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ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5603

AN ORDINANCE of the City of Bellevue, Washington, granting Olympic Pipe Line Company, an interstate pipeline corporation, incorporated in the State of Delaware, its successors and assigns, the nonexclusive right, privilege, authority, and franchise, subject to the terms and conditions prescribed herein, to construct, operate, maintain, remove, replace, and repair its existing pipeline facilities, together with the equipment and appurtenances thereto, for the transportation of Petroleum Products within and through the franchise area of the City of Bellevue.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES 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, from which the time requirement for any notice, extension, and/or renewal will be measured.

1.3 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 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.

1.4 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 agreement or as those components may be modified or improved consistent with the terms of this agreement.

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

1.6 Franchise Area means the Right of Way and certain designated Public Property within the jurisdictional boundaries of the City, including any areas annexed by the City (but excluding properties upon which Grantee 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.

1.7 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 that, after release into the environment, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities.

1.8 Maintain or Maintenance shall mean examining, testing, inspecting, repairing, maintaining, and replacing the existing pipeline(s) and/or Facilities or any part thereof as required and necessary for safe operation.

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

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

1.11 Pipeline Corridor shall mean the pipeline pathway through the jurisdictional boundaries of the City in which the Facilities of the Company are located, including any Right of Way, designated Public Property, and/or other easement over and through private property.

1.12 Public Property shall mean the present and/or future property owned or leased by the City within the present and/or future corporate limits, or jurisdictional boundaries of the City that the City has designated for the Company's Facilities, excluding properties upon which Grantee holds a private easement, license, or other property interest for its Facilities.

1.13 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.

1.14 Right of Way means the surface and the space above and below all roads, streets, avenues, alleys, and highways of the City as now laid out, platted, dedicated, acquired, or improved; all right of way for roads, streets, avenues, alleys, and highways that may hereafter be laid out, platted, dedicated, acquired, or improved within the present limits of the City and as such limits may be hereafter extended, but excluding properties upon which the Company holds a private easement, license, or other property interest for its Facilities.

Section 2. Purpose

The City grants this nonexclusive Franchise to the Company to Construct, Operate, Maintain, and Improve its existing Facilities as a liquid Petroleum Product delivery system for the 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 the 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 establish the conditions relating to Company's use of the Franchise Area 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 the Company.

Section 3. Rights Conveyed

3.1 Pursuant to the laws of the State of Washington, including, but not limited to, RCW 35A.47.040 and RCW 80.32.010, the City hereby grants, under the terms and conditions contained herein, to the 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, and to its successors and assigns (subject to and as provided for in Section 5) 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.

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

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

Section 4. <u>Term</u>

4.1 Each of the provisions of this Franchise shall become effective upon the Company's acceptance of the terms and conditions of this Franchise and shall remain in effect for ten (10) years thereafter. At any time not more than three (3) years nor less than one hundred eighty (180) days before the expiration of the Franchise, either party may request an extension of the Franchise for an additional ten (10) year renewal period.

4.2 The effective date of this Franchise shall be May 26, 2005.

4.3 If the parties fail to formally renew the Franchise prior to the expiration of its term or any extension thereof, the Franchise may 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. <u>Assignment and Transfer of Franchise</u>

This Franchise shall not be sold, assigned, transferred, leased, or disposed of either in whole or in part either by involuntary sale or by voluntary sale, 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 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.

Section 6. Compliance with Laws and Standards

The Company, in carrying out any authorized activities under the privileges granted herein, shall 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, and any laws or regulations that may be subsequently enacted by any governmental entity with jurisdiction over the Company and/or the Facilities.

Section 7. Construction within Franchise Area

7.1 This Section 7 shall apply to all Construction, Maintenance, or Improvements done by the Company in the Franchised Area.

7.2 Except in the event of an emergency, the Company shall first obtain all required permits from the City to Construct, Maintain, or Improve Company's Facilities within the Franchise Area. Such work shall only commence upon the issuance of all required permits by the City, which permits shall not be unreasonably withheld or delayed after submission of a complete application.

