ORDINANCE NO. 3998

AN ORDINANCE of the City Council of the City of Kent, Washington, granting Olympic Pipe Line Company, an interstate pipeline corporation incorporated in the State of Delaware, a nonexclusive franchise to construct, operate, maintain, remove, replace, and repair existing pipeline facilities, together with equipment and appurtenances thereto, for the transportation of petroleum products within and through the franchise area of the City of Kent.

RECITALS

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

B. RCW 35A.47.040 authorizes the City to grant nonexclusive franchises for the use of public streets and other public ways under conditions set by ordinance; and

C. The City Council finds that it is in the public interest to specify the rights and duties of Company through a franchise.
NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. –Definitions. For the purposes of this Franchise and all exhibits attached hereto, the following terms, phrases, words and their derivations will have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined will be given their common and ordinary meaning.

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

1.2. Effective Date means the date designated herein, after passage, approval and legal publication of this Ordinance and acceptance by Company, upon which the rights, duties and obligations will come in effect and the date from which the time requirement for any notice, extension or renewal will be measured.

1.3. Emergency means an unforeseen event or set of circumstances which demands immediate action to preserve or protect public health, life or property.
1.4. **Emergency Management Laws** include any applicable federal, state or local rules and regulations relating to emergency mitigation, preparedness, response, and recovery which may include Homeland Security Presidential Directive (HSPD) – 5 establishing the National Incident Management System ("NIMS"), the Revised Code of Washington ("RCW") Chapter 38.52, and the Washington Administrative Code ("WAC") Chapter 118-30. Also included are WAC Chapter 118-40 Hazardous Chemical Emergency Response Planning and Community Right to Know Reporting and RCW 70.136 Hazardous Materials Incidents.

1.5. **Environmental Laws** include the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D RCW all as amended from time to time; and any other valid and applicable federal, state, or local statute, code, or ordinance or valid and applicable federal or state administrative rule, regulation, ordinance, order, decree, or other valid and applicable governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment.

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

1.7. **Franchise** means his Franchise and any amendments, exhibits, or appendices to this Franchise.

1.8. **Franchise Area** includes the following:

<table>
<thead>
<tr>
<th>STREET</th>
<th>WIDTH</th>
<th>APPROX. DISTANCE/LOCATION</th>
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<tbody>
<tr>
<td>Across S. 228th St.</td>
<td>60 feet</td>
<td>1750' E/CL 68th Ave. S.</td>
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<tr>
<td>Across S. 212th St.</td>
<td>60 feet</td>
<td>1750' E/CL 68th Ave. S.</td>
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<tr>
<td>Across S. Smith St.</td>
<td>60 feet</td>
<td>1775' E/CL 68th Ave. S.</td>
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<td>Across W. Meeker St.</td>
<td>60 feet</td>
<td>1775' E/CL 68th Ave. S.</td>
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<td>Across W. Willis St.</td>
<td>60 feet</td>
<td>750' W/CL 5th Ave.</td>
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<tr>
<td>Across S. 259th St.</td>
<td>60 feet</td>
<td>1275' W/CL 3rd Ave.</td>
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<tr>
<td>Across S. 262nd St.</td>
<td>60 feet</td>
<td>2150' E/CL West Valley Hwy.</td>
</tr>
<tr>
<td>Across W. James St.</td>
<td>66 feet</td>
<td>1775' E/WL Section 13, T 22 N, R 4 E, W.M.</td>
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and any Right of Way, Public Way, Other Way or designated Public Property within the jurisdictional boundaries of the City where the Facilities may be located, including any areas annexed by the City (but excluding properties annexed upon which the Company holds a private easement, license, or other property interest for its Facilities) during the term of this Franchise, in which case the annexed area will become subject to the terms of this Franchise.

Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. § 136 et seq.; the Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D, RCW; all as amended from time to time; and any other federal, state, or local statute, code or ordinance or lawful rule, regulation, order, decree, or other governmental authority as now or at any time hereafter in effect. The term will specifically include Petroleum and Petroleum Products. The term will also be interpreted to include any substance which, after release into the environment, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities.

1.10. Improve or Improvements means modifications to, but not a change in the basic nature, size or location of, the existing pipeline(s) or Facilities, as required or necessary for safe operation.

1.11. Maintenance or Maintain means examining, testing, inspecting, repairing, and replacing the existing pipeline(s) or Facilities or any part thereof as required or necessary for safe operation.

