

Ordinance No.162012

Granting a franchise to Olympic Pipe Line Company for
a period of 15 years. (Ordinance)

The City of Portland ordains:

Section 1. NATURE AND TERM OF GRANT.

A. The City of Portland, Oregon, (the City), does hereby grant to Olympic Pipe Line Company, a Delaware corporation qualified to do business in Oregon, (the Grantee), and to its successors and assigns, the right and franchise to construct, operate and maintain its pipe line facilities, together with pump stations, gathering lines and other facilities, for the transportation of petroleum products and as a common carrier, in and under the following streets, as shown in red on the map attached hereto and incorporated by reference:

Beginning at a point in the southerly line of N.W. Yeon Avenue (120 feet wide) 353.55 feet southeasterly from the southeast corner of the intersection of N.W. Yeon Avenue to a point within N.W. Yeon Avenue; thence northwesterly in and along N.W. Yeon Avenue to a point within N.W. Kittridge Avenue; thence northeasterly in and along N.W. Kittridge Avenue to a point within N.W. Front Avenue; thence northwesterly in and along N.W. Front Avenue to the westerly terminus of N.W. Front Avenue as established by vacating Ordinance No. 146216, passed by the City Council on July 27, 1978; Except those portions of N.W. Front Avenue in the above description that lay adjacent to the pipelines installed in private property.

Also: Pipelines located in the portion of N.W. Front Avenue described in Ordinance No. 151327, passed by the City Council on April 1, 1981 that designates and assigns the described parcel as public street area.

Also: Beginning at a point in the westerly line of N.W. Front Avenue 181.7 feet northeasterly from the northwest corner of the intersection of N.W. Front Avenue and N.W. St. Helens Road; thence southeasterly across N.W. Front Avenue to a point within N.W. Front Avenue; thence northeasterly in and along N.W. Front Avenue to a point within N.W. Front Avenue; thence southeasterly in and across N.W. Front Avenue to the easterly line of N.W. Front Avenue as established by vacating Ordinance No. 146216, passed by the City Council on July 27, 1978.

Also: The St. Johns Bridge approach right of way on the westerly side of the Willamette River that lays between the

northerly line of N.W. St. Helens Road and the southerly line of the S.P.& S. Railroad right of way.

Also: N.W. St. Helens Road from the easterly line of N.W. 105th Avenue to the westerly line of N.W. 112th Avenue.

Also: N.W. 105th Avenue laying northeasterly of the northerly line of N.W. St. Helens Road.

Also: N.W. 112th Avenue from the northerly line of N.W. St. Helens Road northeasterly to and including its intersection with N.W. Front Avenue.

B. The term of this franchise, and all the rights and obligations pertaining hereto, shall be fifteen (15) years from the effective date of this franchise, unless terminated sooner as provided herein. The effective date of this franchise shall be 60 days after passage by City Council unless Grantee fails to file a written acceptance of this franchise as provided herein.

C. For the purpose of this franchise, the following terms shall have the meanings given below:

- (1) "Streets" shall mean the streets, alleys, public highways and public right-of-way in the City.
- (2) "Pipes, structures or other facilities" shall mean all of Grantee's pipe line facilities, together with its pump stations, gathering lines and other distribution facilities, for the transportation of petroleum products as a common carrier.

D. When not inconsistent with the context, the terms, phrases, words and their derivations used in this franchise in the present tense shall include the future tense, words used in the singular shall include the plural, and words used in the plural shall include the singular. The word "shall" is always mandatory and not merely directory. The title of any section shall not control the substance nor the effect of the language of that section.

Section 2. COMPENSATION.

A. During the term of this franchise, Grantee agrees to pay as compensation to the City for the use of the streets a franchise fee calculated by the following formula:

$$F = 5\% \times R \times C/T$$

- (1) "F" shall mean franchise fee.

- (2) "5%" shall mean five percent.
- (3) "R" shall mean Grantee's total gross revenues.
- (4) "C" shall mean the total amount of Grantee's pipe line in the City's streets, measured in linear feet, as the numerator in a fraction.
- (5) "T" shall mean the total amount of Grantee's mainline pipe line in Grantee's pipe line transportation system, measured in linear feet, as the denominator in a fraction.

