CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Rob Jammerman, Development and Environmental Services Manager
Oskar Rey, Assistant City Attorney
Ray Steiger, P.E., Interim Public Works Director

Date: May 5, 2011

Subject: OLYMPIC PIPELINE FRANCHISE AGREEMENT

RECOMMENDATION:

Staff recommends that the City Council approves the attached Ordinance for the Olympic Pipeline Franchise Agreement.

BACKGROUND DISCUSSION:

On May 3, 2011, the City Council conducted the first reading and held a public hearing for the Olympic Pipeline Franchise Agreement. There were no comments received at the public hearing. Council directed staff to bring the Ordinance back for final approval at the May 17, 2011 Council meeting. The Council did request that additional information be provided regarding the comparison between the existing City of Bellingham Franchise Agreement and the proposed Kirkland agreement. Oskar Rey, Assistant City Attorney has reviewed both agreements and the attached memorandum outlines differences. It should also be noted that Kevin Nalder, Kirkland Fire Chief, has reviewed and approved the proposed Franchise Agreement language.

Copy: Kevin Nalder, Fire Chief

Attachments: Memorandum from Oskar Rey
Ordinance
Publication Summary

CITY OF KIRKLAND
City Attorney's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3030
www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Oskar Rey, Assistant City Attorney

Date: May 6, 2011

Subject: Proposed Olympic Franchise—Comparison with Bellingham Franchise

INTRODUCTION:

At its May 3, 2011 Council Meeting, the Council asked if the proposed Franchise with Olympic Pipeline Company ("Olympic") was comparable with Olympic's franchise with the City of Bellingham and asked for a description of any provisions in the Bellingham Franchise that are not in the proposed Franchise with the City of Kirkland. This memo will summarize any provisions of the Bellingham Franchise that are materially different from or not in the proposed Kirkland Franchise.

BACKGROUND:

The current Bellingham Franchise was adopted by the City of Bellingham on November 5, 2001. In negotiating the proposed Kirkland Franchise, City staff used Olympic's franchises with Bellevue (adopted in 2005) and Redmond (adopted in 2006) as a starting point. Nevertheless, the proposed Kirkland Franchise is similar to the Bellingham Franchise in many respects.

The proposed Kirkland Franchise differs significantly from the Bellingham Franchise in the following respects:

--Section 2 of the proposed Kirkland Franchise ("Purpose") contains language clarifying that the franchise is non-exclusive and the Franchise does not prevent the City from granting other franchises or affect the City's jurisdiction and authority over its right of way. That language is not in the Bellingham Franchise.

--Section 6 of the proposed Kirkland Franchise ("Compliance with Laws and Standards") is substantially similar to the Bellingham Franchise, except the Bellingham Franchise provides that: "In addition, Grantee's activities shall comply with all applicable commercially acceptable industry standards." That language is not in the proposed Kirkland Franchise.

--Section 7 of the proposed Kirkland Franchise ("Construction on or within Rights of Way . . .") provides that Olympic will provide 72 hour notice of any construction or maintenance activity within the Franchise Area. The Bellingham Franchise provides for 10 days written notice "other than routine inspections and maintenance." Both Franchises require that work not be commenced until required permits are issued.

--Section 8 of the proposed Kirkland Franchise (Abandonment or Removal of Facilities) allows the City to require Olympic to remove or adjust abandoned facilities if the City deems removal or adjustment to be necessary or advisable for the health, safety, necessity or convenience of the public. The Bellingham Franchise does not contain such a provision.

--Both Franchises require Olympic to comply with state and federal regulations regarding operations, maintenance, inspection and testing of the pipeline system. The Bellingham Franchise requires Olympic to visually inspect the pipeline route every two weeks. The proposed Kirkland Franchise provides that Olympic regularly inspect the surface conditions along the pipeline route in accordance with state and federal regulations (Section 9).

--Section 9.2 of the proposed Kirkland Franchise provides that, with respect to work within 100 feet of Olympic facilities, the City will use reasonable efforts to inform excavators of the need to notify Olympic 48 hours before the start of work and to comply with One Call requirements. That provision is not in the Bellingham Franchise.

--The Bellingham Franchise provides that Olympic will monitor pipeline operation and pressure through trained control center personnel. The Kirkland Franchise does not contain a similar provision, but it does require Olympic to comply with federal pipeline regulations (Title 49 CFR Part 145) which, among other things, contains corresponding provisions.

