

ORDINANCE NO. 6619

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, GRANTING TO NORTHWEST PIPELINE LLC, A DELAWARE LLC, A FRANCHISE FOR GAS

WHEREAS, Northwest Pipeline LLC (“Grantee”) has applied to the City of Auburn (“City”) for a non-exclusive Franchise for the right of entry, use, and occupation of certain public right(s)-of-way within the City, expressly to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, over, under, along and/or across those right(s)-of-way; and

WHEREAS, following proper notice, the City Council held a public hearing on Grantee’s request for a Franchise, at which time representatives of Grantee and interested citizens were heard in a full public proceeding affording opportunity for comment by any and all persons desiring to be heard; and

WHEREAS, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the City Council now deems it appropriate and in the best interest of the City and its inhabitants that the franchise be granted to Grantee.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN WASHINGTON, DO ORDAIN as follows:

Section 1. Grant of Right to Use Franchise Area

A. Subject to the terms and conditions stated herein, the City grants to the Grantee general permission to enter, use, and occupy the right(s)-of-way and/or other public property specified in Exhibit “A”, attached hereto and incorporated by reference (the “Franchise Area”).

B. The Grantee is authorized to install, remove, construct, erect, operate, maintain, relocate and repair the types of facilities specified in Exhibit “B”, attached hereto and incorporated by reference, and all necessary appurtenances thereto, (“Grantee Facilities”) for provision of those services set forth in Exhibit “C” (“Grantee Services”) in, along, under and across the Franchise Area.

C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Grantee Facilities and Grantee Services, and

it extends no rights or privilege relative to any facilities or services of any type, including Grantee Facilities and Grantee Services, on public or private property elsewhere within the City. This Franchise is intended to convey only a limited right and interest and is not a warranty of title or interest in the City's right-of ways. The Agreement does not convey any right to Grantee to install Grantee Facilities on or to otherwise impact, city-owned or leased properties, easements, or rights-of way outside the ones identified in Exhibit A.

D. This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the City or its predecessors to use any property, Right-of-Way, easement, right, interest or license for any purpose whatsoever, including the right of the City to use same for any purpose it deems fit, including the same or similar uses allowed the Grantee hereunder. The City may at any time grant authorization to use the Right-of-Way for any purpose not incompatible with the Grantee's authority under this Agreement and for such additional franchises as the City deems appropriate.

E. Except as explicitly set forth herein, this Franchise does not waive any rights that the City has or may hereafter acquire with respect to the Franchise Area or any other City roads, rights-of-way, property, or any portions thereof. This Franchise shall be subject to the power of eminent domain, and in any proceeding under eminent domain, the Grantee acknowledges its use of the Franchise Area shall have no value.

F. The City reserves the right to change, regrade, relocate, abandon, or vacate any right-of-way within the Franchise Area. If, at any time during the term of this Franchise, the City vacates any portion of the Franchise Area containing Grantee Facilities, the City shall reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which the Grantee may continue to operate any existing Grantee Facilities under the terms of this Franchise for the remaining period set forth under Section 3.

G. The Grantee agrees that its use of Franchise Area shall at all times be subordinated to and subject to the City and the public's need for municipal infrastructure, travel, and access to the Franchise Area, except as may be otherwise required by law.

H. This Franchise is subject to the provisions of Auburn City Code ("ACC"), including specifically ACC Chapter 20.10, "CONDITIONS OF PUBLIC WAY AGREEMENTS, FRANCHISES, AND FACILITIES LEASES", and all federal and state laws, codes and regulations as currently exist or as amended. However,

if the provisions of city code, as amended or superseded, conflict with any terms and conditions of this agreement, the provisions of this agreement shall govern. A conflict does not exist where this agreement is silent about a condition or matter addressed by city code.

Section 2. Notice

A. Whenever this Franchise calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed by certified mail to the recipient at the address set forth in this Section. If the date for making any payment, notice, or performing any act is a legal holiday, payment or notice may be made or the act performed on the next succeeding business day which is not a legal holiday.

City: Engineering Aide,
 Community Development and Public Works Department
 City of Auburn
 25 West Main Street
 Auburn, WA 98001-4998
 Telephone: (253) 931-3010; Fax: (253) 931-3048

with a copy to: City Clerk
 City of Auburn
 25 West Main Street
 Auburn, WA 98001-4998

Grantee: Land Department
 Northwest Pipeline LLC
 P.O. Box 58900
 Salt Lake City, UT 84158
 Telephone: (800) 453-3810

B. Any changes to the above-stated Grantee information shall be sent to the City's Engineering Aide, Community Development and Public Works Department, with copies to the City Clerk, referencing the title of this agreement.

C. The above-stated Grantee voice and fax telephone numbers shall be staffed at least during normal business hours, Pacific time zone.