1.12. Petroleum or Petroleum Products includes, but are not limited to motor gasoline, diesel fuel, and aviation jet fuel, and will exclude natural gas.

1.13. Pipeline Corridor means the pipeline pathway through the jurisdictional boundaries of the City in which the pipeline(s) or Facilities of the Company are located, including any Rights-of-Way, Public Property, Public Ways, Other Ways, or easements over and through private property.
1.14. **Pipeline Operation and Safety Laws** include any valid and applicable federal, state or local rules and regulations relating to the operations, management, maintenance, damage prevention, public education, emergency planning and response or other activities relating to hazardous liquid pipelines, which includes the Federal Pipeline Safety Act, 49 U.S.C. 60101 *et seq.* and the Pipeline Safety Code of Federal Regulations, 40 CFR Parts 186-199, all as amended from time to time and any other valid and applicable federal, state or local law.

1.15. **Public Improvement** means any installation, construction, modification, relocation, maintenance, testing, or repair within the Franchise Area done by the City or on its behalf.

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

1.17. **Public Properties** means the present or future property owned or leased by the City within the present or future corporate limits, or jurisdictional boundaries of the City.

1.18. **Operate or Operations** means the use of the Company's pipeline(s) or Facilities for the transportation, distribution and handling of Petroleum or Petroleum Products within and through the Franchise Area.

1.19. **Other Ways** means the highways, streets, alleys, utility easements or other Rights-of-Way within the City as encompassed by RCW 47.24.020 and 47.52.090.
1.20. **Rights-of-Way** means the surface and the space above and below and appurtenant to streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, and similar Public Property, Public Ways or Other Ways and areas located within the Franchise Area.

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

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

SECTION 3. - Rights Conveyed.

3.1. Pursuant to the laws of the State of Washington including, but not limited to, RCW 35A.47.040, the City hereby grants, under the terms and conditions contained herein, to Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, and which is authorized to transact business within the State of Washington, the right, privilege, authority and Franchise to Construct, Operate, Maintain and Improve its existing Facilities, together with all equipment and appurtenances as may be necessary thereto, for the transportation and handling of any Petroleum or Petroleum Products, within the existing Pipeline Corridor passing through the Franchise Area.

3.2. This Franchise is only intended to convey a limited right and interest as to that Public Rights-of-Way, Public Property, Public Ways and Other Ways in which the City has an actual interest. It is not a warranty of title or interest in the City's Rights-of-Way, Public Property, Public Ways and Other Ways. None of the rights granted herein will affect the City's jurisdiction over its property, streets or rights of way.

3.3. The limited rights and privileges granted under this Franchise will not convey any right to Company to install any new pipeline(s) or Facilities that change the basic nature, size or location of the Facilities without an amendment to this Franchise Ordinance.

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

SECTION 4. - Term.

4.1. Each of the provisions of this Franchise will become effective upon Company's acceptance of the terms and conditions of this Franchise and will remain in effect for ten (10) years thereafter. Within one year of the end of the ten (10)-year term, either party may request an extension for a period of one (1) additional year.

4.2. If the parties fail to formally renew the Franchise prior to the expiration of its term, the City may extend this Franchise on a year-to-year basis (or such term as the parties may mutually agree) until the City may grant a renewed Franchise. Extensions will not be automatic, but must be granted in writing by the City.
SECTION 5. - Assignment and Transfer of Franchise.

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

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

SECTION 6. - Compliance with Laws and Standards. Company will, in carrying out any activities under the privileges granted herein, comply with all valid and applicable local, state and federal laws, as amended from time to time; including, but not limited to, Pipeline Operation and Safety Laws, Emergency Management, Environmental and Hazardous Substance Laws, and any laws, regulations or orders that may be subsequently enacted by any governmental entity with jurisdiction over Company or the Facilities.