--Section 11 of the Proposed Kirkland Franchise ("Leaks, Spills and Emergency Response") provides that the City and Olympic will, upon written request of either party, meet periodically to review the Emergency Response Plan and procedures. The Bellingham Franchise provides that such meetings will occur annually.

--Section 12 of the proposed Kirkland Franchise (Required Relocation of Facilities) provides that the City will endeavor, where practical, to provide 360 days written notice to Olympic of any improvement project that will require relocation of Olympic's facilities. The Bellingham Franchise provides for 120 days unless additional time is reasonably required.

ORDINANCE NO. 4298

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KIRKLAND, WASHINGTON GRANTING OLYMPIC PIPE LINE COMPANY, AN INTERSTATE PIPELINE CORPORATION INCORPORATED IN THE STATE OF DELAWARE, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, MAINTAIN, REMOVE, REPLACE, AND REPAIR EXISTING PIPELINE FACILITIES, TOGETHER WITH EQUIPMENT AND APPURTENANCES THERETO, FOR THE TRANSPORTATION OF PETROLEUM PRODUCTS WITHIN AND THROUGH THE FRANCHISE AREA OF THE CITY OF KIRKLAND.

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

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

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

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Definitions. For the purposes of this Franchise and all exhibits attached hereto, the following terms, phrases, words and their derivations shall have the meaning given herein.

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

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

1.2 Effective Date shall mean June 1, 2011.

1.3 Environmental Laws shall include the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the

Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D RCW all as amended from time to time; and any other valid and applicable federal, state, or local statute, code, or ordinance or valid and applicable federal or state administrative rule, regulation, ordinance, order, decree, or other valid and applicable governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment.

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

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

1.6 Franchise Area means the Right of Way and certain designated Public Property within the jurisdictional boundaries of the City, including any areas annexed by the City (but excluding properties upon which the Company holds a private easement, license, or other property interest for its Facilities) during the term of this Franchise, in which case the annexed area shall become subject to the terms of this Franchise.

1.7 Hazardous Substance means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant, including all substances designated under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. § 136 et seq.; the Washington Hazardous Waste management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D, RCW; all as amended from time to time; and any other federal, state, or local statute, code or ordinance or lawful rule, regulation, order, decree, or other governmental authority as now or at any time hereafter in effect.

The term shall specifically include Petroleum and Petroleum Products. The term shall also be interpreted to include any substance which, after release into the environment, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities.

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

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

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

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

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

1.13 Public Properties shall mean the present and/or future property owned or leased by the City within the present and/or future corporate limits, or jurisdictional boundaries of the City.

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

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

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

Section 2. Purpose. The City grants this nonexclusive Franchise to Company to operate and maintain its existing Facilities as a liquid petroleum product delivery system for Company's business. This Franchise is granted subject to the police powers, land use authority and franchise authority of the City and is conditioned upon the terms and conditions contained herein and Company's compliance with any applicable federal, state or local regulatory programs that currently exist or may hereafter be enacted by any federal, state or local regulatory agencies with jurisdiction over the Company. The purpose of this Franchise is to delineate the conditions relating to Company's use of the Franchise Area and to create a foundation for the parties to work cooperatively in the public's best interests after this Ordinance becomes effective. By granting this Franchise, the City is not assuming any risks or liabilities therefrom, which shall be solely and separately borne by Company.

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

Section 3. Rights Conveyed.

3.1 Pursuant to the laws of the State of Washington including, but not limited to, RCW 35A.47.040 and RCW 80.32.010, the City hereby grants, under the terms and conditions contained herein, to Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, and which is authorized to transact business within the State of Washington, and its successors and assigns (subject to and as provided for in Section 5), the right, privilege, authority and Franchise to Construct, Operate, Maintain and Improve its Facilities, together with all equipment and appurtenances as may be necessary thereto, for the transportation and handling of any Petroleum or Petroleum Products, within the existing Pipeline Corridor passing through the Franchise Area, such lands being more particularly described in Attachment 1 which is attached hereto and expressly incorporated herein by this reference.

3.2 This Franchise is only intended to convey a limited right and interest as to that Right-of-Way and/or certain designated Public

Property in which the City has an actual interest. It is not a warranty of title or interest in the City's Right-of Way and/or certain designated Public Property. None of the rights granted herein shall affect the City's jurisdiction over its property, streets or rights of way.

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

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

Section 4. Term.

4.1 Each of the provisions of this Franchise shall become effective upon Company's acceptance of the terms and conditions of this Franchise and shall remain in effect for ten (10) years thereafter. At any time not more than three (3) years nor less than one-hundred-eighty (180) days before the expiration of the Franchise term, the Company may make a written request and the City may consider, at its sole discretion, renewing this Franchise for an additional ten (10) year renewal period unless either party expresses its intention in writing to terminate this Franchise at the conclusion of the ten (10) year term.

4.2 The effective date of this Franchise shall be June 1, 2011.

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

Section 5. Assignment and Transfer of Franchise.

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

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

Section 6. Compliance with Laws and Standards. Company shall, in carrying out any authorized activities under the privileges granted herein, comply with all valid and applicable local, state and federal laws, including, but not limited to, Title 49 Code of Federal Regulations, Part 195 Transportation of Hazardous Liquids, environmental laws, and any laws or regulations that may be subsequently enacted by any governmental entity with jurisdiction over Company and/or the Facilities.

Section 7. Construction on or within Rights-of Way, Public Properties, Public Ways, and Other Ways.

7.1 This Section 7 shall apply to all Construction and/or Maintenance done by Company in the Franchise Area.

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

seventy two (72) hours written notice prior to any construction or maintenance on the Company Facilities within the Franchise Area.

7.3 In the event of an emergency requiring immediate action by Company for the protection of the pipeline(s) or Facilities, the City's property or the property, life, health or safety of any individual, the Company may take action immediately to correct the dangerous condition without first obtaining any required permit so long as: (1) the Company notifies the City Fire Department through the dispatch system of the emergency; and (2) the Company informs the City permitting authority of the nature, location, and extent of the emergency, and the work to be performed, prior to commencing the work if such notification is practical, or where such prior notification is not practical, the Company shall notify the City permitting authority on the next business day; and (3) such permit is obtained by the Company as soon as practicable following cessation of the emergency.

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

7.5 All work done hereunder by Company or upon Company's direction or on Company's behalf, including any work performed by contractors or subcontractors, shall be undertaken and completed in a workmanlike manner and in accordance with the descriptions, plans and specifications provided to the City. The Company's activities (including work done at the direction of the Company, or by its contractors or subcontractors) shall be conducted in such a manner as to avoid damage or interference with other utilities, drains or other structures, and not unreasonably interfere with public travel, park uses or other municipal uses, and the free use of adjoining property and so as to provide safety for persons and property. The Company's Construction and/ or Maintenance shall be in compliance with all valid and applicable laws and regulations and specifications of governmental agencies with jurisdiction.

7.6 In case of damage caused by the Company, its agents or employees or by the Facilities of the Company to Rights-of-Way, Public Ways, or Other Ways, the Company agrees to repair the damage at its

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

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

7.8 The Company shall continuously be a member of the State of Washington one number locator service under (RCW 19.122), or approved equivalent, and shall comply with all such applicable rules and regulations

7.9 The Company's Facilities shall be located and maintained within the Franchise Area so as not to interfere with the free passage of pedestrian and/or vehicle traffic therein, or with the reasonable ingress or egress to the properties abutting the Franchise Area as they exist at the time of installation of the Facilities.

7.10. The Company shall, after installation, construction, relocation, maintenance, removal or repair of any of Company Facilities with the Franchise Area, restore the surface of the Franchise Area and any other City property within the Franchise Area which may be disturbed or damaged by such work, to at least the same condition as it was immediately prior to any such work. The City shall have final approval of the condition of the Franchise Area after restoration pursuant to the provisions of applicable City codes, ordinances, regulations, standards and procedures, as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise.

7.11. The City will require the Company to post an appropriate bond, as determined by the City, to ensure satisfactory restoration of the Franchise Area following the completion of the Company's work therein. In lieu of separate bonds for routine individual projects involving work in the Franchise Area, the Company may satisfy the

City's bond requirement of this Section by posting an approved indemnity bond with the City pursuant to KMC 19.12.095.

7.12. All survey monuments which are disturbed or displaced by the Company in its performance of any work under this Franchise shall be referenced and restored by the Company, as per WAC 332-120, as from time to time amended, and all pertinent federal, state and local standards and specifications.

7.13 The Company and the City shall each exercise all best reasonable efforts to coordinate any construction work that either may undertake within the Franchise Areas so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. The Company and the City shall further exercise best reasonable efforts to minimize any delay or hindrance to any construction work undertaken by themselves or utilities with the Franchise Area.

Section 8. Abandonment or Removal of Facilities.

