such

improvement project so that Grantee may relocate its facilities to accommodate such improvement project.

8.1.1 Grantee may, after receipt of written notice requesting a relocation of its facilities under section 8.1, submit to the City written alternatives to such relocation within thirty (30) calendar days of receiving the plans and specifications. The City shall evaluate such alternatives and advise Grantee in writing if one or more of the alternatives is suitable to accommodate the work that would otherwise necessitate relocation of the facilities. If so requested by the City, Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Grantee full and fair consideration but retains full discretion to decide for itself whether to utilize its original plan or an alternative proposed by Grantee. In the event the City ultimately determines that there is no other reasonable alternative, Grantee shall relocate its facilities as otherwise provided in this Section.

8.2 If said improvement project under section 8.1 is required in the public health, safety, welfare or necessity, as adjudged in the sole discretion of the Grantor, the Grantee shall make such changes as required herein at Grantee's sole cost, expense and risk.

8.3 Grantor shall work cooperatively with Grantee in determining a viable and practical route within which Grantee may relocate its facilities under section 8.1, in order to minimize costs while meeting Grantor's project objectives. Upon receipt of Grantor's notice, plans and specifications, Grantee shall complete relocation of such facilities so as to accommodate the improvement project at least ten (10) calendar days prior to commencement of the improvement project or such other time as the parties may agree in writing.

Section 9. Leaks or Spills and Emergency Response.

9.1 Emergency response procedures shall be in place at all times during the term of this franchise for locating leaks and spills and for shutting down valves as rapidly as possible. Grantee shall provide Grantor a copy of its emergency procedures, including, but not limited to, emergency spill response plans, within ten (10) business days of the Grantor's written request. Grantee's emergency plans and procedures shall designate Grantee's responsible emergency officials and a responsible emergency 24-hour on-call person for Grantee to contact in case of an emergency. Grantee shall, after being notified of an emergency, cooperate with the City and make every effort to respond as soon as possible to protect the public's health, safety and welfare. The parties agree to meet annually to review emergency plans, procedures and preparedness. Grantee shall coordinate this meeting with the City.

9.2 Grantee shall notify Grantor of any uncontained leak, spill or other release, outside of a vault, of petroleum product from its pipeline within or affecting the City of Bellingham totaling one (1) barrel or more within one (1) business day of its observation or detection. If requested by Grantor in writing, Grantee shall follow-up this notice within thirty (30) days with a written summary of the event, including, but not limited to, the leak or spill's date, time, amount, location, response, remediation and other agencies Grantee has notified.

9.3 In the event of an uncontained leak, spill or other release of petroleum product from Grantee's pipeline affecting the City of Bellingham of ten (10) barrels or more, where the cause is not reasonably apparent, the Grantee shall perform an incident investigation and report its findings to the Grantor in a timely manner. If the Grantor is not satisfied with the Grantee's incident investigation and after the parties confer and have made reasonable attempts to resolve

Grantor's dissatisfaction with Grantee's incident investigation, Grantor may require that an independent pipeline consultant investigate the occurrence. The Grantor and Grantee shall jointly select the consultant within thirty (30) calendar days of the Grantor's demand for an independent pipeline consultant's investigation. If the parties can not jointly select a consultant within the thirty (30) days, the parties shall petition the Superior Court for Whatcom County to select the consultant. Grantee shall be solely responsible for paying all of the consultant's costs and expenses incurred in investigating the occurrence and reporting the findings. Grantee shall meet and confer with the independent consultant following the consultant's investigation to address whether any modifications or additions to Grantee's facilities may be warranted. If the consultant recommends that Grantee make modification or additions to its facilities, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow the consultant's recommendations, Grantee shall provide a written report to the City explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute resolution provisions contained herein below at Section 10 to resolve any dispute over whether to follow the consultant's recommendations.

9.4 Grantee shall be solely responsible for all necessary costs incurred in responding to any spill, leak or other release of petroleum product from Grantee's pipeline, including, but not limited to, detection, removal of contaminants from earth or water, and all associated remediation costs.

Section 10. Dispute Resolution.

