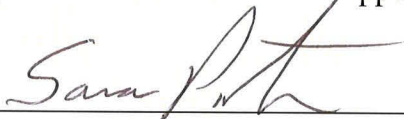


ACCEPTANCE

January 10, 2014

Auditor of the City of Portland
 City Hall Room 140
 1221 SW 4th Avenue
 Portland, Oregon 97204

This is to advise the City of Portland, Oregon that Chevron USA hereby accepts the terms and provisions of Ordinance No. 186402, passed by the Portland City Council on January 2, 2014, **Grant a franchise to Chevron USA for a period of 20 years to use City streets to own and operate a Pipeline System (Ordinance)** and in consideration of the benefits received thereunder by the corporation, Chevron USA hereby agrees to abide by and perform each and all of the applicable terms and provisions thereof.



Sara Porter, Area Manager, T & O, NW

Sara Porter
 Area Manager, Transportation & Operations NW
 6001 Bollinger Canyon Road
 Building L, L-3024
 San Ramon, CA 94583

SPOR@Chevron.com

Approved as to form: APPROVED AS TO FORM

City Attorney

 1/22/14
 CITY ATTORNEY

*When an acceptance is signed by an officer of a firm or corporation, his or her official title must be stated.

Ordinance No. 186402

Grant a franchise to Chevron USA for a period of 20 years to use City streets to own and operate a Pipeline System (Ordinance)

The City of Portland ordains:

Section 1. NATURE AND TERM OF GRANT.

1.1 Grant of Franchise.

(A) The City of Portland, Oregon does hereby grant to Chevron USA, a Pennsylvania corporation qualified to do business in Oregon, and to its successors and assigns as approved by the City under Section 13, a franchise to construct, operate, repair and maintain a Pipeline System, with all necessary Facilities, together with pump stations and other facilities, for transportation of petroleum products, located within the Streets, as shown on the map attached hereto as Exhibit A, which is incorporated by reference.

(B) At any point during the term of this Franchise, Chevron USA may seek to amend, alter, or add to its Pipeline System by filing a map showing such proposed changes with the City's Office for Community Technology and with the City Engineer. The City shall respond with its approval, modifications, or denial within 45 days from receiving Chevron USA's proposal. However, the total length of the trenches for Grantee's pipeline Facilities in the Streets shall not exceed 2,700 feet unless separately authorized by the City Council by ordinance.

(C) Throughout this Franchise, the City of Portland, Oregon, shall be referred to as the "City" and Chevron USA shall be referred to as "Grantee."

1.2 Duration of Franchise. The term of this Franchise, and all the rights and obligations pertaining thereto, shall be 20 years from the effective date of this Franchise, unless terminated sooner as provided herein.

1.3 Effective Date. The effective date of this Franchise shall be sixty (60) days after passage of the Franchise by the City Council, unless Grantee fails to file an unconditional written acceptance of this Franchise in accordance with Section 17.10, in which event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the original hereof, as stamped by the Council Clerk.

1.4 Franchise Not Exclusive. This Franchise is not exclusive. The City expressly reserves the right to grant franchises, licenses, permits or other similar rights to other Persons, as well as the right in its own name as a municipality, to use the Streets for similar or different purposes allowed Grantee under this Franchise.

1.5 Charter and General Ordinances to Apply. To the extent authorized by law, this Franchise is subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not merely existing

contractual rights of Grantee, now in effect or hereafter made effective. Section 10-201 through 10-218, inclusive, of the Charter of the City of Portland, (1942 compilation, as revised in part by subsequent amendments), as the same now exist or hereafter are amended by the people of the City, are hereby incorporated by reference and made a part of this Franchise. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction.

Section 2. DEFINITIONS.

2.1 Captions. Throughout this Franchise, captions are intended solely to facilitate reading and reference provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

2.2 Definitions. For the purpose of this Franchise, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

(A) "City" means the City of Portland, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

(B) "City Council" means the Council of the City of Portland.

(C) "Facility" means any tangible component of Grantee's Pipeline System.