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

7.1. This Section 7 will apply to all Construction, Improvements or Maintenance done by Company or its agents within the City.
7.2. Except in the event of an Emergency, Company will first obtain applicable permits from the City to perform Construction, Improvements or Maintenance work on Company's Facilities within the City. The permit application will contain detailed plans and specifications ("Plans") showing the position, depth and location of all such Facilities in relation to City Rights-of-Ways, Public Property, Public Ways, and Other Ways, or other City property, and specifying the class and type of material and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures and facilities, erection of permanent structures and facilities, traffic control, traffic turnouts and road obstructions, and all other necessary information. The Company will file as-built plans and maps showing the final location of the Facilities. Such work will only commence upon the issuance of applicable permits, and payment of the associated fees, which permits will not be unreasonably withheld or delayed after submission of a complete application. Once a permit is issued, except in the event of an Emergency, the Company will provide the City with at least seventy two (72) hours written notice prior to any construction or maintenance on the Company Facilities within the Franchise Area. Company will restore the Franchise Area as nearly as possible to the condition that existed immediately prior to the Company's Construction, Improvement or Maintenance work.

7.3. In the event of an Emergency requiring immediate action by Company for the protection of the pipeline(s) or Facilities, or preservation or protection of public property, the environment or the property, life, health or safety of any individual, the Company may take action immediately to correct the dangerous condition pursuant to Section 11 without first obtaining any required permit so long as: (1) the Company notifies the City Fire Department of the Emergency, including the nature, location and extent of the Emergency through the City's designated dispatch system (i.e. 911), including any additional information required

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by the City’s or Company’s emergency response plans or Emergency
Management Laws and (2) the Company informs the City’s designated
permitting authority of the nature, location, and extent of the Emergency,
and the work to be performed, prior to commencing the work if such
notification is practical, or where such prior notification is not practical, the
next business day; and (3) such permit is obtained by the Company as
soon as practicable.

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

7.5. All work done hereunder by Company or upon Company’s direction
or on Company’s behalf will be undertaken and completed in a
workmanlike manner and in accordance with the Plans and approved
permit. The Company’s activities will be conducted in such a manner as to
avoid damage or interference with other utilities, drains or other
structures, and not unreasonably interfere with public travel, park uses or
other municipal uses, and the free use of adjoining property and so as to
provide safety for persons and property. The Company’s Construction or
Maintenance will be in compliance with all valid and applicable laws and
regulations and specifications of governmental agencies with jurisdiction.
7.6. If the Company, its agents or employees or the Facilities of the Company cause any damage to the Franchise Area during the work described in this Section, the Company agrees to promptly repair the damage at its own cost and expense. The Company will, upon discovery of any such damage, immediately notify the City. The City will inspect the damage, and set a time limit for the Company to complete the repair. If the City discovers any such damage caused by the Company or its Facilities, the City will give the Company notice of the damage and set a time limit for the Company to complete the repair. In the event the Company does not make the repair as required in this section, the City may repair the damage at the Company’s sole expense and invoice the Company for all reasonable costs incurred by the City.

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

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

7.9. If the Company applies for a permit within the Franchise area, the Company will not open cut the Right-of-Way affected by the permit application if the City has completed an asphalt overlay on such Right-of-Way during a five (5)-year period immediately prior to the date of a permit application or such Right-of-Way has a City pavement rating of 70 or higher, unless required by an Emergency or federal or state rule or
order or otherwise approved by the City. If any such Right-of-Way is open

cut, whether in an Emergency or otherwise, the Company will install or

cause to install a new asphalt overlay in accordance with City Construction

Standards or other specifications for a minimum of one hundred fifty (150)

feet in length in both directions from the open cut at Company's sole

expense. The Company may request that the City install the new asphalt

overlay and invoice the Company for all reasonable costs incurred by the

City, but the City is not required to do so. Company or its agent will

obtain any necessary permits pursuant to Section 7 for any asphalt

overlays required by this Section.

SECTION 8. - Abandonment or Removal of Facilities.

8.1. The Company will notify the City of any abandoned Facilities or

permanent cessation of use of any of its Facilities within sixty (60) days

after such abandonment or cessation of use.