7.3 In the event of an emergency requiring immediate action by the 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 may take action immediately to correct the dangerous condition without first obtaining any required permit(s) so long as: (1) the Company informs the City of the nature and extent of the emergency and the work to be performed prior to commencing the work if such notification is practical, or, where prior notification is not practical, the Company shall notify the City on the next business day; and (2) such required permit(s) is obtained by the Company as soon as practicable following cessation of the emergency.

7.4 Upon acceptance of this Franchise by the Company, the Company shall post a Performance Bond in the amount of five hundred thousand dollars ($500,000) that shall remain in effect for the term of this Franchise. The bond shall ensure the faithful performance of the Company's obligations under the Franchise, including, but not limited to, payment by the Company of any penalties, claims, liens, or fees due the City that arise by reason of the Operation, Construction, or Maintenance of the Facilities within the Franchise Area. The Company shall pay all premiums or other costs associated with maintaining the bond. Additionally, if the Performance Bond is determined by the City to be inadequate to ensure the Company's performance of a project, the Company shall post any additional bonds required to guarantee performance by the Company in accordance with the conditions of any permits and/or the requirements of this Franchise.

7.5 All Construction, Maintenance, or Improvement work done hereunder by the Company or upon the Company's direction or on the Company's behalf, including any work performed by contractors or subcontractors, shall be considered work done by the Company and shall be undertaken and completed in a

workmanlike manner and in accordance with the descriptions, plans, and specifications provided to the City. Any work done by the Company, including work done at the Company's direction or on its behalf by contractors or subcontractors, 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, Maintenance, and/or Improvements shall be in compliance with all valid and applicable laws and regulations of governmental agencies with jurisdiction.

7.6 The Company shall place and maintain line markers pursuant to federal regulations within and along the Pipeline Corridor. The Company agrees to continue its voluntary practice of placing continuous markers underground, when and where appropriate, indicating the pipeline's location each time the 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.

7.7 Both the Company and the City shall continuously be a member of the State of Washington "one-call" locator service (RCW 19.122), or approved equivalent, and shall comply with all such applicable rules and regulations.

Section 8. <u>Abandonment or Removal of Facilities</u>

8.1 In the event of abandonment or the Company's permanent cessation of use of its Facilities, or any portion thereof within the Franchised Area, the Company shall, within one hundred eighty (180) days after the abandonment or permanent cessation of use, remove the Facilities at the Company's sole cost and expense.

8.2 However, with the express written consent of the City, said consent not to be unreasonably withheld, the Company may secure the Facilities in such a manner as to cause it to be as safe as is reasonably possible by removing all Petroleum Product(s), 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 the Company's sole cost and expense.

8.3 In the event of the removal of all or a portion of the Facilities, the Company shall restore the Franchised Area as nearly as possible to a condition that existed prior to installation of the Company's Facilities. Such property restoration work shall be done at the Company's sole cost and expense and to the City's reasonable satisfaction. If the 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 the Company, remove the Facilities, restore the premises, or take such other action as is reasonably necessary at the 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.

8.4 The City's consent to the abandonment of any 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 public health, safety, and/or necessity, in which case the Company shall perform such work at no cost to the City subject to the provisions of Section 12.6 herein.

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

Section 9. <u>Operations and Maintenance - Inspection and Testing</u>

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

9.2 The City shall use reasonable efforts to require all excavators working within the Franchise Area in proximity to the Company's Facilities to notify the Company at least forty-eight (48) hours prior to the start of any work and to ensure compliance with the requirements of the State of Washington "one-call" locator service law (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.

Section 10. <u>Encroachment Management and Damage Prevention</u>

10.1 The Company and the City shall comply with applicable and valid federal, state, and local requirements regarding encroachment management and damage prevention, including the State of Washington "one-call" locator service law (RCW 19.122).

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

10.3 The Company shall regularly inspect the surface conditions on or adjacent to the Pipeline Corridor, as required by applicable state and federal regulations.

Section 11. Leaks, Spills, and Emergency Response

11.1 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 on hand, on the County level, sufficient emergency response equipment and materials as required by applicable laws and regulations.

11.2 Leaks, spills, ruptures, and other emergencies shall be investigated and reported as required by applicable state and federal regulations.

11.3 The Company shall be solely responsible for all of the City's reasonable and necessary costs incurred in responding to any spill, leak, or other release of Petroleum Product or other substances or material from the Company's Facilities, including, but not limited to, the detection and removal of any contaminants from earth or water, and all remediation, 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 born by the City and shall not be considered administrative expenses of the City. Nothing in this Section 11 shall be construed as limiting the Company's right to seek recovery from third parties.