B. The franchise fee imposed hereunder 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. Payments not received on or before the forty-fifth (45th) day following the end of the calendar year quarter period shall be assessed interest at the rate of one percent per month, compounded monthly. Interest shall be due on the entire late payment, or on any underpayment, from the date on which the payment was due until the date on which the City receives the payment.

C. Accompanying each payment of franchise fees to the City, Grantee shall file with the City a report of its calculation of the franchise fee payment, setting forth its gross revenues, the total lengths of pipe line in the City streets and elsewhere, and the total amount due.

D. Grantee's books and records concerning its gross revenues shall be open for inspection by the proper officers of the City at all convenient times to determine the amount of compensation due the City under this franchise, and shall be kept so as to accurately show the same. Grantee shall prepare and furnish to the City, at the times prescribed by the City and in the form prescribed by the City after consultation with Grantee, such reports with respect to its operation, affairs, or property, as the City may deem reasonably necessary or appropriate. All other reports required by the Charter and ordinances of the City shall be made by Grantee from time to time as required.

E. At the time of the first franchise fee payment, Grantee shall provide the City with a map showing the location of Grantee's pipes, structures and other facilities located within the City and elsewhere. The Grantee shall provide the City with updated versions of such maps as changes are made to Grantee's pipe line transportation system.

F. 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 amounts payable. All amounts payable shall be subject to audit, confirmation and recomputation by the City. The Grantee agrees to reimburse the City for:

- (1) The reasonable costs of such confirmation if the City's recomputation discloses that the Grantee has paid 95% or less of the franchise fee owing for the period at issue; or
- (2) One-half of the reasonable costs of such confirmation if the City's recomputation discloses that the Grantee has paid more than 95% but less than 98% of the franchise fee owing for the period at issue.

G. Grantee shall pay the cost of publication of this franchise and any amendments hereto, as such publication is required by law. Grantee shall also pay the City for such reasonable pre-franchising costs as the City may incur in entering into this franchise agreement with the City. Payment of this franchise fee shall not exempt Grantee from the payment of any other license, tax or charge on the business, occupation, property or income of Grantee that may be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license, fee, tax or charge.

Section 3. CONSTRUCTION AND RELOCATION.

A. Grantee may perform all construction and maintenance necessary for the operation of its pipe line transportation business. All such construction and maintenance of any and all pipes, structures and other facilities within City streets shall, regardless of who performs such construction or maintenance, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits necessary for construction of any such pipes, structures or other facilities, and for excavation and laying of any pipes, structures or other facilities within City streets. Grantee shall pay all applicable fees upon the issuance of the requisite permits by the City to Grantee.

B. Grantee may make all needed excavations in City streets for any pipes, structures or other facilities needed for the maintenance of Grantee's system. Prior to doing such work, Grantee shall apply for, and obtain, appropriate permits from the City and give appropriate notices to other franchisees, licensees or permittees of the City, bureaus of the City, and other units of government owning or

maintaining facilities which may be affected by the proposed excavation.

C. In the event that emergency repairs are necessary, Grantee shall immediately notify the City of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within 48 hours after 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.

D. Within forty-eight (48) hours after any City bureau, franchisee, licensee, or permittee notifies the Grantee of a proposed street excavation, the Grantee shall:

- (1) Mark all of its locatable underground pipes, structures or other facilities within the area of the proposed excavation; or
- (2) Notify the excavator of any unlocatable underground facilities in the area of the proposed excavation; or
- (3) Notify the excavator that the Grantee does not have any underground pipes, structures or other facilities in the vicinity of the proposed excavation.

E. The City shall have the right to require Grantee to change the location of any pipes, structures or other facilities within the City streets when the public convenience requires such change, and the expense of the relocation or removal shall be paid by Grantee. Should Grantee fail to remove or relocate any such pipes, structures or other facilities by the date established by the City, the City may effect such removal 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.

F. Grantee's pipes, structures and other facilities shall be constructed and maintained in such manner as not to interfere with the City's sewers, water pipes, or any other property, or with any other pipes, wires, conduits, or other structures or facilities that may have been laid in the streets by or under the City's authority. The system of pipes, structures and other facilities constructed by Grantee shall be of good quality and workmanship and shall be maintained in good repair and efficiency.