Section 3. Term of Agreement

A. This Franchise shall run for a period of 10 (ten) years, from the date of execution specified in Section 5.

B. **Renewal Option of Term:** The Grantee may renew this Franchise for an additional ten (10) year period upon submission and approval of the application specified under ACC 20.06.130, as it now exists or is amended, within the timeframe set forth therein (currently between 180 and 240 days prior to expiration of the then-current term). Any materials submitted by the Grantee for a previous application may be considered by the City in reviewing a current application, and the Grantee shall submit those materials that differ from the previous materials or as deemed necessary by the City to address changes in the Grantee Facilities or Grantee Services, or to reflect specific reporting periods mandated by the ACC.

C. **Failure to Renew Franchise – Automatic Extension.** If the Parties fail to formally renew this Franchise prior to the expiration of its term or any extension thereof, the Franchise automatically continues month to month until renewed or either party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise.

Section 4. Definitions

For the purpose of this agreement:

“ACC” means the Auburn City Code.

“Emergency” means a condition of imminent danger to the health, safety and welfare of persons or property located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots, acts of terrorism or wars.

“Maintenance or Maintain” shall mean examining, testing, inspecting, repairing, maintaining and replacing the existing Grantee Facilities or any part thereof as required and necessary for safe operation.

“Relocation” means permanent movement of Grantee facilities required by the City, and not temporary or incidental movement of such facilities, or other revisions Grantee would accomplish and charge to third parties without regard to municipal request.

“Rights-of-Way” means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-ways and similar public properties and areas.

“Grantee Facilities” means, collectively, any and all natural gas systems owned or operated by Grantee, including but not limited to gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters meter-reading devise, fixtures, communication systems, and any and all other equipment appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing for the purpose of transmission of natural gas, whether the same be located over or under ground.

“Hazardous Substance” shall specifically include, but shall not be limited to, petroleum and petroleum products and their by-products, residue, and remainder in whatever form or state.

“Operate” or “Operations” shall mean the operation, use, and maintenance of Grantee Facilities, pursuant to the terms of this Agreement.

“Party” or “Parties” means collectively the City and Grantee, and individually either the City or Grantee.

“Public Works Project” means, any City capital improvement or the construction, relocation, expansion, repair, maintenance, or removal of any part of the Public Way or City-owned facilities located on or in the Public Way for: parks; streets; sidewalks; curbs; pedestrian and/or vehicle traffic; sewers, storm water drains; water facilities, and; City owned fiber optic cable, conduit or network facilities.

“Third Party” means any person, party, or entity other than the City and Grantee.

“FERC” means the Federal Energy Regulatory Commission, or such other successor regulatory agency having jurisdiction over interstate pipeline companies.

Section 5. Acceptance of Franchise

A. This Franchise, and any rights granted hereunder, shall not become effective for any purpose unless and until Grantee files with the City Clerk (1) the Statement of Acceptance, attached hereto as Exhibit “D,” and incorporated by reference, (2) all verifications of insurance coverage specified under Section 17,

(3) the financial guarantees specified in Section 18 and (4) payment of any outstanding application fees per the City fee schedule. These four items shall collectively be the "Franchise Acceptance". The date that such Franchise Acceptance is filed with the City Clerk shall be the effective date of this Franchise.

B. Should the Grantee fail to file the Franchise Acceptance with the City Clerk within thirty (30) days after the effective date of the ordinance approving the Franchise Agreement, the City's grant of the Franchise will be null and void.

Section 6. Construction and Maintenance

A. The Grantee shall apply for, obtain, and comply with the terms of all permits required under ACC Chapter 12.24 for any work done upon Grantee Facilities. Grantee shall comply with all applicable City, State, and Federal codes, rules, regulations, and orders, as they now exist or as may be hereafter amended or superseded, in undertaking such work, which shall be done in a thorough and proficient manner.

Grantee's work within the Public Way which directly affects Grantee's construction, operation, and maintenance of Grantee Facilities shall be performed in accordance with Federal law and regulation.

B. Grantee agrees to coordinate its activities with the City and all other utilities located within the public right-of-way within which Grantee is under taking its activity. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Public Way informed of its intent to undertake such construction work.

C. In addition to complying with ACC 20.10.80, as hereafter amended or superseded, Grantee Facilities shall be located and maintained within the Right-of-way so as not to interfere with the reasonable ingress or egress to the properties abutting the right-of-ways as they exist at the time of installation of the Grantee Facilities. The City expressly reserves the right to prescribe how and where Grantee Facilities shall be installed within the public right-of-way and may from time to time, pursuant to the applicable sections of this Franchise, require at the expense of the Grantee, the removal, relocation and/or replacement thereof, subject to any approval or modification of the City's requested removal, relocation or replacement by the FERC pursuant to 18C.F.R.157.

D. Grantee shall continuously be a member of the State of Washington One Number Locator service under RCW 19.122, or an approved equivalent as

determined by the City, and shall comply with all such applicable rules and regulations. Before commencing any work within the public right-of-way, the Grantee shall comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.

E. Tree Trimming. Upon prior written approval of the City and in accordance with City ordinances, Grantee shall have the authority to reasonably trim trees upon and overhanging streets, public rights-of-way, and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with the Grantee Facilities. Grantee shall be responsible for debris removal from such activities. If such debris is not removed within twenty-four (24) hours of completion of the trimming, the City may, at its sole discretion, remove such debris and charge Grantee for the cost thereof. This section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require a land clearing permit.

