

ORDINANCE NO. 06-1002

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON GRANTING OLYMPIC PIPE LINE COMPANY, AN INTERSTATE PIPELINE CORPORATION INCORPORATED IN THE STATE OF DELAWARE, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN EXISTING PIPELINE FACILITIES, TOGETHER WITH EQUIPMENT AND APPURTENANCES THERETO, FOR THE TRANSPORTATION OF PETROLEUM PRODUCTS WITHIN AND THROUGH PUBLIC RIGHTS-OF-WAY, PUBLIC WAYS, AND OTHER WAYS WITHIN THE CITY OF SEATAC.

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

WHEREAS, the City Council finds that it is in the public interest to specify the rights and duties of Olympic Pipe Line through a franchise; and

WHEREAS, RCW 35A.47.040 authorizes the City to grant nonexclusive franchises for the use of City rights-of-way, streets and other designated public properties, public ways, or other ways;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section I. Definitions

For the purposes of this Franchise and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meaning given herein.

When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning.

1.1 Construct or Construction shall mean removing, replacing, and repairing existing pipeline(s) and/or Facilities and may include, but is not limited to, digging and/or excavating for the purposes of removing, replacing, and repairing existing pipeline(s) and/or Facilities.

1.2 Effective Date shall mean the date designated herein, after passage, approval and legal publication of this Ordinance and acceptance by Company, upon which the rights, duties and obligations shall come in effect and the date from which the time requirement for any notice, extension and/or renewal will be measured.

1.3 Emergency shall mean an event or set of circumstances which demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken area within the City overtaken by such occurrences.

1.4 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; and any other valid and applicable federal, state, or local statute, code, or ordinance or valid and applicable federal or state administrative rule, regulation, ordinance, order, decree, or other valid and applicable governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment.

1.5 Facilities shall mean the Company's pipeline system, lines, valves, mains, and appurtenances used to transport or distribute the Company's Petroleum Product(s), existing as of the date of this Franchise or as those components may be modified or improved consistent with the terms of this Franchise.

1.6 Franchise shall mean this Franchise and any amendments, exhibits, or appendices to this Franchise.

1.7 Franchise Area means over, in, along, and under any Right of Way, Public Ways, Public Road or Highways, and Other Ways within the jurisdictional boundaries of and under control of the City, including any areas annexed by the City (but excluding properties upon which the Company holds a private easement, license, or other property interest for its Facilities) during the term of this Franchise, in which case the annexed area shall become subject to the terms of this Franchise.

1.8 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; and 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.

1.9 Improve or Improvements shall mean modifications to, but not a change in the nature of, the existing pipeline(s) or Facilities as required and necessary for safe operation.

1.10 Maintenance or Maintain shall mean examining, testing, inspecting, repairing, and replacing the existing pipeline and/or facilities or any part thereof as required and necessary for safe operation.

1.11 Petroleum or Petroleum Products shall include, but is not limited to, motor gasoline, diesel fuel, and aviation jet fuel, and shall exclude natural gas.

1.12 Pipeline Corridor shall mean the pipeline pathway through the jurisdictional boundaries of the City in which the pipeline(s) and or Facilities of the Company are located, including any Rights-of-Way, Public Ways, Other Ways, and/or easement over and through private property.

1.13 Public Ways shall mean any highway, street, alley, utility easement (unless their use is otherwise restricted for other users), or other public Rights-of-way under the jurisdiction and control of the City.

1.14 Operate or Operations shall mean the use of the Company's pipeline(s) and/or Facilities for the transportation, distribution and handling of Petroleum or Petroleum Products within and through the Franchise Area.

1.15 Other Ways means the highways, streets, alleys, utility easements or other Rights-of-Way within the City as encompassed by RCW 47.24.020 and 47.52.090.

1.16 Rights-of-Way means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, Rights-of-Way and similar Public Ways or Other Ways and areas located within the Franchise Area and under the City's control.

Section 2. Purpose

The City grants this nonexclusive Franchise to the Company to construct, operate and maintain its existing Facilities as a liquid petroleum product delivery system for Company's business. This Franchise is granted subject to the police powers, land use authority and franchise authority of the City and is conditioned upon the terms and conditions contained herein and Company's compliance with any applicable federal, state or local regulatory programs that currently exist or may hereafter be enacted by any federal, state or local regulatory agencies with jurisdiction over the Company. The purpose of this Franchise is to delineate the conditions relating to Company's use of the Rights- of-Way, Public Ways, and Other Ways 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 Company.

