

**BOARD OF COUNTY COMMISSIONERS
HEARING PACKET**

Hearing Item: Consider the application of Olympic Pipeline Company for a non-exclusive franchise to construct, operate and/or maintain a petroleum pipeline network within Clark County, Washington, upon, over, under, along and/or across certain county rights-of-way.

Date: Tuesday, June 28, 2016

Time: 10:00 a.m.

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PW16-077

CLARK COUNTY STAFF REPORT

DEPARTMENT: Public Works / Administration

DATE: June 28, 2016

REQUESTED ACTION: Approve the resolution granting a non-exclusive franchise agreement with Olympic Pipeline Company.

___ Consent __X__ Hearing ___ County Manager

PUBLIC WORKS GOALS:

- Provide safe and efficient transportation systems in Clark County
- Create and maintain a vibrant system of parks, trails and green spaces
- Continue responsible stewardship of public funds
- Promote family-wage job creation and economic development to support a thriving community
- Maintain a healthy, desirable quality of life
- Increase partnerships and foster an engaged, informed community
- Cultivate a nimble, responsive work force
- Make Public Works a great place to work

BACKGROUND

Olympic Pipeline originally had a 50 year franchise from Clark County and is looking to renew their franchise. This request is for a twenty (20) year period from the date of this franchise, unless terminated sooner as set forth in the agreement. The agreement may be extended for additional terms upon the mutual agreement of both parties.

Olympic Pipeline is a 400-mile interstate pipeline system that includes 12-inch, 14-inch, 16-inch, and 20-inch pipelines. The pipeline runs along a 299-mile corridor from Blaine, Washington, to Portland, Oregon. The system transports gasoline, diesel, and jet fuel. This fuel originates at four Puget Sound refineries, two in Whatcom County and two in Skagit County, and is delivered to Seattle's Harbor Island, Seattle-Tacoma International Airport, Renton, Tacoma, and Vancouver in Washington, and to Portland, Oregon.

The pipeline was constructed in 1964 and 1972 of welded carbon steel. There are 19 terminals, pump stations, delivery facilities and junctions within the pipeline system. Olympic's corporate offices and Control Center are located in Renton, Washington.

The Olympic pipeline system in Clark County is comprised of approximately 14 miles of 14-inch pipeline and 4 miles of 12-inch lateral pipeline. There are eight county road crossings of approximately 388 linear feet of right of way traversed.

Olympic is regulated by the U.S. Department of Transportation and the Washington Utilities and Transportation Commission.

COUNCIL POLICY IMPLICATIONS

None. This action is consistent with past practice.

PW16-077

ADMINISTRATIVE POLICY IMPLICATIONS

None.

COMMUNITY OUTREACH

The Notice of Public Hearing was published on June 8 and June 15, 2016 in the paper of record for Clark County.

BUDGET IMPLICATIONS

YES	NO	
x		Action falls within existing budget capacity.
	x	Action falls within existing budget capacity but requires a change of purpose within existing appropriation
	x	Additional budget capacity is necessary and will be requested at the next supplemental. If YES, please complete the budget impact statement. If YES, this action will be referred to the county council with a recommendation from the county manager.

BUDGET DETAILS

Local Fund Dollar Amount	n/a
Grant Fund Dollar Amount	n/a
Account	n/a
Company Name	Olympic Pipeline

DISTRIBUTION:

Board staff will post all staff reports to The Grid. <http://www.clark.wa.gov/thegrid/>



Heath H. Henderson, PE
Public Works Director/County Engineer



APPROVED:
CLARK COUNTY, WASHINGTON
BOARD OF COUNTY COUNCILORS

DATE: June 28, 2016

SR# _____

RESOLUTION NO. 2016-06-15

IN THE MATTER OF THE APPLICATION OF)
OLYMPIC PIPE LINE COMPANY FOR A)
NONEXCLUSIVE FRANCHISE TO CONSTRUCT,)
OPERATE AND/OR MAINTAIN A PETROLEUM)
PIPELINE NETWORK WITHIN CLARK COUNTY,) LIMITED NONEXCLUSIVE
WASHINGTON, UPON, OVER, UNDER, ALONG) FRANCHISE
AND/OR ACROSS CERTAIN COUNTY RIGHTS-OF-)
WAY, NOT WITHIN THE LIMITS OF ANY)
INCORPORATED CITY OR TOWN.)

A RESOLUTION granting a nonexclusive Franchise to Olympic Pipe Line Company (hereinafter "Olympic Pipe Line") to engage in the business of constructing, operating, and/or maintaining a petroleum pipeline network in Clark County; setting forth terms and conditions accompanying the grant of the nonexclusive Franchise; and providing for County administration and regulation of the nonexclusive Franchise; and

WHEREAS, Olympic Pipe Line has applied to the Board of County Councilors of Clark County, pursuant to Chapter 36.55 RCW, for a nonexclusive Franchise to construct, operate and/or maintain a petroleum pipeline network upon, over, under, along and/or across certain County Rights-of-Way in Clark County; and

WHEREAS, pursuant to RCW 36.55.040, notice was posted in three public places in the County seat at least fifteen (15) days before the hearing date and notice was published twice in the official County newspaper, the last publication being not less than five (5) days before the date fixed for the hearing; and

WHEREAS, pursuant to RCW 36.55.040, a hearing on the application for Franchise was held on the ____ day of _____, 20____; and

WHEREAS, the Board of County Councilors finds that it is in the public interest to grant the nonexclusive Franchise;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COUNCILORS OF CLARK COUNTY that a nonexclusive Franchise is hereby granted to Olympic Pipe Line (hereinafter referred to as the "Grantee"), to construct, operate and/or maintain a petroleum pipeline network upon, under, along and/or across certain County Rights-of-Way in Clark County, as described in the accompanying attachment to this Franchise hereby designated as "Exhibit A," under the following express terms and conditions:

Section 1. Definitions.