H. Markers demarcating the pipeline's location shall be placed on the surface at least every 100 yards so as to provide clear warning of the presence of the pipeline but in a manner that does not interfere with trails or other public uses in that area. Additionally, Grantee shall place continuous underground markers demarcating the pipeline's location each time Grantee digs to the pipeline for any reason.

Section 7. Repair and Emergency Work

In the event of an emergency, the Grantee may commence such repair and emergency response work as required under the circumstances, provided that the Grantee shall notify the City telephonically during normal business hours (at 253.931.3010 and during non-business hours at 253-876-1985 as promptly as possible before such repair or emergency work commences, and in writing as soon thereafter as possible. Such notification shall include the Grantee's emergency contact phone number for the corresponding response activity. For any emergency or after normal business hour issues involving the Grantee's facilities which requires the Grantee's immediate response the City shall contact the Grantee at 801-584-6949, which is operated 24 hours a day, seven days a week. If, in the opinion of the City Director of Community Development & Public Works, the City Engineer, or the Mayor, an emergency presents a serious and immediate danger to the public health, safety and welfare, they, separately or together, may take reasonable immediate action to mitigate the damage. All costs associated

with such actions will be the sole responsibility of the Grantee, and the Grantee shall reimburse the City for such costs within thirty (30) days after receipt of an itemized bill. Grantee will not be held liable for damages as a result of the City's repair and emergency work that arise out of the negligent acts or willful misconduct of the City, its successors, assigns, permittee, agents or contractors.

Section 8. Damages to City and Third-Party Property

A. Grantee agrees that if any of its actions under this Franchise impairs or damages any City property, survey monument, or property owned by a third-party, Grantee will restore, at its own cost and expense, said property to a safe condition. Such repair work shall be performed and completed to the satisfaction of the City Engineer.

B. The City may at any time perform or have performed any and all work that it considers necessary to restore to a safe condition any area within the Public Way disturbed by Grantee in the performance of this Agreement. Grantee shall pay all reasonable costs of such work upon demand of the City.

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

Section 9. Location Preference

A. Any structure, equipment, appurtenance or tangible property of a utility, other than the Grantee's, which was installed, constructed, completed or in place prior to the execution of this Franchise shall have preference as to positioning and location with respect to any new or relocated Grantee Facilities. However, to the extent that the Grantee Facilities are completed and installed prior to another private utility's submittal of a permit for new or additional structures, equipment, appurtenances or tangible property, then the Grantee Facilities shall have priority. These rules governing preference shall continue in the event of the necessity of relocating or changing the grade of any City road or right-of-way. A relocating utility shall not necessitate the relocation of another utility that otherwise would not require relocation. This Section shall not apply to any City facilities or utilities that may in the future require the relocation of Grantee Facilities. Such relocations shall be governed by Section 11.

B. When constructing new facilities, or replacing or reconstructing facilities, Grantee shall maintain a minimum underground horizontal separation of ten (10) feet from City water and five (5) feet from City sanitary sewer and storm sewer facilities; provided, that for development of new areas, the City, in consultation with Grantee and other utility purveyors or authorized users of the Public Way, will develop and follow the City's determination of guidelines and procedures for determining specific utility locations, subject additionally to this agreement .

Section 10. Grantee Information

A. To the extent City agrees to take the protective steps described in Section 10(C) Grantee agrees to supply, at no cost to the City, any information reasonably requested by the City Engineer to coordinate municipal functions with Grantee's activities and fulfill any municipal obligations under state law. Said information shall include, at a minimum, as-built drawings of Grantee Facilities, and maps and plans showing the general location of existing or planned facilities within the City. Said information may be requested either in hard copy or electronic format, reasonably compatible with the City's data base system, as now or hereinafter existing, including the City's geographic information Service (GIS) data base. If said electronic format is not compatible then Grantee will supply hard copies to scale and size requested by the City. Grantee shall keep the City Engineer informed of its long-range plans for coordination with the City's long-range plans.

B. Upon the City's reasonable request, in connection with the design of any Public Works Project, Grantee shall verify the location of its underground Facilities within the Public Way by excavating (e.g., potholing) at no expense to the City. In the event Grantee performs such excavation, the City shall not require any restoration of the disturbed area in excess of restoration to the same condition as existed immediately prior to the excavation.

C. The parties understand that Washington law limits the ability of the City to shield from public disclosure any information given to the City. Grantee shall clearly mark any information that it provides to the City as "Proprietary" information if Grantee believes that disclosure of that information would be exempt under the trade secrets exemption in RCW 42.56.270. The City agrees that if it receives a request for Grantee's proprietary information, it will initially assert the exemption under 42.56.270, and will notify Grantee of the request. The City shall not initiate legal action to prevent disclosure of Grantee's proprietary information. If a requestor files a lawsuit to compel disclosure, Grantee agrees to

defend the action at Grantee's sole expense. Grantee shall indemnify and hold harmless the City for any loss or liability for fines, penalties, and costs (including attorney fees) imposed on the City because of non-disclosures requested by Grantee under Washington's open public records act, provided the City has notified Grantee of the pending request or Grantee is made aware of the request or claim.