G. Upon Grantee's acquisition of any pipes, structures or other facilities in any City street, or upon the annexation to the City of any area in which Grantee owns or controls any such pipes, structures or other facilities

in any street, the Grantee shall submit to the City a statement describing all the properties involved, whether or not authorized by franchise or prior right, and specifying the location of all such properties. Such pipes, structures and other facilities shall immediately become subject to the terms of this franchise.

Section 4. RESTORATION OF STREETS. Whenever Grantee disturbs the surface of any street for any purpose mentioned in Section 3, Grantee shall promptly refill the opening and restore the surface to a condition satisfactory to the City Engineer.

Following excavation of the surface of any such street, Grantee shall be responsible for maintenance 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 street opening made by Grantee, 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 streets shall be properly safeguarded for the prevention of accidents. The work hereby required shall be done in strict compliance with all rules, regulations and ordinances of the City.

Section 5. 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 is practicable, so as not to obstruct, injure or prevent the free use and operation of Grantee's pipes, structures and other facilities. However, if any of the pipes, structures, or other facilities of Grantee interfere with the construction or repair of any street or public improvement, including, but not limited to, construction, repair or removal of a sewer or water main, all such pipes, structures, or other facilities shall be removed, replaced and relocated in the manner the City shall direct. Any and all such removal, replacement and relocation shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its pipes, structures, or other facilities by the date established by the City Engineer's written notice to Grantee, the City may 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. If the City requires Grantee to remove its pipes, structures, or other facilities

from the streets for any street or public improvement, Grantee shall be permitted to relocate such facilities, insofar as is practicable, in the City's streets.

Section 6. COVENANT TO INDEMNIFY AND HOLD CITY HARMLESS.

A. 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 pipes, structures, or other facilities in a safe condition. Grantee shall consult and cooperate with the City while conducting its defense of the City.

B. 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 pipes, structures or other facilities in a timely manner in accordance with a relocation schedule furnished Grantee by the City Engineer in writing.

C. Grantee agrees to forever indemnify the City against any claims, costs and expenses of any kind, whether direct or indirect, incurred voluntarily or pursuant to any state or federal law statute, regulation or order, for the clean up, extraction, detoxification or neutralization of any leaks, spills, contamination or residues of any petroleum products, or other toxic or hazardous substances, associated with, arising from or due to Grantee's pipes, structures or other facilities in the City streets.

Section 7. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

A. Insurance. The Grantee shall maintain public liability and property damage insurance that protects the Grantee and the City and its officers, agents, and employees from the claims referred to in Section 6. The insurance shall provide coverage at all times for not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$500,000 for each occurrence involving property damages plus costs of defense; or a single limit policy of not less than \$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 the 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 herein 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 cancelled or materially altered without thirty (30) days written notice first being given to the City Auditor. If the insurance is cancelled or materially altered within the term of this franchise, Grantee shall provide a new policy with the same terms. Grantee agrees to maintain continuous uninterrupted coverage, in the amounts required, for the duration of the franchise.

B. The Grantee shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required above. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate termination of this franchise by the City.

Section 8. FRANCHISE NOT EXCLUSIVE. This franchise is not exclusive. The City expressly reserves the right to grant rights or franchises to other persons or corporations, as well as its own rights as a municipality, to use its streets for the same or similar purposes allowed Grantee under this franchise.

Section 9. STREET VACATION. If any street or portion thereof used by Grantee is vacated by the City during the term of this franchise, unless City Council specifically reserves to Grantee the right to continue its installation in the vacated street area, Grantee shall, without expense to the City, promptly remove its facilities from such street, and restore, repair or reconstruct the street area where such removal has occurred, and place the street area in such condition as may be required by the Council. In the event of failure, neglect or refusal of Grantee, after thirty days' written notice by City Council, to repair, improve or maintain such street portions, the City may do such work or cause it to be done, and the cost thereof, as found and declared by 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.