Furthermore, this Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, under, on, across, over, through, along or below any Rights-of-Ways, Public Ways, and Other Ways. This and other franchises shall, in no way, prevent or prohibit the City from using any of its Rights-of-Ways, Public Ways, and Other Ways or affect its jurisdiction over them or any part of them, and the City hereby retains full power to make all changes, relocations, repairs, maintenance, establishments, improvements, dedications or

vacations of same as the City may seem fit, including the dedication, establishment, maintenance and improvement of all new Rights-of-Way, streets, avenues, thoroughfares, and Public Ways, or Other Ways.

Section 3. Rights Conveyed

3.1 Pursuant to the laws of the State of Washington including, but not limited to, RCW 35A.47.040, the City hereby grants, under the terms and conditions contained herein, to Company, 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 (subject to and as provided for in Section 6), the right, privilege, authority and Franchise to Construct, Operate, Maintain and Improve its Facilities, together with all equipment and appurtenances as may be necessary thereto, for the transportation and handling of any Petroleum or Petroleum Products, within the existing Pipeline Corridor passing through the Franchise Area, such lands being more particularly described in Schedule I, which is attached hereto and expressly incorporated herein by this reference.

3.2 This Franchise is only intended to convey a limited right and interest as to that Public Rights-of-Way, Public Ways and Other Ways in which the City has an actual interest. It is not a warranty of title or interest in the City's Rights-of Way, Public Ways and Other Ways. None of the rights granted herein shall affect the City's jurisdiction over its property, streets or rights of way.

3.3 The limited rights and privileges granted under this Franchise shall not convey any right to Company to install any new pipeline(s) and/ or Facilities without the express written consent of the City.

3.4 The Company acknowledges and warrants by acceptance of the rights and privileges granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all reasonable risks of

the meaning of the provisions, terms and conditions herein. The Company further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and believes that the same are consistent with all local, state and federal laws and regulations currently in effect, including the Federal Pipeline Safety Act (49 U.S.C. 60101 *et seq.*) and the Pipeline Safety Code of Federal Regulations (Title 49 CFR Part 186-199). If in the future the Company becomes aware that a provision of this franchise may be unlawful or invalid, it will not use such potential invalidity to unilaterally ignore or avoid such provision. Instead, the Company will promptly advise the City of the potential invalidity or illegality, and the parties will meet within thirty (30) days and endeavor jointly to cure the invalidity or illegality.

Section 4. Term

4.1 Each of the provisions of this Franchise shall become effective as provided in Section 26 and shall remain in effect for ten (10) years thereafter. At any time not more than two (2) years nor less than one-hundred-eighty (180) days before the expiration of the Franchise term, the Company may make a written request and the City may consider, at its sole discretion, renewing this Franchise for an additional ten (10) year renewal period unless either party expresses its intention in writing to terminate this Franchise at the conclusion of the ten (10) year term.

4.2 If the parties fail to formally renew or terminate the Franchise prior to the expiration of its term or any extension thereof, the Franchise shall be extended on a year-to-year basis (or such term as the parties may mutually agree) until a renewed Franchise is executed.

Section 5. Application Fee

The Company shall be subject to a one-time administrative fee of Two Thousand Dollars (\$2,000) relating to the franchise application, which is payable to the City no later than March 1, 2006.

Section 6. Assignment and Transfer of Franchise

6.1 This Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, nor shall title thereto, either legal or equitable, pass to or vest in any person or entity without the prior written consent of the City' s Council, acting by ordinance or resolution, which consent shall not be unreasonably withheld. Such consent shall not be deemed to waive any rights of the City to subsequently enforce non-compliance issues relating to this Franchise that existed at or before the time of the City's consent.

6.2 If such consent is given by the City then the Company shall, within thirty (30) days, file with the City a written instrument evidencing such sale, assignment or transfer of ownership, whereby the assignee(s) or transferee(s) shall agree to accept and be bound by all of the provisions of this Franchise.

Section 7. Compliance with Laws and Standards

Company shall, in carrying out any authorized activities under the privileges granted herein, comply with all valid and applicable local, state and federal laws, including, but not limited to, Title 49 Code of Federal Regulations, Part 195 Transportation of Hazardous Liquids, environmental laws, and any laws or regulations that may be subsequently enacted by any governmental entity with jurisdiction over Company and/or the Facilities.