Section 12. Required Relocation of Facilities

12.1 In the event that the City undertakes or approves the construction of any City project, or makes changes to the grade or location of any water, sewer, or storm drainage line, street, or sidewalk, or undertakes any other public improvement project (collectively and individually an "Improvement Project"), and, as a result of the Improvement Project, the City determines that the public health, safety, welfare, necessity, and/or convenience reasonably requires changes to or the relocation of the Company's Facilities, then the Company shall make such changes or relocations as required herein at the Company's sole cost, expense, and risk. In the event the Company relocates or otherwise modifies its facilities at the direction of the City to accommodate a City Improvement Project, and the City thereafter abandons and does not complete the Improvement Project, the Company may invoke the Section 14 Dispute Resolution procedures and seek reimbursement for the reasonable and necessary costs incurred by the Company for the relocation or modification that it would not have otherwise incurred.

12.2 The City shall provide the Company reasonable prior written notice of any Improvement Project(s) that in the interest of public health, safety, welfare, necessity, and/or convenience require changes to or relocation of the Company's Facilities. The City will endeavor, where practical, to provide the Company at least one hundred eighty (180) days prior written notice, or such additional time as may reasonably be required, of such Improvement Project(s). However, nothing in this Section shall be construed as to relieve the Company of its duty and obligation to

relocate its Facilities to accommodate any Improvement Project(s) undertaken by the City after any reasonable written notice of any Improvement Project(s).

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

12.4 The Company may, after receipt of written notice requiring changes to or relocation of its Facilities under Sections 12.2 and 12.3, submit to the City, within ninety (90) 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(s) 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 field verification of the actual location(s) of the Company's underground Facilities within the Improvement Project area by excavating (i.e., pot holing), at no expense to the City. The City shall give each alternative proposed by the Company full and fair consideration, but the City retains its discretion to decide whether to utilize its original plan or an alternative proposed by the Company. In the event the City ultimately determines that none of the alternatives proposed by the Company is suitable to accommodate the Improvement Project, the City may direct the Company to proceed with the required relocation or modification, and the Company shall take all reasonable steps to complete the relocation or modification so as to meet the City's reasonable project timelines and objectives and avoid project delays. However, if the Company feels that the City did not give full and fair consideration to the Company's proposed alternatives, the Company may invoke the Dispute Resolution process, Section 14 of this agreement, provided that the Company shall not suspend or discontinue relocation or modification work necessary to meet the City's reasonable project timelines and objectives and to avoid project delays, during the Section 14 Dispute Resolution process.

12.5 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 actual and reasonable cost of the subsequent relocation during the five (5) year period.

12.6 The Company shall not be required to remove an abandoned Facility or relocate its existing operational 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, Transportation Improvement Program, the Transportation Facilities Program, or other similar plan, then the Company shall change or otherwise relocate

its Facilities in accordance with Section 12.1 at the Company's sole cost, expense, and risk.

12.7 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 12.1 in order to minimize costs while meeting the City's reasonable project timelines and objectives. The City's requirements with regard to the required changes or relocation (e.g., depth of cover, distance from other utilities, etc.) must be reasonable and not inconsistent with applicable federal and state requirements, provided that nothing in this section shall be construed as to limit in any way the City's authority to protect the health, safety, and welfare of it citizens or to limit damage to property through the exercise of its police power, land use authority, franchise authority, or the City's authority to regulate the time, place, and manner of the Company's use of the Right of Way and/or designated Public Property.

12.8 Upon receipt of the City's reasonable notice, plans, and specifications per Section 12.1, the Company shall take all reasonably necessary measures to complete relocation of such Facilities so as to accommodate the Improvement Project(s) at least ten (10) calendar days prior to commencement of the Improvement Project(s) or such other time as the parties may agree in writing.

12.9 The City shall take reasonable steps to cooperate with the Company should the Company apply for any local, 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 may not delay the City Improvement Project(s). To the extent such funds are made available, the funds shall be applied towards the Company's costs incurred to relocate the Company's Facilities.