Section 11. Relocation of Grantee Facilities

A. Except as otherwise required by law, Grantee agrees to relocate, remove, or reroute its facilities within one hundred eighty (180) days, and the terms of its FERC Certificate, of being ordered by the City Engineer at no expense or liability to the City, except as may be required by RCW Chapter 35.99. Such alternate location for relocation of Grantee's facilities shall be determined and approved jointly by the City and Grantee at no cost to the City. Pursuant to the provisions of Section 16, Grantee agrees to protect and save harmless the City from any customer or third-party claims for service interruption or other losses in connection with any such change, relocation, abandonment, or vacation of the Public Way.

B. If a readjustment or relocation of the Grantee Facilities is necessitated by a request from a party other than the City, that party shall pay the Grantee the actual costs thereof. Any contractor doing work pursuant to contract with the City shall not be considered a Third Party for purposes of this section.

C. Any condition or requirement imposed by the City upon any Third Party (including, but not limited to, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of Grantee's Facilities within the Rights-of-Way shall be a condition or requirement causing relocation of Grantee's Facilities to occur subject to the provisions of Subsection B above; provided, however in the event the City reasonably determines and notifies Grantee that the primary purpose of imposing such condition or requirement upon such Third party is to cause or facilitate the construction of a Public Works Project to be undertaken within a segment of the Right-of-Ways on the City's behalf and consistent with the City's Capital Facility Plan or Transportation Improvement Program, then Grantee shall relocate its Facilities within such segment of the Rights-of-Way in accordance with this Agreement.

D. As to any relocation of Grantee's Facilities whereby the cost and expense thereof is to be borne by Grantee in accordance with this Section 11, Grantee may, after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's receipt from Grantee of such written alternatives, the City shall evaluate such alternatives and shall advise Grantee in writing if one or more of such alternatives are suitable to accommodate the work which would otherwise necessitate relocation of Grantee's Facilities. In evaluating such alternatives, the City shall give each alternative proposed by Grantee full and fair consideration with due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. In the event the City determines that such alternatives are not appropriate, Grantee shall relocate its Facilities as otherwise provided in this Agreement.

E. Nothing in this Section 11 shall require Grantee to bear any cost or expense in connection with the relocation of any Facilities under benefit of easement independent of this Agreement or other rights not arising under this Agreement, nor shall anything in this Section 11 require the City to bear any such cost or expense. Nothing in this Section 11 shall be construed to be a waiver of any right of either Grantee or the City to contest any claim or assertion by the other of responsibility to pay such cost or expense.

F. Subject to ACC 20.10.160, in the event of an emergency posing a threat to public safety or welfare requires the relocation of Grantee's Facilities within the Rights-of-Way, the City shall give Grantee notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City (and subject to the issuance of any necessary order(s) of the Federal Energy Regulatory Commission), Grantee shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities.

Section 12. Abandonment and or Removal of Grantee Facilities

A. Subject to ACC 20.10.130, within one hundred and eighty days (180) of Grantee's permanent cessation of use of the Grantee Facilities, or any portion thereof, the Grantee shall (subject to any necessary approval(s) and/or order(s) to be provided by FERC concerning abandonment), at the City's discretion, either abandon in place or remove the affected facilities. Grantee will remove the facilities if the City deems removal reasonably necessary. Abandonment or removal shall be at the sole cost and expense of Grantee. Any Facilities left in place shall be made inert by purging all natural gas from such Facilities (including displacement of natural gas with an appropriate inert gas) and disconnecting and

sealing such Facilities, all in compliance with applicable regulations and industry standards. The City's consent shall not relieve Grantee of the obligation and/or costs to subsequently remove or alter such Facilities in the event the City reasonably determines that such removal or alteration is necessary or advisable for the health and safety of the public, in which case Grantee shall perform such work at no cost to the City. The obligations contained in this Section shall survive the expiration, revocation, or termination of this Agreement.

Section 13. Encroachment Management

Grantee shall manage and inspect encroachments as defined by federal and applicable state and local laws, rules, regulations and industry standards, as now enacted or hereinafter amended, and any other future laws or regulations that are applicable to Grantee, the Facilities, and business operations. Upon notification to Grantee of planned construction by another within ten (10) feet of Grantee's pipeline, Grantee shall flag the precise location of its Facilities before the construction commences, provide a representative to inspect the construction when it commences, and periodically inspect thereafter to ensure that Grantee's pipeline is not damaged by the construction.

Section 14. Emergency Management, Leaks, Ruptures, and Emergency Response.

A. Upon the request of the City, Grantee shall meet with the Valley Regional Fire Authority, the Auburn Police Department, and the City's Emergency Management Office to coordinate emergency management operations at the request of the City, Grantee personnel shall actively participate with the Valley Regional Fire Authority and the City in emergency preparedness drills or planning sessions.