Section 8. Construction on or within Rights-of Way, Public Ways, and Other Ways

8.1 This Section 8 shall apply to all Construction and/or Maintenance done by Company in the Franchise Area.

8.2 Except in cases where federal or state regulations or industry 'best practices' require the installation of Facilities above-ground, and except as expressly permitted by the City, all Facilities under this franchise shall be located underground.

8.3 Except in the event of an emergency, Company shall first obtain applicable permits from the City to perform maintenance or construction work on Company's Facilities within the Franchise Area. The permit application shall contain detailed plans and specifications showing the position, depth and location of all such Facilities in relation to existing City Rights-of-Ways, Public Ways, and Other Ways, or other City property, hereinafter collectively referred to as the "Plans." The Plans shall specify the class and type of material and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures and facilities, erection of permanent structures and facilities, traffic control, traffic turnouts and road obstructions, and all other necessary information. The Company shall file as-built plans and, when available, maps in GIS format with the City showing the final location of the facilities. Such work shall only commence upon the issuance of applicable permits, and payment of the associated fees, and attendance at a pre-construction meeting with the City, which permits shall not be unreasonably withheld or delayed after submission of a complete application. Except in the event of an emergency, the Company shall provide the City with at least seventy two (72) hours written notice prior to any construction or maintenance on the Company Facilities within the Franchise Area.

8.4 In the event of an emergency requiring immediate action by Company for the protection of the pipeline(s) or Facilities, the City's property or the property, life, health or safety of any individual, the Company shall immediately notify the City Fire

Department through the dispatch system and the Company may take action immediately to correct the dangerous condition without first obtaining any required permit so long as: (1) the Company informs the Engineering Division of the City's Public Work's department of the nature, location, and extent of the emergency, and the work to be performed, prior to commencing the work if such notification is practical, or where such prior notification is not practical, the Company shall notify the Engineering Division of the City's Public Works department on the next business day; and (2) such permit is obtained by the Company as soon as practicable following cessation of the emergency.

8.5 Before undertaking any of the work, installation, improvements, construction, repair, relocation, or maintenance authorized by this Franchise, as a condition precedent to the issuance of any permits by the City, the Company shall furnish a bond executed by the Company and a corporate surety authorized to operate a surety business in the State of Washington, in such sum as may be set and approved by the City as sufficient to ensure performance of the Company's obligations under this Franchise. The bond shall be conditioned so that the Company shall observe all the covenants, terms and conditions and shall faithfully perform all of the obligations of this Franchise, and to repair or replace any defective work or materials discovered in the City's road, streets, or property.

8.6 All work done hereunder by Company or upon Company's direction or on Company's behalf shall be undertaken and completed in a workmanlike manner and in accordance with the descriptions, plans and specifications provided to the City. The Company's activities shall be conducted in such a manner as to avoid damage or interference with other utilities, drains or other structures, and not unreasonably interfere 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 Company's Construction and/ or Maintenance shall be in compliance with all valid and applicable laws and regulations and specifications of governmental agencies with jurisdiction.

8.7 In case of damage caused by the Company, its agents or employees or by the Facilities of the Company to Rights-of-Way, Public Ways, or Other Ways, the Company agrees to repair the damage at its own cost and expense. The Company shall, upon discovery of any such damage, immediately notify the City. The City will inspect the damage, and set a time limit for completion of the repair. If the City discovers damage caused by the Company to Rights-of-Way, Public Ways, or Other Ways, the City shall give the Company notice of the damage and set a time limit in which the Company must repair the damage. In the event the Company does not make the repair as required in this section, the City may repair the damage pursuant to Section 13.6 of this Franchise.

8.8 The Company shall, using a licensed surveyor, immediately replace all survey markers or monuments disturbed during any work by the company within the Franchise Area. The Company shall obtain any necessary permits from the State and shall pay all costs associated with such lost, destroyed, or disturbed monuments or markers.

8.9 The Company shall place and maintain line markers pursuant to federal regulations within and along the Pipeline Corridor. Additionally, Company agrees to continue its voluntary practice of placing continuous markers underground, when and where appropriate, indicating the pipeline's location each time Company digs to the pipeline, or such other 'industry best practices' as may from time to time be developed as a method of alerting excavators of the presence of the pipeline.