Terms as used throughout this Franchise and not defined below shall have the same meanings given in CCC 12.20A.030. The terms listed below, as used in this

Franchise, shall have the meanings given herein. When not inconsistent with the text, words used in the present tense include the future tense, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders. The words “shall”, “must”, and “will” are mandatory, and the word “may” is permissive. Words not otherwise defined shall be given their common and ordinary meaning.

1.1 “County” means Clark County of the State of Washington and all the unincorporated territory within its present and future boundaries and including any area over which the County exercises jurisdiction. It shall include Clark County and any of its departments.

1.2 “Emergency” means any condition constituting a clear and present danger to life, multiple properties or a service outage to multiple customers (“customer” meaning any person who lawfully receives services provided by the Grantee).

1.3 “Hazardous Substance” means any substance that has been determined by Federal or State law to present a threat to human health or the environment.

1.4 “Person” means an individual, entity, corporation, partnership, firm, association, joint venture or organization of any kind.

1.5 “CCC” means the Clark County Code, as amended or recodified.

1.6 “Wetland” means an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support and that, under normal circumstances, does support a prevalence of vegetation typically adapted for life in saturated soil conditions or any area which has been so designated under Federal, State or Local (including County) law.

Section 2. Franchise.

2.1. Grant of Franchise. Pursuant to Chapter 36.55, RCW, the County hereby grants to Grantee a nonexclusive Franchise to construct, operate and obligation to maintain a petroleum pipeline network and all its components upon, over, under, along and/or across certain County Rights-of-Way in Grantee’s Franchise area, and for that purpose to erect, install, construct, operate, repair, replace, maintain or retain in, upon, over, under, along or across any road or extensions thereof and additions thereto, such appurtenances as poles, wires, pipes, cables, conductors, ducts, conduits, vaults, pipes, valves, manholes, pedestals, appliances, attachments and other related property or equipment as may be necessary or appurtenant to the system (collectively, the “Facilities”).

The following conditions shall apply to the Franchise granted herein:

- a. The Franchise granted shall not convey any rights, title or interest in the Rights-of-Way but shall be deemed a Franchise only to use and

occupy the Rights-of-Way for the limited purposes and term stated herein.

- b. The Franchise granted shall not authorize or excuse Grantee from securing such further easements, leases, permits or other approvals as may be required to lawfully occupy and use the Rights-of-Way.
- c. The Franchise granted shall not be construed as any warranty of title.
- d. No act, event, occurrence or thing shall give Grantee any rights to occupy or use the Rights-of-Way permanently nor shall operate as an Estoppel against the County.
- e. Grantee shall comply with all applicable service quality and continuity requirements of State and Federal law, including regulatory requirements of the Washington Utilities and Transportation Commission, which are applicable to Grantee.
- f. The grant of this Franchise shall not be construed as having any effect on Grantee's status as a regulated utility.
- g. The Franchise granted includes the covenant by and obligation of Grantee to maintain, at its own expense, its facilities and infrastructure located within the right-of-way.

2.2 Term of Franchise. The term of the Franchise shall be twenty (20) years from the date of this Franchise, unless terminated sooner as set forth herein. The term of this franchise may be extended for additional terms upon the mutual agreement of the parties.

2.3 Franchise Area. The Franchise area shall be that area designated in Exhibit A, attached hereto and incorporated herein by reference.

2.4 Franchise Nonexclusive. The Franchise granted herein shall be nonexclusive. The County specifically reserves the right to grant, at any time, such rights, permits, licenses and/or franchises to other Persons to use the Rights-of-Way for similar or different purposes allowed hereunder as the County deems appropriate. Subject to this Franchise, Grantee shall not prevent or interfere with the County's construction, alteration, maintenance or use of any of said Rights-of-Way, or affect its jurisdiction over them or any part of them, the County having full power and authority to make all necessary changes, relocations, repairs, or maintenance of said Rights-of-Way as the County deems appropriate.

2.5 Scope. The Franchise is granted subject to the applicable provisions of the Clark County Code, including, but not limited to Chapter 12.20A, Accommodation of Utilities on County Rights-of-Way, as now written or as later amended, which shall apply in addition to the terms and conditions of this Franchise and Chapter 36.55, RCW. Provisions of Chapter 12.20A, CCC, shall control over inconsistent terms contained in this Franchise; provided, however, that Section 10 (Rights and Powers Reserved to the

County) and Section 11 (Release, Indemnification and Hold Harmless), shall control for this Franchise over inconsistent provisions of Chapter 12.20A, CCC, as that Chapter is currently adopted.

Grantee's Facilities shall be located and maintained within the Franchise Area so as not to interfere with the free and safe passage of pedestrian and/or vehicular traffic therein, or with the reasonable ingress or egress to properties abutting thereto. In the event that Grantor's Public Works Director determines in the reasonable exercise of its discretion, after providing written notice to Grantee and reasonable opportunity for Grantee to respond to the Public Works Director's concerns, that any one or more of Grantee's Facilities within the Franchise Area interfere with the free and safe passage of pedestrians or vehicle traffic therein, or with the reasonable ingress or egress to properties abutting thereto, then Grantee shall promptly take such action as is reasonably necessary to eliminate such interference. In the event such interference requires relocation of Grantee's Facilities within the Franchise Area, such relocation shall be accomplished in accordance with Section 4 (Relocation or Removal of Utility Facilities) below, at no cost to Grantor.

Section 3. Performance of Work.

3.1. Permit Required. Prior to commencing any work within any County Rights-of-Way, Grantee shall apply for and receive a utility permit from the County pursuant to Chapter 12.20A, CCC, to do such work. All such work shall be subject to the approval of and shall pass the inspection of the Engineer. Grantee shall remain solely responsible for compliance with all applicable laws, regulations, codes, and standard plans and specifications in the design and construction of its Facilities. Grantee shall pay all fees, costs, and expenses incurred by the County in the administration, examination, inspection, and approval of such work on account of granting the permit.