10.1 In the event of a dispute between Grantor and Grantee arising by reason of this franchise, or any obligation thereunder, the dispute shall first be referred to the operational

officers or representatives designated by Grantor and Grantee to have oversight over the administration of this franchise. Said officers or representatives shall meet within thirty (30) calendar days of either party's request for said meeting, whichever request is first, and the parties shall make a good faith effort to attempt to achieve a resolution of the dispute.

10.2 In the event that the parties are unable to resolve the dispute under the procedure set forth in section 10.1, then the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. If the parties are unable to agree upon a mediator, the parties shall jointly obtain a list of seven (7) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a party fails to notify the other party of which mediator it has stricken within two (2) business days, the other party shall have the option of selecting the mediator from those mediators remaining on the list. Any expenses incidental to mediation shall be borne equally by the parties.

10.3 If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies, provided, that if the party seeking judicial redress does not substantially prevail in the judicial action, it shall pay the other party's reasonable legal fees and costs incurred in the judicial action.

Section 11. Abandonment or Removal of Facilities.

In the event of abandonment or Grantee's permanent cessation of use of its facilities, or any portion thereof within the City of Bellingham, the Grantee shall, within one hundred and eighty days (180) after the abandonment or permanent cessation of use, remove the pipeline or

secure the pipeline in such a manner as to cause it to be as safe as is reasonably possible, by removing all liquid hydrocarbons, purging vapors, displacing the contents of the line with an appropriate inert material and sealing the pipe ends with a suitable end closure, all in compliance with applicable regulations and industry standards; provided, that portions of the pipeline which are above ground shall be removed. In the event of the removal of all or a portion of the pipeline, Grantee shall restore the franchised property area as nearly as possible to a condition that existed prior to installation of Grantee's facilities. Such property restoration work shall be done at Grantee's sole cost and expense and to Grantor's reasonable satisfaction. If Grantee fails to remove or secure the pipeline and fails to do so and to restore the premises or take such other mutually agreed upon action, Grantor may, after reasonable notice to Grantee, remove the pipeline, restore the premises or take such other action as is reasonably necessary at Grantee's expense and Grantor shall not be liable therefor. This remedy shall not be deemed to be exclusive and shall not prevent the City from seeking a judicial order directing that the facilities be removed.

Section 12. Non-Exclusive Franchise.

This franchise is non-exclusive. Grantor reserves the right to grant other franchises, easements, licenses, permits or other approvals to others, subject to the rights granted herein, provided that Grantor shall not grant any other franchise, license, permit or other approval which would substantially interfere with Grantee's use. Grantor shall notify Grantee of any proposed franchise, easement, license or permit for a utility or other structure which may be located within ten (10) feet of Grantee's pipeline, as shown on the latest map Grantee has provided the City. When the Grantor has notice that excavation, construction or other work may be undertaken

within ten (10) feet of Grantee's pipeline, it shall notify Grantee so that Grantee may have the opportunity to inspect the work to see that Grantee's pipeline is not damaged. If the contractor undertaking the excavation, construction or other work is observed to have violated safety regulations, Grantor will cooperate to the extent feasible in pursuing an enforcement action to avoid third party damage to the pipeline. This provision shall not create, either expressly or implicitly, nor shall the City assume, any liability under any circumstances hereunder.

Section 13. Indemnification.

13.1 General Indemnification. Grantee shall indemnify, defend and hold harmless Grantor from any and all liability, loss, damage, cost, expense, and claim whatsoever, arising on or after the date of this agreement, whether at law or in equity, arising out of or related to, directly or indirectly, the construction, operation, use, location, testing, repair, maintenance, removal, abandonment or damage to Grantee's pipeline, or from the existence of Grantee's pipeline and other appurtenant facilities, and of the products contained in, transferred through, released or escaped from said pipeline and appurtenant facilities, from any and all causes whatsoever, except Grantor's sole negligence. If any action or proceeding is brought against Grantor by reason of the pipeline or its appurtenant facilities, Grantee shall defend the Grantor at the Grantee's complete expense, provided that, for uninsured actions or proceedings, defense attorneys shall be approved by Grantor, which approval shall not be unreasonably withheld.