8.10 The Company 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.

8.11 Any asphalt overlay completed within the Franchise Area during the five (5) year period immediately prior to the date of the permit application shall not be open cut by the Company unless required by an emergency or necessitated by federal or

state regulatory order or rule. The Company shall install new asphalt overlay on any such street that is open cut, whether in an emergency or otherwise, for a minimum of one-half (1/2) block (approximately 150 feet) in length both directions from the open cut or pay a mitigation fee as reasonably determined by the City's Public Works Director.

Section 9. Abandonment or Removal of Facilities

9.1 The Company shall notify the City of any abandoned Facilities or cessation of use of any of its Facilities within sixty (60) days after such abandonment or cessation of use.

9.2 In the event of abandonment or Company's permanent cessation of use of its Facilities, or any portion thereof within the Franchised Area, the Company shall, within one hundred and eighty days (180) after the abandonment or permanent cessation of use, either remove the Facilities at Company's sole cost and expense or alternatively, with the consent of the City, which consent shall not be unreasonably withheld, the Company may secure the Facilities in such a manner as to cause them to be as safe as is reasonably possible, by removing all Petroleum Products, 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 valid and applicable regulations, and abandon them in place provided that portions of the Facilities which are above ground shall be removed at Company's sole cost and expense.

9.3 In the event of the removal of all or a portion of the Facilities, Company shall restore the Franchise Area as nearly as possible to a condition that existed prior to removal of Company's Facilities. Such property restoration work shall be done at Company's sole cost and expense and to the City's reasonable satisfaction. If Company fails to remove or secure the Facilities and fails to restore the premises or take such other mutually agreed upon action, the City may, after reasonable notice to Company, remove the Facilities, restore the premises or take such other action as is reasonably necessary at Company's expense and the City shall not be liable therefore. 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.

9.4 The City shall not charge the Company franchise fees for pipelines or pipeline segments abandoned or removed in compliance with this Section. However, the City's consent to the abandonment of Facilities in place shall not relieve the Company of the obligation and/or costs to remove, alter or re-secure such Facilities in the future in the event it is reasonably determined, as adjudged in the sole discretion of the City, that removal, alteration or re-securing the facilities is necessary or advisable for the health, safety, necessity and/or convenience of the public, in which case the Company shall perform such work at no cost to the City.

9.5 The parties expressly agree that the provisions of this Section 8 shall survive the expiration, revocation or termination of this Franchise.

Section 10. Operations and Maintenance - Inspection and Testing

10.1 The Company shall Operate and Maintain its Facilities in full compliance with the applicable provisions of Title 49, Code of Federal Regulations, Part 195, and WAC 480-75-420, as now enacted or hereafter amended, all environmental laws, and any other current or future laws or regulations that are applicable to Company's Facilities, enacted by any governmental entity with jurisdiction over Company or Company's Facilities.

10.2 At City's request, the Company shall provide, at its sole cost and expense, a briefing by qualified testing experts to explain the inspection results and Company's proposed corrective action(s). Said qualified testing expert may be an employee or representative of the Company.

10.3 The City shall use all reasonable efforts to require all excavators issued a City grading and/or right-of-way permit working within 100 feet of the Company's

Facilities to notify the State of Washington one number locator service law (RCW 19.122) at least 48 hours prior to the start of any work and to ensure compliance with the requirements of RCW 19.122. If the Company becomes aware that a third party conducts any excavation or other significant work that may affect the Facilities, the Company shall conduct such inspections and/or testing as is necessary to determine that no direct or indirect damage was done to the Facilities and that the work did not abnormally load the Company's Facilities or impair the effectiveness of the Company's cathodic protection system. Upon written request, the Company shall report to the City its inspection and findings.

Section 11. Encroachment Management

11.1 The Company shall maintain a written program to prevent damage to its Facilities from excavation activities, as required by applicable state and federal guidelines.

11.2 The Company and the City shall comply with applicable and valid federal, state and local requirements regarding encroachment management, including RCW 19.122 (one-call system).

Section 12. Leaks, Spills and Emergency Response

12.1 The Company warrants that it will maintain an Emergency Response Plan that is in compliance with the applicable requirements of local, state and federal agencies with jurisdiction, including provisions that require the City Fire Department be notified immediately through the dispatch system of any leak, spill, or release greater than five (5) gallons. Upon written request by either party, the parties agree to meet periodically to review the Emergency Response Plan and procedure.

12.2 The Company's emergency plans and procedures shall designate the Company's responsible local emergency officials and a direct 24 hour emergency

contact number for control center operator. The Company 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 response will be subject to the Unified Command Structure of the National Incident Management System (NIMS).