8.2. In the event of abandonment or Company's permanent cessation of

use of its Facilities, or any portion thereof within the Franchise Area, the

Company will, within one hundred and eighty days (180) after the

abandonment or permanent cessation of use, at Company's sole cost and

expense, either remove the Facilities or alternatively, with the consent of

the City, which consent will not be unreasonably withheld, the Company

may secure the Facilities in such a manner as to cause them to be as safe

as is reasonably possible, by removing all Petroleum Products, purging

vapors, displacing the contents of the line with an appropriate inert

material and sealing the pipe ends with a suitable end closure, all in

compliance with valid and applicable regulations, and abandon them in

place provided that portions of the Facilities which are above ground will

be removed. Company will obtain any necessary permits pursuant to

Section 7 for any securement or removal of Facilities under this Section.
8.3. In the event of the removal or securement of all or a portion of the Facilities, Company will restore the Franchise Area as nearly as possible to a condition that existed prior to removal or securement of Company's Facilities. Such property restoration work will be done at Company's sole cost and expense and to the City's reasonable satisfaction. If Company fails to remove or secure the Facilities and fails to restore the premises or take such other mutually agreed upon action, the City may, after reasonable notice to Company, remove the Facilities, restore the premises or take such other action as is reasonably necessary at Company's sole expense and invoice the Company for all reasonable costs incurred by the City which costs shall be paid within thirty (30) days of invoice. This remedy will not be deemed to be exclusive and will not prevent the City from seeking a judicial order directing that the Facilities be removed or properly abandoned in place.

8.4. If the Company abandons the Facilities in place, it will retain the obligation to remove, alter, relocate or re-secure such Facilities in the future at Company's sole expense in the event it is reasonably determined, in the sole discretion of the City, that removal, alteration, relocation or re-securing the Facilities is necessary or advisable for the health, safety, necessity or convenience of the public. If the Company fails to remove, alter, relocate or re-secure such Facilities in the future, the City may, after reasonable notice to Company, cause the Facilities to be removed, the premises to be restored or take any other action as is reasonably necessary at Company's sole expense and invoice the Company for all reasonable costs incurred by the City which costs shall be paid within thirty (30) days of invoice. In the event the City causes any work to be done on the Facilities, it will use a contractor or personnel that are qualified under Company's required Operator Qualification Program.
8.5. The parties expressly agree that the provisions of this Section 8 will survive the expiration, revocation or termination of this Franchise.


9.1. At City’s request, the Company will provide, at its sole cost and expense, a briefing by qualified testing experts to explain the inspection results and Franchisee’s proposed corrective action(s). Said qualified testing expert may be an employee or representative of the Company.

9.2. The City will require all excavators that make application and are subject to a City grading or right-of-way permits working within 100 feet of the Company’s Facilities to notify the Company at least 48 hours prior to the start of any work and to comply with the requirements of the State of Washington One-number locator service law (RCW 19.122). If the Company becomes aware that a third party conducts any excavation or other significant work that may affect the Facilities, the Company will conduct such inspections or testing as is necessary to determine that no direct or indirect damage was done to the Facilities and that the work did not abnormally load the Company’s Facilities or impair the effectiveness of the Company’s cathodic protection system. Upon written request, the Company will report to the City its inspection and findings. In the event of damage by a third party, Company will make or cause to make all necessary or required repairs at no cost to the City unless and to the extent such third party is an agent or acting on behalf of the City.

SECTION 10. - Excavation Management.

10.1. The Company will maintain a written program to prevent damage to its Facilities from excavation activities, as required by applicable state and federal guidelines.
10.2. The Company and the City will comply with applicable and valid federal, state and local requirements regarding excavation management, including the State of Washington One-number locator service (RCW 19.122).

SECTION 11. - Leaks, Spills and Emergency Response.

11.1. The Company warrants that it will maintain and provide to the City an Emergency Response Plan that is in compliance with the applicable Pipeline Operation and Safety Laws and Emergency Management Laws or requirements of local, state and federal agencies with jurisdiction. Upon written request by either party, the parties agree to meet periodically to review the Emergency Response Plan and procedures.

The Company’s Emergency Response Plan and procedures will designate the Company’s responsible local emergency officials and a direct 24-hour emergency contact number for the control center operator. The Parties will cooperate throughout the term of this Franchise to keep emergency contact information up to date and accurate. The Company will, after being notified of an Emergency, cooperate with the City and make every effort to respond as soon as possible to protect public property and the public’s health, safety and welfare.

11.2. The Company will cooperate with the City in planning for and responding to Emergencies involving or affecting Company’s Facilities requiring protection of property, public health and safety. The Company warrants that it will at all times have available, within King County, sufficient emergency response personnel, equipment and materials to immediately and fully respond to any spill, leak, rupture or other release of Petroleum Products or Hazardous Substances from Company’s pipeline(s) or Facilities and that Company will be solely responsible for all
reasonably necessary costs incurred by any agency in responding appropriately to any spill, leak, rupture or other release of Petroleum Products or Hazardous Substances from Company’s pipeline(s) or Facilities, including, but not limited to, detection and removal of any contaminants from, earth or water, all remediation costs, equipment replacement, and staffing costs, except for any spill, leak, or other release that results from the sole negligence or willful misconduct of the City or its contractors.