(D) "Franchise" means this ordinance, as approved by the City Council and accepted by Grantee pursuant to Section 17.10.

(E) "Hazardous Substances" has the meaning given by ORS 465.200(16) (2011).

(F) "Minimum Annual Franchise Fee" shall mean \$12,000 in the first year of this Franchise, (for calendar year 2013), and shall increase by \$500 annually, until reaching a \$20,000 in year seventeen of this Franchise.

(G) "Person" means any natural person, and any individual, sole proprietorship, partnership, association, corporation, cooperative, municipal corporation, or other form of organization authorized to do business in the State of Oregon.

(H) "Pipeline System" or "System" means all of Grantee's pipeline facilities, together with its pump stations, gathering lines and distribution facilities for the transportation of petroleum products, located in or below the Streets.

(I) "Streets" means the surface of and the space above and below any public street, road, alley or highway within the City, used or intended to be used by the general public, to the extent the City has the right to allow Grantee to use them.

186402

(J) "Year," "Annual," or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

Section 3. COMPENSATION.

3.1 (A) Amount of Compensation. As compensation for the benefits and privileges under this Franchise, and in consideration of permission to use the Streets, Grantee shall pay to the City an annual Franchise fee throughout the duration of this Franchise. This Franchise fee shall be \$3.63 (for calendar year 2013) per linear trench foot of Grantee's Pipeline System in the Streets or the Minimum Annual Franchise Fee, whichever is greater. The total number of linear feet of Grantee's Pipeline System located in the Streets shall be determined by as built maps submitted by Grantee, as provided in Section 6.1(B).

(B) The rate per linear trench foot shall be adjusted annually by a percentage equal to the change in the Consumer Price Index (CPI) for Urban Wage Earners and Clerical Workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor and Statistics of the Department of Labor and as published in such Bureau of Labor Statistics Detailed Report during the time period immediately prior to the due date of the franchise fee payment.

3.2 Payment of Compensation.

(A) Grantee's Minimum Annual Franchise Fee under Section 3.1 for the first year of the Franchise shall be paid to the City on or before the forty-fifth day following the Effective Date of the Franchise, as defined in Section 1.3. Thereafter, Grantee shall pay each Minimum Annual Franchise Fee by April 15 for the current calendar year (January 1 through December 31).

(B) If the linear foot based franchise fee for the calendar year exceeds the Minimum Annual Franchise Fee, then Grantee shall pay the amount in excess to the City on or before May 15 of the following year.

(C) Payment not received by the City by the due date shall be assessed interest equal to the rate of one percent per month, compounded daily. Interest shall be due on the entire late payment from the date on which the payment was due until the date on which the City receives the payment.

(D) Grantee shall set up electronic fund transfer within sixty (60) days of the franchise effective date to submit payments to the City by Automated Clearing House (ACH) payment receipts. The City may grant any written requests for waivers from the ACH requirement.

3.3 Reports. Accompanying each payment to the City under Section 3.1, Grantee shall file with the City a written report setting forth the total length of the trenches through the Streets occupied by Grantee's System and Facilities, measured in linear feet along the major axis, the amount per linear foot, together with its calculation of the Franchise fee payment, any

adjustments for inflation, and the total amount due. Such reports shall be in a form satisfactory to the City.

3.4 Cost of Pre-franchising and Publication. Grantee shall pay for the pre-franchising costs associated with this Franchise, including publication of this Franchise, as such publication is required by the City Charter.

3.5 Acceptance of Payment and Recomputation. No acceptance of any payment pursuant to this Section 3 shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable. All amounts paid under this Section 3 shall be subject to audit by the City, provided that only payments which occurred during a period of sixty (60) months prior to the date the City notifies Grantee of its intent to perform an audit shall be subject to such audit. Grantee agrees to pay the City for:

(A) Interest on any underpayment of an amount due under Section 3 that is disclosed as the result of an audit, such interest to be calculated at the interest rate pursuant to Section 3.2(B).