Section 10. MAINTENANCE OF FACILITIES. Grantee shall provide and put in use equipment and appliances necessary for the operation of its business, so as to prevent injury to the City's property or to any property within the City belonging to any person, firm or corporation. Grantee, at its own expense, shall repair, renew, change and improve said facilities and appliances from time to time as may be necessary to accomplish this purpose. Grantee shall not connect its pipes, structures or other facilities in a manner that requires its customers to install any pipe, structure or other facility, under or over a City street.

Section 11. CITY'S CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE.

A. Neither this franchise nor any property owned and operated by Grantee by authority hereof shall be assigned, transferred, merged, leased or mortgaged without the prior consent of the City as expressed by ordinance, except to entities that control, are controlled by, or are under common control with, the Grantee. Grantee shall notify the City of any transfers to such entities 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 instance. Nothing contained in this section shall be deemed to prohibit the mortgage, pledge, or assignment of Grantee's pipes, structures or other facilities or other tangible assets for any purpose 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.

B. Grantee shall not lease or sublease any of its pipes, structures or other facilities, or the area of the City streets in which such pipes, structures or other facilities are located, without the City's consent as expressed by ordinance. However, Grantee may dedicate or lease its pipes, structures or other facilities, or any portion thereof, or otherwise make its pipes, structures or other facilities available in the ordinary conduct of its business as a petroleum products transporter, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its pipes, structures or other facilities.

C. Within ten days after execution and delivery of any instrument consented to by the City under the terms of this Section, Grantee shall file with the Auditor an executed counterpart or certified copy thereof.

Section 12. REGULATION. The City Council shall at all

times be vested with the power and right to reasonably regulate in the public interest the exercise of the privileges permitted by this franchise. Grantee shall not be relieved of its obligation to comply with any provision of this franchise by any failure of the City to promptly enforce compliance with this franchise. Services furnished by Grantee under this franchise shall be rendered using the best practicable commercial methods and practices, insuring the least danger to life and property compatible with the best obtainable service.

Section 13. HAZARDOUS SUBSTANCES.

A. Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning the transportation, release, testing, monitoring, cleaning up, removal, extraction, containment, treatment, detoxification or neutralization of petroleum products, or toxic or hazardous substances, relating to its pipes, structures or other facilities in the City streets.

B. Grantee shall maintain and inspect its pipes, structures or other facilities located in the City streets. If Grantee discovers any leaks, spills, releases or other contamination associated with, arising from or due to its pipes, structures or other facilities in the City streets, Grantee shall report the discovery to the City within 48 hours. Grantee shall immediately proceed to repair, contain, extract, detoxify and neutralize any petroleum products, or toxic or hazardous substances in the City streets associated with, resulting from or due to any leaks, spills, releases or other contamination from its pipes, structures or other facilities.

C. In doing any construction, modification or removal of any of its pipes, structures or other facilities in the City streets, Grantee shall inspect and test for any petroleum product or toxic or hazardous substances contamination or residue. Grantee shall remove all contamination or residue of petroleum products, or toxic or hazardous substances, associated with, arising from or due to its pipes, structures or other facilities. If Grantee fails to remove all such contamination or residue, in compliance with standards set by federal and state laws, statutes, regulations and orders, the City may arrange for the clean up, extraction, detoxification or neutralization of the petroleum products, or toxic or hazardous substances, contamination or residues and the costs of such clean up, extraction, detoxification or neutralization shall be charged to the Grantee and the Grantee shall promptly pay such charges.

Section 14. DISCONTINUING USE OF FACILITIES.

Whenever Grantee intends to discontinue using any pipes, structures or other facilities within the streets, Grantee shall submit to the City Engineer for the City Engineer's approval a completed application describing the pipes, structures or other facilities and the date on which the Grantee intends to discontinue using such pipes, structures or other facilities. Grantee may elect to remove the pipes, structures or other facilities or request that the City permit the pipes, structures or other facilities to remain in place. Notwithstanding the Grantee's request that any such pipes, structures or other facilities remain in place, the City Engineer may require the Grantee to remove the pipes, structures or other facilities from the street area or modify the pipes, structures or other facilities in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require the Grantee to perform a combination of modification and removal of the pipes, structures or other facilities. 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 affected pipes, structures or other facilities as directed by the City Engineer, or until the rights to and responsibility for the affected pipes, structures or other facilities are accepted by another person or entity having authority to construct and maintain such pipes, structures or other facilities, Grantee shall be responsible for all necessary repairs, relocations of the pipes, structures or other facilities, and maintenance of the street area in the same manner and degree as if the pipes, structures or other facilities were in active use, and shall retain all liability for such pipes, structures or other facilities.