13.2 Environmental Indemnification. Grantee shall indemnify, defend and save Grantor harmless from and against any and all liability, loss, damage, expense, actions and claims, arising on or after the date of this agreement, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by Grantor in defense

thereof, arising from (a) Grantee's breach of any environmental laws applicable to the pipeline or (b) from any release of a hazardous substance on or from the pipeline or (c) other activity related to this franchise by Grantee, its agents, contractors or subcontractors. This indemnity includes but is not limited to (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

13.3 Definitions.

13.3.1 "Hazardous Substance" means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant, including all substances designated under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. § 136 et seq.; the Washington Hazardous Waste management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D, RCW; all as amended from time to time; or any other federal, state, or local statute, code or ordinance or lawful rule, regulation, order, decree, or other governmental authority as now or at any time

hereafter in effect. The term shall specifically include petroleum and petroleum products. The term shall also be interpreted to include any substance which, after release into the environment, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities.

13.3.2 "Environmental Laws" shall include the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D RCW; all as amended from time to time; or any other federal, state, or local statute, code, or ordinance or federal or state administrative rule, regulation, ordinance, order, decree, or other governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment.

Section 14. Insurance.

14.1 During this Agreement, Grantee shall provide and maintain, at its own cost, insurance in the minimum amount of ONE HUNDRED MILLION UNITED STATES DOLLARS (\$100,000,000.00) each occurrence, in a form and with a carrier reasonably acceptable to the Grantor, naming Grantor as an additional insured, to cover any and all insurable liability, damage, claims and loss as set forth in Section 13.1 above, and, to the extent such

coverage is reasonably available in the commercial marketplace, all liability, damage, claims and loss as set forth in Section 13.2 above, except for liability for fines and penalties for violation of environmental laws and as otherwise provided below. Insurance coverage shall include, but is not limited to, all defense costs. Such insurance shall include, but is not limited to, pollution liability coverage, at a minimum covering liability from sudden and accidental occurrences, subject to time element reporting requirements, and such other applicable pollution coverage as is reasonably available in the commercial marketplace. In the event that a deductible applies to the insurance herein, Grantee agrees to pay the amount of that deductible.

14.2 Proof of insurance and a copy of the insurance policy, including, but not limited to, coverage terms and claims procedures, shall be provided to the Grantor prior to the beginning of any substantial work, testing or construction or reconstruction on the Pipeline. Said insurance shall contain a provision that it shall not be canceled without a minimum of thirty (30) days prior written notice to the Grantor.

14.3 The indemnity and insurance provisions herein under Sections 13 and 14 shall survive the termination of this Agreement and shall continue for as long as the Grantee's facilities shall remain in or on the franchised areas or until the parties execute a new franchise agreement which modifies or terminates these indemnity or insurance provisions.

Section 15. Annual Franchise Fee.

15.1 In consideration for granting this franchise and for the use of the franchised area, there is hereby established an annual fee of Fifty Thousand Dollars (\$50,000.00), paid in United States Dollars. The first installment shall be paid at the time Grantee accepts this franchise and shall cover the next twelve (12) months. Each succeeding installment shall cover the next twelve

(12) month period and shall be paid not later than the anniversary date of this franchise's Effective Date. Interest shall accrue on any late payment at the rate of twelve percent (12%) per annum.

15.2 The annual fee shall be increased or decreased every three years in the percentage amount that the Consumer Price Index-All Urban Consumers ("CPI-U") for the Seattle area shall have increased or decreased for that three year period.

15.3 Grantee agrees that it will obtain, at the City's then-existing rate, any and all licenses, permits or other approvals necessary for Grantee to operate, maintain or repair its facilities in the franchised area. This shall include, by way of example only and not limitation, inspection and permit costs associated with Grantee's work in the City's rights of way. The franchise fee set forth in section 15.1 does not include standard and customary payments associated with the City's administrative expenses incurred in reviewing, licensing, permitting or granting any other approvals necessary for Grantee to operate, maintain or repair its facilities or for any inspection or enforcement costs thereunder. Additionally, the foregoing annual fee does not include any generally applicable taxes that the Grantor may legally levy.

Section 16. Notice.