12.3 The Company shall cooperate with the City and respond to protect public health and safety in the event of a pipeline emergency. The Company warrants that it will at all times have available, on the county level, sufficient emergency response equipment and materials to immediately and fully respond to any spill, leak, rupture or other release of Petroleum Products or Hazardous Substances from Company's pipeline(s) and/or Facilities and that Company shall be solely responsible for all reasonably necessary costs incurred by any agency in responding appropriately to any spill, leak, rupture or other release of Petroleum Products or Hazardous Substances from Company's pipeline(s) and/or Facilities, including, but not limited to, detection and removal of any contaminants from, earth or water, all remediation costs, equipment replacement, and staffing costs, except for any spill, leak, or other release that results from the sole negligence or willful misconduct of the City or its contractors. Any such costs shall be considered extraordinary costs that shall not be borne by the City and shall not be considered administrative expenses of the City. Nothing in this Section shall be construed as limiting the Company's right to seek recovery from third parties.

12.4 Leaks, spills, ruptures and other emergencies shall be investigated by the Company and reported to the appropriate government agencies as required by applicable state, federal, and local regulations. Furthermore, City shall be notified according to Section 8.4 and Section 12 of this Franchise.

Section 13. Required Relocation of Facilities

13.1 In the event that the City undertakes or approves the construction of an Improvement Project, such as construction of, improvement to, or change in grade or

location of any street, sidewalk, storm drainage infrastructure, signal poles, arms, and equipment, utility facilities, street illumination, and transit infrastructure, and the City determines that the Improvement Project reasonably requires changes to or the relocation of Company's Facilities, then Company shall make such changes or relocations as required herein at Company's sole cost, expense and risk.

13.2 The City shall provide the Company reasonable written notice of any Improvement Project in the interest of public health, safety, welfare, necessity and/or convenience that requires changes to or the relocation of Company's Facilities. The City will endeavor, where practical, to provide the Company written notice at least two years prior to scheduled construction of such Improvement Project. However, nothing in this Section shall be construed as to relieve Company of its duty and obligation to relocate its Facilities to accommodate any Improvement Project undertaken by the City after written notice of any Improvement Project.

13.3 The City shall further provide the Company with copies of pertinent portions of the draft plans and specifications for such Improvement Project so that the Company may make the required changes to or relocate its facilities to accommodate such Improvement Project.

13.4 The Company may, after receipt of written notice requiring changes to or relocation of its Facilities under Section 13.2, submit to the City, within sixty (60) days, written alternatives to such relocation. The City shall evaluate such alternatives and advise the Company in writing if one or more of the alternatives are suitable to accommodate the Improvement Project that would otherwise necessitate changes to or relocation of the Facilities. If so requested by the City, the Company shall submit additional information to assist the City in making such evaluation including actual field verification of the location(s) of the Company's underground Facilities within the Improvement Project area by excavating (e.g., pot holing), and restoring at no expense to the City. The City shall give each alternative proposed by the Company full and fair consideration but retains sole discretion to decide whether to utilize its original plan or

an alternative proposed by the Company. If it is determined and agreed upon by the City and the Company that it is in the mutual best interest of both the City and the Company to redesign a proposed Improvement Project rather than have the Company relocate its facilities, the Company shall pay the reasonable incremental costs of redesign of the Improvement Project, including, but not limited to, increased costs of design, construction, and right-of way acquisition, in order to avoid facility relocation.

13.5 If any portion of the Company's Facilities that has been required by the City to be relocated under the provisions of this section is subsequently required to be relocated again within five (5) years of the original relocation, the City will bear the entire cost of the subsequent relocation.

13.6 The City shall work cooperatively with the Company in determining a viable and practical route within which the Company may relocate its facilities under Section 13.1, in order to minimize costs while meeting the City's project timelines and objectives. The City's requirements with regard to the required changes or relocation (i.e. depth of cover, distance from other utilities, etc.) must not be unreasonable and not inconsistent with applicable federal and state requirements, however, nothing in this section shall be construed as to limit the City's police power, land use authority, franchise authority or the City's authority to regulate the time, place and manner of Company's use of the Public Rights-of-Way, Public Ways and Other Ways.

13.7 Upon receipt of the City's reasonable notice, plans and specifications per Section 13.2, the Company 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.