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

8.2 In the event of abandonment or Company's permanent cessation of use of its Facilities, or any portion thereof within the Franchised Area, the Company shall, within one hundred and eighty days (180) after the abandonment or permanent cessation of use, remove the Facilities at the Company's sole cost and expense. However, with the express written consent of the City, which shall not be unreasonably withheld, the Company may, at Company's sole cost and expense, secure the Facilities in such a manner as to cause it to be as safe as is reasonably possible, by removing all Petroleum Products, purging vapors, displacing the contents of the line with an appropriate inert material and sealing the pipe ends with a suitable end closure, all in compliance with valid and applicable regulations, and abandon them in place provided that portions of the Facilities which are above ground shall be removed at Company's sole cost and expense.

8.3 In the event of the removal of all or a portion of the Facilities, Company shall restore the Franchise Area as nearly as possible to a condition that existed prior to installation of Company's Facilities. Such property restoration work shall be done at Company's sole cost and expense and to the City's reasonable satisfaction. If Company fails to remove or secure the Facilities and fails to restore the premises or take such other mutually agreed upon action, the City may, after reasonable notice to Company, remove the Facilities, restore the

premises or take such other action as is reasonably necessary at Company's expense and the City shall not be liable therefor. This remedy shall not be deemed to be exclusive and shall not prevent the City from seeking a judicial order directing that the Facilities be removed.

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

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

Section 9. Operations and Maintenance - Inspection and Testing.

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

9.2 The City shall use reasonable efforts to inform all excavators subject to a City grading and/or right-of-way permit working within 100 feet of the Company's Facilities of their responsibility to notify the Company at least 48 hours prior to the start of any work and to ensure compliance with the requirements of the State of Washington one number locator service law (RCW 19.122). If the Company becomes aware that a third party conducts any excavation or other significant work that may affect the Facilities, the Company shall conduct such inspections and/or testing as is necessary to determine that no direct or indirect damage was done to the Facilities and that the work did not abnormally load the Company's Facilities or impair the effectiveness of the Company's cathodic protection system. Upon written request, the Company shall report to the City its inspection and findings in person.

9.3 At City's request, the Company shall provide, at its sole cost and expense, a briefing by qualified testing experts to explain the inspection results and Franchisee's proposed corrective action(s) in

reference to 9.2. Said qualified testing expert may be an employee or representative of the Company.

Section 10. Encroachment Management.

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

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

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

Section 11. Leaks, Spills and Emergency Response.

11.1 The Company warrants that it will maintain an Emergency Response Plan that is in compliance with the applicable requirements of local, state and federal agencies with jurisdiction. (Emergency Response Plan available on Information Sharing Website). Upon written request by either party, the parties agree to meet periodically to review the Emergency Response Plan and procedure.

The Company's emergency plans and procedures shall designate the Company's responsible local emergency officials and a direct 24 hour emergency contact number for control center operator. The Company shall, after being notified of an emergency, cooperate with the City and make every effort to respond as soon as possible to protect the public's health, safety and welfare.

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

this Section shall be construed as limiting the Company's right to seek recovery from third parties.

11.3 Leaks, spills, ruptures and other emergencies shall be investigated and reported as required by applicable state and local regulations and the City shall be notified according to Section 7.3 of this franchise.

Section 12. Required Relocation of Facilities

12.1 In the event that the City undertakes or approves the construction of, or changes to the grade or location of, any water, sewer or storm drainage line, street, sidewalk, or any other Improvement Project and the City determines that the Improvement Project reasonably requires changes to or the relocation of Company's Facilities, then Company shall make such changes or relocations as required herein at Company's sole cost, expense and risk.

12.2 The City shall provide the Company reasonable written notice of any Improvement Project in the interest of public health, safety, welfare, necessity and/or convenience that requires changes to or the relocation of Company's Facilities. The City will endeavor, where practical, to provide the Company at least 360 days prior written notice, or such additional time as may reasonably be required, of such Improvement Project. However, nothing in this Section shall be construed as to relieve Company of its duty and obligation to relocate its Facilities to accommodate any Improvement Project undertaken by the City after written notice of any Improvement Project.

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

12.4 The Company may, after receipt of written notice requiring changes to or relocation of its Facilities under Section 12.2, submit to the City, within ninety 90 days, written alternatives to such relocation. The City shall evaluate such alternatives and advise the Company in writing if one or more of the alternatives are suitable to accommodate the Improvement Project that would otherwise necessitate changes to or relocation of the Facilities. If so requested by the City, the Company shall submit additional information to assist the City in making such evaluation including actual field verification of the location(s) of the Company's underground Facilities within the Improvement Project area by excavating (e.g., pot holing), at no expense to the City. The City shall give each alternative proposed by the Company full and fair consideration but retains sole discretion to

decide whether to utilize its original plan or an alternative proposed by the Company.

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

12.6 The Company shall not be required to relocate its Facilities at its expense for the benefit of private developers or third party projects. However in the event the City reasonably determines and notifies the Company that the primary purpose for requiring such changes to or relocation of the Company's facilities by a third party is to cause or facilitate the construction of an Improvement Project consistent with the City Capital Investment Plan; Transportation Improvement Program; or the Transportation Facilities Program, or other similar plan, then the Company shall change or otherwise relocate its Facilities in accordance with Section 12.1 at Company's sole cost, expense and risk.

12.7 The City shall work cooperatively with the Company in determining a viable and practical route within which the Company may relocate its facilities under Section 12.1, in order to minimize costs while meeting the City's project timelines and objectives. The City's requirements with regard to the required changes or relocation (i.e. depth of cover, distance from other utilities, etc.) must not be unreasonable and must be consistent with applicable federal and state requirements however, nothing in this section shall be construed as to limit the City's police power, land use authority, franchise authority or the City's authority to regulate the time, place and manner of Company's use of the Public Rights-of-Way, Public Property, Public Ways and Other Ways.

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

12.9 The City shall take reasonable steps to cooperate with the Company on any effort by the Company to apply for and obtain any local, state or federal funds that may be available for the relocation of the Company's Facilities provided however that the Company's application for any such funds shall not delay the City Improvement Project. To the extent such funds are made available, the Company

may apply funds towards the costs incurred to relocate the Company's Facilities.

Section 13. Violations, Remedies and Termination.

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

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

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

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

Section 14. Dispute Resolution

14.1 In the event of a dispute between the City and the Company arising by reason of this Franchise, or any obligation hereunder, the dispute shall first be referred to the representatives designated by the City and the Company to have oversight over the administration of this Franchise. Said officers or representatives shall meet within thirty (30) calendar days of either party's request for said meeting, and the parties shall make a good faith effort to attempt to achieve a resolution of the dispute.

14.2 In the event that the parties are unable to resolve the dispute under the procedure set forth in Section 14.1, then the parties hereby agree that the matter shall be referred to mediation. The parties shall endeavor to select a mediator acceptable to both sides. If the parties cannot reach agreement, then each party shall secure the services of a mediator, who will in turn work together to mutually agree upon a third mediator to assist the parties in resolving their differences.

Any expenses incidental to mediation shall be borne equally by the parties.

14.3 If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies, provided, that if the party seeking judicial redress does not substantially prevail in the judicial action, it shall pay the other party's reasonable legal fees and costs incurred in the judicial action.

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

Section 15. Indemnification

15.1 General Indemnification. Except for environmental matters, which are covered by a separate indemnification in Section 15.2 below, the Company shall indemnify, defend and hold harmless the City, it agents, officers or employees, from any and all liability, loss, damage, cost, expense, and any claim whatsoever, including reasonable attorneys' and experts' fees incurred by the City in defense thereof, whether at law or in equity, arising out of or related to, directly or indirectly, the construction, operation, use, location, testing, repair, maintenance, removal, abandonment or damage to the Company's Facilities, or from the existence of the Company's pipeline and other appurtenant facilities, and of the products contained in, transferred through, released or escaped from said pipeline and appurtenant facilities, from any and all causes whatsoever, except the City's sole negligence and except for a violation by the City of its obligations, if any, under RCW 19.122 (One-Call regulations). If any action or proceeding is brought against the City by reason of the pipeline or its appurtenant facilities, the Company shall defend the City at the Company's complete expense, provided that, for uninsured actions or proceedings, defense attorneys shall be approved by the City, which approval shall not be unreasonably withheld.

15.2 Environmental Indemnification. The Company shall indemnify, defend and hold harmless the City, it agents, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims (except to the extent such liability, loss, damage, expense, actions and claims result from the City's noncompliance with RCW 19.122) either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by the City in defense thereof, arising from (a) Company's violation of any environmental laws applicable to the Facilities or (b) from any release of a hazardous substance on or from the Facilities. This indemnity includes but is not limited to (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by

hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

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

Section 16. Insurance.