11.3. In the event of an Emergency, the Company will 1) notify the City Fire Department of the Emergency, including the nature, location and extent of the Emergency through the City’s designated dispatch system (i.e. 911), including any additional information required by the City’s or Company’s Emergency Response Plans or Emergency Management Laws; 2) investigate, respond to and report any leaks, spills, ruptures and other Emergencies affecting the City as required by applicable federal or state regulations and Emergency Response Plans; and 3) provide to the City a copy of any reports related to the investigation and response to any such Emergency or resulting corrective actions which are required by applicable federal or state regulations or directed by governmental authorities with jurisdiction. The Company will notify the City Emergency Manager of the Emergency at 253-856-4316 as soon as is practicable

**SECTION 12. - Required Relocation of Facilities.**

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

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

12.3. The City will further provide the Company with copies of pertinent portions of the final plans and specifications for such Public Improvement Project so that the Company may make the required changes to or relocate its Facilities to accommodate such Public Improvement Project. The Company will cooperate with the City, upon request, by assisting the City in locating and marking the Facilities during the design phase, including providing the horizontal and vertical location of the Company’s Facilities within the Franchise Area related to the proposed Public Improvement Project by field markings or Facilities location markings on the City’s design drawings.

12.4. The Company may, after receipt of written notice requiring changes to or relocation of its Facilities under Section 12.2, submit to the City, within ninety (90) days, written alternatives to such relocation. The City will evaluate such alternatives and advise the Company in writing if one or more of the alternatives are suitable to accommodate the Public Improvement Project that would otherwise necessitate changes to or
relocation of the Facilities. If so requested by the City, the Company will submit additional information to assist the City in making such evaluation including actual field verification of the location(s) of the Company’s underground Facilities within the Public Improvement Project area by excavating (e.g., pot holing) and restoring the premises to the same condition, at no expense to the City. The City will give each alternative proposed by the Company full and fair consideration, but retains sole discretion to decide whether to utilize its original plan or an alternative proposed by the Company. If it is determined and agreed upon by the City and the Company that it is in the mutual best interest of both the City and the Company to redesign a proposed Public Improvement Project rather than have the Company relocate its facilities, the Company will be responsible for the reasonable incremental costs of redesigning the Public Improvement Project, including, but not limited to, the increased costs of design, construction or Right-of Way acquisition to avoid relocation of Company’s Facilities.

12.5. If the City requires the Company to relocate any portion of its Facilities that have already been relocated as required by the City under this section within five (5) years of the original relocation, the City will bear the entire cost of the subsequent relocation.

12.6. The Company will not be required to relocate its Facilities at its expense for the benefit of private developers or third party projects. However, in the event the City reasonably determines and notifies the Company that the primary purpose for requiring such changes to or relocation of the Company’s facilities by a third party is to cause or facilitate the construction of a Public Improvement Project consistent with the City Capital Investment Plan; Transportation Improvement Program; or the Transportation Facilities Program, or other similar plan, then the
Company will change or otherwise relocate its Facilities in accordance with this Section 12 at Company’s sole cost, expense and risk.

12.7. The City will work cooperatively with the Company in determining a viable and practical route within which the Company may relocate its facilities, in order to minimize costs while meeting the City’s project timelines and objectives. The City’s requirements with regard to the required changes or relocation (i.e. depth of cover, distance from other utilities, etc.) must be reasonable and consistent with applicable federal and state requirements however, nothing in this section will be construed as to limit the City’s police power, land use authority, franchise authority or the City’s authority to regulate the Company’s use of the Franchise Area.