(B) A penalty of five percent (5%) of the underpayment shall be assessed and due within thirty (30) days of written notice from the City, if the City's audit discloses that Grantee has paid ninety-five percent (95%) or less of the principal amount owing for the period under audit. If such payment is not received within thirty (30) days of written notice from the City, then interest shall be compounded daily from the date on which the payment was due until the date on which the City receives the payment, such interest to be calculated at the interest rate pursuant to Section 3.2(B).

3.6 Escrow. If Grantee disputes the City's determination of underpayment under Section 3, Grantee shall place the disputed amount in an escrow account at a financial institution acceptable to the City with instructions agreed to by the City until final resolution.

3.7 Right to Audit. The City and its agents and representatives shall have authority to arrange for and conduct audits or financial reviews of the relevant financial obligations payable under Section 3. The City may determine the scope of audit or review in each instance. All amounts paid by Grantee shall be subject to audit or review by the City, provided that such audit or review be completed within five (5) years from the date payment was due. City requests for audits or reviews shall be in writing. If Grantee has not provided copies of all information reasonably within the scope of the audit or review to the City within 30 days from the date of the written request, Grantee shall provide access to the information within the Portland metropolitan region, upon no less than 48 hours prior written notice, and during normal business hours. If the City requests in writing that Grantee provide, or cause to be provided, copies of any information reasonably within the scope of the audit or review, and Grantee fails within 30 days of receipt of the request to provide, or cause to be provided, such information, then the five (5) year period shall be extended by one day for each day or part thereof beyond 30 days that Grantee fails to provide or fails to cause to be provided, such requested information.

186402

3.8. No Credit Against Other City Charges. Payment of the compensation owed pursuant to Section 3 shall not exempt Grantee from the payment of any license fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City or other taxing authority, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge.

Section 4. GENERAL FINANCIAL AND INSURANCE PROVISIONS.

4.1 Insurance.

(A) At all times during which Grantee's Facilities are in the Streets as described in Section 1 of this Agreement, Grantee shall comply with the requirements for insurance or other forms of financial guaranty for right-of-way permits, as established by applicable Portland City Code, and administrative regulations, along with any revisions implemented by the City during the term of this Franchise. Until the time when applicable administrative regulations are effective, Grantee shall maintain insurance with the requirements as set forth in Exhibit B.

(B) Grantee shall maintain on file with the City a certificate of insurance certifying the coverage required above. The adequacy of the insurance shall be subject to the approval of the City Attorney. Failure to maintain liability insurance shall be cause for immediate revocation of this Franchise by the City.

(C) In the alternative to providing a certificate of insurance to the City certifying liability insurance coverage as required in Section 4.1(A), Grantee may provide the City with an annual statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for Grantee and the City, its officers, agents and employees, as otherwise required under Section 4.1(A). The adequacy of such self-insurance shall be subject to the City Attorney's review and approval. Upon Grantee's election to provide self-insurance coverage under Section 4.1(C), any failure by Grantee to maintain adequate self-insurance shall be cause for the City to declare a revocation of this Franchise under and subject to Section 14.

4.2 Faithful Performance Bond.

(A) Upon the effective date of this Franchise, Grantee shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of not less than \$100,000, conditioned that Grantee shall well and truly observe, fulfill, and perform each term and condition of the Franchise. Grantee shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of the Franchise, including, if necessary, the time required for removal of all of Grantee's Pipeline System installed in the Streets. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice first being given to the City. The bond shall be reviewed and approved as to form by the City Attorney as to whether the certificate and bond certified is consistent with the requirements of this Section 4.2.

(B) During the term of the Franchise, Grantee shall file with the City a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights against the performance bond under Section 4.2 if a bona fide, good faith dispute exists between the City and Grantee.

4.3 Construction Bond. At all times during which Grantee is constructing, repairing, replacing or maintaining its Facilities in the Streets, Grantee shall comply with the requirements for right-of-way permits established by applicable Portland City Code and implementing regulations in effect as of the date of this Agreement, along with any revisions implemented by the City during the term of this Agreement for providing construction bonds or other form of financial guaranty satisfactory to the City.