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

A. Commercial general liability insurance including coverage for premises - operations, explosions and collapse hazard, underground hazard and products completed hazard, with limits not less than:

$100,000,000 per occurrence and in the aggregate for bodily injury or death to each person; and in the aggregate for property damage resulting from any one accident; and in the aggregate for general liability;

B. Automobile liability for owned, non-owned and hired vehicles with a limit of $1,000,000 for each person and $1,000,000 for each accident;

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

D. Pollution Legal Liability, to be in effect throughout the ten (10) year term of this Franchise, with a limit not less than

$50,000,000 per occurrence and in the aggregate to the extent such coverage is reasonably available in the marketplace.

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

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

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

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

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

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

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

16.7 The indemnity and insurance provisions herein under Sections 15 and 16 shall survive the termination of this Franchise and shall continue for as long as the Company's Facilities shall remain in or on the Franchise Area or until the parties execute a new Franchise agreement that modifies or terminates these indemnity or insurance provisions.

Section 17. Annual Franchise Fee.

17.1 In consideration for granting this Franchise and for the use of the Franchise Area, there is hereby established an annual fee of Six Thousand Dollars ($6,000).

17.2 The annual fee shall increase each year throughout the term of this Franchise and any renewal terms by three percent (3%).

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

17.4 The Franchise fee set forth in Section 17.1 does not include, and the Company agrees that it is responsible for, payments associated with the City's administrative expenses including but not limited to the City's expenses incurred in reviewing, inspecting, licensing, permitting or granting any other approvals necessary for the Company to operate and maintain its Facilities or for any inspection or enforcement costs thereunder (i.e., customary permitting fees). Additionally, the foregoing annual fee does not include any generally applicable taxes that the City may legally levy. The Company shall bear the cost of publication of this Ordinance.

Section 18. Legal Relations.

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

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

18.3 This Franchise Ordinance shall not create any duty of the City or any of its officials, employees or agents and no liability shall

arise from any action or failure to act by the City or any of its officials, employees or agents in the exercise of powers reserved herein. Further, this Ordinance is not intended to acknowledge, create, imply or expand any duty or liability of the City with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in the City hereunder shall be deemed a duty to the general public and not to any specific party, group or entity.

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

Section 19. Company's Acceptance. The City may void this Franchise Ordinance if the Company fails to file its unconditional acceptance of this Franchise within thirty (30) calendar days from the final passage of same by the City Council. The Company shall file its unconditional written acceptance with the City Clerk of the City of Kirkland.

Section 20. Notice.

20.1 All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

City:
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Attn: Franchise Manager

With a copy to:
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Attn: City Attorney

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

with copy to:
Mark Johnsen
Karr Tuttle Campbell
1201 Third Avenue, Suite 2900
Seattle, Washington 98101

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

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

Section 21. Miscellaneous.

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

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

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

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

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

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

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

Section 22. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2011.

Signed in authentication thereof this _____ day of _____, 2011.

_____
MAYOR

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

UNCONDITIONAL ACCEPTANCE BY OLYMPIC PIPE LINE COMPANY:
I, the undersigned official of Olympic Pipe Line Company, am authorized to bind Olympic Pipe Line Company and to unconditionally accept the terms and conditions of the foregoing Franchise (Ordinance No. 4298), which are hereby accepted by Olympic Pipe Line Company this _____ day of_____20__.

OLYMPIC PIPE LINE COMPANY

By:_____

Name:_____

Title:_____

Subscribed and sworn to before me this _____ day of _____, 20___.

_____
Print Name: _____
Notary Public in and for the State of Washington,
residing at _____
My commission expires _____

Received on behalf of the City this _____ day of _____, 20__.

Name:_____

Title:_____

PUBLICATION SUMMARY
OF ORDINANCE NO. 4298

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KIRKLAND, WASHINGTON GRANTING OLYMPIC PIPE LINE COMPANY, AN INTERSTATE PIPELINE CORPORATION INCORPORATED IN THE STATE OF DELAWARE, ITS SUCCESSORS AND ASSIGNS, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, MAINTAIN, REMOVE, REPLACE, AND REPAIR EXISTING PIPELINE FACILITIES, TOGETHER WITH EQUIPMENT AND APPURTENANCES THERETO, FOR THE TRANSPORTATION OF PETROLEUM PRODUCTS WITHIN AND THROUGH THE FRANCHISE AREA OF THE CITY OF KIRKLAND.

SECTIONS 1 - 21. Provide for the grant of a franchise to Olympic Pipe Line Company of a franchise for the transportation of petroleum products for 10 years on specified terms and conditions.

SECTION 22. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2011.

I certify that the foregoing is a summary of Ordinance 4298 approved by the Kirkland City Council for summary publication.

_____
City Clerk