Adopted: 06/13/18
Effective: 08/01/18

After Recording Return To:

Asst. Clerk of the Council
Snohomish County Council
3000 Rockefeller, M/S 609
Everett, WA 98201

Grantor:	Snohomish County
Grantee:	Olympic Pipe Line Company LLC
Tax Account No:	Not Assigned
Legal Description:	See Section 1.3
Ref. # of Docs. Affected:	N/A
Document Title:	An Ordinance of Snohomish County Council Granting a Nonexclusive Franchise Authorizing Limited Use of Public Road Rights-of-Way in Portions of Snohomish County, Washington to Olympic Pipe Line Company LLC

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 18-029

GRANTING A NONEXCLUSIVE FRANCHISE AUTHORIZING LIMITED USE OF THE PUBLIC ROAD RIGHTS-OF-WAY IN PORTIONS OF SNOHOMISH COUNTY, WASHINGTON TO OLYMPIC PIPE LINE COMPANY LLC

WHEREAS, Olympic Pipe Line Company LLC, an interstate pipeline Limited Liability Company incorporated in Delaware, has applied to Snohomish County, Washington, for a nonexclusive franchise to maintain, operate, replace and repair its two existing petroleum pipeline facilities in, on, across, over, along, under, and/or through public rights-of-way within unincorporated Snohomish County; and

WHEREAS, the Washington State Constitution, by and through its general grant of police power, and Section 36.55.010 of the Revised Code of Washington authorize counties to grant franchises for use of public rights-of-way; and

WHEREAS, Section 9.20 of the Snohomish County Charter and Title 13 of the Snohomish County Code specify requirements for franchises in Snohomish County rights-of-way; and

WHEREAS, a franchise is a legislative authorization to use public rights-of-way, however, actual construction and activities in the rights-of-way will also be subject to approved right-of-way use permits after review of specific plans; and

WHEREAS, Olympic Pipe Line Company LLC held a franchise for a petroleum products pipe line granted on June 8, 1964, by Ordinance in Commissioner's Records, Volume 45, Page 208, and which Franchise expired on June 7, 2014; and

WHEREAS, Olympic Pipe Line Company LLC operates and maintains two pipelines that traverse the length of Snohomish County running from north to south, one being sixteen (16) inches in diameter being installed in 1964 and the other being twenty (20) inches and being installed in 1973; and

WHEREAS, Olympic Pipe Line Company LLC's pipeline system transports gasoline, diesel and jet fuel originating from four refineries in Whatcom and Skagit counties and delivers said products to Seattle, Tacoma, Olympia, Vancouver and Portland; and

WHEREAS, Olympic Pipe Line Company LLC operates its pipeline system under the regulation of the United States Department of Transportation's Pipeline and Hazardous Materials Safety Administration and the Washington Utilities and Transportation Commission; and

WHEREAS, the Snohomish County Council considered the Engineer's Report of the Department of Public Works, attached to and incorporated into this ordinance by reference, which report recommends that the subject franchise be granted, and further sets out guidelines and expectations for the right-of-way use permit process; and

WHEREAS, the Snohomish County Council held a public hearing on June 13, 2018, to solicit comments from the public and to consider whether to grant the requested franchise to Olympic Pipe Line Company LLC; and

WHEREAS, it has been found to be in the public interest that a franchise, authorizing use of public rights-of-way for petroleum product transmission, be granted to Olympic Pipe Line Company LLC.

NOW, THEREFORE, BE IT ORDAINED:

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Section 1. Grant of Franchise.

1.1 Pursuant to Section 36.55.010 of the Revised Code of Washington ("RCW"), section 9.20 of the Snohomish County Charter and chapter 13.80 of the Snohomish County Code ("SCC"), Snohomish County, a political subdivision of the State of Washington (the "County"), hereby grants to Olympic Pipe Line Company LLC, an interstate pipeline Limited Liability Company incorporated in Delaware, its successors and assigns (the "Grantee"), a non-exclusive franchise to use those portions of the County's rights-of-way described in Section 1.3 below, for the purposes described in Section 1.2 below, subject to compliance with all applicable provisions of the SCC, the Engineering Design & Development Standards (EDDS) and the terms and conditions contained in this franchise ordinance (the "Franchise").

1.2 This Franchise grants the Grantee the right, privilege and authority to use portions of the Public Rights-of-Way (as such term is defined below) of the County for the sole purposes of maintaining, operating, replacing and repairing its petroleum product transmission facilities consisting of two petroleum pipelines one being sixteen (16) inches in diameter installed in 1964 and the other being twenty (20) inches in diameter installed in 1973 (the "Permitted Use") and for no other purpose or use whatsoever. The term "Public Rights-of-Way" as used in this Franchise shall mean all public streets, roads, ways, or alleys of the County as now or hereafter laid out, platted, dedicated or improved. Pursuant to this Franchise, the Grantee shall have the right to install, locate, construct, operate, maintain, use, replace and/or remove such equipment and facilities as may be reasonably necessary or convenient for the conduct of the Permitted Use (the "Grantee Facilities"), in, on, across, over, along, under or through certain Public Rights-of-Way of the County, subject to all applicable provisions of Title 13 SCC (including EDDS), Chapter 36.55 RCW, and the terms and conditions of County right-of-way use permits issued pursuant to Title 13 SCC and Section 4 of this Franchise. This Franchise merely authorizes the Grantee to occupy and use the Public Rights-of-Way at issue, and does not transfer, convey or vest any easement, title, servitude, or other real property interest in or to any Public Right-of-Way or portion thereof in or to the Grantee.

1.3 This Franchise covers all Public Rights-of-Way located within the following portions of unincorporated Snohomish County:

Township	Range	Sections
Twp. 32N	Rge. 4E	Sects. 3, 10, 11, 14, 23 & 24
Twp. 32N	Rge. 5E	Sects. 31
Twp. 31N	Rge. 5E	Sects. 6 & 8
Twp. 30N	Rge. 5E	Sects. 3, 11 & 14
Twp. 29N	Rge. 5E	Sects. 14
Twp. 28N	Rge. 5E	Sects. 3, 9, 21, 28, 33
Twp. 27N	Rge. 5E	Sects. 4, 9, 16, 21, 28, 33

Section 2. Non-Exclusive Franchise.

2.1 This Franchise is granted upon the express condition and understanding that it shall be a non-exclusive franchise which shall not in any manner prevent or hinder the County from granting to other parties, at other times and under such terms and conditions as the County, in its sole discretion, may deem appropriate, other franchises or similar use rights in, on, to, across, over, upon, along, under or through any Public Rights-of-Way. Owners, whether public or private, of any authorized facilities or equipment installed in, on, across, over, along, under, and/or through a Public Right-of-Way prior to the construction and/or installation of Grantee's Facilities in the same location, shall have preference as to positioning and location of their facilities. The initial position and location of any newly installed Grantee's Facilities in the Public Rights-of-Way shall be subject to the authority of the County Engineer and any adjustment, relocation, alteration or removal of existing Grantee Facilities shall be subject to County review and approval in accordance with Sections 4, 9 and 14.

2.2 This Franchise shall in no way prevent, inhibit or prohibit the County from using any of the Public Rights-of-Way covered or affected by this Franchise, nor shall this Franchise affect the County's jurisdiction, authority or power over any of them, in whole or in part. The County expressly retains its power to make or perform any and all changes, relocations, repairs, maintenance, establishments, improvements, dedications, or vacations of or to any of the Public Rights-of-Way as the County may, in its sole and absolute discretion, deem fit, including the dedication, establishment, maintenance and/or improvement of new Public Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 3. Term; Early Termination.

3.1 The initial term of the Franchise shall be for a period of ten (10) years (the "Initial Term"), beginning on the Effective Date (as such term is defined in Section 32 of this Franchise) of the Franchise, and continuing until the date that is one day prior to the tenth (10^{th}) anniversary of the Effective Date (the "Initial Term Expiration Date"), unless earlier terminated, revoked or modified pursuant to the provisions of this Franchise.

3.2 This Franchise shall automatically renew for an additional term of ten (10) years (the "Extended Term," and, together with the Initial Term, the "Term").

3.3 The County shall have the right, in its sole and absolute discretion, at any time after the Initial Term Expiration Date, to unilaterally elect to open negotiations with the Grantee regarding proposed amendments, alterations or other changes (collectively, the "Amendments") to the terms and conditions of this Franchise. In such event, the County shall deliver written notice to the Grantee stating the County's general desire to amend the terms and conditions of the Franchise. Within thirty (30) days after the date on which the Grantee receives the County's notice letter, the Grantee and the County shall enter into good faith negotiations regarding potential Amendments

to the terms and conditions of the Franchise. Grantee's failure to participate in good faith in said negotiations shall constitute material breach of the Franchise.

Section 4. Regulation of Use; Permits Required.

4.1 The installation, location, maintenance, operation, relocation, removal or any other work related to any of the Grantee Facilities occurring in, on, across, over, along, under, and/or through any Public Right-of-Way covered by this Franchise, shall be performed in a safe and workmanlike manner, in such a way as to minimize interference with the free flow of traffic and the use of adjacent property, whether such property is public or private.

4.2 The Grantee shall not commence any work within Public Rights-of-Way until a right-of-way use permit authorizing such work has been issued by the County pursuant to Title 13 SCC. In addition to any standards of performance imposed by this Franchise, any and all work performed by Grantee pursuant to this Franchise shall be performed in accordance with all current County standards applicable to such work, including the County approved plans and specifications for the work, and the terms and conditions of any right-of-way use permit and/or other permits and/or approvals required under Title 13 SCC in order to accomplish the work (e.g., lane closure or road detour permits). Grantee understands and acknowledges that some or all of Grantee's activities may require additional project permits and approvals under County land use codes and development regulations, and Grantee accepts full responsibility for obtaining and complying with same.

4.3 In addition to any criteria set forth in Title 13 SCC, the EDDS, and the County's utility accommodation policies, in reviewing the Grantee's application for any right-of-way use permit pursuant to this Franchise, the County Engineer may apply the following criteria in reviewing proposed utility routes and in the issuance, conditioning, or denial of such permit:

(i) the capacity of the Public Rights-of-Way at issue to accommodate the proposed Grantee Facilities;

(ii) the capacity of the Public Rights-of-Way at issue to accommodate additional utility, cable, telecommunications, or other public facilities if the right-of-way use permit is granted;

(iii) the damage or disruption, if any, to public or private facilities, improvements, service, travel, or landscaping if the right-of-way use permit is granted;

(iv) the public interest in minimizing the cost and disruption of construction within the Public Rights-of-Way at issue, including, but not limited to, coordination with future utility installation or County projects;

(v) recent and/or proposed construction and/or improvements to the Public Rights-of-Way at issue;

(vi) the availability of alternate routes, locations, and/or methods of construction or installation for the proposed Grantee Facilities, including, but not limited to, whether other routes are preferred; and

(vii) whether the Grantee has received all requisite licenses, certificates, and authorizations from applicable federal, state, and local agencies with jurisdiction over the activities proposed by the Grantee.

4.4 Prior to commencing any work in a critical area as defined by SCC 30.91C.340, the Grantee shall comply with all applicable requirements of the County's critical areas regulations in chapters 30.62A, 30.62B, 30.62C and 30.65 SCC, and shall obtain any and all required permits and approvals. The granting of this Franchise shall in no way relieve the Grantee from its responsibility for avoiding "take" of any threatened or endangered species as defined by the Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., as amended, in the performance of any work authorized by this Franchise and/or any right-of-way use permits.

Section 5. Emergency Work.

Should any of the Grantee Facilities in the Public Rights-of-Way break or become damaged such that an immediate danger to the property, life, health or safety of any individual is presented, or should any site upon which the Grantee is engaged in construction or maintenance activities pursuant to this Franchise for any reason be in such a condition that an immediate danger to the property, life, health or safety of any individual is presented, the Grantee shall immediately take such measures as are reasonably necessary to repair the Grantee Facilities at issue or to remedy the dangerous conditions on the site at issue so as to protect the property, life, health or safety of individuals. In the event of an emergency described above, the Grantee may take corrective action immediately, without first applying for or obtaining any permits or other authorizations that might otherwise have been required by the SCC and/or this Franchise. However, the emergency provisions contained in this Section 5 shall not relieve the Grantee from its obligation to obtain any permits necessary for the corrective actions taken, and the Grantee shall apply for all such permits as soon as is reasonably possible after the occurrence of the emergency. In the event of any emergency described in this Section 5, the Grantee shall notify the County of the emergency as soon as may be reasonably feasible after the Grantee discovers the emergency (such notice may be telephonic).

Section 6. Compliance with Applicable Laws; Performance Standards.

6.1 The Grantee shall at all times during the Term of the Franchise undertake the Permitted Use in compliance with all federal, state and local laws, rules and regulations (including, but not limited to, the County's comprehensive plan, zoning code, and other development regulations) that are applicable to any and all work or other activities performed by Grantee pursuant to or under authority of the Franchise.

6.2 During any period of installation, maintenance, operation, relocation, removal or any other work related to any of the Grantee Facilities subject to this Franchise, Grantee shall use industry accepted best-practices to ensure that, to the extent reasonably feasible, such work does not impede: (i) public use of the Public Rights-of-Way at issue for vehicular and pedestrian transportation; (ii) construction and/or maintenance within Public Rights-of-Way and other authorized facilities, equipment and improvements; (iii) the operation, maintenance or improvement by the County of the Public Rights-of-Way or other public property impacted by Grantee's work; or (iv) use of the Public Rights-of-Way for other governmental purposes.

6.3 During any periods of construction within Public Rights-of-Way, the Grantee shall at all times post and maintain proper barricades and comply with all applicable safety regulations as required by the SCC, the EDDS, or the laws of the State of Washington, including, but not limited to, RCW 39.04.180 for the construction of trench safety systems.

6.4 Before the Grantee commences any work under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys, Grantee shall reference all such monuments and markers using a method or methods approved by the County Engineer, and a complete set of reference notes for monument and other ties shall be filed with the County prior to the commencement of construction. Reference points shall be so located that they will not be disturbed during Grantee's operations. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, as directed by the County Engineer, and to federal, state and local standards. All costs incurred pursuant to this Section 6.4 shall be borne by Grantee.

6.5 If the Grantee shall at any time plan to make excavations in any area covered by the Franchise, the Grantee shall, upon receipt of a written request to do so, provide an opportunity for the County and/or any other grantees or authorized users of the Public Right-of-Way at issue to participate in such excavation, and shall coordinate the location and installation of its Grantee Facilities with the County or such other grantees or authorized entities, PROVIDED THAT, Grantee need not permit the County or any other party (ies) to participate in an excavation if the County Engineer determines that any of the following are true:

(i) such joint use would unreasonably delay the performance of Grantee's work;

(ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions for accomplishing such joint use; or

(iii) valid safety reasons exist for denying a request for such joint use.

6.6 If the Grantee shall at any time plan to include communication facilities in furtherance of the Permitted Use, the Grantee shall provide an opportunity for the County to enter into negotiations for shared use of such communication facilities, and shall coordinate negotiation of shared use of its communication facilities with the County; PROVIDED THAT, Grantee need not

permit the County to participate in shared use of communication facilities if any of the following are true, in the reasonable judgment of the County and the Grantee:

(i) such shared use would unreasonably delay the performance of Grantee's work;

(ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions, including but not limited to allocation of costs amongst various parties, for accomplishing such shared use;

(iii) valid safety reasons exist for denying a request for such shared use and/or the proposed facilities of the third party are in conflict with the best practices employed by the Grantee; or

(iv) the installation of communication facilities is for the purpose of an emergency action to protect the property, life, health or safety of individuals.

Section 7. Restoration of Public Rights-of-Way.

Promptly after completing any work in, on, under, over, across or upon any Public Rights-of-Way, including, but not limited to any excavation, installation, construction, relocation, maintenance, repair or removal of any Grantee Facilities, Grantee shall, at Grantee's sole cost and expense, restore the Public Rights-of-Way and any adjacent affected areas as required by the EDDS. Grantee shall also comply with any and all restoration conditions contained in applicable permits or approvals. The County Engineer shall have final authority to determine in each instance of restoration, whether adequate restoration has been performed.

Section 8. Record Plans, Record Drawings, and Records of Grantee Facility Locations.

8.1 The Grantee shall maintain adequate records to document obligations performed under this Franchise. The Grantee agrees and covenants that it shall, promptly upon substantial completion of any construction project involving a Public Right-of-Way, provide to the County, at no cost to the County, a copy of all as-built plans, maps and records revealing the approximate final locations and conditions of the Grantee Facilities located within such Public Right-of-Way. Additionally, the County may, at any time, deliver a written request to the Grantee for copies of maps and records showing the approximate location of all or any portion of the Grantee Facilities. In such event, the Grantee shall provide the County, at no cost to the County, with copies of the requested record plans, record drawings and other records within a reasonable time after receiving the County's request for same. The County may also inspect and review at Grantee's offices after reasonable notice to Grantee any additional records relating to this Franchise, including records relating to the construction, maintenance, operation, inspections, or regulatory compliance of any Grantee Facilities subject to this Franchise, or such other records which the County deems necessary to manage the county roads, any Public Rights-of-Way or other property, or to protect the public health, safety, and welfare. The right to review records shall last for six (6) years from the expiration or earlier termination of this Franchise. Upon the County's request, Grantee shall

provide to the County any of Grantee's records it may have reviewed, provided such records were actually used by the County in guiding any County action or decision. Nothing in this Section 8 shall be construed to require Grantee to violate state or federal law concerning customer privacy, nor shall this Section 8 be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

8.2 If the Grantee considers any portion of its records provided to the County, whether in electronic or hard copy form, to be protected from disclosure under law, the Grantee shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Public Records Act, Chapter 42.56 RCW, to inspect or copy the information so identified by the Grantee and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Grantee (a) of the request and (b) of the date that such information will be released to the requester unless the Grantee obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Grantee fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has, and by this section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the Act. The County shall not be liable to the Grantee for releasing records not clearly identified by the Grantee as confidential or proprietary. The County shall not be liable to the Grantee for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

Section 9. Relocation of Grantee Facilities.

9.1 The Grantee agrees and covenants that it will promptly, at its sole cost and expense, protect, support, temporarily disconnect, relocate, or remove from the Public Rights of Way any Grantee Facilities when the County Engineer determines after full and fair consideration that such a relocation is necessary for any of the following reasons: (i) traffic conditions; (ii) public safety; (iii) dedications of new Public Rights-of-Way and the establishment and/or improvement thereof; (iv) widening and/or improvement of existing Public Rights-of-Way; (v) vacations of Public Rights-of-Way; (vi) freeway construction; (vii) change or establishment of road grade; or (viii) the construction of any public improvement or structure by any governmental agency acting in a governmental capacity; PROVIDED that the Grantee shall generally have the privilege to temporarily bypass, in the authorized portion of the same Public Right-of-Way, upon approval by the County Engineer, any Grantee Facilities required to be temporarily disconnected or removed. In the event of a conflict between this Section 9 and the specific terms of any existing real property interests and rights owned by the Grantee, such as a utility easement or other servitude, the terms of this Section 9 shall be subject to the specific terms of the real property interests and rights owned by the Grantee unless and until those rights are extinguished or amended (i) by mutual agreement, (ii) pursuant to a judicial condemnation order, (iii) by negotiated sale of said property rights between Grantee and the County in-lieu of condemnation, or (iv) by any other lawful means.

9.2 Upon the request of the County and in order to facilitate County improvements to Public Rights-of-Way, the Grantee agrees to locate and, if reasonably determined necessary by the County, to excavate and expose, at its sole cost and expense, portions of the Grantee Facilities for inspection so that the location of the facilities may be taken into account in the improvement design.

9.3 Grantee shall, upon reasonable prior written request of any person or entity holding a permit issued by the County to move any structure, temporarily move its facilities to allow the moving of such structure; PROVIDED (i) Grantee may impose a reasonable charge on the permittee for the movement of Grantee's Facilities; (ii) Grantee is granted a permit by the County for such work if a permit is needed; and (iii) Grantee is given not less than one hundred and eighty (180) days' notice to arrange for such temporary relocation; EXCEPT in any case where the County Engineer determines Grantee Facilities are not reasonably movable.

9.4 Where the County imposes conditions or requirements on a third party development requiring the relocation of any Grantee Facilities, the County shall not be responsible for paying any costs related to such relocation. Nothing in this Franchise is intended or shall be construed to prohibit the Grantee from assessing on such person or entity, other than the County, the full costs of relocation as a condition of such relocation.

9.5 To assist Grantee with anticipating relocations of Grantee Facilities related to County improvements to the Public Rights-of-Way, upon request, the County will provide the Grantee with copies of most recently adopted Six-Year Transportation Improvement Program ("TIP") and Annual Construction Program ("ACP").

9.6 If the County determines that a County project necessitates the relocation of existing Grantee Facilities, the parties shall proceed as follows:

(i) At least one hundred eighty (180) days prior to commencement of the construction phase of the County project at issue, the County shall provide the Grantee with written notice requiring such relocation; PROVIDED, that under the following circumstances the County need only provide the Grantee with written notice as soon as may be reasonably practicable: (a) in the event of an emergency posing a threat to public safety, health or welfare; (b) in the event of an emergency beyond the control of the County and which will result in adverse financial consequences to the County; or (c) where the need to relocate the Grantee Facilities could not reasonably have been anticipated by the County.

(ii) At least ninety (90) days prior to commencement of the construction phase of the County project at issue, the County shall provide the Grantee with copies of pertinent portions of the designs and specifications for the County project as well as a proposed new location for the Grantee Facilities. Upon request of the Grantee, thirty-percent (30%), sixty-percent (60%) and ninety-percent (90%) design plans shall be provided to the Grantee. The County and the Grantee shall, upon the

request of either party, meet to discuss the plans, specifications and schedule of the County project at issue at a mutually agreed time in a location determined by the County.

(iii) After receipt of such notice and such plans and specifications, the Grantee shall complete relocation of its facilities within the Public Right-of-Way at least ten (10) days prior to commencement of the construction phase of the County project at no charge, cost or expense to the County, unless otherwise agreed to within a separate agreement executed by both Parties. Relocation shall be accomplished in such a manner as to accommodate the County's project. In the event of an emergency, the Grantee shall relocate the Grantee Facilities at issue within a time period reasonably specified by the County Engineer.

(iv) The County and the Grantee may, for each individual County project, enter into an agreement for costs incurred by the County for relocation of Grantee's Facilities and associated work tied to the relocation.

(v) In the event of an emergency, the Grantee shall relocate the Grantee Facilities at issue within a time period reasonably specified by the County Engineer.'

(vi) The Grantee may, after receipt of written notice requesting a relocation of any Grantee Facilities in accordance with Section 9.6, submit to the County proposed written alternatives to such relocation or the schedule of said relocation. The County shall give each alternative proposed by the Grantee full and fair consideration. If, the Grantee cannot meet the specified relocation schedule after making commercially reasonable efforts to do so, the County shall grant an extension to the Grantee for a time period agreed upon by both parties. In the event the County ultimately determines that there is no reasonable or feasible alternative to relocation, the Grantee shall relocate the Grantee Facilities at issue.

9.7 Where, upon the request of the Grantee, the County incurs additional costs in performing any maintenance, operation, or improvement of or to public facilities due to measures taken by the County to avoid damaging or to otherwise accommodate one or more of Grantee's Facilities, the Grantee shall reimburse the County for the full amount of such additional costs promptly upon receiving the County's invoice for same.

9.8 The provisions of this Section 9 shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of any Grantee Facility by any person or entity other than the County, where the facilities to be constructed by said person or entity are not or will not become County-owned, operated or maintained facilities, provided that such arrangements do not unduly delay any County projects. The Grantee shall provide certified record drawings (or as-built drawings) detailing the location of Grantee's Facilities within the Public Right-of-Way required to be relocated or removed for the purpose of the non-County project subject to all applicable terms of Section 8.

9.9 The Grantee shall be responsible for timely relocation of the Grantee Facilities at issue and the coordination of such relocation with the County (or the County's contractor for the County project). The Grantee shall be fully responsible for the costs of any delays to County projects resulting from relocations of any Grantee Facilities to the extent that any such delays are attributable to the actions or inactions of Grantee, its employees, agents, or contractors, but not to the extent that such delays are attributable to the actions or inactions of any party not reasonably within Grantee's control or any other event or occurrence not reasonably foreseeable at the time the County and the Grantee developed the agreed construction schedule. The Grantee's further obligations to indemnify, defend and hold the County harmless are set forth in Section 16 of this Franchise.

Section 10. Reserved.

This section reserved.

Section 11. Maintenance of Grantee Facilities.

11.1 The Grantee shall maintain all Grantee Facilities in good condition and repair, in accordance with industry accepted best practices.

11.2 The Grantee shall take necessary steps to maintain a reasonably clear area around all Grantee Facilities installed above ground within Public Rights-of-Way. A minimum of five (5) feet of clearance will be maintained around each such object so as to provide clear visibility from the roadway for County operations and maintenance. Prior to using any chemical sprays within the Public Rights-of-Way to control or kill weeds and brush, the Grantee must obtain the County's permission. The County may limit or restrict the types, amounts, and timing of applications provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance.

Section 12. Hazardous Materials.

12.1 The County understands and agrees that the Permitted Use contemplated by the Grantee involves the use by Grantee of certain chemicals and/or materials within the Public Rights-of-Way that are classified as hazardous or otherwise harmful to life, health and/or safety (any such chemical or material, a "Hazardous Material") under one or more applicable federal, state or local laws, rules, regulations or ordinances (collectively, the "Hazardous Materials Laws"). The Grantee shall be permitted to use such Hazardous Materials within the Public Rights-of-Way as are reasonably necessary for the Grantee's conduct of the Permitted Use and which are customary for the industry in which the Grantee is engaged; PROVIDED, however, that the Grantee's use of any such Hazardous Materials within the Public Rights-of-Way shall at all times be undertaken in full compliance with all Hazardous Materials Laws, including any orders or instructions issued by any authorized regulatory agencies.

12.2 The Grantee covenants and agrees that it will neither cause nor permit, in any manner, the release, seepage or spill of any Hazardous Material upon, into, under, over, across or through any Public Right-of-Way or property adjacent thereto, whether public or private, in violation of any applicable Hazardous Materials Law. Any such release, seepage or spill of any Hazardous Material within the Public Rights-of-Way that is in violation of any applicable Hazardous Materials Law and is caused by Grantee or its directors, officers, agents, employees or contractors, is, referred to as "Release."

12.3 Should a Release occur, the Grantee shall immediately upon receiving notice thereof provide written notice of the Release to the County and agrees to comply with applicable reporting requirements established by relevant state or federal authorities. The Grantee agrees it shall indemnify, defend and hold the County, its elected and appointed officials, employees, agents and volunteers (collectively, the "County Parties") harmless from and against any and all claims, lawsuits, actions, judgments, awards, penalties, fines and other damages (including, but not limited to, reasonable attorneys' fees and costs) incurred or suffered by any of the County Parties, to the extent the Release is caused by any act or omission of Grantee or its directors, officers, agents, employees or, contractors (collectively, the "Grantee Parties") within Public Rights-of-Way or property adjacent thereto, whether public or private. Grantee shall be responsible, at its sole cost and expense, for completely cleaning up and remediating, as required by any governmental agency having jurisdiction, any Release caused by any Grantee Party within Public Rights-of-Way or property adjacent thereto, whether public or private. Notwithstanding the Grantee's obligation to completely remediate same, in the event of any Release by a Grantee Party, the County may (but need not), in the interest of protecting the health, safety, welfare and property of the public, immediately take whatever actions it deems necessary or advisable, in its sole discretion, to contain, clean up or remediate the Release at issue. Should the County choose to take any actions pursuant to the preceding sentence, the County shall be entitled to repayment from the Grantee of any and all reasonable costs and expenses incurred by the County in performing such actions.

12.4 Should the Grantee cause a Release as described in Section 12.2 above, failure to promptly comply with all orders or instructions lawfully issued by any authorized regulatory agencies regarding clean-up and remediation shall constitute a material breach of this Franchise, and the County Council may terminate or suspend the Franchise in accordance with Section 23.

Section 13. Dangerous Conditions, Authority for County to Abate.

13.1 Whenever the Grantee's excavation, construction, installation, relocation, maintenance, repair, abandonment, or removal of Grantee Facilities authorized by this Franchise has caused or contributed to a condition that, in the reasonable opinion of the County Engineer, substantially impairs the lateral support of the adjoining road or public or private property, or endangers the public, an adjoining public place, road facilities, County property or private property, the County Engineer may direct the Grantee to remedy the condition or danger to the satisfaction of the County Engineer, within a specified period of time and at the Grantee's sole cost and expense.

13.2 In the event that the Grantee fails or refuses to promptly take the actions directed by the County Engineer, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, in accordance with Section 13.1 above, the County may enter upon the property and take such actions as are reasonably necessary to protect the public, the adjacent roads, or road facilities, or to maintain the lateral support thereof, or actions necessary to ensure the public safety, and the Grantee shall be liable to the County for all reasonable costs and expenses incurred by the County in performing such actions.

Section 14. Removal of Grantee Facilities; Abandonment of Grantee Facilities.

14.1 In no event may all or any portion of any Grantee Facility located in, on, under, over, across or through the public right-of-way be abandoned or temporarily abandoned in place by the Grantee without the express written consent of the County. Should the Grantee desire to deactivate, abandon, or temporarily abandon in place all or any portion of the Grantee Facilities, the Grantee shall request the County's permission to do so by delivering a written request to the County not later than thirty (30) days after the date on which the Grantee discontinues use of any Grantee Facilities for any reason or this Franchise expires or terminates, whichever is earlier. The Grantee's request shall specify which Grantee Facilities the Grantee desires to deactivate or abandon in place. Within a reasonable time after the date on which the County receives the Grantee's written request, the County shall deliver a written response to the Grantee setting forth the County's decision, which shall be made in the County's sole and absolute discretion. If the County denies the Grantee's request with respect to all or any portion of the Grantee Facilities at issue, then the Grantee must promptly proceed to remove those Grantee Facilities for which the Grantee's request for abandonment has been denied.

14.2 If the County grants its approval to the Grantee's request for deactivation or abandonment, either in whole or in part, the County may impose conditions on such approval. The Grantee shall, at its sole cost and expense, as directed by the County, purge the Grantee Facilities that will be deactivated, abandoned, or temporarily abandoned of any product, Hazardous Material and/or other substance so as to render such Grantee Facilities safe in accordance with applicable law or such other standards as may be reasonably deemed appropriate by the County. The County's consent to such action by the Grantee shall not relieve the Grantee of the obligation and/or costs to remove or to alter such Facilities in the future in the event it is reasonably determined by the County that removal or alteration is necessary or advisable for the health and safety of the public, in which case the Grantee shall perform such work at no cost to the County. This paragraph shall survive the expiration, revocation or termination of this Franchise.

14.3 Should the Grantee fail to comply with the requirements of Section 14.1 within a reasonable time after either: (i) the expiration or earlier termination of the Franchise; or (ii) the County's denial of the Grantee's request for permission to deactivate or abandon all or any portion of the Grantee Facilities, the Grantee shall be deemed to have deactivated or abandoned the Grantee Facilities without authorization. In the event of any unauthorized abandonment of all or any portion of the deactivated or abandoned Grantee Facilities by the Grantee, the County may, at

its election, and in addition to any other remedies or enforcement options available to the County under this Franchise, at law or in equity, remove all or any portion of the deactivated or abandoned Grantee Facilities on behalf of the Grantee and restore the Public Rights-of-Way following such removal. Should the County choose to perform any such removal and restoration activities on the Grantee's behalf, the County may dispose of the removed Grantee Facilities in any manner it deems fit and in accordance with applicable laws, and the Grantee shall be liable to the County for all applicable costs and expenses incurred by the County in performing such removal and restoration activities.

Section 15. Fees, Compensation for Use of Public Rights-of-Way, and Taxes.

15.1 The Grantee shall be subject to all permit fees allowed by law associated with activities undertaken within Public Rights-of-Way through the authority granted to the Grantee by this Franchise or under applicable provisions of the SCC.

15.2 Grantee shall pay itemized costs and expenses incurred by the County in the examination and report of the proposed franchise under SCC 13.80.030(4) and any other fees required under chapter 13.110 SCC.

15.3 In addition, the Grantee shall reimburse the County for any and all documented costs the County reasonably and necessarily incurs in response to an emergency involving any Grantee Facilities. The Grantee shall promptly reimburse the County, upon submittal by the County of an itemized billing, for the Grantee's proportionate share of all actual, identified costs and expenses incurred by the County in repairing any County facility, or altering such County facility if at the Grantee's request, as the result of the presence of any Grantee Facilities in the Public Right-of-Way. Such costs and expenses shall include, but not be limited to, the Grantee's proportionate share of the costs of County personnel assigned to review construction plans or to oversee or engage in any work in the Public Right-of-Way as a result of the emergency and the presence of the Grantee Facilities in the Public Right-of-Way. Any and all costs will be billed on an actual cost basis. The billing may be on an annual basis, but the County shall provide the Grantee with the County's itemization of costs at the conclusion of each project for informational purposes.

Section 16. Hold Harmless and Indemnification.

16.1 Grantee agrees to indemnify, defend, and hold harmless any County Party (as such term is defined in Section 12 above) from any and all claims, demands, liability, suits, and judgments, including costs of defense thereof, for bodily injury to persons, death, or property damage arising out of the acts or omissions of any of the Grantee Parties (as such term is defined in Section 12 above) in the use of a Public Right-of-Way pursuant to this Franchise. This covenant of indemnification shall include, but not be limited to, any and all claims, demands, liability, suits, and judgments arising out of the placement of Grantee's existing utility fixtures and any and all third party claims, demands, liability, suits, and judgments arising out of any of the Grantee Parties' failure to complete all utility related adjustments, relocations, repairs, or work in accordance with this Franchise and the work

plan and schedule agreed to by the County and Grantee. In the event of liability for damages arising out of bodily injury to persons, death or property damage caused by or resulting from the concurrent negligence of Grantee and the County, its officers, employees and agents, Grantee's liability hereunder shall be only to the extent of Grantee's negligence.

16.2 In the event the County incurs attorney's fees, legal expenses, or other costs in connection with the County's effort to enforce the provisions of this Section 16 against Grantee, such fees expenses shall be recoverable from the Grantee..

16.3 It is specifically and expressly understood that, solely to the extent required to enforce the indemnification, defense and hold harmless obligations contained in this Section 16, Grantee waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees. This waiver has been mutually negotiated by the parties.

16.4 The County shall give Grantee timely written notice of the matter of any claim or of the commencement of any such action, suit or other proceeding covered by the indemnification, defense and hold harmless obligations contained in this Section 16. In the event any such claim arises, the County or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the right and duty to defend, settle or compromise any claims arising hereunder and the County shall cooperate fully therein.

16.5 The County's permitting approval, inspection, lack of inspection, or acceptance of any work performed by the Grantee Parties in connection with work authorized on Grantee Facilities, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise, shall not be grounds for avoidance of any of the indemnification, defense and hold harmless obligations contained in this Section 16.

16.6 The indemnification, defense and save harmless obligations contained in this Section 16 shall survive the expiration, abandonment or termination of this Franchise.

Section 17. Limitation of County Liability.

The County's administration of this Franchise shall not be construed to create the basis for any liability on the part of the County Parties, except for and only to the extent of the County's negligence.

Section 18. Insurance.

18.1 Insurance Requirements

A. Insurance Required

Grantee shall procure, and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the operations, maintenance and/or performance of work hereunder by the Grantee, its agents, representatives, employees and/or contractors /subcontractors. The Grantee or contractor/subcontractor shall pay the costs of such insurance. The Grantee shall furnish separate certificates of insurance and policy endorsements from each contractor/subcontractors as evidence of compliance with the insurance requirements of this Franchise.

The Grantee is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Grantee, its agents, employees, officers, contractor/subcontractors to comply with the insurance requirements stated herein shall constitute a material breach of this Franchise.

Each insurance policy shall be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior County approval. If coverage is approved and purchased on a "claims made" basis, the Grantee 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 years from the date of Franchise termination, and/or conversion from a "claims made" form to an "occurrence" coverage form.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained in this provision shall affect and/or alter the application of any other provision contained within this Franchise.

B. Risk Assessment by Grantee

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Grantee under this Franchise, nor shall such minimum limits be construed to limit the limits available under any insurance coverage obtained by the Grantee. The Grantee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

C. Minimum Scope and limits of Insurance. Coverage shall be at least as broad as and with limits not less than the following:

(i) General Liability

Insurance Services Office form number (CG 00 01) covering COMMERCIAL GENERAL LIABILITY including XCU coverage: $100,000,000 combined single limit per occurrence by bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a $100,000,000 aggregate limit.

(ii) Automobile Liability

Insurance Services Office form number (CA 00 01) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 8, or 9: $2,000,000 combined single limit per accident for bodily injury and property damage if the use of motor vehicles is contemplated.

(iii) Pollution Legal Liability

$50,000,000 per claim and in the aggregate.

(iv) Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or "Other States" state law: Statutory requirements of the state of residency.

(iv) Stop Gap/Employers Liability

Coverage shall be at least as broad as the indemnification, protection provided by the Workers' Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy: $1,000,000.

D. Excess or umbrella insurance. Any and all above policy limits may be met through a combination of primary, excess, or umbrella coverage, at Grantee's option.

E. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not apply to the Grantee's liability to the County and shall be the sole responsibility of the Grantee.

F. Other Insurance Provisions

The insurance policies required in this Franchise are to contain, or be endorsed to contain, the following provisions:

(i) All Liability Policies except Workers Compensation.

a. The County, its officers, officials, employees, and agents are to be covered as additional insured as respects liability arising out of activities performed by or on behalf of the Grantee/contractor in connection with this Franchise. Such coverage shall include Products-Completed Operations.

b. The Grantee's/contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, or agents shall not contribute with the Grantee's insurance or benefit the Grantee in any way.

c. The Grantee's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(ii) All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after 30 days prior written notice has been given to the County. In the event of said cancellation or intent not to renew, the Grantee shall obtain and furnish to the County evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date. Failure to provide proof of insurance could result in suspension of the Franchise.

G. Acceptability of Insurers

Unless otherwise approved by the County, insurance is to be placed with insurers with a Bests' rating of no less than A-VII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII.

If, at any time, the foregoing policies shall fail to meet the above requirements, the Grantee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit to the County, the appropriate certificates and endorsements.

H. Verification of Coverage

The Grantee shall furnish the County with certificates of insurance and endorsements required by this Franchise. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with the Franchise. The County

reserves the right to reasonably require complete copies of all required insurance policies if a claim should occur that is applicable to this Franchise.

I. Subcontractors

The Grantee shall include all subcontractors as insured under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. If the Grantee is relying on the insurance coverage provided by subcontractors as evidence of compliance with the insurance requirements of this Franchise, then such requirements and documentation shall be subject to all of the requirements stated herein.

J. Insurance Review

In consideration of the duration of this Franchise, the parties agree that the Insurance section herein, at the discretion of the County Risk Manager, may be reviewed and adjusted with each amendment and at least ninety (90) days prior to the end of the first five (5) year period of the term of this Franchise and prior to the end of each successive five (5) year period thereafter. Any adjustments made as determined by the County Risk Manager, shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the first day of each successive five (5) year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of the Grantee. Any failure by the County to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

18.2 Grantee shall furnish the County with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Grantee for the duration of the Franchise.

Section 19. Performance Security.

Before undertaking any work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, the Grantee shall, upon the request of the County through its permit process, provide a security device in a sum to be set and approved by the County Engineer in accordance with Title 13 SCC. Grantee may, upon approval of the County Engineer, provide a Franchise security device or Franchise bond to cover all work performed by Grantee under this Franchise in such amount as the County Engineer deems adequate.

Section 20. Annexation.

If any Public Right-of-Way covered by this Franchise, or portion thereof, is incorporated into the limits of any city or town, it shall not be subject to the terms of this Franchise.

Section 21. Vacation.

If any Public Right-of-Way covered by this Franchise, or portion thereof, is vacated, it shall not be subject to the terms of this Franchise. The County may retain a utility easement as allowed under RCW 36.87.140 when a Public Right-of-Way, or portion thereof, is vacated. The Grantee may request the County retain a utility easement; however in no case shall the County be obligated to retain such an easement. The County shall not be liable for any damages or loss to the Grantee by reason of such vacation and termination.

Section 22. Assignment.

22.1 Neither this Franchise nor any interest therein shall be leased, sold, partitioned, transferred, assigned, disposed of, or otherwise subject to a change in the identity of the Grantee (each such activity, a "Transfer"), in whole or in part, in any manner, without the prior written consent of the County Council. Should any such Transfer be approved by the County, then each and every one of the provisions, conditions, regulations and requirements contained in this Franchise shall be binding upon the approved transferee beginning on the date of the Transfer, and all privileges, as well as all obligations and liabilities of the Grantee shall inure to such transferee equally as if such transferee was specifically mentioned wherever the Grantee is named herein.

22.2 In the case of a Transfer to secure indebtedness, whether by mortgage or other security instrument, the County's consent shall not be required unless and until the secured party elects to realize upon the collateral. The Grantee shall provide prompt, written notice to the County of any assignment to secure indebtedness.

22.3 Any attempt by Grantee to Transfer this Franchise in violation of this Section 22 shall constitute a material breach by Grantee.

Section 23. Termination, Revocation, and Forfeiture.

If the Grantee (i) defaults on any material term or condition of this Franchise; (ii), willfully violates or fails to comply with any of the provisions of this Franchise; or, (iii) through willful misconduct or gross negligence fails to heed or comply with any notice given the Grantee by the County under the provisions of this Franchise, then the Grantee shall, at the election of the County Council, forfeit all rights conferred hereunder and the Franchise may be terminated by the County Council. Upon termination for any cause, all rights of the Grantee granted hereunder or under any right-of-way use permit shall cease, and the Grantee shall immediately commence to remove or, with approval of the County Engineer, abandon in place all of the Grantee Facilities from the Public Rights-of-Way in accordance with Section 14 above.

Section 24. Remedies to Enforce Compliance; No Waiver.

24.1 In lieu of termination, revocation or forfeiture as provided in Section 23, and without prejudicing any of its other legal rights and remedies, the County may elect to obtain an order from

the Superior Court or other court, tribunal, or agency having competent jurisdiction compelling the Grantee to comply with the provisions of this Franchise and to recover damages and costs incurred by the County by reason of the Grantee's failure to comply. In addition to any other remedy provided herein, the County reserves the right to pursue any remedy to compel or force the Grantee and/or its permitted successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the County shall not prevent the County from thereafter declaring a forfeiture or revocation for material breach of the conditions herein.

24.2 Failure of the County to exercise any rights or remedies under this Franchise shall not constitute a waiver of any such right or remedy and shall not prevent the County from pursuing such right or remedy at any future time.

24.3 Nothing in this Franchise is or was intended to confer third-party beneficiary status on any person or entity to enforce the terms of this Franchise.

Section 25. County Ordinances and Regulations – Reservation of Police Power.

Nothing in this Franchise shall restrict the County's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of the Franchise, including, but not limited to, any ordinances adopted under the County's police powers in the interest of public safety and for the welfare of the public. The County shall have the authority at all times to control by appropriate regulations, including design standards, and utility accommodation policies, the location, elevation, manner of construction, and maintenance of any Grantee Facilities located within any Public Right-of-Way, and the Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of state or federal law applicable to interstate pipelines. In the event of a conflict between the regulatory provisions of this Franchise and any other ordinance(s) enacted under the County's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein.

Section 26. Eminent Domain, Powers of the People.

This Franchise is subject to the power of eminent domain and the right of the County Council or the people acting for themselves through initiative or referendum to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Section 27. Survival and Force Majeure.