Section 5. COVENANT TO INDEMNIFY AND HOLD CITY HARMLESS.

5.1. Indemnification – General. Grantee hereby agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to Person or property by reason of any construction, excavation or any other act done under this Franchise, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its Pipeline System with all necessary Facilities in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees. The City shall provide Grantee with prompt notice of any such claim which Grantee shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done without the prior written approval of Grantee. Grantee and its agents, contractors and others shall consult and cooperate with the City while conducting its defense of the City.

5.2. Indemnification – Relocation. Grantee also hereby agrees to indemnify the City, its officers, agents and employees, for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its Pipeline System with all related Facilities in the Streets in a timely manner in accordance with Section 6.3, unless Grantee's failure arises directly from the City's negligence or willful misconduct.

5.3. Indemnification – Hazardous Substances. Grantee agrees to forever indemnify the City, its officers, agents and employees, from and against any claims, costs and expenses of any kind, whether direct or indirect, or pursuant to any state or federal law statute, regulation or order, for the removal or remediation of any leaks, spills, contamination or residues of Hazardous Substances, associated with, arising from or due to Grantee's pipes or other Facilities in the Streets.

Section 6. CONSTRUCTION AND RELOCATION.

6.1 Permits.

(A) Subject to applicable regulations of the City, Grantee may perform all construction necessary for the operation and maintenance of its Pipeline System. All construction and maintenance of any and all Pipeline System Facilities within the Streets shall, regardless of who performs installation and/or construction, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits necessary for installation and/or construction of any such Facilities, and for excavation and laying of any Pipeline System Facilities within the Streets. Grantee shall pay all applicable fees due for City construction permits.

(B) Maps.

(1) Prior to beginning any new construction in the Streets, Grantee shall provide the City Engineer through the permitting process with an initial construction schedule for work in the Streets and the estimated total cost of such work together with its permit application. When Grantee's construction in the Streets is completed, Grantee shall provide the City with electronic maps showing the location of its installed Pipeline System Facilities in the Streets, as built. Such "as-built" maps shall be in a form acceptable to the City Engineer.

(2) One (1) year after the effective date of this Franchise, and annually thereafter in the event of any alterations, Grantee shall provide an electronic map to the City Engineer and the City's Office for Community Technology, or its successor, showing the location of Grantee's Facilities in the Streets on a scale of three thousand five hundred feet (3,500') per inch or whatever scale the City and Grantee agree upon.

6.2 Locates. Grantee shall comply with the requirements of ORS 757.542-757.562 and ORS 757.993 (2011), and the rules and regulations promulgated thereunder in OAR Chapter 952.

6.3 Relocation. Grantee shall relocate its System within the Streets when the public convenience requires such change, in compliance with the requirements of Portland City Code and applicable administrative regulations, and the expense thereof shall be paid by Grantee.

6.4 Additional Facilities Subject to Franchise. Within thirty (30) days of Grantee's acquisition of any Pipeline System Facilities in the Streets, or upon any addition or annexation to the City of any area in which Grantee retains any such Facilities in the Streets, Grantee shall submit to the City a written statement describing all Facilities involved, whether authorized by franchise, license, permit or any other similar form of right granted by the City, and specifying the location of all such Facilities. At the City's sole option, as expressed by ordinance adopted by the City Council, such acquired Facilities shall be subject to the terms of this Franchise, with a reasonable period of time provided to Grantee to bring such acquired Facilities into compliance with this Franchise, including payment of appropriate Franchise fees as determined by the City in accordance with Section 3.

Section 7. RESTORATION OF STREETS.

Grantee shall, after construction, maintenance or repair of Facilities, leave the Streets in as good or better condition in all respects as before the commencement of such construction, maintenance or repairs, excepting normal wear and tear in strict compliance with the requirements for right-of-way permits established by applicable Portland City Code and implementing regulations, and the expense thereof shall be paid by Grantee.

Section 8. RESERVATION OF CITY STREET RIGHTS.