12.8. Company understands that the City desires all relocation work to be completed prior to issuing bids for the Public Improvement Project and that relocation of Company’s Facilities must be completed prior to the commencement of the Public Improvement Project to avoid delays in the project schedule and resulting cost increases. Upon receipt of the City’s reasonable notice and plans and specifications per Sections 12.2 and 12.3, Company will take all necessary, prudent and prompt measures to complete relocation of such Facilities at least one hundred eighty (180) calendar days prior to the scheduled commencement of the Public Improvement Project. The parties may mutually agree in writing to such other time for completion of the relocation if the City has provided less than one (1) year’s notice or other unique circumstances exist as long as it is reasonably prior to the scheduled commencement of the Public Improvement Project. Company agrees that it will be responsible for any additional costs from delays to the Public Improvement Project to the extent such additional costs are caused by unreasonable delays in
Company’s completion of the relocation of its Facilities, unless such delays by Company are beyond its reasonable control.

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

SECTION 13. - Violations, Remedies and Termination.

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

13.2. The City may terminate this Franchise if the Company materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms of this Franchise, and fails to cure or make reasonable effort to cure such breach within thirty (30) calendar days of receipt of written notice thereof, or, if not reasonably curable within thirty (30) calendar days, within such other reasonable period of time as the parties may agree upon.
13.3. Either party may invoke the Dispute Resolution clause contained in Section 14 of this Franchise as it deems necessary with regard to termination.

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

13.5. In the event the Company fails to comply with any terms or conditions of this Franchise and such noncompliance continues for a period of more than thirty (30) days after Company receives written notice from the City regarding such noncompliance, the City may, but is not obligated to, complete or cause to complete any obligation of the Company under this Franchise including the work, repair, removal or relocation of Company's Facilities or restoration of City's Franchise Area at the Company's sole expense. The Company will immediately reimburse City for its reasonable costs and expenses incurred due to Company's noncompliance, which may include reasonable overhead expenses and attorneys' fees. In the event the City causes any work to be done on the Facilities, it will use a contractor or personnel that is qualified under Company's required Operator Qualification Program.

**SECTION 14. - Dispute Resolution.**

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

14.2. In the event that the parties are unable to resolve the dispute under the procedure set forth in Section 14.1, then the parties hereby agree that the matter will be referred to mediation. The parties will endeavor to select a mediator acceptable to both sides. If the parties cannot reach agreement, then each party will secure the services of a mediator at its own expense, who will in turn work together to mutually agree upon a third mediator to assist the parties in resolving their differences, whose expense will be shared equally by the parties. Any other reasonable expenses incidental to mediation will be borne equally by the parties.

14.3. If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies. Each party will be responsible for its own costs and attorneys’ fees. Venue and jurisdiction shall be in the Superior Court for King County Washington. Determinations of the court shall be made pursuant to the laws of the State of Washington without regard to conflicts of law provisions.

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

**SECTION 15. - Indemnification.**

15.1. **General Indemnification.** Except for environmental matters, which are covered by a separate indemnification in Section 15.2 below, the Company will indemnify, defend and hold harmless the City, its agents, officers or employees, from any and all liability, loss, damage, cost, expense, and any claim whatsoever, including reasonable attorneys’ and experts’ fees incurred by the City in defense thereof, whether at law or in
equity, arising out of or related to, directly or indirectly, the construction, operation, use, location, testing, repair, maintenance, removal, abandonment or damage to the Company's Facilities, or from the existence of the Company's pipeline and other appurtenant facilities, and of the products contained in, transferred through, released or escaped from said pipeline and appurtenant facilities, from any and all causes whatsoever, except the City's sole negligence and except to the extent it is caused by the City's non-compliance with Section 10.2, above (One-number locator service requirements). If any action or proceeding is brought against the City by reason of the pipeline or its appurtenant facilities, the Company will defend the City at the Company's complete expense, provided that, for uninsured actions or proceedings, defense attorneys will be approved by the City, which approval will not be unreasonably withheld.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Company's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

15.2 Environmental Indemnification. The Company will indemnify, defend and hold harmless the City, its agents, officers or employees, from and against any and all liability, loss, damage, expense, actions and claims either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by the City in defense thereof, arising from (a) Company's violation of any Environmental or Hazardous Substance laws applicable to the Facilities or (b) from any release of a hazardous substance on or from the Facilities except to the extent it is caused by City's noncompliance with Section 10.2 above (One-number locator service requirements). This indemnity includes, but is not limited to, (a) liability for a governmental agency's costs of removal or
remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; and (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any Environmental or Hazardous Substance laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