27.1 Until such time as all of the Grantee Facilities have been removed from the Public Rights-of-Way in accordance with Section 14.1 above, or have been deactivated or abandoned in place in accordance with Sections 14.2 and 14.3 above, all of the provisions, conditions and requirements contained in the following sections of this Franchise shall survive the expiration, revocation, forfeiture or early termination of the Franchise: (i) Section 4 (Regulation of Use; Permits Required); (ii) Section 5 (Emergency Work); (iii) Section 6 (Compliance with Applicable Laws;

Performance Standards); (iv) Section 7 (Restoration of Public Rights-of-Way); (v) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (vi) Section 12 (Hazardous Materials); (vii) Section 13 (Dangerous Conditions, Authority for County to Abate); (viii) Section 14 (Removal of Grantee Facilities; Abandonment of Grantee Facilities); (ix) Section 15 (Fees, Compensation for Use of Public Rights-of-Way and Taxes); (x) Section 16 (Hold Harmless and Indemnification); (xi) Section 17 (Limitation of County Liability); (xii) Section 18 (Insurance); (xiii) Section 19 (Performance Security); and (xiv) Section 24 (Remedies to Enforce Compliance; No Waiver).

27.2 After such time as all Grantee Facilities have been either removed from the Public Rights-of-Way or abandoned/deactivated in place to the County's satisfaction pursuant to Section 14 above, only the following provisions shall survive the expiration or earlier termination of the Franchise: (i) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (ii) Section 12 (Hazardous Materials); (iii) Section 16 (Hold Harmless and Indemnification); and (iv) Section 17 (Limitation of County Liability).

27.3 If the Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason of a Force Majeure, then Grantee's performance shall be excused during a Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence the Grantee shall promptly perform its obligations in an orderly and expedited manner using industry accepted best practices. Grantee's performance shall not be excused by economic hardship nor by the misfeasance or malfeasance of its directors, officers, or employees.

27.4 For the purposes of this Franchise, "Force Majeure" means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen) that delays or prevents performance by the Grantee of any of its obligations under this Franchise, but only to the extent that and for so long as the event or circumstance is beyond the reasonable control of the Grantee and shall include, without limitation, all of the following events and circumstances: (i) acts of nature, including volcanic eruption, landslide, earthquake, flood, lightning, tornado or other unusually severe storm or environmental conditions, perils of the sea, wildfire or any other natural disaster; (ii) acts of public enemies, armed conflicts, act of foreign enemy, acts of terrorism (whether domestic or foreign, state-sponsored or otherwise), war (whether declared or undeclared), blockade, insurrection, riot, civil disturbance, revolution or sabotage; (iii) any form of compulsory government actions, acquisitions or condemnations, changes in applicable law, export or import restrictions, customs delays, rationing or allocations; (iv) accidents or other casualty, damage, loss or delay during transportation, explosions, fire, epidemics, quarantine or criminal acts; (vi) inability, after the use of commercially reasonable efforts, to timely obtain from any governmental authority any permit, approval, order, decree, license, certificate, authorization or permission to the extent required by applicable law; (vii) inability, after the use of commercially reasonable efforts, to obtain any consent or approval required by the Franchise, including any third-party approvals required to comply with the terms of this Franchise; and (viii) third-party litigation contesting all or any portion of the Franchise or Grantee's rights under this Franchise.

Section 28. Governing Law and Stipulation of Venue.

This Franchise and all use of Public Rights-of-Way granted herein shall be governed by the laws of the State of Washington, unless preempted by federal law. Any action relating to this Franchise shall be brought in the Superior Court of Washington for Snohomish County, or in the case of a federal action, the United States District Court for the Western District of Washington at Seattle, unless an administrative agency has primary jurisdiction.

Section 29. Severability.

If any section, sentence, clause, phrase or provision of this Franchise or the application of such provision to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, phrase or provision of this Franchise nor the application of the provision at issue to any other person or entity.

Section 30. Notice and Emergency Contact.

30.1 Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

SNOHOMISH COUNTY
Department of Public Works
3000 Rockefeller Avenue, M/S 607
Everett, WA 98201

Attn. Right of Way Coordinator
Phone: (425) 388-3488

OLYMPIC PIPE LINE COMPANY LLC
Right of Way Department
600 SW 39th Street, Suite 275
Renton, WA 98057

Attn. Right of Way Agent
Phone: 425-981-2506

30.2 The Grantee shall also provide the County a current emergency contact name (or title) and phone number available 24-hours a day, seven days a week. The Grantee shall promptly notify the County of any change in the notice address or emergency contact (or title) and phone number.

Emergency Contact:

24-Hour Hotline: 888-271-8880
Olympic Pipe Line Company LLC Control Center
2319 SW Lind Avenue
Renton, WA 98057

Section 31. Acceptance.

Within ninety (90) days after the passage and approval of this Franchise by the County Council, the Franchise may be accepted by the Grantee by its filing with the County Council an unconditional written acceptance thereof. Failure of the Grantee to so accept the Franchise within said period of time shall be deemed a rejection thereof by the Grantee, and the rights and privileges herein granted shall automatically cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

Section 32. Effective Date.

This Franchise shall take effect, if at all, on the date on which each and every one of the following conditions have been met (the "Effective Date"): (i) ten (10) days have passed since the County Executive executed this Franchise, or this ordinance was otherwise enacted; (ii) the Grantee executes a copy of this Franchise and returns it to the County Council within the time provided in Section 31 above; (iii) the Grantee presents to the County acceptable evidence of insurance as required in Section 18 above; and (iv) the Grantee pays all applicable fees as set forth in Section 15 above.

[This section intentionally left blank.]

PASSED this 13th day of June, 2018.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Council Chairperson

ATTEST:

Asst. Clerk of the Council

( ) APPROVED
( ) VETOED
( ) EMERGENCY

Dave Somers
Snohomish County Executive

DATE: 6/14/18

ATTEST:

Approved as to Form Only:

Deputy Prosecuting Attorney

Date: 3/19/2018

D-7

ACCEPTANCE:

The provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, Olympic Pipe Line Company LLC covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the Snohomish County Charter, Snohomish County Code, and this Franchise.

Dated: June 19, 2018

Olympic Pipe Line Company LLC

By: _____

Printed Name: Marc Horn

Title: President

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) the Grantee returned a signed copy of this Franchise to the County Council within the time provided in Section 31; (2) the Grantee has presented to the County acceptable evidence of insurance as required in Sections 18 of this Franchise; and (3) the Grantee has paid all applicable processing costs and fees as set forth in Section 15 of this Franchise.

THE EFFECTIVE DATE OF THIS ORDINANCE IS:

AUGUST 1, 2018

By: _____

Name: MARIA ELENA LAO

Title: ASSISTANT CLERK OF THE COUNCIL