Nothing in this Franchise shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to injure or prevent the unrestricted use and operation of Grantee's Pipeline System under this Franchise. However, if any portion of Grantee's Pipeline System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the City may direct Grantee to relocate as provided in Section 6.3 of this Franchise.

Section 9. STREET VACATION.

Upon receipt of any request for vacation of any Street or portion thereof used by Grantee, the City shall provide Grantee with the standard notice provided for street vacations. If any Street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated Street area or Grantee secures such right from the third party that will have title to the area in which Grantee has its Facilities, Grantee shall, without expense to the City, remove its Facilities from such Street, restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area in such condition as may be required by the Council, which shall be no worse than the condition of such Street immediately prior to removal. In the event of failure, neglect or refusal of Grantee, after thirty (30) days notice by City Council, to repair, improve or maintain such Street portions, the City may do such work or cause it to be done, and the direct cost thereof, as found and declared by City Council, shall be entered in the Docket of City Liens against any property of Grantee which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. The City shall make reasonable efforts to assist Grantee in identifying potential available alternative locations within the Streets, or, if requested by Grantee, will cooperate with Grantee's efforts to secure an alternate location in the vacated Street area from the third party that shall have ownership after vacation.

Section 10. FACILITY MAINTENANCE.

Grantee shall provide and put in use all facilities and equipment necessary for the operation of its Pipeline System in a manner that will not cause injury to the City's property or to any property within the City belonging to any Person, consistent with applicable pipeline safety rules and regulations. Notwithstanding the foregoing, it shall not be a breach of Section 10 if such injury

is not reasonably foreseeable by Grantee. Grantee, at no expense to the City, shall repair, renew, change and improve said Facilities and equipment from time to time as may be necessary to meet the requirement of Section 10. Grantee shall not connect its pipes, structures or other Facilities in a manner that requires its customers to install any pipe, structure or other facility, within, under or over a Street. The System constructed, owned or controlled by Grantee shall be of good quality and workmanship and shall be maintained in good repair and efficiency, in compliance with federal and state gas pipeline and safety rules, regulations and standards, and applicable City ordinances.

Section 11. DISCONTINUED USE OF FACILITIES.

If Grantee intends to discontinue using any Facilities in the Streets, Grantee shall comply with the requirements of Portland City Code and implementing regulations regarding the discontinuation of the use of Facilities.

Section 12. HAZARDOUS SUBSTANCES.

Grantee shall comply with all applicable local, state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to its System and Facilities in the Streets. Grantee shall place utility corridor fill and use containment barriers in compliance with the requirements for right-of-way permits established by applicable Portland City Code and implementing regulations.

Section 13. CITY'S CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE.

13.1. Council Consent. Neither this Franchise, nor all or substantially all of Grantee's Pipeline System located in the Streets by authority of this Franchise, shall be sold, leased, mortgaged, assigned, merged or otherwise transferred without the prior written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld, except to entities that control, are controlled by, or are under common control with Grantee. Grantee shall give written notice to the City of any transfers to entities under such common control within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained in this Franchise shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantee's Pipeline System for the purpose of financing the acquisition of equipment for or the construction and operation of Grantee's Pipeline System, within or outside the City, without the City's consent, but any such mortgage, pledge or assignment with respect to Grantee's Pipeline System shall be subject to the City's other rights contained in this Franchise.

13.2. Review.

(A) In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer, the City may inquire into the technical, legal, and financial qualifications of the prospective party. Grantee shall assist the City in any such inquiry. The City may condition any sale, lease, mortgage, assignment, merger or transfer upon such

186402

conditions related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of this Franchise, as it deems appropriate. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer or merger.

(B) No sale, lease, mortgage, assignment, transfer or merger for which the City's consent by ordinance is required may occur until the successor, assignee or lessee has complied with the requirements of Section 4, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Grantee shall file with the City an executed counterpart or certified copy thereof.