3.2. Breaking Surface or Soil. Any work which disturbs any soil, surface, facility or structure of any County Rights-of-Way shall be controlled by the applicable provisions of Clark County Code including but not limited to: Accommodation of Utilities in the County Right-of-way, Road Standards, Wetlands, and SEPA as applicable. Grantee, at its expense, shall restore such soil, surface, facility or structure to substantially the same condition as existed before the work involving such disturbance took place. All such restoration work shall be subject to the reasonable approval and inspection of the Engineer. Restoration work will be done, at the expense of Grantee, as the Engineer, in the exercise of its reasonable discretion, deems necessary to render the County Rights-of-Way safe where a condition, which is dangerous to life, health, or property, is created by Grantee, or where Grantee fails, upon demand by the Engineer, to restore such County Rights-of-Way.

3.3. Emergency Excavation. No work which disturbs any soil, surface, facility or structure of any County Rights-of-Way shall be done prior to the obtaining of an utility permit; provided, however, that in cases of emergency when an immediate excavation may be necessary for the protection of private or public property necessary excavation may be made upon the express condition that an application for an utility permit be made on or before noon of the next business day.

3.4 Conformity With Plans and Specifications Required. All lines, structures, equipment and facilities shall be laid in conformance with Grantee's plans and specifications, as approved by the Engineer in the exercise of its reasonable discretion, except where deviation is allowed by the Engineer upon application of Grantee. Grantee shall at all times employ ordinary care and shall install and maintain such lines, structures, equipment, pipes, valves and facilities using commonly accepted methods and devices for preventing failures and accidents, which are likely to cause damage, injuries or nuisances to the public. Upon request, Grantee shall provide as-built pipeline alignment sheets to the County depicting the location of its pipeline and facilities. County shall be indemnified in matters resulting from Grantee's failure to provide accurate alignment sheets, provided that County has complied with all requirements of the "one-call" locator service law (RCW 19.122).

3.5 Workmanlike Manner. All work shall be done in accordance with current County standards in a thorough, professional and workmanlike manner with minimum interference in public use of the County Rights-of-Way. Where any work includes opening of trenches and/or ditches and/or tunneling under County Rights-of-Way, Grantee shall take all precautions necessary to protect and guard the public from any condition caused by the work. All signs and barricades shall conform to the Manual on Uniform Traffic Control Devices. If any line, pole, or other facility of Grantee is so located that, in the opinion of the Engineer, any hazard to travel or the public is created, Grantee shall remove or relocate the line, pole, or other facility at the Grantee's own expense upon request of the Engineer. Regardless of approval or failure to object by Grantor, Grantee shall be liable for any damages, including costs incurred by the County in remedying any failure to perform by Grantee, resulting from its failure to safely perform the work or failure to provide adequate traffic controls and protection to members of the public and their property.

3.6 Monuments. Before any work which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys is performed under this Franchise, Grantee shall reference all such monuments and markers on a survey and comply with applicable state law. Reference points shall be so located that they will not be disturbed during Grantee's operation under this Franchise. The replacement of all such monuments and markers disturbed during construction shall be made as expeditiously as conditions permit and as directed by the Engineer. The cost of monuments or markers lost, destroyed, or disturbed, and the expense of replacement of approved monuments shall be borne by Grantee.

3.7 Wetlands. All work shall be performed by Grantee in a manner to avoid or minimize impacts on wetlands contained within the County Rights-of-Way. Wetland impacts may not occur where work related to installation, maintenance and/or repair of Grantee's facilities occurs in the wetland, or near enough to decrease the wetland's functional values. If Grantee is unable to perform its work without wetland impacts, it shall be responsible to take measures to mitigate those wetland impacts. Those mitigation measures within the County Rights-of-Way shall be in compliance with all applicable Federal, State, and County laws and regulations and/or County policies.

3.8 Applicable Laws. Grantee shall comply with all Federal, State and County laws, rules and regulations applicable to any work, facility or operation of Grantee upon County Rights-of-Way.

Section 4. Relocation or Removal of Utility Facilities.

4.1 Relocation or Removal. If at any time Clark County or any department thereof shall construct, widen or improve, or change the line, grade, or cross-section of any County road, right-of-way, or other County property(ies) subject to this Franchise, or construct storm and/or sanitary sewers, surface, pave, or perform any other work for the public benefit within the Franchise Area, the Grantee upon written notice from the County Engineer shall, at its sole expense and with due diligence, adjust its petroleum pipelines and other facilities so that the same shall not interfere with such County work and so that such lines and facilities shall conform to such new lines, grades, and cross-sections as may be established.

All relocation work shall comply with CCC 12.20A and CCC 40.350.010 et. seq., generally, and CCC 12.20A.060 - 080, specifically. The County Engineer will endeavor to provide as much reasonable advance notice as possible for the relocation or removal of Lessee's facilities but in no event shall such notice be less than one hundred and eighty (180) days from the removal/relocation of the facilities.

4.2 Cost of Relocation. Grantee, at its cost and expense, except as hereinafter provided, upon written notice from the County Engineer, shall, with due diligence, cut, raise, or lower or relocate any wire or cable, pipe and associated infrastructure maintained by it and move any conduit, pole, pipe and/or other infrastructure to permit any local improvement, the removal of any structure, building or buildings, or the laying down of any sidewalk, sewer, drainage, or water pipes, and upon its failure to comply with such notice, Clark County may cause the same to be done and the said Grantee, upon demand, shall pay to the County the cost and expense thereof; and whenever any of its wires, conduits, pipes or other infrastructure are cut, raised or lowered or relocated by the County or the said Grantee for any of the purposes set forth in this section, said Grantee shall replace said wires or conduits, pipes and/or infrastructure at its sole cost and expense; provided, however, that whenever any of said wires, conduits, pipes and/or other infrastructure have to be cut, raised, or relocated because of some public improvement matter by the County, or under its authority and direction (or for the removal of any buildings), said County shall not be liable in any manner whatsoever for any damage, loss, or detriment caused thereby to said Grantee or to any person, firm, or corporation to whom said Grantee may at the time be furnishing service; provided further, that the County shall, in case of the removal of buildings as herein before provided, fix the time when and the time within which such buildings shall cross any line of said Grantee and in case of a longer interruption of said line than the time so fixed, the person so moving such building and the owner thereof shall pay the damages resulting from such continued time of interruption.