All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Grantor: Director of Public Works
City of Bellingham
210 Lottie Street
Bellingham, Washington 98225

with copy to: City Attorney
City of Bellingham
210 Lottie Street
Bellingham, Washington 98225

Grantee: Olympic Pipe Line Company
Attn: Vice President/District Manager
2319 Lind Avenue S.W.
Renton, Washington 98055

with copy to: Mark Johnsen
Karr Tuttle Campbell
1201 Third Avenue, Suite 2900
Seattle, Washington 98101

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

Section 17. Assignment and Transfer of Franchise.

17.1 In accordance with Bellingham City Charter Article XI, Section 11.06, this franchise shall not be leased, assigned or otherwise alienated without the express consent of the Grantor by ordinance, which approval shall not be unreasonably withheld.

17.2 Subject to the foregoing, Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than 120 days prior to the proposed date of transfer:

17.2.1 Complete information setting forth the nature, terms and conditions of the proposed assignment or transfer;

17.2.2 All information reasonably required by the City of a franchise applicant under Bellingham Municipal Code chapter 13.15 with respect to the proposed assignee or transferee;

17.2.3 Any other information reasonably required by the City; and,

17.2.4 An application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing and investigating the proposed assignment or transfer.

17.3 No transfer shall be approved unless the assignee or transferee has at least the legal, technical, financial, and other requisite qualifications to carry on the activities of the franchisee granted hereunder.

17.4 Any transfer or assignment of this franchise without the prior written consent of the City as set forth herein shall be void and shall result in revocation of the existing permit or franchise.

Section 18. Transfers of Control.

If Grantee intends to enter into a transaction which would result in a change of the operational control of Grantee, the City shall be notified and given 90 days within which to provide written comments and identify any issues of concern to the City. Grantee will reimburse Grantor for actual and reasonable expenses to perform due diligence with regard to the legal, financial and technical experience and qualifications of the proposed new operator, provided that reimbursement shall not exceed Twenty-five Thousand Dollars (\$25,000.00). Grantee shall

provide reasonable cooperation to Grantor during Grantor's due diligence. Grantee shall respond in writing within 60 days to any written comments submitted by Grantor regarding the transfer of operational control.

Section 19. Reservation of Police Power.

All the rights and privileges granted in this franchise shall be governed by the terms and conditions contained herein subject to the City's reservation of all its police powers to enact ordinances that are necessary to protect the health, safety and welfare of the general public.

Section 20. Termination.

20.1 Grantor may terminate this Agreement upon the occurrence of any of the following events:

20.1.1 If Grantee materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms and conditions of this franchise or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within thirty (30) calendar days of Grantor's providing Grantee written notice thereof, or, if not reasonably capable of being cured within thirty (30) calendar days, within such other reasonable period of time as the parties may agree upon; or,

20.1.2 A single uncontained release of any petroleum product from the pipeline totaling more than ten (10) barrels within the City of Bellingham or if any such release of the pipeline's petroleum product flows or migrates into the City of Bellingham, if the spill is materially caused by Grantee's negligence. Provided, that prior to termination under this provision, the parties shall undertake the investigation process of Section 9.3 herein and, at the request of either party, the dispute resolution provisions of Section 10. The parties shall ensure

that remedial action following an accidental release be consistent with directives of the Federal Office of Pipeline Safety.

20.2 This Agreement shall not be terminated except upon a majority vote of the City Council, after reasonable notice to Grantee and an opportunity to be heard, provided that if exigent circumstances necessitate immediate termination, the hearing may be held as soon as possible after the termination.

20.3 In the event of termination under this franchise Section 20, Grantee shall follow any and all directives of the Federal Office of Pipeline Safety, including, but not limited to, those directives regarding modification, reduction or discontinuance in the operation of the pipeline through the franchised area.

20.4 Grantor's right to terminate this franchise is in addition to and not in limitation of any other remedy of Grantor at law or equity. Grantor's failure to exercise such remedy at any time shall not waive Grantor's right to terminate or assert any other remedy at law or equity for any future breach or default of Grantee.

20.5 Termination of this franchise shall not release Grantee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release Grantee from any obligation to remove or secure the pipeline and restore the premises pursuant to Section 11 herein.

Section 21. Legal Relations.