**SECTION 16. - Insurance.**

16.1. The Company will procure and maintain for the duration of the Franchise, insurance; or upon City's written approval based on satisfactory evidence of financial capacity and stability, Company may provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the Franchisee, its agents, representatives or employees. The Company will provide an insurance certificate, together with an endorsement naming the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insureds, to the City upon the Company's execution of this Franchise, and such insurance certificate will evidence the following minimum coverages:

A. Commercial general liability insurance including coverage for premises - operations, contractual liability, explosions and collapse hazard, underground hazard and products completed hazard, with limits not less than $100,000,000 per occurrence and in the aggregate for bodily injury or death to each person; and in the aggregate for property damage resulting from any one accident; and in the aggregate for general liability.
B. Automobile liability for owned, non-owned and hired vehicles with a limit of $1,000,000 for each person and $1,000,000 for each accident.

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

D. Environmental pollution liability with a limit not less than $50,000,000 for each occurrence, covering liability from sudden or accidental occurrences to the extent such coverage is reasonably available in the marketplace, and if not, a substantially equivalent coverage for similar occurrences.

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

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

16.4. In addition to the coverage requirements set forth in this Section, the certificate of insurance will provide that:

“The above described policies will not be canceled before the expiration date thereof, without the Company giving sixty (60) days written notice to the certificate holder.”

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

16.6. If coverage is purchased on a “claims made” basis, then the Company will warrant continuation of coverage, either through policy renewals or the purchase of an extended discovery period, for not less than three (3) years from the date of termination of this Franchise or conversion from a “claims made” coverage form to an “occurrence” coverage form.

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

SECTION 17. - Annual Franchise Fee.

17.1. The current franchise fee is set at $22,000 per annum for use of the franchise area. The Company will pay $18,495.82 representing the difference between the current fee and the amount of the franchise payment the Company made to the City in 2010. The Franchise fee for 2011-2012 is $22,330.00 ($22,000.00 multiplied by 1½%), which is intended to cover the City's reasonable costs related to the general administration of the Franchise and its terms and conditions.

17.2. Beginning with year two of the Franchise term and each year thereafter, the annual fee shall be increased by the most recently published Consumer Price Index All Urban Consumers (CPI-U) for the Seattle-Tacoma-Bremerton Area, or at a rate of one and one half percent.
(1½%), whichever is greater. Each increase will become effective on the anniversary date of this Franchise each year.

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

17.4. The Franchise fee set forth in Section 17.1 does not include, and the Company agrees that it is separately responsible for, other reasonable costs incurred by the City including, but not limited to reviewing, inspecting, licensing, permitting or granting any other approvals necessary for the Company to operate and maintain its Facilities or for any inspection or enforcement costs thereunder (i.e., customary permitting fees), repairing or restoring damage to City property in the Franchise Area under Sections 7 or 8, responding to any leak, spill or Emergency under Section 11, any additional costs for redesign or delays to a Public Improvement Project under Section 12 or any other extraordinary cost borne by the City caused by Company or its Facilities. The City will invoice Company separately for these reasonable costs and Company will pay within thirty (30) days of receipt of an invoice. Interest will accrue on any late payment at a rate of twelve percent (12%) per annum. Additionally, the foregoing annual fee does not include any generally applicable taxes that the City may legally levy. The Company will bear the cost of publication of this Ordinance. Nothing in this Section will be construed as limiting the Company’s right to seek recovery from third parties.
SECTION 18. - Legal Relations.

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

18.2. This Franchise Ordinance will not create any duty of the City or any of its officials, employees or agents and no liability will arise from any action or failure to act by the City or any of its officials, employees or agents in the exercise of powers reserved herein. Further, this Ordinance is not intended to acknowledge, create, imply or expand any duty or liability of the City with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in the City hereunder will be deemed a duty to the general public and not to any specific party, group or entity.

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

SECTION 19. - Company's Acceptance. The City may void this Franchise Ordinance if the Company fails to file its unconditional written acceptance of this Franchise within thirty (30) calendar days from the final passage of same by the City Council. The Company will file its unconditional written acceptance with the City Clerk of the City of Kent.
SECTION 20. - Notice.

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

**City:**

City of Kent
220 4th Avenue South
Kent, WA 98032
Attn: Brian Felczak, Fire Department

**With copy to:**

Tom Brubaker, City Attorney
City of Kent Law Department
220 4th Avenue S
Kent, WA 98032

**Company:**

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

**With copy to:**

Mark Johnsen
Karr Tuttle Campbell
1201 Third Avenue, Suite 2900
Seattle, Washington 98101

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

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

SECTION 21. - Miscellaneous.