4.3 Grantee shall not be required to remove an abandoned Facility or relocate its existing operational Facilities at its expense for the benefit of private developers or other Third Party projects. However, in the event the County reasonably determines and notifies the Grantee in writing that the primary purpose for requiring such

changes to or relocation of the Grantee's facilities by a Third Party is to cause or facilitate the construction of a Public Works Project consistent with the Grantor's Transportation Improvement Program or Transportation Facilities Program, then the Grantee shall change or otherwise relocate its Facilities at the Company's sole cost, expense, and risk; provided, however, that costs and expenses incurred by Grantee in reconnecting such relocated Facilities with Grantee's other Facilities shall be paid to Grantee by such Third Party.

4.4 Grantee may, after receipt of written notice requiring changes to or relocation of its Facilities under Section 4.1 or 4.3, submit to the County, within ninety (90) days, written alternatives to such relocation. The County shall evaluate such alternatives and advise the Company in writing if one or more of the alternatives are suitable to accommodate the Improvement Project(s) that would otherwise necessitate changes to or relocation of the Facilities. If so requested by the County, the Company shall submit additional information to assist the County in making such evaluation including field verification of the actual location(s) of the Grantee's underground Facilities within the Improvement Project area by excavating (i.e., pot holing), at no expense to the County. The County shall give each alternative proposed by the Grantee full and fair consideration, but the County retains its discretion to decide whether to utilize its original plan or an alternative proposed by the Grantee. In the event the County ultimately determines that none of the alternatives proposed by the Grantee is suitable to accommodate the Improvement Project, the County may direct the Grantee to proceed with the required relocation or modification, and the Grantee shall take all reasonable steps to complete the relocation or modification so as to meet the County's reasonable project timelines and objectives and avoid project delays. However, if the Grantee feels that the County did not give full and fair consideration to the Grantee's proposed alternatives, the Grantee may invoke the mediation process in Section 19.2 of this agreement, provided that the Grantee shall not suspend or discontinue relocation or modification work necessary to meet the County's reasonable project timelines and objectives and to avoid project delays.

4.5 Relocation Procedure. When relocation of Grantee's Facilities is required in accordance with the foregoing provisions of this Section 4, the following procedures shall be followed:

- a. Clark County shall make available to Grantee a list of anticipated projects for each new budget period as soon as is reasonably practicable. Annually, Clark County and Grantee shall meet to review both upcoming county road construction projects and major utility maintenance, repair or upgrade or replacements that require any road lane closure.
- b. Clark County shall provide to Grantee two sets of preliminary plans for individual projects as soon as such plans are developed to a state of reasonable certainty, and shall advise Grantee of the anticipated date of start of work on such projects.

- c. Grantee shall, when requested by Clark County in writing, locate their facilities in the field, show those locations on one set of the preliminary plans provided, and return that set to the Clark County Public Works and Utilities - Transportation Services within four (4) weeks of receiving the written request.
- d. Clark County shall provide to Grantee final plans for such projects as soon as such plans are available, and shall confirm or correct the anticipated date of start of work on such projects.
- e. Clark County will provide assistance to Grantee in determining how its Facilities will be relocated. Such assistance by Clark County may include copies of plans (as required above) and specifications for such County Projects, and information known to Clark County as to existing survey control available for location of such County Projects.

Such assistance shall not subject Clark County to any cost or liability for relocating the subject facilities.

- f. At the request of the Grantee, Clark County and Grantee shall meet to discuss how County Projects and utility relocations can be accomplished with the least impact to Grantee. Clark County agrees to cooperate with Grantee in good faith and act reasonably to reduce the impact upon Grantee of any County Projects or utility relocations, provided: Clark County shall be under no obligation to modify its project design to reduce impacts.
- g. Relocation of Grantee's facilities shall be completed in a timely manner defined as follows: Relocation of Grantee's facilities shall normally be accomplished in advance of County Projects. In the event relocation of Grantee's facilities is done concurrently with such Projects, Grantee must obtain prior approval from Clark County. Clark County will establish a written schedule for relocation that allows a reasonable time within which to complete all necessary relocation work. Compliance with such a written schedule shall be the Grantee's duty. In no event shall relocation of Grantee's facilities interfere with County Projects or delay County Contractors,.
- h. If Grantee does not relocate its facilities in a timely manner as required above, it shall be liable for any delay costs claimed against it. Grantee will defend and hold harmless the County against such claim.
- i. Grantee shall indemnify and hold harmless Clark County, its officers, officials, and employees, from damages which may arise from Grantee's failure to relocate its facilities in accordance with the dates for completion of relocation of facilities set forth above, or any other act or omission by Grantee, its contractor(s), agents, officers, or employees related to the provisions of this Franchise except if such damages and liability arise from the gross negligence or intentional

acts of Clark County, its employees, officers, or agents or as a result of events or circumstances Grantee proves were outside its reasonable control.

- j. The exercise of its rights, as set forth in Item (h), above, by Clark County in no way relieves Grantee of completing and/or finalizing the relocation of its facilities at no expense to Clark County if the relocation work done by Clark County is incomplete.
- k. In the event a lawsuit is brought by Clark County against Grantee in connection with this Section 4, the prevailing party in such an action shall be allowed its legal fees and costs.

Section 5. Interference with Other Utilities.