Section 13. <u>Violations, Remedies, and Termination</u>

13.1 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 the Company violates any material provision of this Franchise. The remedies provided for in this Franchise are cumulative and not exclusive, and; the exercise of one remedy shall not prevent the exercise of another or any rights of the City at law or equity.

13.2 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.

13.3 Either party may invoke the Dispute Resolution clause contained in Section 14 of this Franchise, as it deems necessary with regard to termination.

13.4 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 of the Facilities and with all directives of applicable federal and state agencies with jurisdiction over its Facilities.

Section 14. Dispute Resolution

14.1 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 operational officers or 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 a meeting, and the parties shall make a good faith effort to attempt to achieve a resolution of the dispute.

14.2 In the event that the parties are unable to resolve the dispute under the procedure set forth in Section 14.1, 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. Any expenses incidental to mediation shall be borne equally by the parties.

14.3 If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies.

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

Section 15. Indemnification

15.1 General Indemnification. Except for environmental matters, which are covered by a separate indemnification in Section 15.2 below, the Company shall indemnify, defend, and hold harmless the City, it agents, officers, or employees, from any and all liability, loss, damage, cost, expense, and claim whatsoever, 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 City non-compliance with Section 7.7 above (i.e., RCW 19.122, the State of Washington "one-call" locator law). 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.

15.2 Environmental Indemnification. The Company shall indemnify, defend, and hold harmless the City, it 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 noncompliance with Section 7.7 above (i.e., RCW 19.122, the State of Washington "one-call" locator law) 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) the 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; (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.

15.3 The Company agrees that its obligations under this Section 15 extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Company, by mutual negotiation, hereby waives, as respects the City only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

Section 16. Insurance.

16.1 The Company shall procure and maintain for the duration of the Franchise insurance, or provide self-insurance, against all claims for injuries to persons or damages to property that may arise from or in connection with the exercise of the rights, privileges, and authority granted hereunder to the Company, its agents, representatives, or employees. The Company shall provide an insurance certificate, together with an endorsement naming the City, its officers, elected officials, agents, employees, representatives, consultants, and volunteers as additional insureds on the Company's Commercial General Liability and Pollution Legal Liability policies, to the City upon the Company's acceptance of this Franchise, and such insurance certificate shall evidence the following minimum coverages:

A. Commercial General Liability insurance, including coverage for premises operations, explosions, and collapse hazard, underground hazard and products completed hazard, with limits not less than $100,000,000, per occurrence and in the aggregate, combined single limit for bodily injury, personal injury and property damage, including products and completed operations.

B. Automobile liability for owned, non-owned, and hired vehicles with a limit of $2,000,000 for each person and $2,000,000 for each accident;

C. Worker's compensation, within statutory limits, and employer's liability insurance with limits of not less than $2,000,000;

D. Pollution Legal Liability, to be in effect throughout the ten (10) year term of this Franchise agreement, with a limit not less than $50,000,000 per occurrence and in the aggregate for any pollution condition or occurrence after August, 2000. Such policy shall be purchased with a minimum policy term of five (5) years.

16.2 If coverage is purchased on a "claims made" basis, then the Company shall warrant continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of termination of this Franchise and/or conversion from a "claims made" form to an "occurrence" coverage form.

16.3 Any deductibles shall be the sole responsibility of the Company. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability.

16.4 The Company's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Company's insurance and shall not contribute with it.

16.5 In addition to the coverage requirements set forth in this Section, the certificate of insurance shall provide that:

"The above described policies will not be canceled before the expiration date thereof, without the issuing company giving sixty (60) days written notice to the certificate holder."

In the event of said cancellation or intent not to renew, the Company shall obtain and furnish to the City evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date.

Section 17. <u>Annual Franchise Fee</u>

17.1 In consideration for the granting of this Franchise and for the Company's use of the Franchise Area, there is hereby established an annual fee equal to Twenty-Two Thousand Five Hundred Dollars ($22,500).

17.2 Beginning with year two of the Franchise term and each year thereafter, the annual fee shall be increased by the national Consumer Price Index for Urban Consumers (CPI-U) as published in January of that year, or at a rate of one and one half percent (1.5%), which ever is greater.