B. Grantee shall have in place, at all times during the term of this Agreement, a system for remotely monitoring pressures and flows across the Public Way.

C. During the term of this Agreement, Grantee shall have a written emergency response plan and procedure for locating leaks and ruptures and for shutting down valves as rapidly as possible.

D. Upon acceptance of this Agreement, Grantee shall provide, for the City's review, a copy of its emergency response plans and procedures, including, but not limited to, emergency rupture response. If the parties disagree as to the

adequacy of Grantee's emergency response plan, the parties will submit the plan to independent, third party review. If the review recommends that Grantee make modifications or additions to Grantee's emergency response plan, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow the recommendations, Grantee shall provide a written report to the City explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute resolution provisions contained herein to resolve any dispute over whether to follow the recommendations. Upon completion of the review of Grantee's emergency plans and procedures set forth in this section, Grantee shall provide a copy of the plans and procedures to the City and to the Valley Regional Fire Authority.

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

F. Grantee shall be solely responsible for all its necessary costs incurred in responding to any leak, rupture or other release of natural gas from Grantee's Facilities, including, but not limited to, detection and removal of any contaminants from air, earth or water, and all remediation costs.

G. If requested by the City in writing, Grantee shall provide a written summary concerning any leak or rupture within thirty (30) days concluding Grantee's prompt investigation, including, but not limited to, the leak or rupture's date, time, amount, location, response, remediation and other agencies Grantee has notified.

H. The City may request that any substantial leak or rupture be investigated by the WUTC or PHSMA. Grantee shall be solely responsible for paying all of the costs and expenses incurred in investigating the occurrence and reporting the findings. Grantee shall meet and confer with the WUTC or PHSMA following their investigation to address whether any modifications or additions to Grantee's pipeline(s) and/or Facilities may be warranted.

I. If the WUTC or PHMAS recommends that Grantee make modifications or additions to Grantee's pipeline(s) and/or Facilities, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow the WUTC or PHMAS's recommendations, Grantee shall provide a written report to the City explaining its reasoning for not following said recommendations.

The parties agree to comply with the dispute resolution provisions contained herein to resolve any dispute over whether to follow the consultant's recommendations.

Section 15. Maintenance, Inspection, and Testing.

Grantee shall remain solely and separately liable for the operation, testing, maintenance, replacement and/or repair of the pipeline or other activities permitted under this Agreement. Grantee shall operate, maintain, inspect, and test the Facilities in full compliance with all applicable federal, state, and local laws, rules, regulations, and industry standards, as now enacted or hereinafter amended, and any other future laws or regulations that are applicable to Grantee, the Facilities, and business operations.

Section 16. Indemnification and Hold Harmless

A. The Grantee shall defend, indemnify, and hold the City and its officers, officials, agents, employees, and volunteers harmless from any and all costs, claims, injuries, damages, losses, suits, or liabilities of any nature including attorneys' fees arising out of or in connection with the Grantee's performance under this Franchise, except to the extent such costs, claims, injuries, damages, losses, suits, or liabilities are caused by the sole negligence or wrongful misconduct of the City.

B. The Grantee shall hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee Facilities caused by maintenance and/or construction work performed by, or on behalf of, the City within the Franchise Area or any other City road, right-of-way, or other property, except to the extent any such damage or loss is directly caused by the sole negligence or wrongful misconduct of the City, or its agent performing such work.

C. The Grantee acknowledges that neither the City nor any other public agency with responsibility for firefighting, emergency rescue, public safety or similar duties within the City has the capability to provide trench, close trench or confined space rescue. The Grantee, and its agents, assigns, successors, or contractors, shall make such arrangements as Grantee deems fit for the provision of such services. The Grantee shall hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee for the City's failure or inability to provide such services, and, pursuant to the terms of Section 14(A), the Grantee shall indemnify the City against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities caused by the City's failure or inability to provide such services.

D. Acceptance or inspection by the City of any work performed by the Grantee shall not be grounds for avoidance of this section.

E. In addition to the promise of indemnification required by ACC 20.10.230, Grantee shall indemnify, defend and hold the City, its appointed and elective officials, agents, officers, employees, and volunteers harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorney's fees, made against the City on account of violation of any environmental laws applicable to the Grantee Facilities, or from any release of natural gas or Hazardous Substances on or from the Grantee Facilities. This indemnity includes, but is not limited to: (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; and (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws.

F. The Grantee, further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the Grantee's facilities as the result of any interruption of service due to damage or destruction of the Grantee's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful or malicious actions on the part of the City, its officers, agents, employees, or contractors.

G. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, 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 the Grantee and the City, its officers, officials, employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 17. Insurance

A. The Grantee shall maintain or cause to be maintained for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Grantee, its agents, representatives, or employees in the amounts and types set forth below. The required Commercial General Liability limit can be met under a combination of primary and excess liability policies:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a minimum combined single limit for bodily injury and property damage of \$2,000,000.00 (two million dollars) per accident. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance with limits no less than \$100,000,000.00 (one hundred million dollars) each occurrence, \$100,000,000.00 (one hundred million dollars) general aggregate and a \$100,000,000.00 (one hundred million dollars) products-completed operations aggregate limit. Coverage shall be written on ISO occurrence form CG 00 01, or an equivalent occurrence based form, or on a claims made form with tail coverage of three years and a retroactive date to cover the services provided pursuant to this agreement and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, and personal injury and advertising injury and liability assumed under an insured contract. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect to the work performed under this Franchise using ISO Additional Insured Endorsement CG 20 10 and Additional Insured-Completed Operations endorsement CG 20 37 or substitute endorsements providing similar coverage.

3. The Grantee's general liability coverage, proof of which is provided by Grantee to the satisfaction of the City, shall evidence sudden and accidental pollution limit of \$10,000,000.00.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Grantee's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Grantee's insurance and shall not contribute with it.

2. The Grantee's insurance (with the exception of Workers' Compensation) shall be endorsed to provide the City thirty (30) days' prior written notice of cancellation.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

D. Verification of Coverage. Grantee shall furnish the City with documentation of insurer's A.M. Best rating and with original certificates and a copy of amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

E. Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self-insurance is subject to approval by the City.

F. Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 18. Performance Security

The Grantee shall provide the City with a financial guarantee in the amount of Fifty Thousand Dollars (\$50,000.00) running for, or which shall annually automatically renew over, the term of this Franchise, in a form and substance acceptable to the City. In the event Grantee shall fail to substantially comply with any one or more of the provisions of this Franchise, then there shall be recovered jointly and severally from the principal and any surety of such financial guarantee any

damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Grantee specifically agrees that its failure to comply with the terms of Section 22 (Enforcement & Remedies) shall constitute damage to the City in the monetary amount set forth therein. Such a financial guarantee shall not be construed to limit the Grantee's liability to the guarantee amount, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 19. Relationship of the Parties

A. Nothing in this Agreement shall be construed to create or confer any right or remedy upon any person(s) other than the City and Grantee. No action may be commenced or prosecuted against any Party by any Third Party claiming as a Third Party beneficiary of this Agreement. This Agreement shall not release or discharge any obligation or liability of any Third Party to either Party.

B. Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency relationship, or joint venture or to impose a trust, partnership, or agency duty, obligation or liability on or with regard to any party. Each party shall be individually and severally liable for its own duties, obligations, and liabilities under this Agreement.

C. Grantee accepts any privileges granted by the City in an "as is" condition. Grantee agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of Grantee's location of facilities or the facilities themselves in public property or rights of way or possible hazards or dangers arising from other uses of the public rights of way or other public property by the City or the general public. Grantee shall remain solely and separately liable for the function, testing, maintenance, replacement and repair of the pipeline or other activities permitted under this Agreement.

D. Except as specifically provided herein, this Agreement shall not create any duty of the City or any of its officials, employees or agents and no liability shall arise from any action or failure to act by the City or any of its officials, employees or agents in the exercise of powers reserved to the City. Further, this Agreement 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 shall

be deemed a duty to the general public and not to any specific party, group or entity.

Section 20. Successors and Assignees

A. All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns of, and independent contractors of the Grantee, and all rights and privileges, as well as all obligations and liabilities of the Grantee shall inure to its successors, assignees and contractors equally as if they were specifically mentioned herein wherever the Grantee is mentioned.

B. This Franchise shall not be leased, assigned or otherwise alienated without the express prior consent of the City by ordinance.

C. Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than sixty (60) days prior to the proposed date of transfer: (a) Complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (b) All information required by the City of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (c) An application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing, and investigating the proposed assignment or transfer.

D. Prior to the City's consideration of a request by Grantee to consent to a Franchise assignment or transfer, the proposed Assignee or Transferee shall file with the City a written promise to unconditionally accept all terms of the Franchise, effective upon such transfer or assignment of the Franchise. The City is under no obligation to undertake any investigation of the transferor's state of compliance and failure of the City to insist on full compliance prior to transfer does not waive any right to insist on full compliance thereafter.

Section 21. Dispute Resolution

A. In the event of a dispute between the City and the Grantee arising by reason of this Agreement, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Grantee to have oversight over the administration of this Agreement. The officers or representatives shall meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute.

B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case, and such fees shall be included in the judgment.

Section 22. Enforcement and Remedies

A. If the Grantee shall willfully violate, or fail to comply with any of the provisions of this Franchise through willful or unreasonable negligence, or should it fail to heed or comply with any notice given to Grantee under the provisions of this agreement, the City may, at its discretion, provide Grantee with written notice to cure the breach within thirty (30) days of notification. If the City determines the breach cannot be cured within thirty days, the City may specify a longer cure period, and condition the extension of time on Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Grantee does not comply with the specified conditions, the City may, at its discretion, either (1) revoke the Franchise with no further notification, or (2) claim damages as provided in ACC 20.10.340 per day against the financial guarantee set forth in Section 18 for every day after the expiration of the cure period that the breach is not cured.