5.1 Interference Prohibited. All construction or installation of Grantee's petroleum pipeline or other facilities, service, repair, or relocation of the same, performed along, above or under any County Rights-of-Way shall be done in such a manner as not to interfere with the construction and maintenance of other utilities, public or private, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvement of such County Rights-of-Way or other County property. Grantee shall coordinate the location and relocation of its utilities with other Franchise Holders to maximize the orderly alignment of all utilities. Clark County agrees to use reasonable efforts to notify franchise holders of right-of-way work and require reasonable cooperation among franchise holders but in no event shall Clark County be liable for failure to coordinate.

Section 6. Hazardous Substances and Conditions.

6.1. Hazardous Substances. Grantee agrees that it will not cause nor permit in any manner, including by accidental or non-negligent acts or omissions, release of any hazardous substance, waste, or pollutant or contaminant into or upon any County Rights-of-Way contrary to any State or Federal law with respect thereto. Grantee agrees to comply with applicable reporting requirements established by relevant state or federal regulatory authorities in the event of a leak, spill, rupture or other emergency involving a release from Company's pipeline within the Franchise Area. Grantee shall be completely liable for any and all consequences of such release, including liability under any Federal or State law or at common law. Grantee shall indemnify and hold the County harmless from any and all liability resulting from such a release and shall have full responsibility for completely cleaning up, as required by any government agency, any and all contamination from such a release. The County shall be entitled to full contribution for all costs incurred by the County as the result of any release of such materials by Grantee. In the event that Grantee fails to promptly and properly respond to any negligent release of a hazardous substance by Grantee, the County may enter the franchised premises and take reasonable steps to cure the consequences of such release, all at the expense of the Grantee.

6.2 Hazardous Conditions. Grantee agrees to comply with applicable criteria relating to pipeline integrity management developed by relevant state or federal regulatory authorities. Whenever the Engineer determines that any conditions or operations caused by any activity covered by this Franchise have become a hazard to life and limb, endanger property or public resources, or adversely affect the safety, use, or stability of County Rights-of-Way, the Engineer is authorized to notify Grantee in writing of the property upon which the condition or operation is located, or other Person or agent in control of said property. Upon receipt of any such notice, Grantee shall take all reasonable and necessary steps to ensure that it remains in compliance with all standards in effect at the time any work is performed. Should the Engineer have reasonable cause to believe that the situation is so adverse as to preclude written notice; the Engineer may take the measures necessary to eliminate the hazardous situation, provided that the Engineer shall first make a reasonable effort to notify Grantee before acting. If costs are incurred and the hazardous situation has been created in conjunction with or as a result of an operation for which a bond has been posted, the Engineer shall have the authority to forfeit the bond or other security to recover costs incurred if Grantee fails to pay such costs.

6.3 Preexisting Conditions. Grantee is not liable for any hazardous substances existing in a right-of-way prior to its right-of-way work and the County shall hold Grantee harmless for claims relating to the existence of pre-existing hazardous substances. To the extent Grantee becomes aware of hazardous substances in the right-of-way; Grantee shall immediately discontinue work and notify County.

Section 7. Aesthetic and Scenic Considerations.

7.1 Design and Construction. In addition to the requirements of Sections CCC 12.20A.060 and other provisions of the Clark County Code, Grantee shall design and construct its Facilities' installations in a manner that mitigates the adverse effect on existing roadside manmade or natural amenities.

7.2 Refuse and Debris. Grantee shall promptly remove and properly dispose of refuse and debris resulting from the installation or maintenance of its Facilities once the work is completed.

Section 8. Grading or Excavating by County.

8.1 Grading and Excavating. Grantee and the County each shall continuously be a member of the State of Washington "one-call" locator service (RCW 19.122), or approved equivalent, and shall comply with all such applicable rules and regulations. This Franchise shall not preclude the County, its agents, employees, contractors or other franchise holders from grading, excavating, or doing other road work contiguous to Grantee's petroleum pipelines and other facilities, provided that they comply with all requirements of the "one-call" locator service law (RCW 19.122).

Section 9. Vacation.

9.1 Termination of Franchise. If the County vacates all or portion of any County Rights-of-Way which is subject to rights granted by this Franchise, and said

vacation is for the purpose of acquiring the fee or other property interest in said Rights-of-Way for use by the County in either its proprietary or governmental capacity, the Board may, by giving forty-five (45) days written notice to Grantee, terminate this Franchise with reference to any County Rights-of-Way so vacated, and the County shall not be liable for any damages or loss to the Grantee by reason of such termination.

9.2. Easement. Whenever a County right-of-way or any portion thereof is vacated upon a finding that it is not useful and the public will be benefited by the vacation, the County may retain an easement in respect to the vacated land for the construction, repair and maintenance of public utilities and services which at the time of the vacation are specifically authorized under this Franchise or physically located on a portion of the land being vacated, but only in accordance with the provisions of RCW 36.87.140. The County shall not be liable for any damages or loss to the Grantee by reason of any such vacation. The Grantee is obligated to notify the County if Grantee wishes the County to retain an easement.

Section 10. Rights and Powers Reserved to the County.

10.1 Eminent Domain. This Franchise is subject to the power of eminent domain and the rights of the Board to repeal, amend, or modify this Franchise. In the event of an exercise of eminent domain by the County, the Parties agree that this Franchise itself shall be given a zero (0) value.

10.2 Police Power. In granting this Franchise, the County does not waive any of its police powers to regulate the use of County Rights-of-Way in the interest of public health, safety, and general welfare.

10.3 Compensation. The Franchise granted hereunder is subject to the County's right, which is expressly reserved, to annually fix a fair and reasonable fee to reimburse the County's costs in connection with administration and oversight of this Franchise, and in connection with reviewing, inspecting, monitoring and supervising the use and occupancy of the Rights-of-Way. Nothing herein shall prohibit the County and Grantee from agreeing upon the compensation to be paid.

Grantor intends to eliminate permit fees and substitute billing based on the actual cost of processing, issuance and inspection/compliance.