13.8 The City shall take reasonable steps to cooperate with the Company on any effort by the Company to apply for and obtain any state or federal funds that may be available for the relocation of the Company's Facilities provided however that the

Company's application for any such funds shall not delay the City Improvement Project. To the extent such funds are made available, the Company may apply funds towards the costs incurred to relocate the Company's Facilities.

13.9 The Company shall not be required to relocate its Facilities at its expense for the benefit of private developers or third party projects. However, in the event the City reasonably determines and notifies the Company that the primary purpose for requiring such changes to or relocation of the Company's facilities by a third party is to cause or facilitate the construction of an Improvement Project consistent with the City Capital Investment Plan, Comprehensive Plan, Transportation Improvement Program, or the Transportation Facilities Program, or other similar plan, then the Company shall change or otherwise relocate its Facilities in accordance with Section 13.1 – 13.4 at the Company's sole cost, expense and risk.

Section 14. Vacation

In the event the City vacates any portion of the Franchise Area in which the Company's Facilities are located during the term of this Franchise, the City shall, in its vacation procedure, ensure that an easement is reserved and granted to the Company for the Company's Facilities.

Section 15. Design Markings

In the event the City desires to design new streets or intersections, renovate existing streets, or make any other public improvements, the Company shall at the City's request, provide the horizontal and vertical location of the Company's underground Facilities within the Franchise Area by either field markings or by locating the Facilities on the City's design drawings and shall provide all other reasonable cooperation and assistance to the City with respect to locating and marking the location of its Facilities.

Section 16. Violations, Remedies and Termination

16.1 The Company shall be in compliance with the terms of this Franchise at all times. The City reserves the right to apply any of the following remedies, alone or in combination, in the event Company violates any material provision of this Franchise. The remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the City at law or equity.

16.2 The City may terminate this Franchise if the Company materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms of this Franchise, and fails to cure or make reasonable effort to cure such breach within thirty (30) calendar days of receipt of written notice thereof, or, if not reasonably curable within thirty (30) calendar days, within such other reasonable period of time as the parties may agree upon.

16.3 Either party may invoke the Dispute Resolution clause contained in Section 17 of this Franchise as it deems necessary with regard to termination.

16.4 If the Company's right to operate its Facilities within the Franchise Area is ultimately terminated, the Company shall comply with the terms of this Franchise, regarding removal and/or abandonment and restoration of the Facilities and with all directives of applicable federal and state agencies with jurisdiction.

16.5 In the event the Company fails to comply with any applicable federal, state, or City laws, ordinances, rules, regulations or standards or with any of the terms and conditions of this Franchise with regard to work including, but not limited to, Construction, Operation or Maintenance within the Franchise Area, and such noncompliance continues for a period of thirty (30) days after the Company receives written notice from the City regarding the noncompliance, the City may, but in no event is the City obligated to, order any work completed, including without limitation the

Company's obligation to repair, remove or relocate Facilities pursuant to this Franchise. However, the City shall not have any pipeline repair or maintenance work accomplished by any person or entity other than Company or another entity approved by the Federal Office of Pipeline Safety. If the City causes such work to be done by its own employees or by any person or entity other than the Company, the company shall, upon the City's written request, immediately reimburse the City for all reasonable costs and expenses incurred by the City in having such work performed, which costs may include the City's reasonable overhead expenses and attorneys fees.

Section 17. Dispute Resolution

17.1 In the event of a dispute between the City and the Company arising by reason of this Franchise, or any obligation hereunder, the dispute shall first be referred to the representatives designated by the City and the Company 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, and the parties shall make a good faith effort to attempt to achieve a resolution of the dispute.

17.2 In the event that the parties are unable to resolve the dispute under the procedure set forth in Section 17.1, then the parties hereby agree that the matter shall be referred to mediation. If the parties are unable to agree on a mediator, the parties shall each secure the services of a mediator, who will in turn work together to mutually agree upon a third mediator, and the three mediators will serve as a mediation panel to assist the parties in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties.

17.3 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. It is agreed that

King County, Washington shall be the venue for any judicial action arising out of this Franchise.

17.4 Subject to state and federal regulation, the Company shall be permitted to continuously operate its Facilities during dispute resolution.

Section 18. Indemnification

18.1 General Indemnification. Except for environmental matters, which are covered by a separate indemnification in Section 18.2 below, the Company shall indemnify, defend and hold harmless the City, its agents, officers or employees, from any and all liability, loss, damage, cost, expense, and any claim whatsoever, including reasonable attorneys' and experts' fees incurred by the City in defense thereof, 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 the Company's Facilities, or from the existence of the Company'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 the City's sole negligence and except for any incidence of the City's non-compliance with Section 10.3, above (One-Call regulations). If any action or proceeding is brought against the City by reason of the pipeline or its appurtenant facilities, the Company shall defend the City at the Company's complete expense, provided that, for uninsured actions or proceedings, defense attorneys shall be approved by the City, which approval shall not be unreasonably withheld.

18.2 Environmental Indemnification. The Company shall indemnify, defend and hold harmless the City, its agents, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims (unless such liability, loss, damage, expense, actions and claims result from the City's noncompliance with Section 10.3 above) either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by the City in defense thereof, arising from (a)

Company's violation of any environmental laws applicable to the Facilities or (b) from any release of a hazardous substance on or from the Facilities. 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; and (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.

Section 19. Insurance

19.1 The Company agrees to carry as a minimum, the following insurance, in such forms and with such carriers as are satisfactory to the City.

(a) Workers compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;

(b) Commercial general liability insurance with combined single limits of liability not less than \$100,000,000 per occurrence and in the aggregate for bodily injury, including personal injury or death, products liability, contractual coverage, operations, explosion, collapse, underground and property damage and any claims or losses under Section 15; and

(c) Automobile liability insurance with combined single limits of liability not less than \$2,000,000 for bodily injury, including personal injury or death and property damage.

(d) Environmental pollution liability with a limit not less than \$50,000,000 for each occurrence, at a minimum covering liability from sudden and/or accidental occurrences to the extent such coverage is reasonably available in the marketplace.

19.2 The comprehensive general liability insurance and automobile liability insurance policies shall be endorsed to contain the following provisions:

(a) The City shall be named as additional insured; such insurance shall apply to the City's officers, elected officials and employees, representatives, consultants, or volunteers, while acting on behalf of the City and resulting from the Company's operations.

(b) Coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability;

(c) Coverage shall not be suspended, canceled, modified or reduced except after thirty (30) days prior written notice to the City delivered by certified mail, return receipt requested; and

(d) Coverage shall be primary as to the City, its officers, officials, employees, representatives, consultants, or volunteers. Any insurance or self-insurance by the City, its officers, officials, employees or volunteers shall be in excess of the Company's required insurance as a result of the Company's negligence.

19.3 The Company shall furnish the City with certificates of insurance and original endorsements evidencing the coverage required by this Section upon acceptance of this Franchise. The certificates and endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf and must be received and approved by the City prior to the commencement of any work.

19.4 The indemnity and insurance provisions herein under Sections 18 and 19 of this Franchise shall survive the termination of this Franchise and shall continue for as long as the Company's Facilities shall remain in or on the Franchise Area or until the parties execute a new Franchise agreement that modifies or terminates these indemnity or insurance provisions.

Section 20. Annual Franchise Fee.

20.1 In consideration for granting this Franchise and for the use of the Franchise Area, there is hereby established an annual fee of Twelve Thousand Nine

Hundred Sixty Dollars (\$12,960) intended to cover the City's reasonable costs related to administering the Franchise pursuant to the City's fee schedule...

20.2 The annual fee shall increase each year throughout the term of this Franchise and any renewal terms by 100% of the non-seasonally adjusted Consumer Price Index for the Seattle-Tacoma-Bremerton Metropolitan Area for the previous calendar year. Each increase shall become effective on the anniversary date of this Franchise each year.

20.3 Each annual payment shall cover the next twelve (12) month period and shall be paid not later than the anniversary date of the Effective Date of this Franchise. Interest shall accrue on any late payment at the rate of twelve percent (12%) per annum. Such interest shall be in addition to any applicable penalties for late payment. Any partial payment shall first be applied to any penalties, then interest, then to principal.

20.4 The Franchise fee set forth in Section 20.1 does not include, and the Company agrees that it is responsible for, payments associated with the City's administrative expenses including but not limited to the City's expenses incurred in reviewing, inspecting, licensing, permitting or granting any other approvals necessary for the Company to operate and maintain its Facilities or for any inspection or enforcement costs thereunder (i.e., customary permitting fees). Additionally, the foregoing annual fee does not include any generally applicable taxes that the City may legally levy. The Company shall bear the cost of publication of this Ordinance, which is payable to the City within 30 days of publication.

Section 21. Eminent Domain

The existence of this Franchise shall not limit either party's powers of eminent domain under Washington law.

Section 22. Legal Relations

22.1 The Company accepts any privileges granted hereunder by the City to the Franchised Area in an "as is" condition. The Company agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of the location of the Company's Facilities or the Facilities themselves or possible hazards or dangers arising from other uses or users of the Rights-of Way, Public Ways and Other Ways including by the City, the general public or other utilities. As between the City and the Company, the Company shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of the Facilities or other activities permitted hereunder.

22.2 The Company hereby waives its Workers Compensation immunity under Title 51 RCW in any cases involving the City and affirms that the City and the Company have specifically negotiated this provision, to the extent it may apply.

22.3 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 City 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.

22.4 This Franchise shall be governed by, and construed in accordance with, the laws of the State of Washington.

Section 23. [OMITTED]

Section 24. Notice

24.1 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:

City:

City of SeaTac

4800 S. 188th Street

SeaTac, WA 98188-8605

Attn: City Manager

Company:

Olympic Pipe Line Company Attn: President

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.

24.2 To ensure effective cooperation, the Company and the City shall each designate a representative responsible for communications between the Parties.

Section 25. Miscellaneous

25.1 In the event that a court or agency of competent jurisdiction declares a material provision of this Franchise to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to such amendments or modifications as are appropriate actions so as to give effect to the intentions of the parties as reflected herein. If severance from this Franchise of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Franchise, either party may apply to a court of competent jurisdiction to reform or reconstitute the Franchise so as to recapture the original intent of said particular provision(s). All other provisions of the Franchise shall remain in effect at all times during which negotiations or a judicial action remains pending.

25.2 Whenever this Franchise sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of this Franchise.

25.3 In the event that the Company is prevented or delayed in the performance of any of its obligations under this Franchise by reason(s) beyond the reasonable control of the Company, then the Company's performance shall be excused during the Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence the Company shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation or performance that is satisfactory to the City. The Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

25.4 The Section headings in this Franchise are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the Section to which they pertain.

25.5 By entering into this Franchise, the parties expressly do not intend to create any obligation or liability, or promise any performance to, any third party, nor have the parties created for any third party any right to enforce this Franchise.

25.6 This Franchise and all of the terms and provisions shall be binding upon and inure to the benefit of the respective successors and assignees of the parties.

25.7 The parties each represent and warrant that they have full authority to enter into and to perform this Franchise, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Franchise, except such as may be routinely required and obtained in the ordinary course of business.

Section 26. Effective Date

This Ordinance shall be effective on March 1, 2006, having been (i) introduced to the City Council not less than five days before its passage; (ii) first submitted to the City Attorney; (iii) published at least five days prior to the above-referenced effective date and as otherwise required by law; and (iv) passed at a regular meeting of the legislative body of the City of SeaTac by a vote of a majority of the City Council. This Franchise Ordinance is void if the Company fails to file its unconditional acceptance of this Franchise within thirty (30) calendar days from the final passage of same by the City Council. The Company shall file its unconditional written acceptance with the City Clerk of the City of SeaTac. Furthermore, failure of the Company to so accept this Franchise within said period of time shall be deemed a rejection thereof by the Company, and the

rights and privileges herein granted shall, after the expiration of the thirty day period, absolutely cease and determine, unless the time period is extended by the parties.

ADOPTED this 10th day of January, 2006, and signed in authentication thereof on this 10th day of January, 2006.

CITY OF SEATAC

Gene Fisher, Mayor

ATTEST:

Judith L. Cary, City Clerk

Approved as to Form:

Mary Mirante Bartolo, City Attorney

Date

Date of Publication: _____

[Effective Date March 1, 2006]

[OPL Franchise]

UNCONDITIONAL ACCEPTANCE BY OLYMPIC PIPE LINE COMPANY:

I, the undersigned official of Olympic Pipe Line Company, am authorized to bind Olympic Pipe Line Company and to unconditionally accept the terms and conditions of the foregoing Franchise (Ordinance No. _____), which are hereby accepted by Olympic Pipe Line Company this _____ day of _____ 2006.

OLYMPIC PIPE LINE COMPANY

By: _____

Name: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 2006.

Notary Public in and for the State of Washington
My commission expires _____

Received on behalf of the City this _____ day of _____, 2006.

Name: _____

Title: City Clerk _____