B. Should the City determine that Grantee is acting beyond the scope of permission granted herein for Grantee Facilities and Grantee Services, the City reserves the right to cancel this Franchise upon thirty days (30) written notice to Grantee and require the Grantee to apply for, obtain, and comply with all applicable City permits, franchises, or other City permissions for such actions, and if the Grantee's actions are not allowed under applicable federal and state or City laws, to compel Grantee to cease such actions.

Section 23. Compliance with Laws and Regulations

A. In carrying out any authorized activities under the privileges granted herein, Grantee shall meet accepted industry standards and comply with all applicable laws, rules, and regulations, of any governmental entity with jurisdiction

over the pipeline and its operation (specifically including, but not limited to, all requirements, rules, regulations, and orders of FERC and the applicable provisions of the City's comprehensive plan). This shall include all applicable laws, rules and regulations existing at the Effective Date of this Franchise or that may be subsequently enacted by any governmental entity with jurisdiction over Grantee or the pipeline(s) and the Facilities. Furthermore, notwithstanding any other terms of this agreement appearing to the contrary, the Grantee shall be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in the Franchise Area.

B. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, the Grantee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the City may enact the proposed amendment, by incorporating the Grantee's concerns to the maximum extent the City deems possible.

C. The City may terminate this Franchise upon thirty (30) days written notice to the Grantee, if the Grantee fails to comply with such amendment or modification.

Section 24. License, Tax and Other Charges

This Franchise shall not exempt the Grantee from any future license, tax, or charge which the City may hereinafter adopt pursuant to authority granted to it under state or federal law for revenue or as reimbursement for use and occupancy of the Franchise Area.

Section 25. Consequential Damages Limitation

Notwithstanding any other provision of this Agreement, in no event shall either party be liable for any special, incidental, indirect, punitive, reliance, consequential or similar damages.

Section 26. Force Majeure

In the event that either Party is prevented or delayed in the performance of any of its obligations under this Agreement by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a party, its contractors or a Third party; or any failure or delay in the performance by the other party, or a Third Party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with this Agreement. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Agreement. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event. The occurrence of a Force Majeure Event shall not alter or impair any of the provisions concerning liability and/or insurance as provided in this Agreement.

Section 27. Severability & Survival

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

All provisions, conditions and requirements of this Agreement that may be reasonably construed to survive the termination or expiration of this Agreement shall survive the termination or expiration of the Agreement. Subject to Section 15 above, the Parties' respective rights and interests under this Agreement shall inure to the benefit of their respective successors and assigns.

Section 28. Titles

The section titles used herein are for reference only and should not be used for the purpose of interpreting this Franchise.

Section 29. Implementation

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

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

Section 30. Entire Agreement

This Agreement, as subject to the appropriate city, state, and federal laws, codes, and regulations, and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. All previous Agreements between the parties pertaining to GRANTEE's operation of its pipeline(s) and/or Facilities are hereby superseded.

Section 31. Effective date.

This Ordinance shall take effect and be in force five days from and after its passage, approval and publication as provided by law.

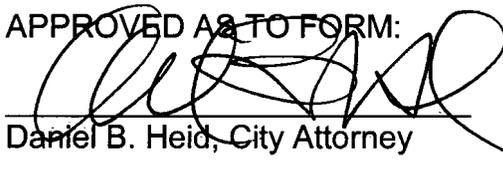
INTRODUCED: NOV 21 2016
PASSED: NOV 21 2016
APPROVED: NOV 21 2016

Nancy Backus
NANCY BACKUS, MAYOR

ATTEST:


Danielle E. Daskam, City Clerk

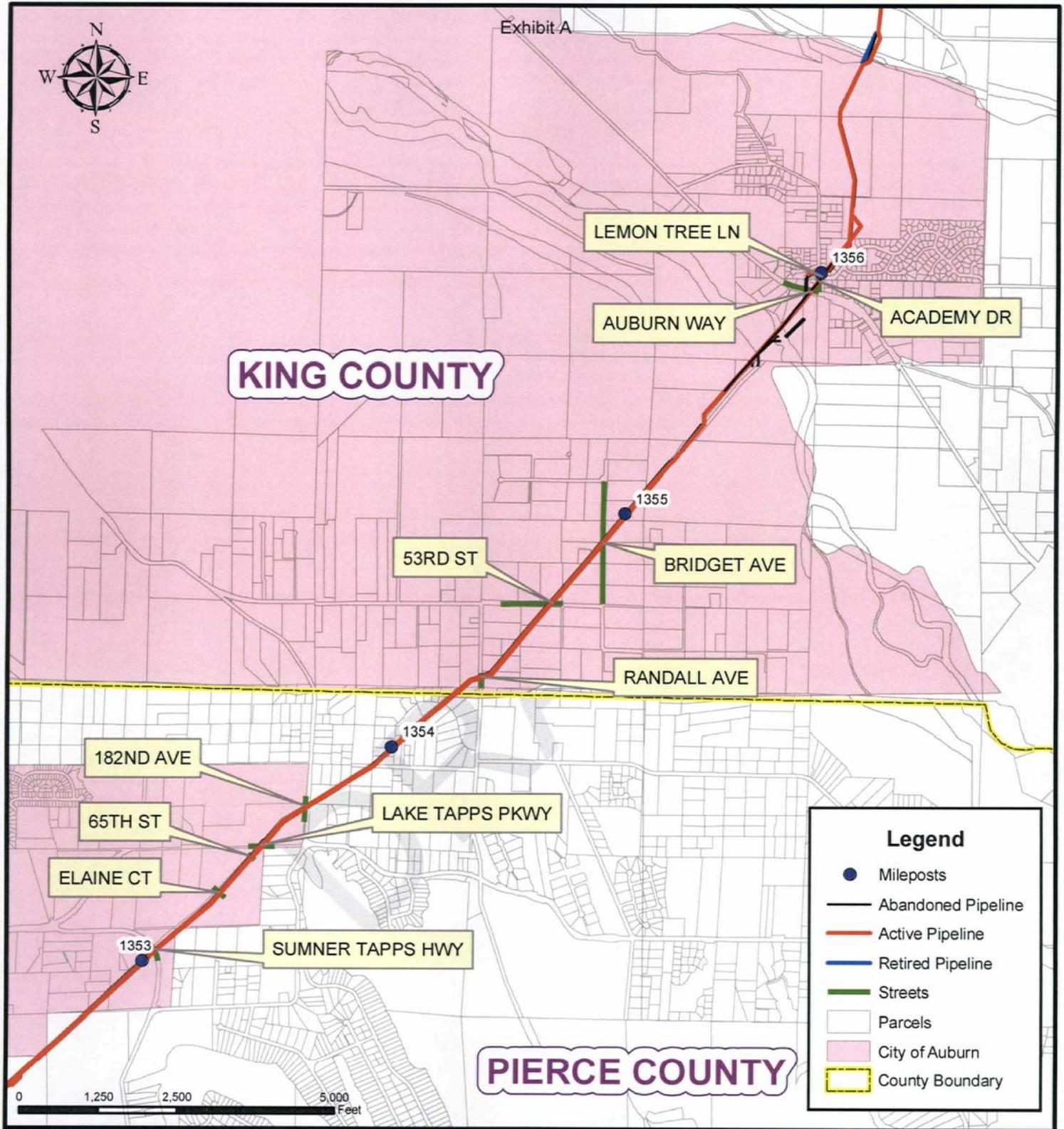
APPROVED AS TO FORM:


Daniel B. Heid, City Attorney

Published: 11-25-2016 Seattle Times



Exhibit A



Legend

- Mileposts
- Abandoned Pipeline
- Active Pipeline
- Retired Pipeline
- Streets
- Parcels
- City of Auburn
- County Boundary

PIERCE COUNTY

KING COUNTY

DRAWING NO.	REFERENCE TITLE

**NORTHWEST PIPELINE GP
LOCATION MAP
STREET DATA
CITY OF AUBURN
KING & PIERCE COUNTIES, WASHINGTON**



NO.	DATE	BY	REVISION NUMBER	W.O. NO.	CHK.	APP.	DWG. BY: CCS	DATE: 10/8/08	ISSUED FOR BID:	SCALE: 1:25,000
Ordinance No. 6619 Franchise Agreement No 16-54 August 29, 2016							CHK BY:	DATE:	ISSUED FOR CONTS:	
							APPR. BY:	DATE:	DRAWING NUMBER: Auburn	SHEET 1
							K:\Mapping Projects\Auburn_CityofMapping\ArcGIS\Auburn.mxd			OF 1

Exhibit "B"

Description or plans of facilities that are in the ground:
26inch, 30inch and 36inch diameter high pressure natural gas transmission pipelines, together with cathodic protection equipment and appurtenances.

Exhibit "C"

Description of services offered from facilities in Exhibit B to customers within the Auburn City Limits: High pressure natural gas transmission pipeline services for local natural gas distribution companies, powerplants or other industrial users.

EXHIBIT "D"

STATEMENT OF ACCEPTANCE

NORTHWEST PIPELINE LLC, for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated herein by this reference.

[Grantee]

By: [Signature]
Name: CLAY R GUSTAVES
Title: ATTORNEY-IN-FACT

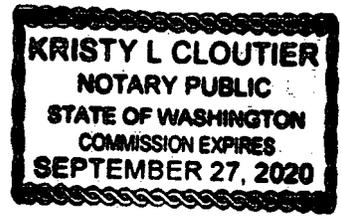
Date: 11/29/2016

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this 29th day of NOVEMBER, 2016, before me the undersigned, a Notary Public in and for the State of WA, duly commissioned and sworn, personally appeared, CLAY GUSTAVES of NORTH WEST PIPELINE LLC, the company that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date hereinabove set forth.

[Signature]
Signature
Kristy L. Cloutier
NOTARY PUBLIC in and for the State of WA, residing at Carnation



MY COMMISSION EXPIRES: 9/27/20