10.4 Nonwaiver of Rights. The County and Grantee agree that the excuse or forgiveness of performance or waiver of any provision of this Franchise does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Franchise at a subsequent time.

Section 11. Release, Indemnification and Hold Harmless.

11.1 In addition to and distinct from the insurance requirements of this Franchise, Grantee releases and shall defend, indemnify and hold harmless County, its elected and appointed officers, officials, employees, agents, and representatives (collectively referred to as the "Indemnitees") from any and all claims, losses, costs, liabilities, damages and expenses, including, but not limited to, those of Grantee's

lessees, (except those damages caused by the gross negligence or intentional acts of the Indemnitees), and also including, but not limited to:

- a. arising out of or alleged to arise out of any claim for damages for Grantee's violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any Person;
- b. arising out of or in connection with Grantee's acts or omissions during the design or installation, or maintenance of any of Grantee's petroleum pipelines or other Facilities, or the performance of any work within the County right-of-way;
- c. arising out of or in connection with the acts or omissions of Grantee or any of its suppliers or contractors of any tier, or anyone acting on Grantee's behalf in connection with said location, installation, performance of work, maintenance, or operation of Pipeline Facilities or Grantee's system; or
- d. arising out of or in connection with fixed objects designed or installed by Grantee.

11.2 In the event an action or suit is brought against the Indemnitees for damages arising out of or by reason of the above-mentioned causes, Grantee will, upon notice to it of the commencement of such action or suit, defend the same at its sole cost and expense, and in case judgment shall be rendered against the Indemnitees, Grantee will fully satisfy said judgment (with interest, if applicable) within ninety (90) days after action or suit shall have finally been determined, if determined adversely to the Indemnitees.

11.3 Such indemnity, protection and hold harmless shall include any demand, claim, suit or judgment for damages to property or injury to or death of Persons, including officers, agents, and employees of any Person including payment made under or in connection with any Worker's Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused or contributed to directly or indirectly by the erection, maintenance, presence, operation, use or removal of Grantee's Facilities or installations of Facilities including any claims or demands of customers of Grantee with respect thereto. It is further specifically understood that the indemnification provision provided herein constitutes Grantee's waiver of immunity under Title 51, RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

11.4 Indemnitees shall not be liable to Grantee or to Grantee's customers, and Grantee hereby indemnifies, protects and saves harmless the Indemnitees against any and all such claims or demands, suit or judgment for loss, liability, damages and expense by Grantee's customers, or for any interruption to the service of Grantee, or for interference with the operation of the Pipeline Facilities except to the extent that such claims or demands, suit or judgment for loss, liability, damages and expense are caused by the gross negligence or intentional acts of the Indemnitees.

11.5 Inspection or acceptance by the County of any work performed by Grantee shall not be grounds for avoidance by Grantee of any of its obligations under this Section. Said indemnification and hold harmless obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised in good faith prior to the culmination of any litigation or the institution of any litigation, to the extent that such compromise is determined to be reasonable under the circumstances.

11.6 In the event of liability for damages arising out of bodily injury to Persons or damages to property caused by or resulting from the concurrent negligence of Grantee and the County, Grantee shall not be liable for damages caused by Clark County's grossly negligent acts or omissions or intentional misconduct. Notwithstanding the provisions above, Grantee shall be responsible for all damages and injuries related to its decision to locate and install any above ground equipment and improvements in the franchise area, except to the extent caused by County's gross negligence or intentional misconduct

11.7 To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless provisions shall apply to and be for the benefit of the Indemnitees. In the event the County incurs costs or expenses to enforce the hold harmless and indemnification provision of this Franchise, such costs shall be recoverable in full from the Grantee.

11.8 The provisions of *Section 11* shall survive the expiration or termination of this Franchise. Further, all provisions of *Section 11* shall apply to the successors, assigns and lessees of the Grantee.

Section 12. Insurance.

12.1 Grantee Insurance. As a condition of this Franchise, Grantee shall secure and maintain the following liability insurance policies for the duration of this Franchise:

- a. Commercial General Liability (CGL) insurance, and if necessary, Following Form Excess insurance, which will cover bodily injury, property damage, and any other exposure which can be reasonably identified as potentially arising from the Grantees activities within the Rights-of-Way or adjacent to due to Grantee's Rights-of-Way activity. The limit of liability shall not be less than Ten Million Dollars (\$10,000,000) for each occurrence. It may be a combination of an underlying policy with following form excess coverage. Occurrence or claims-made policies are acceptable. The County, its elected and appointed officers, officials, employees, agents, and representatives, including volunteers, shall be named as additional insureds with respect to activities occurring within its Rights-of-Way. Coverage shall be comprehensive with respect to the Grantee's activities within the Rights-of Way and shall include at least completed operations, collapse, explosions and underground hazards.

- b. Business Automobile Liability insurance for owned, non-owned and hired vehicles with limits of not less than One Million Dollars

(\$1,000,000) minimum per accident, Two Million Dollars (\$2,000,000) aggregate, annually renewing occurrence based coverage.
- c. Workers' Compensation insurance as required by Title 51, RCW, and Employers Liability Coverage with a limit of not less than One Million Dollars (\$1,000,000) per occurrence. Grantee waives their right of subrogation against the Grantor.
- d. The policy coverage shall include Clark County as an additional insured, shall be primary and non-contributory with other insurance maintained by Clark County and shall contain a waiver of subrogation.
- e. The insurance policies required by this section shall be maintained at all times by the Grantee. By this agreement, Grantee will provide 45 days advance notice of any expiring policies. Grantee will also provide advance notice as soon as practicable prior to cancellation of any policies. The Grantee will be obligated to replace or renew the canceled or expiring policy and show proof in the form of a certificate of insurance.
- f. The Grantee shall furnish the Grantor, with properly executed certificates of insurance and signed policy endorsement(s) which shall clearly show evidence of all coverages, endorsements, and exclusions, required in this Section and these coverage(s) shall be primary, for defense and indemnity, to any other collectible insurance from the Grantor.
- g. The insurance limits mandated for any insurance coverage required by this Franchise are not intended to be an indication of limits of exposure nor are they limitations on liability or indemnification.
- h. For any claims, suits or charges against the County, Grantor, that may arise out of the Rights-of-Way activities, the Grantee shall accept tender of the same on behalf of the Grantor to defend and indemnify if necessary.
- i. It is understood and agreed that Grantee may satisfy any of the insurance limits identified in this Section 12 through a combination of primary and excess policies, at Grantee's option.