Section 15. FORFEITURE.

A. In addition to any other rights set out elsewhere in this franchise, the City may declare a forfeiture of the franchise, and all of Grantee's rights arising under the franchise, in the event that:

(1) The Grantee violates any material provision of the franchise; or

(2) The Grantee becomes insolvent or unable or unwilling to pay its debts, or it files for bankruptcy and it is unwilling to assume and perform the terms of this franchise; or

(3) The Grantee is found by any court of competent jurisdiction to have practiced any fraud or deceit upon the

City; or

(4) The Grantee fails to obtain and/or maintain any permit required by any federal or state regulatory body with jurisdiction over Grantee's activities.

B. In addition to any other rights set out elsewhere in this franchise, the City reserves the right at its sole option to apply any of the following remedies, alone or in combination, in the event that Grantee violates any of the provisions contained in this franchise:

(1) The City may impose a financial penalty of up to \$1,000.00 for each violation of the franchise by the Grantee; or

(2) The City may suspend any or all of the Grantee's rights under the franchise until the Grantee corrects or otherwise cures its franchise violation.

In determining which remedy or remedies are appropriate, the City shall consider the nature of the franchise violation, the person or persons affected by the violation, the nature of the remedy required in order to prevent the reoccurrence of such violation and any other matters the City deems appropriate.

C. The City shall give Grantee thirty days prior written notice of its intent to exercise its rights under this Section, stating its reasons for determining that a violation had occurred. If the Grantee cures the stated violation within the thirty day notice period, or if the Grantee initiates efforts which are satisfactory to the City to remedy the violation and those efforts are continued by the Grantee in good faith, the City shall not exercise its remedy rights. If Grantee fails to cure the stated violation within the thirty day notice period, or if the Grantee fails to undertake efforts which are satisfactory to the City to cure the violation, then the City Council may exercise any or all of the remedy rights available under this Section.

D. If any provision of this franchise, or its application to any person or circumstances, is declared or becomes invalid or unenforceable, the remainder of this franchise shall remain in full force and effect, unless the City Council expressly finds by ordinance that such provision was material to the City's grant of this franchise to the Grantee.

Section 16. EXPIRATION.

A. Upon the expiration of this franchise, the City shall have the right, at its election, to do any of the following:

(1) Renew or extend the franchise, in accordance with the Charter of the City of Portland and applicable law, although nothing in this franchise shall be construed to require such renewal or extension; or

(2) Terminate the franchise without further action; or

(3) Take such action as the City may deem appropriate in its discretion.

Until such time as the City exercises its rights under this Section, the Grantee's rights and responsibilities within the City shall be controlled by the terms of this franchise.

Section 17. CHARTER AND GENERAL ORDINANCES TO APPLY.

A. This franchise is hereby made subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, now in effect or hereafter made effective, and particularly to the applicable provisions contained in Sections 10-101 through 10-218 inclusive of said Charter (1942 compilation and revised in part by subsequent amendments), as the same now exist or are hereafter amended by the people of the City of Portland, which are hereby expressly made a part of this franchise.

B. The City shall take such actions as are lawful and necessary to ensure that information submitted to the City and identified by Grantee as confidential, such as trade secrets or business records required by the City to be produced by Grantee, shall remain confidential and shall not be subject to public disclosure.

C. 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.

Section 18. WRITTEN ACCEPTANCE. Within thirty days 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 on such form as shall be provided by the City Auditor, executed by authorized officers of the Grantee, meeting the approval of the City Attorney. A 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 by this ordinance and this franchise 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.

franchise Section 19. OTHER AUTHORITY SUPERSEDED. Upon the date this franchise becomes effective, any and all authority to operate previously granted to Grantee by the City shall be superseded by this franchise.

Passed by Council, Jun 14, 1989

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