

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. Term

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. Assignment and Transfer of Franchise

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. Abandonment or Removal of Facilities

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. Operations and Maintenance - Inspection and Testing

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. Encroachment Management and Damage Prevention

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