Section 13. Limitation of Liability.

13.1 Limitation of 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, its elected and appointed officers, officials, agents, employees, and representatives for any injury or damage from the failure of Grantee to comply with the provisions of this

Franchise or any applicable federal, state or local law; by reason of any plan, schedule or specification review, inspection, notice and order, permission, or other approval or consent by the County; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the County; or for the accuracy of plans submitted to the County.

Section 14. Termination of Franchise.

14.1 Default by Grantee. If Grantee defaults on any term or condition of this Franchise, the County may terminate this Franchise as provided in section 14.2 below. Upon termination of the Franchise, all rights of Grantee hereunder shall cease.

14.2 Procedure. If the Grantee does not comply with any term or condition of this Franchise for a period of thirty (30) days following written demand by the Engineer to so comply, the Engineer may request the Board to terminate this Franchise following a duly advertised public hearing. The Board shall give the Grantee at least ten (10) days written notice of the Board's intention to terminate the Franchise on a designated Board hearing day. At such hearing, the Board shall consider the request of the Engineer and hear any person desiring to be heard on the Franchise termination. If the Board determines that Grantee's default justifies action, the Board may pass a resolution declaring that the Franchise be modified, revoked or terminated.

14.3 Termination of Franchise. At the expiration of the term of this Franchise or upon its revocation or termination, the County shall have the right to require Grantee to remove its petroleum pipeline network from or upon, under, along, and/or across certain County Rights-of-Way in Clark County within one (1) year. The Grantee shall be liable for any costs incurred in removing any of its Facilities or improvements and restoring any County Rights-of-Way. If Grantee fails to remove its Facilities in the time frame required by the County, the County may perform the work and collect the cost thereof from the Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of the Grantee effective upon filing of the lien with the County Auditor.

14.4 Force Majeure. Grantee shall not be deemed in default of any provisions of this Franchise or subjected to any penalty hereunder, where performance or compliance is prevented by acts of God, civil emergencies, or natural disasters. Notwithstanding the above, Grantee shall still be obligated to repair and remediate, in a timely manner, any damage to the right-of-way and other infrastructure caused by its pipelines and Other facilities regardless of whether the damage resulted from a Force Majeure event.

Determination of reasonable responsibility shall be made by County Engineer subject to challenge. Determination made by County Engineer shall be presumed to be correct. Grantee may file a challenge, subject to De Novo review, with the Superior Court of Clark County.

14.5 Termination by Grantee. Grantee may, upon ninety (90) days' notice to County, terminate this Franchise if the county Rights-of-way or the petroleum pipelines are, or become unacceptable under Grantee's design or engineering specifications for its

petroleum pipelines or the system to which the petroleum pipelines belong. Upon termination, Grantee's shall comply with the obligations in section 14.3.

14.6 Default by County. Grantee shall have the right to terminate this franchise or seek equitable relief if the County (i) fails to perform any covenant for a period of thirty (30) days after receipt of written notice thereof to cure or (ii) commits a material breach of this franchise and fails to cure the breach within 30 days.

Section 15. Abandonment or Removal of Facilities

15.1 In the event of abandonment or Grantee's permanent cessation of use of its facilities, or any portion thereof within the Franchise Area, Grantee shall, within one hundred eighty (180) days after the abandonment or permanent cessation of use, remove the facilities at Grantee's sole cost and expense.

15.2 However, with the express written consent of the County, said consent not to be unreasonably withheld, Grantee may secure the facilities in such a manner as to cause it to be as safe as is reasonably possible by removing all petroleum product(s), purging vapors, displacing the contents of the line with an appropriate inert material, and sealing the pipe ends with a suitable end closure, all in compliance with valid and applicable regulations, and abandon them in place, provided that portions of the facilities which are above ground shall be removed at Grantee's sole cost and expense. Any abandonment in place will be compliant with regulations govern such abandonment.

15.3 In the event of the removal of all or a portion of the facilities, Grantee shall restore the Franchise Area as nearly as possible to a condition that existed prior to installation of Grantee's Facilities. Such property restoration work shall be done at Grantee's sole cost and expense and to the County's reasonable satisfaction.

Section 16. Transfers or Assignment.

16.1 Board Consent. Neither this Franchise nor any interest therein shall be sold, transferred or assigned without the prior written approval of the Board, which shall not unreasonably withhold approval; provided, that Grantee may assign this franchise to a parent, affiliate, subsidiary of all or substantially all of Grantee's assets upon thirty (30) days prior written notice pursuant to Section 20.2 below. Neither this Section nor other Sections of this Franchise shall preclude the mortgaging, hypothecating, or the assignment of certain rights in the system, or the pledge of stock by Grantee for the purpose of financing. In no event shall a transfer, assignment, or disposal of ownership or control be effective without the buyer, transferee, or assignee becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the transferor to the County.

16.2 Binding on Successors. All provisions, conditions, regulations, obligations, liabilities of the Grantee, and requirements herein contained shall be binding upon the successors and assigns of Grantee. Upon approval by the County of the Assignment or Novation, all privileges of the Grantee shall inure to its successors and

assigns equally as if they were specifically mentioned wherever Grantee is mentioned.

Section 17. Incorporation/Annexation.

17.1 City or Town. If any Rights-of-Way covered by this Franchise are incorporated into the limits of any city or town, this Franchise shall terminate as to such Rights-of-Way within the corporate limits of such city or town; but this Franchise shall continue as to County Rights-of-Way not incorporated.