21.1 Grantee accepts any privileges granted hereunder by Grantor to the franchised public rights of way and other public property in an "as is" condition. Grantee agrees that the City has never made any representations, implied or express warranties or guarantees as to the

suitability, security or safety of Grantee's location of facilities or the facilities themselves in public property or rights of way or possible hazards or dangers arising from other uses of the public rights of way or other public property by the City or the general public. Grantee shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of the pipeline or other activities permitted hereunder.

21.2 Grantee hereby waives immunity under Title 51 RCW in any cases involving the Grantor and affirms that the Grantor and Grantee have specifically negotiated this provision, to the extent it may apply.

21.3 This franchise ordinance shall not create any duty of the City or any of its officials, employees or agents and no liability shall arise from any action or failure to act by the City or any of its officials, employees or agents in the exercise of powers reserved herein. Further, this ordinance is not intended to acknowledge, create, imply or expand any duty or liability of the Grantor with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in the City hereunder shall be deemed a duty to the general public and not to any specific party, group or entity.

21.4 This franchise shall be governed by, and construed in accordance with, the laws of the State of Washington and the parties agree that, in any such action brought hereunder, except actions based on federal questions, venue shall lie exclusively in Whatcom County, Washington.

Section 22. Grantor's Acceptance.

This franchise ordinance shall be completely void if Grantee shall not file its unconditional acceptance of this franchise within thirty (30) calendar days from the final passage

of same by Council, Grantee shall file its unconditional acceptance with the City's Finance Director and a copy of same with the City Attorney's Office.

Section 23. Specific Performance.

The parties acknowledge that the covenants set forth herein are essential to this franchise, and, but for the mutual agreements of the parties to comply with such covenants, the parties would not have entered into this franchise. The parties further acknowledge that they may not have an adequate remedy at law if the other party violates such covenant. Therefore, the parties shall have the right, in addition to any other rights they may have, to obtain in any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach of or otherwise to specifically enforce any of such covenants contained herein should the other party fail to perform them after notice as provided herein in Section 20.1.1.

Section 24. Miscellaneous Provisions.

24.1 All the provisions, conditions, terms and requirements contained herein shall be binding upon the Grantee's successors and assigns. All of Grantee's privileges, obligations, and liabilities shall inure to its successors and assigns equally as if they were specifically mentioned in this franchise wherever the Grantee is so mentioned.

24.2 Any modification, change or alteration to this franchise shall only be effective if completed in a written ordinance duly approved by City Council approving said modification, change or alteration.

24.3 No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this franchise or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other

covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this franchise, and each and every covenant, agreement, term and condition of this franchise shall continue in full force and effect with respect to other than existing or subsequent breach thereof.


24.4 The captions of this franchise ordinance are for convenience and reference only and in no way define, limit, or describe the scope or intent of this franchise.

PASSED by Council this 5TH day of NOVEMBER, 2001.



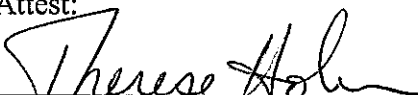
Council President

APPROVED by me this 20th day of November, 2001.



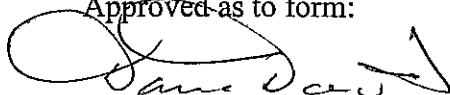
Mayor

Attest:



Finance Director

Approved as to form:



Office of the City Attorney

Published:

FRANCHISE ACCEPTANCE BY GRANTEE:

I, the undersigned official of Olympic Pipe Line Company (OPL), am authorized to bind OPL and to accept the terms and conditions of the foregoing franchise (Ordinance No 2001-11-08) which are hereby accepted by OPL this 14th day of DECEMBER 2001. The foregoing date shall constitute the "Effective Date" of the Ordinance.



Olympic Pipe Line Company

By: Bobby J. Talley
Name: Bobby J. Talley
Title: Vice-President / District Manager

Subscribed and sworn to before me this 14th day of DECEMBER, 2001.

Katherine Reed
Notary Public in and for the
State of Washington
My commission expires 29 Dec. 2004

Received on behalf of the City the 20th day of December, 2001.

Sharon D. Palmer
Name: Sharon D. Palmer
Title: City Clerk Representative