17.3 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 and customary penalties for late payment. Any partial payment shall first be applied to any applicable and customary penalties penalties, then interest, and then to principal.

17.4 The Franchise Fee set forth in Section 18.1 does not include standard and customary payments associated with the Grantor's administrative expenses incurred in reviewing, licensing, permitting, or granting any other approvals necessary for Grantee to Operate, Maintain, or Improver 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 Grantor may legally levy. The Grantee shall pay the franchise renewal application fee, pursuant to Bellevue City Code 14.20.070, and shall bear for the cost for the publication of this Ordinance.

Section 18. <u>Legal Relations</u>

18.1 The Company accepts any privileges granted hereunder by the City to the Franchise 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 Right of Way or designated Public Property, including any use by the City, by the general public, or by 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.

18.2 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.

18.3 This Franchise shall be governed by, and construed in accordance with, the laws of the State of Washington. The venue for any dispute related to this Franchise shall be in the United States District Court for the Western District of Washington or in the Superior Court in King County, Washington.

Section 19. Company's Acceptance

The City may void this Franchise ordinance if the Company fails to file its unconditional written acceptance of this Franchise within thirty (30) calendar days from the final passage of same by Council. The Company shall file its unconditional written acceptance with the City Clerk of the City of Bellevue.

Section 20. 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:

City address:

City of Bellevue
301 116th Avenue SE
Leavitt Building, Suite 100
P.O. Box 90012
Bellevue, Washington 98004
Attention: Franchise Manager

With copy to:

City of Bellevue
P.O. Box 90012
Bellevue, Washington 90012
Attention: City Clerk

Company:

Olympic Pipe Line Company
2319 Lind Avenue S.W.
Renton, Washington 98055
Attn: President

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 21. Miscellaneous

21.1 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 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 believes that the Franchise is compliant with federal, state, and local laws. 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.

21.2 In the event that a court or agency of competent jurisdiction declares a material provision of this Franchise Agreement 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 Agreement of the particular provision(s) determined to be invalid, illegal, or unenforceable will fundamentally impair the value of this Franchise Agreement, either party may apply to a court of competent jurisdiction to reform or reconstitute the Franchise Agreement 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.

21.3 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.

21.4 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.

21.5 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.

21.6 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.

21.7 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.

22.8 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 2. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

Passed by the City Council this 13th day of June, 2005, and signed in authentication of its passage this 13th day of June, 2005.

(SEAL)

Connie B. Marshall

Connie B. Marshall, Mayor

Approved as to form:

Lori M. Riordan

Lori M. Riordan, City Attorney

Attest:

Myrna L. Basich

Myrna L. Basich, City Clerk

Published June 17, 2005

ACCEPTANCE OF ORDINANCE NO. 5603
OF THE CITY OF BELLEVUE WASHINGTON

The undersigned, Olympic Pipe Line Company, Inc., hereby accepts Ordinance No. 5603, which was passed by the City Council of the City of Bellevue Washington on June 6, 2005 and is entitled:

> AN ORDINANCE of the City of Bellevue, Washington, granting Olympic Pipe Line Company, an interstate pipeline corporation, incorporated in the State of Delaware, its successors and assigns, the nonexclusive right privilege, authority, and franchise, subject to the terms and conditions prescribed herein, to construct, operate, maintain, remove, replace, and repair its existing pipeline facilities, together with the equipment and appurtenances thereto, for the transportation of Petroleum Products within and through the franchise area of the City of Bellevue.

IN TESTIMONY WHEREOF said Olympic Pipe Line Company, Inc. has caused this written Acceptance to be executed in its name by its undersigned authorized signer, thereunto duly authorized on this 30 day of June, 2005.

Olympic Pipe Line Company, Inc.

By: Bobby J. Talley

Title: President

State of Washington)
) ss.
County of King)

On this 30 day of June, 2005, personally before me appeared Bobby J. Talley who stated that (s)he is an authorized signer for the Olympic Pipe Line Company, Inc. and that the instrument was signed on behalf of and with the knowledge and authority of the said corporation.

Before me:

Pamela D. Brady

Notary Public for the State of Washington

My Commission Expires: 2/9/06.

PAMELA D. BRADY
NOTARY PUBLIC
COMMISSION EXPIRES 2-9-06
STATE OF WASHINGTON