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

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

21.3. In the event that the Company is prevented or delayed in the
performance of any of its obligations under this Franchise by reason(s)
beyond the reasonable control of the Company, then the Company's

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performance will be excused during the Force Majeure occurrence, except that it will make best efforts to perform all its obligations under Section 11 at all times. Upon removal or termination of the Force Majeure occurrence the Company will promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation or performance that is satisfactory to the City. The Company will not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers or employees.

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

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

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

21.7. The parties each represent and warrant that they have full authority to enter into and to perform this Franchise, that they are not in default or violation of any permit, license, applicable regulation, order or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Franchise, except such as may be routinely required and obtained in the ordinary course of business.
21.8. This Franchise Ordinance will be effective upon the date of the timely filing of Company’s written unconditional acceptance having been first 1) introduced to the City Council not less than five days before its approval; 2) submitted to the City Attorney; 3) published at least once in a newspaper of general circulation in Kent; and 4) approved by a vote of at least a majority of the City Council of the City of Kent at a regular meeting.

SECTION 22. - **Severability.** If any one or more section, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 23. - **Corrections by City Clerk or Code Reviser.** Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

SECTION 24. - **Effective Date.** This ordinance shall take effect and be in force thirty (30) days from and after its passage; having first been submitted to the Kent City Attorney; having been granted by the approving vote of at least a majority of the City Council at a regular meeting after introduction on May 17, 2011; and after having been published at least once in a newspaper of general circulation in the City of Kent.

Suzette Cooke, Mayor

**Olympic Pipeline Franchise**
I hereby certify that this is a true copy of Ordinance No. 3998 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDAL JACOBER, CITY CLERK
(SEAL)
UNCONDITIONAL ACCEPTANCE BY OLYMPIC PIPE LINE COMPANY
OF ORDINANCE NO. 3998
OF THE CITY OF KENT, WASHINGTON

The undersigned official of Olympic Pipe Line Company, hereby accepts Ordinance No. 3998, which was passed by the City Council of the City of Kent, Washington on June 7, 2011 and is entitled:

AN ORDINANCE of the City Council of the City of Kent, Washington, granting Olympic Pipe Line Company, an interstate pipeline corporation incorporated in the State of Delaware, a nonexclusive franchise to construct, operate, maintain, remove, replace, and repair existing pipeline facilities, together with equipment and appurtenances thereto, for the transportation of petroleum products within and through the franchise area of the City of Kent.

IN TESTIMONY WHEREOF said Olympic Pipe Line Company, Inc., has caused this written Acceptance to be executed in its name by its undersigned authorized signer, duly authorized on this 20 day of June, 2011.

OLYMPIC PIPE LINE COMPANY
By: Steven Maulding
Print Name: Steven Maulding
Title: President
State of Washington  

County of King  

I certify that I know of have satisfactory evidence that Steve Maulding is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the President of Olympic Pipe Line Company to be the free and voluntary acts of such party for the uses and purposes mentioned in the instrument.

Dated this 20 day of June, 2011.

Pamela O. Brady  
Notary Public in and for the State of Washington  
My commission expires 2/9/14

Received on behalf of the City this 28 day of June, 2011.

Name: Brenda Jacobs  
Title: City Clerk
STATE OF WASHINGTON, COUNTY OF KING }  
AFFIDAVIT OF PUBLICATION

PUBLIC NOTICE
Linda M Mills, being first duly sworn on oath that she is the Legal Advertising Representative of the

Kent Reporter

a weekly newspaper, which newspaper is a legal newspaper of general circulation and is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a weekly newspaper in King County, Washington. The Kent Reporter has been approved as a Legal Newspaper by order of the Superior Court of the State of Washington for King County.

The notice in the exact form annexed was published in regular issues of the Kent Reporter (and not in supplement form) which was regularly distributed to its subscribers during the below stated period.

The annexed notice, a:

Public Notice

was published on June 10, 2011.

The full amount of the fee charged for said foregoing publication is the sum of $85.30.

Linda M. Mills
Legal Advertising Representative, Kent Reporter
Subscribed and sworn to me this 10th day of June, 2011.

Kathy Dalseg, Notary Public for the State of Washington, Residing in Covington, Washington
P. O. Number: