

ORDINANCE No. 177186

Grant a franchise to Portland Energy Solutions Company, LLC for a period of twenty years.

The City of Portland ordains:

Section 1. NATURE AND TERM OF GRANT:

A. Grant of Franchise

1. The City of Portland, Oregon, does hereby grant to Portland Energy Solutions Co., LLC, an Oregon limited liability company qualified to do business in the State of Oregon, and to Portland Energy Solutions Co., LLC's successors and assigns, as approved by the City of Portland, Oregon, under Section 15 of this Franchise, a franchise to construct, operate and maintain a Pipeline System, with all necessary Facilities, in and under the surface of the City of Portland, Oregon's Streets. A map attached hereto as Exhibit A, which is incorporated by reference, shows the areas in which the Portland Energy Solutions Co., LLC's proposed four phases of construction of the Pipeline System may occur. A map attached hereto as Exhibit B, which is also incorporated by reference, shows the proposed route for Phase I of the Pipeline System's construction. Portland Energy Solutions Co., LLC may seek to amend, alter or add to its Pipeline System by filing a map showing such proposed changes or additions with the City of Portland, Oregon's Office of Cable Communications and Franchise Management and with the City of Portland, Oregon's Engineer. However, the total length of Portland Energy Solutions Co., LLC's Pipeline System in Phase I, measured linearly in the Streets, shall not exceed one thousand (1000) linear feet. Any further modifications beyond the total length of one thousand (1,000) linear feet, whether in Phase I or in future phases, shall be subject to approval by the City of Portland, Oregon's Council by ordinance. The City of Portland, Oregon shall respond to Portland Energy Solutions Co., LLC's proposals for any such further modifications with the approval, modifications, or denial by ordinance within ninety (90) days from receiving Portland Energy Solutions Co., LLC's proposal.
2. Throughout this Franchise, the City of Portland, Oregon, shall be referred to as the "City", and Portland Energy Solutions Company, LLC shall be referred to as the "grantee".

B. Duration of Franchise

The term of this Franchise, and all rights and obligations pertaining thereto, shall be Twenty (20) years from the effective date of the Franchise unless terminated sooner as provided herein.

C. Effective Date

The effective date of this Franchise shall be sixty (60) days after passage of the Franchise by the City Council, unless Grantee fails to file an unconditional written acceptance of this Franchise in accordance with Section 20 herein, in which event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the

original hereof, as stamped by the Council Clerk.

D. Franchise Not Exclusive

This Franchise is not exclusive. The City expressly reserves the right to grant rights or franchises to other Persons, as well as the right in its own name as a municipality, to use the Streets for similar or different purposes allowed Grantee hereunder, by franchise, permit or otherwise.

E. Charter and General Ordinances To Apply

To the extent authorized by law, this Franchise is subject to the Charter of the City of Portland, Oregon and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not merely existing contractual rights of Grantee, now in effect or hereafter made effective. Section 10-201 through 10-218, inclusive, of the Charter of the City of Portland, Oregon, (1942 compilation, as revised in part by subsequent amendments), are hereby incorporated by reference and made a part of this Franchise, to the extent authorized by law. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction.

Section 2. DEFINITIONS:

- A. Captions. Throughout this Franchise, captions to sections are intended solely to facilitate reading and to reference the sections and provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.
- B. Definitions. For the purpose of this Franchise, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word “shall” is always mandatory and not merely directory.
1. “City” means the City of Portland, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.
 2. “City Council” means the Council of the City of Portland.
 3. “Conduit” means any structure, or section thereof, containing two or more ducts.
 4. “Conduit Facility” means any structure, or section thereof, containing one or more ducts, conduits, manholes, handholes, vaults or any other such related appurtenances for wires, cable or Optic Fiber.
 5. “District Cooling Services” means the delivery of chilled water through Grantee’s Pipeline System to customers for air conditioning or other uses.
 6. “Duct” means a single enclosed raceway for conductors, optical fiber, wire or other

cable.

7. “Facility” means any tangible component of the Pipeline System.
8. “Franchise” means this Franchise agreement, as approved by the City Council and accepted by the Grantee, according to the terms of Section 20 of this Franchise.
9. “Grantee” means Portland Energy Solutions Co., LLC, an Oregon limited liability company qualified to do business in the State of Oregon, and to Portland Energy Solutions Co., LLC’s successors and assigns, as approved by the City of Portland, Oregon, under Section 15 of this Franchise.
10. “Gross Revenues” means all amounts earned by the Grantee, or any Affiliated Entity, in whatever form and from all sources, derived from the operation of Grantee’s Pipeline System to provide services authorized by or required under this Franchise. For the purpose of this Section 2.B.10 Affiliated Entity means any entity having ownership or control in common with the Grantee, in whole or in part, including, without limitation, Grantee’s Parent Corporations and any subsidiaries or affiliates of such Parent Corporations.
 - a. “Gross Revenues” shall not include amounts earned by the Grantee for ancillary services to district cooling services, such as consulting on in-building lighting or management of heating, ventilation or air conditioning equipment.
 - b. “Gross Revenues” shall also include amounts earned during any period, regardless of whether:
 - (1) The amounts are paid in cash, in trade or by means of some other benefit to the Grantee or any Affiliated Entity.
 - (2) The goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure.
 - (3) The amounts are characterized, separately identified or accounted as being for goods or services, or fees to be paid to government agencies.
 - (4) The amounts are initially recorded by the Grantee or an Affiliated Entity.
 - c. “Gross Revenues” shall not be net of
 - (1) Any operating expense.
 - (2) Any accrual, including, without limitation, any accrual for commissions.
 - (3) Any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment.
 - d. “Gross Revenues”, however, shall not be double counted. Revenues of both Grantee and an Affiliated Entity that represent a transfer of funds between the Grantee and the Affiliated Entity, and that would otherwise constitute Gross Revenues of both the Grantee and the Affiliated Entity, shall be counted only once for purposes of determining Gross Revenues.
 - e. “Indefeasible Right of User Interest” (“IRU”) means a form of acquired capital in the Conduit Facility, in which the holder of the interest possesses a right to use the Facility, but not the right to control, maintain, construct or revise the Facility.

11. "Minimum Annual Franchise Fee" shall mean ten thousand dollars (\$10,000) in the first year of the Franchise and shall increase by one thousand dollars (\$1,000) annually, until reaching a minimum of twenty-nine thousand dollars (\$29,000) in year twenty (20) of this Franchise.
12. "Optical Fiber" means a filament of transparent dielectric material, usually glass or plastic, and usually circular in cross section, that guides light, and is used to convey modulated information.
13. "Person" means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Oregon, and includes any natural person.
14. "Pipeline System" means all of Grantee's pipe line facilities, including pipes, valves, and vaults installed or used for the provision of District Cooling Services, as well as all additional Conduit Facilities required by this Franchise, located in, above or below the Streets.
15. "Streets" means the surface of, and the space above and below, any public street, road, alley or highway, within the City, used or intended to be used by the general public for travel, to the extent the City has the right to allow the Grantee to use them.
16. "Year", "Annual", or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

Section 3. COMPENSATION AND AUDITING:

A. Amount of compensation

1. As compensation for the benefits and privileges under this Franchise and in consideration of permission to use the Streets of the City, the Grantee shall pay as a Franchise fee to the City, through the duration of this Franchise, the greater of either:
 - a. The Minimum Annual Franchise Fee, or
 - b. An amount equal to five percent (5%) of the Grantee's Gross Revenues.

B. Compensation for sale or lease of Conduit Facilities

1. As additional compensation to the amounts set forth in Section 3(A), in the event Grantee sells any portion of its Conduit Facilities in the Streets, Grantee shall pay a one-time franchise fee to the City of one percent (1%) of the sales price.
2. In the event Grantee enters into any lease or grants any IRU for any portion of its Conduit Facilities in the Streets, Grantee shall pay to the City a franchise fee of five percent (5%) of the revenues from any such leases and IRUs.

C. Franchise Fee Payments

1. Grantee's Minimum Annual Franchise Fee payable under Section 3(A) shall be paid to the City annually following the effective date of this Franchise. Each annual payment shall be made for the immediately preceding calendar year ending December 31. Each annual payment of the Grantee's Minimum Annual Franchise Fee shall be paid on or before the forty-fifth (45th) day following December 31st.
2. The Gross Revenue based Franchise fee payable under Section 3(A) shall be computed and paid on or before the forty-fifth (45th) day following each calendar year quarter period (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31) during the term of this Franchise. The compensation under Section 3(B) shall be paid for the calendar year quarter in which the revenues are entered on Grantee's accounts, and shall accompany the Gross Revenue based payment.
3. Franchise fee payments not received by the City on or before the due date shall be assessed interest based on the average prime interest rate set by the City's bank on December 31st of the previous year, plus 300 basis points or 3%, compounded annually. At no time shall the interest rate be reduced to less than twelve percent (12%), compounded annually.

D. Reports

Each payment shall be accompanied by a written report to the City, verified by an officer or other authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues, together with compensation based upon revenues from sales, leases and IRU's under Section 3(B), and the computation basis and method. Such reports shall be in a form satisfactory to the City.

E. Cost of Pre-franchising and Publication

Grantee has paid the City five thousand dollars (\$5,000) for its pre-franchising costs, including publication of this Franchise, as such publication is required by the City Charter.

F. Acceptance of Payment and Recomputation

1. No acceptance of any payment by Grantee shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable. All amounts paid under Section 3 shall be subject to confirmation and recomputation by the City, provided that such audit and computation is completed within five (5) years of the date any audited and recomputed payment is due. If no such audit or financial review is conducted within the five (5) year period, then any claim that the City might have had for additional compensation shall be forever waived and relinquished. The Grantee agrees to reimburse the City for:

- a. The reasonable costs of such confirmation if the City's recomputation discloses that the Grantee has paid ninety-five percent (95%) or less of the Franchise fees owing for the period at issue upon receipt of an invoice from the City showing such costs were actually incurred and directly related to the audit.
 - b. One-half of the reasonable costs of such confirmation if the City's recomputation discloses that the Grantee had paid more than ninety-five percent (95%) but less than ninety-eight percent (98%) of the Franchise fees owing for the period at issue.
 - c. The City's costs which may be reimbursed under this Section shall not exceed five thousand dollars (\$5,000.00) per audit or financial review.
2. If the City determines that Grantee made any underpayment, and that the underpayment exceeded five percent (5%) of the amount due, Grantee shall pay interest compounded at the rate of one percent (1%) over the existing prime rate as set by the bank with which the City contracts for its banking services, compounded monthly. Interest shall be due on the entire underpayment from the date on which payment was due until the date on which full payment is received.
- G. If the Grantee has a bona fide, good faith dispute regarding the City's determination of underpayment, the Grantee shall place the disputed amount in an escrow account until final resolution of the dispute.
- H. The City and its agents and representatives shall have authority to arrange for and conduct reviews of the relevant financial obligations payable hereunder. The City may determine the scope of review in each instance. City requests for reviews shall be in writing. If Grantee has not provided copies of all information reasonably within the scope of the review to the City within 30 days from the date of the written request, Grantee shall provide access to Grantee's records within the Portland metropolitan region, during normal business hours, upon forty-eight (48) hours' prior written notice. If the City requests in writing that the Grantee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and the Grantee fails within thirty (30) days of receipt of the request to provide, or cause to be provided, such information, then the five (5) year review period under Section 3(F) shall be extended by one day for each day or part thereof beyond thirty (30) days that Grantee fails to provide, or fails to cause to be provided, such requested information.

Section 4. GENERAL FINANCIAL AND INSURANCE PROVISIONS:

A. Insurance

1. The Grantee shall maintain public liability and property damage insurance that protects the Grantee and the City, as well as the City's officers, agents, and employees, from the claims referred to in Section 5. The insurance shall provide coverage at all times of not less than Two Hundred Thousand dollars (\$200,000) for personal injury to each person, Five Hundred Thousand dollars (\$500,000) for each occurrence, and Fifty Thousand dollars (\$50,000) for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than Five

Hundred Thousand dollars (\$500,000) covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this Section 4(A)(1) shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days' prior written notice first being given to the City Auditor. If the insurance is canceled or materially altered within the term of this Franchise, Grantee shall provide a replacement policy with the same terms. Grantee shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this franchise.

2. The Grantee shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required above. The certificate of insurance shall be reviewed and approved as to form by the City Attorney.
3. In the alternative to providing a certificate of insurance to the City, certifying liability insurance coverage as required in this Section, Grantee may provide the City with a statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for the Grantee and the City, its officers, agents and employees, as otherwise required under this Section. The adequacy of such self-insurance shall be subject to the City Attorney's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section 4(A)(3), any failure by the Grantee to maintain adequate self-insurance shall be cause for termination of this Franchise under Section 16.

B. Faithful Performance Bond

1. Upon the effective date of this Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of One Hundred Thousand dollars (\$100,000), conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of this Franchise. Grantee shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of this Franchise, including, if necessary, the time required for removal of all of Grantee's Pipeline System installed in the City's Streets. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days' prior written notice first being given to the City Auditor. The bond shall be reviewed and approved as to form by the City Attorney.
2. During the term of this Franchise, Grantee shall file with the City Auditor a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights against the performance bond

under Section 4(B)(1) if a bona fide, good faith dispute exists between the City and the Grantee.

C. Construction Bond

During all times when Grantee is performing any construction work in or under the Streets requiring a street opening permit, Grantee shall post a faithful performance bond or irrevocable letter of credit, as is required for street opening permits, running to the City, with good and sufficient surety approved by the City, in the sum of One Hundred Thousand dollars (\$100,000). The bond or letter of credit shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition under Section 6. Grantee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Grantee's construction work in or under the Streets by the City Engineer which shall not be unreasonably withheld or delayed. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section. During the duration of the construction work, Grantee shall file with the City Auditor a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to the reasonable approval of the City Attorney as to its adequacy under the requirements of this Section.

D. Maintenance Bond

Upon completion of construction and release from the requirements of Section 4(3), Grantee shall post a faithful performance bond or irrevocable letter of credit, or an equivalent acceptable to the City, running to the City, with good and sufficient surety approved by the City, in the sum of Twenty Thousand dollars (\$20,000). The bond or letter of credit shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition under Sections 6 and 7. Grantee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the life of this Franchise. Grantee shall file with the City Auditor a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to the reasonable approval of the City Attorney as to its adequacy under the requirements of this Section.

Section 5. COVENANT TO INDEMNIFY AND HOLD THE CITY HARMLESS:

1. Grantee hereby agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property by reason of any construction, excavation or any other act done under this Franchise, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its Pipeline System in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees. The City shall provide Grantee with prompt notice of any such claim which Grantee

shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done by the City without the prior written approval of Grantee. Grantee and its agents, contractors and others shall consult and cooperate with the City while conducting its defense of the City.

2. Grantee also hereby agrees to indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its Facilities in the Streets in a timely manner in accordance with a relocation schedule furnished to Grantee by the City Engineer, unless Grantee's failure arises directly from the City's negligence or willful misconduct.

Section 6. CONSTRUCTION AND RELOCATION.

A. Construction

1. Subject to applicable regulations of the City, Grantee may perform all necessary construction to construct, operate and maintain its Pipeline System. All construction and maintenance of Grantee's Facilities within the Streets shall, regardless of who performs installation and/or construction, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits necessary for installation and/or construction of any such Facilities, and for excavation and laying of any pipelines, structures, conduits, or other Facilities within City Streets. Grantee shall pay all applicable fees due for City construction permits.
2. Maps. Prior to beginning construction, Grantee shall provide the City's Office of Cable Communications and Franchise Management with an initial construction schedule for work in the Streets and the estimated total cost of such work. As the Grantee's construction in the Streets is completed, Grantee shall provide the City with maps showing the location of its installed Pipeline System in the Streets, as built. Such as-built maps shall be in a form acceptable to the City Engineer. In addition, Grantee shall provide the City with electronic maps showing the location of Conduit Facilities in a format mutually acceptable to the City and the Grantee.
3. Grantee may make excavations in the City Streets needed for the maintenance or extension of the Grantee's Pipeline System, subject to obtaining permits from the City. Prior to doing such work, Grantee must apply for, and obtain, appropriate permits from the City, and give appropriate notices to any franchisees, licensees or permittees of the City, or bureaus of the City, or other units of government, owning or maintaining facilities which may be affected by the proposed excavation.
4. In the event that emergency repairs are necessary for Grantee's Facilities in the Streets, Grantee shall immediately notify the City of the need for such repairs. Grantee may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency. Grantee must comply with all Charter and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.

B. Locates

Grantee shall comply with the requirements of the Oregon Utility Notification Law (ORS 757.542 to 757.562 and 757.993 (2001)) and the rules and regulations promulgated thereunder.

C. Relocation

The City shall have the right to require Grantee to change the location of its Facilities within the Streets when the public convenience requires such change, and the expense thereof shall be paid solely by Grantee. The City shall provide the Grantee with the standard notice given under the circumstances to other franchisees, licensees, or permittees. Should Grantee fail to remove or relocate any such Facilities by the date established by the City, the City may cause and/or effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all direct, indirect and/or consequential costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its Facilities located within the City's Streets, the City will make a reasonable effort to provide Grantee with an alternate location for its Facilities within the City's Streets.

- D. Grantee's Pipeline System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits or other facilities that may have been laid in the Streets by or under the City's authority. Grantee's Pipeline System shall be stacked vertically in orientation to the length of the Street in order to minimize the impact on the available, usable space in the Streets.
- E. Upon Grantee's acquisition of any pipelines, structures, conduits or other facilities in the Streets, or upon any addition or annexation to the City of any area in which Grantee retains any such facilities in the Streets, the Grantee shall submit to the City a written statement describing all facilities involved, whether authorized by franchise or any other form of prior right, and specifying the location of all such facilities. At the City's sole option, as expressed by ordinance adopted by the City Council, facilities acquired by Grantee shall immediately be subject to the terms of this Franchise, within a reasonable period of time to bring such acquired facilities into compliance with this Franchise.

Section 7. RESTORATION OF STREETS:

- A. Whenever Grantee disturbs the surface of any unimproved Street for any purpose, Grantee shall promptly restore the Street to at least its prior condition to the satisfaction of the City Engineer, to the extent reasonably practicable. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall promptly refill the opening and restore the surface to a condition satisfactory to the City Engineer, in accordance with standards developed and adopted by the City Engineer.
- B. If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration of the Street and its surface within the area affected by the excavation. The City may, after providing notice to Grantee, refill and/or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. The City reserves the right,

after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the City Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under Section 7 shall be done in strict compliance with all applicable rules, regulations and ordinances of the City.

C. Tree Trimming

1. After obtaining a written permit from the City Forester, Grantee may prune or cause to be pruned, using proper arboricultural practices in accordance with such permit, any tree in or overhanging the Streets which interferes with the construction, operation and maintenance of Grantee's Pipeline System. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one week after written notice has been given to the owner or occupant of the premises abutting the Street in or over which the tree is growing. For the purposes of this Section 7(C), an emergency exists when it is necessary to prune to protect the public from imminent danger. The owner or occupant shall have seven days from receipt of Grantee's notice to prune such tree at his or her own expense. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense.
2. The City Forester may, at his or her own discretion, waive the notification and permit process in the case of single trees, if Grantee adequately demonstrates to the City Forester's satisfaction the ability to consistently apply proper arboricultural practices to the pruning of trees. Before any tree trimming permit may be issued, any contractor to be used by Grantee shall be subject to the approval of the City Forester. The City Forester shall have the discretion to cancel the permit if, at any time, the Grantee or its agents fails to use proper arboricultural practices.

Section 8. RESERVATION OF CITY STREET RIGHTS:

Nothing in this Franchise shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Street or laying down, repairing or removing water mains or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as to not obstruct, injure or prevent the unrestricted use and operation of the Pipeline System of the Grantee under this Franchise. However, if any of the Grantee's Pipeline System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the Grantee's System shall be removed or replaced in the manner the City shall direct; provided, however, the City will cooperate with the Grantee to identify alternate locations within the Streets. Any and all such removal or replacement shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its Facilities by the date established by the City Engineer's written notice to Grantee, the City may cause and/or effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay.

Section 9. CONSTRUCTION OF CONDUIT FACILITIES BY GRANTEE.

1. In the first phase (Phase I) of the construction of its Pipeline System, Grantee shall install Conduit Facilities sufficient to provide space for existing franchised telecommunications

providers that may be required to relocate facilities for the public convenience, and shall further provide for such telecommunications providers as may be reasonably anticipated to be franchised by the City within five (5) years from the date of release of the construction bond for the first phase. Prior to construction and at Grantee's expense, a telecommunications expert who is mutually acceptable to the City and the Grantee will prepare a report addressing the number, size and configuration of Conduit Facilities sufficient to meet the present and future needs for franchised telecommunication facilities as provided in this Section 9(1). Within thirty (30) days of receipt of a report from said expert, the City will determine the requirements for number, size, and configuration of the Conduit Facilities required by this Section 9(1). Such requirements shall be reasonably related to the recommendations stated in the report.

2. As Grantee undertakes construction for all future phases of its Pipeline System along such routes as may be approved by the City Council, Grantee shall install additional Conduit sufficient to provide space for existing franchised telecommunications providers that may be required to relocate facilities for the public convenience. The Conduit Facilities installed by the Grantee shall also provide for such telecommunications providers as may be reasonably anticipated to be franchised by the City within five (5) years from the date of release of the construction bond for each phase. For each future phase of Grantee's expansion, prior to construction and at Grantee's expense, a telecommunications expert who is mutually acceptable to the City and the Grantee will prepare a report addressing the number, size and configuration of Conduit Facilities sufficient to meet the present and future needs for franchised telecommunication facilities along the routes as previously approved by the City Council. Within thirty (30) days of receipt of a report from said expert, the City will determine the requirements for number, size, and configuration of the Conduit Facilities required by this Section 9(2). Such requirements shall be reasonably related to the recommendations stated in the report.
3. In addition to any conduit provided above and notwithstanding Section 12(3), in the case of any new construction by the Grantee in the Streets, Grantee shall install for the City one four-inch duct for municipal purposes, with inner duct and access to all Grantee vaults. The cost of such ducts may not be deducted from Franchise fees payable to the City, or otherwise be charged to the City. Upon completing installation and construction of the ducts in the Streets, and within ten (10) working days of release of the construction bond, Grantee shall submit to the City a deed or other form of ownership documentation, in a form acceptable to the City Attorney, indicating City ownership of such ducts. Upon written request from the City, Grantee shall facilitate access to the City's ducts at the City's expense. For the purposes of this Section 9(3), the term "municipal purposes" includes, but is not limited to, the City's fire, police, traffic, water, and users of data, video, telephone, and/or signal systems. The term "municipal purposes" does not include:
 - a. The sale or lease of the ducts to non-governmental third parties;
 - b. The transfer of any rights by the City to non-governmental third parties for the purpose of providing the City with access to interexchange carriers; or,
 - c. The transportation of water or wastewater.

Section 10. STREET VACATION:

If any Street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue the installation of Grantee's Pipeline System in the vacated Street, Grantee shall, without expense to the City, forthwith remove its pipelines, structures, conduits or other Facilities from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by the City Council which shall be no better than the condition of such Street immediately prior to removal. In the event of any failure, neglect or refusal of Grantee, after thirty (30) days' notice by the City Council, to repair, improve or maintain such Street, the City may do such work or cause it to be done, and the direct cost thereof, as found and declared by the City Council, shall be entered in the Docket of City Liens against any property of Grantee which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. The City will cooperate with Grantee to identify alternative locations within the Streets.

Section 11. MAINTENANCE OF FACILITIES:

Grantee shall provide and put in use all pipelines, structures, conduits or other Facilities necessary for the operation of Grantee's Pipeline System so as to prevent injury to the City's property or property belonging to any Person within the City. Grantee, solely at its own expense, shall repair, renew, change and improve said Facilities from time to time as may be necessary to accomplish this purpose. Grantee shall not construct its Pipeline System in a manner that requires any customer, except the City or any City franchisee or permittee, to install facilities in, under or over the City's Streets.

Section 12. USE OF CONDUIT FACILITIES:

1. In order to address the problem of congestion of facilities under Streets, Grantee will allow existing franchised telecommunication providers who have been ordered by the City to relocate their facilities for the public convenience to use Grantee's Conduit Facilities at no charge. The amount, size and length of conduit provided at no charge will at least be reasonably equivalent to, but no more than, what such existing franchised providers have in place at the time of relocation.
2. Conduit installed pursuant to Sections 9(1) and 9(2) to meet future needs for telecommunication facilities may be rented, leased or sold by the Grantee or Grantee's designate to any entity currently holding a valid franchise from the City. A schedule of rental and lease rates to be charged by the Grantee for the additional conduit shall be placed on file with the City for public review. A model IRU agreement setting forth terms and conditions subject to City approval is included herein as Exhibit C.
 - a. Grantee shall provide non-discriminatory access to its Conduit Facilities by franchised telecommunications providers, whether or not such providers are affiliated with Grantee. For purposes of this Subsection, "non-discriminatory basis" shall mean the right to enter and use Grantee's Conduit Facilities shall be provided pursuant to terms and conditions that are reasonably functionally and economically equivalent to the access provided to any other telecommunications provider. For the purposes of this Subsection, such providers are intended beneficiaries and may proceed directly with the enforcement of this provision.

- b. If Grantee and any franchised telecommunications provider fail or cannot otherwise agree to fair and equitable terms and conditions regarding the lease rate for use of the Conduit Facilities within a reasonable period of time, the provider may require that the Grantee enter into binding arbitration to determine such terms and conditions. In such arbitration, the arbitrators shall determine the terms and conditions of the lease rate on a non-discriminatory basis, and the model lease shall control all other terms and conditions of usage. The binding arbitration shall take place as follows:
- (1) After arbitration has been initiated by one party giving written notice, the Grantee and the provider may agree that one arbitrator may conduct the arbitration. If the parties are unable to agree upon the identity of the arbitrator within twenty (20) days after the arbitration has been initiated, the arbitrator shall be selected by the presiding civil judge of the Multnomah County Circuit Court.
 - (2) If either the Grantee or the provider does not consent to having one arbitrator conduct the arbitration, the arbitration shall be conducted by three arbitrators, who shall be selected as follows: the party initiating the arbitration shall its selected arbitrator in its written notice of arbitration, and the other party shall select one arbitrator, within fifteen (15) days after receiving the notice. The two selected arbitrators shall select a third arbitrator within fifteen (15) days after the appointment of the second arbitrator. If the two (2) arbitrators are unable to agree upon a third arbitrator within the time limit, the third arbitrator shall be appointed by the presiding civil judge of the Multnomah County Circuit Court.
 - (3) After selection of the arbitrator(s), the arbitrator(s) shall take an oath to serve neutrally and impartially. The arbitrator(s) shall then schedule a date, time and place for the arbitration hearing. The hearing shall occur not less than sixty (60) days after the appointment of the arbitrator (or the third arbitrator, if three (3) arbitrators are used), unless extended by mutual agreement of the Grantee and the provider.
 - (4) In connection with any arbitration proceeding, each party shall submit, in writing, the specific requested action or decision it wishes to take or be taken, or make or be made, with respect to the dispute, within fifteen (15) days of the scheduling of the hearing. The arbitrator(s) shall be obligated to choose one or the other of such specific requested actions or decisions without being permitted to choose or effectuate any compromise or other position, unless the parties otherwise agree.
 - (5) The arbitrator(s) shall make a written report to the Grantee and the provider on the final determination within sixty (60) days after completion of the hearing. If the arbitration is conducted by three (3) arbitrators, the determination of a majority of the arbitrators shall constitute a final, binding arbitration determination. The arbitrator(s) shall simultaneously send a copy of the report to the City.
 - (6) The arbitrators shall have such powers as are set forth in ORS 36.335 through ORS 36.340 (2001).
 - (7) The Grantee and the provider shall share equally the fees and costs of the arbitrator(s).

3. The City and the Grantee acknowledge that the requirements stated in Section 9 and this Section 12 represent a pilot project to address the problem of congested corridors under the Streets. Within the first five (5) years of this Franchise the City will evaluate the effectiveness of Conduit Facilities provided under Section 9 and this Section 12 in addressing congestion under the Streets. Results of the evaluation will determine subsequent requirements under Section 9(2). In addition, Grantee will be subject to any and all terms and conditions for these Conduit Facilities that generally apply, not merely those affecting the rights under this Franchise, as may be adopted by the City in the future.
4. As otherwise provided in Section 1(E), and as provided under Section 2-105(a)(24) of the Portland City Charter, the City reserves the right to establish terms and conditions for use of the Conduit Facilities. Grantee and all of its successors and assigns will comply with Section 12 of this Franchise in the sale, lease or rent of Conduit Facilities.

Section 13. DISCONTINUED USE OF FACILITIES

Whenever Grantee intends to discontinue use of its Pipeline System within all or part of a particular portion of the Streets and does not intend to use said Facilities again in the future, Grantee shall submit to the City Engineer for the City Engineer's approval a completed application describing the Facility and the date on which the Grantee intends to discontinue using the Facility. Grantee may remove the Facility or request that the City permit it to remain in place, which permission shall not be unreasonably withheld or delayed. If Grantee is permitted to abandon its Facilities in place, upon written consent of the City, the ownership of Facilities in the City's Streets shall transfer to the City and Grantee shall have no further obligation therefor. Notwithstanding the Grantee's request that any such Facility remain in place, the City Engineer may require the Grantee to remove the Facility from the street area or modify the Facility in order to protect the public health and safety or to otherwise serve the public interest. The City Engineer may require the Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City Engineer. Until such time as Grantee removes or modifies the Facility as directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as restoration of the Street, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

Section 14. HAZARDOUS SUBSTANCES:

1. Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to Grantee's Pipeline System in the City Streets. For purposes of this Section, "Hazardous Substances" shall have the meaning given by ORS 465.200(15) (2001).
 - a. Grantee shall maintain and inspect its Pipeline System located in the City Streets. Upon reasonable notice to Grantee and in the presence of an authorized representative of Grantee, the City may inspect Grantees Facilities in the Streets to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Grantee's pipelines, structures, conduits or other Facilities.

- b. In removing or modifying Grantee's Facilities as provided in Sections 6(C), 8 and 13 of this Franchise, Grantee shall also remove all residue of Hazardous Substances in compliance with applicable environmental clean-up standards related thereto.
2. Grantee agrees to forever indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of the release or threat of release of Hazardous Substances caused by Grantee's ownership or operation of a Pipeline System in the Streets.

Section 15. CITY'S WRITTEN CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE:

1. Neither this Franchise nor any of Grantee's Pipeline System located in the Streets by authority of this Franchise shall be sold, leased, mortgaged, assigned, merged or otherwise transferred without the prior written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld, except to entities that control, are controlled by, or are under common control with the Grantee. Grantee shall give written notice to the City of any transfers to entities under such common control within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained in this Section 15 shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantee's Pipeline System for the purpose of financing the acquisition of equipment for, or the construction and operation of, Grantee's Pipeline System, within or outside the City, without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights contained in this Franchise.
 - a. In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer, the City may inquire into the technical, legal, and financial qualifications of the prospective party. Grantee shall assist the City in any such inquiry. The City may condition any sale, lease, mortgage, assignment, merger or transfer upon such conditions related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of this Franchise, as it deems appropriate. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer or merger.
 - b. No sale, lease, mortgage, assignment, transfer or merger for which the City's consent by ordinance is required may occur until the successor, assignee or lessee has complied with the requirements of Section 4, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Grantee shall file with the Auditor an executed counterpart or certified copy thereof.
2. Grantee shall not lease any of its Facilities without the City's prior consent as expressed by ordinance. However, Grantee may lease any portion of its Facilities in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or

removing such Facilities. A lessee of Grantee's Facilities shall not obtain any rights under this Franchise. For the purposes of this Section 15(2), a capital lease or IRU shall be treated as a lease under this Section until the conclusion of the lease, when a transfer of ownership occurs. At that point in time, the capital lease or IRU shall be treated as a sale subject to the requirements of Section 15.

Section 16. FORFEITURE AND REMEDIES:

A. Forfeiture. In addition to any other rights set out elsewhere in this Franchise, the City reserves the right to declare a forfeiture of the Franchise, and all of Grantee's rights arising thereunder, in the event that:

1. Grantee violates any material provision of the Franchise.
 - a. For purposes of this Section 16(A)(1), the following are material provisions of this Franchise, allowing the City, without limitation, to exercise its rights under Section 16(A) or as set forth elsewhere in this Franchise:
 - (1) The invalidation, failure to pay or any suspension of Grantee's payments of Franchise Fees to the City for use of the Streets under this Franchise.
 - (2) Any failure by the Grantee to submit timely reports regarding the calculation of its Franchise Fees to the City.
 - (3) Any failure by Grantee to maintain the liability insurance required under this Franchise.
 - (4) Any failure by Grantee to maintain the performance or maintenance bonds required under this Franchise.
 - (5) Any failure by Grantee to provide copies of requested information as provided under Section 3(H) above.
 - (6) Any failure to provide Conduit Facilities required under this Franchise.
 - (7) Any failure by Grantee to otherwise fully comply with the requirements of Section 3 through Section 17 of this Franchise.
2. Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City.
3. There is a final determination that Grantee has failed, refused, neglected or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding Grantee's operation of its Pipeline System within the City
4. Grantee's construction schedule is delayed for over eighteen (18) months.
5. Grantee becomes unable or unwilling to pay its debts, or is adjudged a bankrupt.

B. Additional Remedies. In addition to any rights set out elsewhere in this Franchise, as well as its rights under the City Code, the City reserves the right at its sole option to apply any of the following, alone or in combination:

1. Impose a financial penalty of up to One Thousand dollars (\$1,000.00) per Franchise violation.

2. Suspend the Grantee's Franchise rights, until the Grantee corrects or otherwise remedies the violation.
 3. Revocation. The City Council may revoke this Franchise in the event that any provision becomes invalid or unenforceable and the City Council expressly finds that such provision constituted a consideration material to the grant of the Franchise. The City shall exercise its revocation rights under this subsection consistent with the terms of Section 17 of this Franchise.
- C. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate.
- D. Notice and Opportunity to Cure. The City shall give Grantee thirty (30) days' prior written notice of its intent to exercise its rights under this Section 16, stating the reasons for such action. If Grantee cures the stated reason within the thirty (30) day notice period, or if Grantee initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City shall not exercise its remedy rights. If Grantee fails to cure the stated reason within the thirty (30) day notice period, or if Grantee does not undertake and/or maintain efforts satisfactory to the City to remedy the stated reason, then the City Council may impose any or all of the remedies available under this Section. However, in no event shall the City exercise its rights under this Section if a bona fide, good faith dispute exists between the City and Grantee.

Section 17. RENEGOTIATION:

In the event that any provision of this Franchise becomes invalid or unenforceable and the City Council or the Grantee expressly finds that such provision constituted a consideration material to entering into this Franchise, the City and the Grantee may mutually agree to renegotiate the terms of this Franchise. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the offer to renegotiate, the parties shall have ninety (90) days to conduct and complete the renegotiation. If both parties agree to renegotiations under this Section, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

Section 18. EXPIRATION:

Upon the expiration of this Franchise, on application made by the Grantee for franchise renewal or additional authority to exercise the privileges, or any of them, hereby granted, the Grantee shall have the first and preferential right to take and receive such authority upon terms and conditions approved by the City. If the Grantee does not promptly apply for such renewal or additional authority, or if the Grantee rejects the terms and conditions of such authority offered by the City, the City may, within one year from the expiration of the prior Franchise, grant a permit or franchise to any other Person. In the event of such a grant, such other Person taking such new or additional authority, shall in addition to any compensation to be paid to the City for such new or additional authority, pay to the Grantee, at or before the time such new or additional authority takes effect, and before the Grantee shall be deprived of the right to possess, maintain and operate its Pipeline System located within the

Streets, the fair and equitable valuation of Grantee's Pipeline System located within the Streets. If the third party and Grantee cannot agree on the fair and equitable value of said Pipeline System, the dispute shall be submitted for a declaratory determination by the courts of the State of Oregon. Until such time as the City exercises its rights as set forth in this Section, the Grantee's rights and responsibilities within the City shall continue to be controlled by the terms and conditions of this Franchise.

Section 19. MISCELLANEOUS:

A. Compliance With Laws

1. Both Grantee and the City shall comply with all applicable federal and state laws.
2. Grantee shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.

B. Severability. If any Section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected.

C. Regulation and Nonenforcement by the City. The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

D. Force Majeure

1. For purposes of this Section 19(D), the term "Force Majeure" shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts or terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events which are not reasonably within the control of the parties hereto.
2. If the Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, the Grantee shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Franchise, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Franchise.

E. Choice of Forum. Any litigation between the City and the Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

F. Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), or (3) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

1. If to the City: Office of Cable Communications and Franchise Management
City of Portland, Oregon
1120 SW 5th Avenue, Room 704
Portland, Oregon 97204
FAX (503) 823-5370

With a copy to: City Attorney's Office
City of Portland
Room 430, City Hall
1221 SW 4th Avenue
Portland, Oregon 97204
FAX (503) 823-3089

2. If to the Grantee: Portland Energy Solutions Company, LLC
Attn: General Manager
121 SW Salmon Street, 1WTC13
Portland, Oregon 97204
FAX (503) 464-2200

3. Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail as aforesaid, one (1) business day after shipment by commercial air courier as aforesaid or the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

G. Confidentiality. Grantee may identify information submitted to the City as confidential. Prior to submitting such information to the City, Grantee shall prominently mark any such information with conspicuous letters. The City shall treat any information so marked as confidential and not subject to public disclosure, until the City receives any public records request for disclosure of such information. Within five (5) working days of receiving any such request, the City shall provide the Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the City, before the City may release any of the requested confidential information. Whether the Grantee submits any written response to the City, the City shall retain final discretion to determine whether to release the requested confidential information, provided that the City shall give the Grantee at least five (5) days' written notice after receipt of any response from Grantee, prior to releasing such information.

H. Public Records

1. Some information submitted by the Grantee to the City may be relevant to the Grantee's obligation to pay franchise fees. Requiring such information to be submitted to the City in order to determine fees payable or paid to the City may qualify such information as being exempt from public disclosure under ORS 192.501(5) (2001) of the Oregon Public Records Law.
 2. Some information submitted by the Grantee to the City may otherwise be used to conduct its business and known to certain individuals within the organization, with actual or potential commercial value, and giving Grantee a business advantage over its competitors. Such information may constitute trade secrets and be exempt from public disclosure under ORS 192.501(2) (2001) of the Oregon Public Record Law.
 3. Identification of these exemptions under the Oregon Public Records Law, which may apply to information submitted by the Grantee to the City, is not an exhaustive list of those possibly applicable to such information.
- I. Franchise Amendment. The City has negotiated this Franchise in good faith, in reliance upon the information provided by the Grantee regarding its business plan for the provision of services and operations as contemplated under this Franchise. In the event that Grantee actually receives authority to offer services other than pipeline services as defined in Franchise, or otherwise begins offering services outside the scope of those identified in Section 2(B)(6), Grantee shall immediately notify the City. Within 90 days of receiving such notice, the City may either enter into negotiations with the Grantee to revise or amend this Franchise to reflect such changed circumstances, or may proceed with early termination of this Franchise. The parties will negotiate in good faith to revise the franchise to authorize the expanded scope of services.
- J. Mutual Duty of Cooperation and Good Faith. In performing their various duties and obligations as set out in this Franchise, both parties agree to act reasonably and in good faith.
- K. Except as otherwise provided expressly in this Franchise, as a condition of this Franchise, the Grantee agrees to be bound by the terms and conditions of this Franchise. In consideration of the substantial benefits it receives from this Franchise, the Grantee covenants that it will not at any time sue or proceed against the City in any claim or proceeding challenging any term or condition of this Franchise as being: (1) unreasonable or arbitrary; (2) unlawful under current law when it was issued; or (3) that the City or the Grantee did not have the authority to impose or agree to such terms or conditions under current law when the franchise was issued.

Section 20. WRITTEN ACCEPTANCE:

On or before the thirtieth (30th) day after this ordinance becomes effective, Grantee shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by the Grantee, meeting the approval of the City Attorney. Any failure on the part of Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this ordinance.

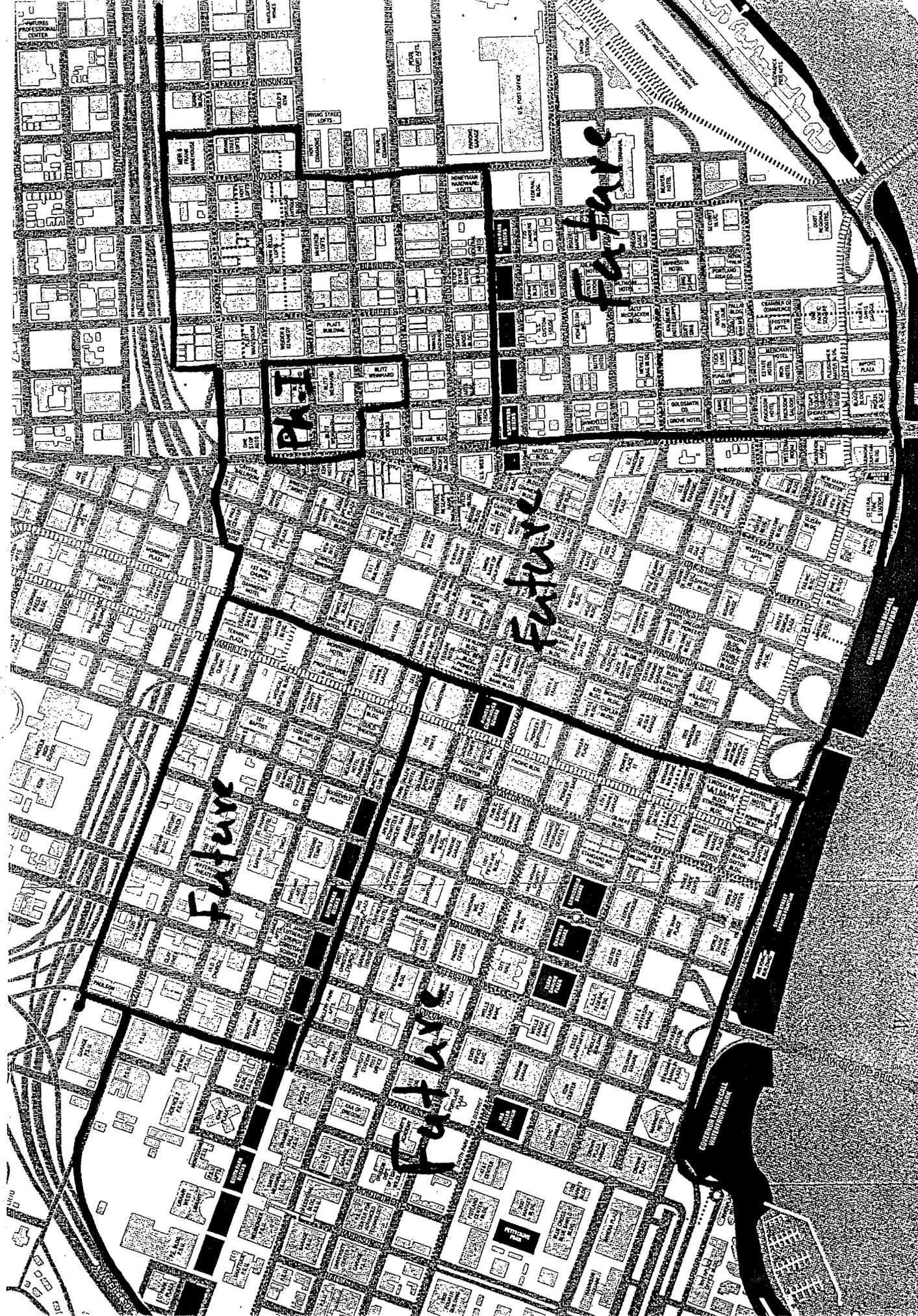
Section 21. OTHER AUTHORITY SUPERSEDED

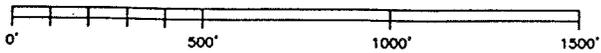
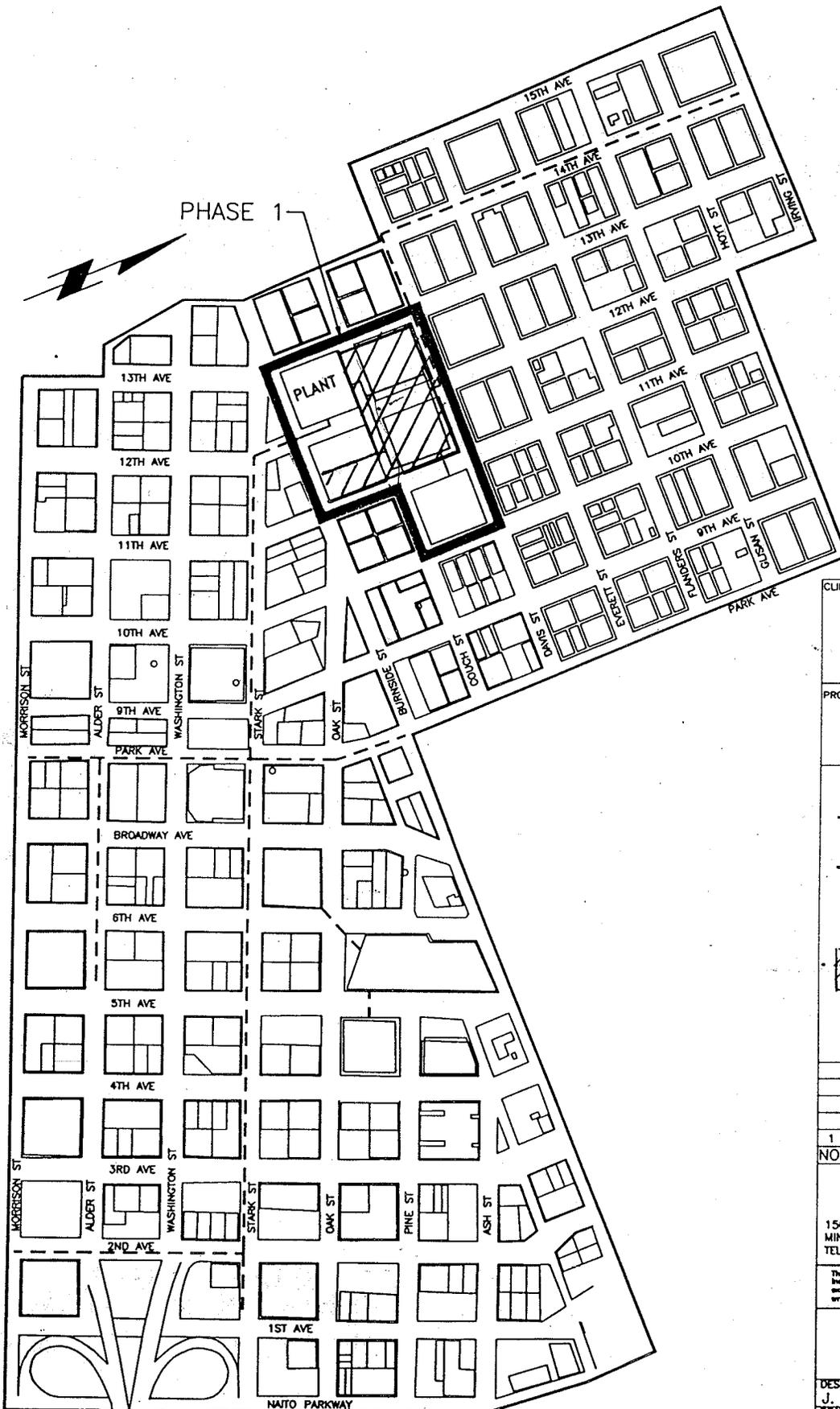
Upon effectiveness of this Franchise, any and all authority to operate previously granted to Grantee by the City shall be superseded by this Franchise.

Passed by Council, Jan 08, 2003
Commissioner Erik Sten
MBHenry/BWalters
October 3, 2002

EXHIBIT
A

177186





CLIENT:
**PORTLAND
ENERGY
SOLUTIONS**

PROJECT:
**ENERGY
SOLUTIONS
PORTLAND**

- PHASE 1 APPROVED ROUTE
- - - FUTURE ROUTE (SUBJECT TO CHANGE & CITY APPROVAL)
- SUBSURFACE GARAGE

REVISIONS

NO.	REMARKS	DATE
1	REVISED PHASE 1 PIPE ROUTING	10/02/02

FVB ENERGY INC
150 SOUTH FIFTH STREET, SUITE 340
MINNEAPOLIS, MINNESOTA 55402
TEL: (612) 338-4489 FAX: (612) 338-3427

This document is the property of Kellor/FVB District Energy Inc. and the information herein is not to be used or copied, except for the specific project it was issued, without the written authorization of Kellor/FVB District Energy Inc.

**PIPE ROUTING
FRANCHISE AREA**

DESIGNED BY J. LAHTI	SCALE 1" = 500'
DRAWN BY S. TREDINNICK	JOB NO. 399215
APPROVED BY S. TREDINNICK	DRAWING NO. DP-2
DATE 10/04/02	