17.2 New County. If, pursuant to Article XI, §3, of the Washington Constitution, territory is stricken or taken from the County and a new county is established from the territory taken from the County, this Franchise shall terminate as to any Rights-of-Way within the territory so taken to establish the new county; but this Franchise shall continue as to County Rights-of-Way not taken.

Section 18. Effective Date.

18.1 Effective Date. Within thirty (30) days after adoption of this Franchise by the Board, this Franchise may be accepted by Grantee by executing this Franchise in duplicate, filing it with the Clerk of the Board, and paying publication costs provided for in *Section 20.1* of this Franchise. Further, the executed Franchise shall be returned accompanied by the required evidence of insurance as provided in *Section 12* of this Franchise. In the event Grantee fails to accept this Franchise or fails to comply with all conditions of acceptance as set forth herein within thirty (30) days after adoption by the Board, this Franchise shall be null and void.

Section 19. Governing Law and Venue.

19.1 Governing Law. This Franchise has been and shall be construed as having been made and executed within the State of Washington, and the parties stipulate that this Franchise shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

19.2 Mediation. Before bringing any action at law, suit in equity, or judicial proceeding the Parties shall attempt to resolve a dispute arising from this Franchise by engaging in mediation in accordance to a process and before a mediator agreed upon by the Parties. Unless otherwise agreed upon between the Parties or determined herein, the cost of that process shall be shared equally by the Parties.

19.3 Venue. Any action at law, suit in equity, or judicial proceeding arising out of this Franchise shall be instituted and maintained only in any of the courts of competent jurisdiction in Clark County, Washington.

Section 20. Publication and Notices.

20.1 Cost. Grantee shall reimburse Grantor for all costs of publication associated with this Franchise as such publication are required by law.

20.2 Notices. Except as provided herein, any notices required or permitted to be given under this Franchise shall be deemed properly served when deposited with the United States Postal Service, postage paid, addressed to the party to receive same.

Notice to the County shall be sent to:

Clark County Department of Public Works
1300 Franklin, PO Box 9810
Vancouver, WA 98666-9810

Notice to Grantee shall be sent to:

President
Olympic Pipe Line Company
600 SW 39th St, Suite 275
Renton, WA 98057
Phone: 425-227-5213

Grantee shall promptly notify the County of any change in notice address.

Section 21. Severability.

21.1 If a court of competent jurisdiction holds any part, term or provision of this Franchise to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Franchise did not contain the particular provision held to be invalid. The invalidity of any portion of this Franchise shall not abate, reduce or otherwise affect any consideration or other obligation required of Grantee or any grant of right by the County.

21.2 If it should appear that any provision of this Franchise is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

21.3 Should the County determine that the severed portions substantially alter the Franchise so that the original intent and purpose of this Franchise no longer exists, the County may, in their sole discretion, terminate this Franchise without cost or penalty, upon one year notice. The County and Grantee shall fulfill their respective duties acting in good faith to comply with the terms of the original agreement during the interim period to the extent consistent with the court's judgment.

Section 22. Entire Agreement.

22.1 Entire Agreement. The parties agree that this Franchise is the complete expression of the terms and conditions hereunder, and supersedes all prior agreements or proposals except as specifically set forth herein, and cannot be changed orally but only by an instrument in writing executed by the parties. Any oral or written

representations or understandings not incorporated herein are specifically excluded. This Franchise is executed in duplicate originals and executed by the persons signing below who warrant that they have the authority to execute this Franchise.

ADOPTED this 28 day of June, 2016.

Attest:

By: *Jane Redline*
Clerk to the Board

BOARD OF COUNTY COUNCIL
Clark County, Washington

By: *Marc Boldt*
Marc Boldt, Chair

APPROVED AS TO FORM ONLY:
Anthony Golik, Prosecuting Attorney

By: *Anthony Golik*
Deputy Prosecuting Attorney

By: _____
Jeanne E. Stewart, Councilor

By: _____
Julie Olson, Councilor

By: _____
Tom Mielke, Councilor

By: _____
David Madore, Councilor

ACCEPTANCE:

Marc Horn

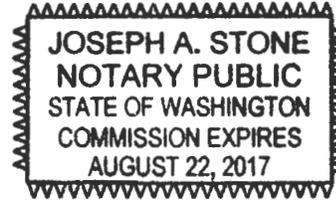
Name: MARC HORN

Title: President

State of Washington)
: ss.
County of Clark)

The foregoing instrument was acknowledged before this 23rd day of JUNE, 2016, by MARC HORN, President (name of officer or agent, title of officer or agent) of Olympic Pipe Line Company a (state or place of incorporation, corporation), on behalf of the corporation.
Delaware

Joseph A. Stone
(Notary's Official Signature)



August 22, 2017
(Commission Expiration)

NOTARY SEAL

NOTICE OF PUBLIC HEARING

The Board of County Councilors will hold a public hearing on **Tuesday, the 28th day of June, 2016 at 10:00 a.m.** in the Councilors' Hearing Room, 6th Floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington to consider:

The application of Olympic Pipeline Company for a nonexclusive franchise to construct, operate and/or maintain a petroleum pipeline network within Clark County, Washington, upon, over, under, along, and/or across certain county rights-of-way.

More information concerning this matter may be obtained by contacting Heath Henderson, Public Works Director, 1300 Franklin Street, Vancouver, Washington, telephone (360) 397-6118.

Any person wishing to give testimony in this matter should appear at the time, date, and place above stated.

BOARD OF COUNTY COUNCILORS

Rebecca Tilton/s/
Clerk of the Board

PLEASE PUBLISH: June 8, 2016
June 15, 2016



For other formats contact the Clark County ADA Program:
Voice (360) 397-2322; **Relay** 711 or (800) 833-6388
Fax (360) 397-6165; **Email** ADA@clark.wa.gov