13.3. Leases. Grantee shall not lease any portion of its franchised Pipeline System without the City's prior consent as expressed by ordinance. However, and notwithstanding Section 13.1, Grantee may lease any portion of its Pipeline System in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such portion of its Pipeline System. A lessee of any portion of Grantee's Pipeline System shall not obtain any rights under this Franchise.

13.4. Sales.

(A) Notwithstanding Section 13.1, Grantee may sell portions of its Pipeline System in the ordinary course of its business, without otherwise obtaining the City's consent by ordinance, so long as Grantee complies with the following conditions:

(1) The sale is to the holder of a current existing, valid franchise, license, permit, or other similar right granted by the City Council;

(2) Within fourteen (14) days of the sale being executed and becoming final, Grantee shall provide written notice to the City, describing the portions of the Pipeline System sold by Grantee, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the requirements of Section 6.1(B)(2) and providing an executed counterpart or certified copy of the sales documents;

(3) Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its remaining Pipeline System; and,

(4) Within fourteen (14) days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the City that it has assumed sole responsibility for locating, servicing, repairing, relocating or removing the purchased Facilities under the purchaser's current, existing valid franchise, license, permit or other similar right granted by the City. The purchaser shall not obtain any of Grantee's rights under this Franchise.

Section 14. FRANCHISE VIOLATIONS AND REMEDIES.

14.1 Remedies for Franchise Violations.

(A) In addition to any rights set out elsewhere in this Franchise, or such other rights as it may possess, the City reserves the right at its discretion to apply any of the following remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise, including but not limited to payment of franchisee fees, submitting timely and accurate reports, providing timely access to records, and maintaining all required insurance or performance bonds.

- (1) Impose liquidated damages as provided in Section 14.1(C);
- (2) Recover specific damages from all or any part of the security provided pursuant to this Franchise, including without limitation any performance bond, letter of credit or other security, provided, however, the assessment shall be for such amount as the City reasonably determines is necessary to remedy the violation;
- (3) Commence litigation seeking recovery of monetary damages or specific performance of this Franchise, as such remedy may be available;
- (4) Suspend Grantee's Franchise rights related to the violation, until Grantee corrects or otherwise remedies the violation;
- (5) Reduce the duration of the term of this Franchise on such basis as is reasonable provided that in no event shall the amount of the term remaining after the reduction be less than three (3) years; or
- (6) Revoke this Franchise.

(B) (1) Grantee shall not be relieved of its obligations to comply promptly with this Franchise by reason of any failure of the City to enforce prompt compliance. The City's failure to enforce shall not constitute a waiver of any term, condition, or obligation imposed upon Grantee under this Franchise; nor a waiver of rights by the City or acquiescence in Grantee's conduct. A specific waiver of a particular term, condition, or obligation imposed upon Grantee under this Franchise shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation. The acts or omissions of affiliates are not beyond Grantee's control, and the knowledge of affiliates shall be imputed to Grantee.

(2) Subject to applicable law, the remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any available rights of the City at law or equity.

(C) Liquidated Damages

(1) The City and Grantee recognize that delays, expense and unique difficulties would be involved in establishing actual losses suffered by the City and the public as a result of Grantee's

violation of certain material provisions of this Franchise. In circumstances where proof of specific, actual damages would not be feasible, Grantee shall pay liquidated damages to the City for violating material provisions of this Franchise. The parties agree that such amounts are a reasonable estimate by the parties of the actual harm (including increased costs of administration and other damages difficult to measure) the City and the public would suffer in the event of Grantee's breach of such provisions of this Franchise. City and Grantee agree that the Franchise provisions to which such liquidated damages would apply are:

(a) Failure to send reports, maps, or other requested information or data as required by Sections 3.3 or 6.1(B);

(b) Failure to respond to audit requests as required by Section 3.7; and

(c) Failure to comply with Section 13 in connection with an assignment, transfer, merger, lease, sale or mortgage of Grantee's System or Franchise.

(2) Subject to Grantee's right to notice and the opportunity to cure as provided in Section 14.2, if the City determines that Grantee has violated any material provision of this Franchise, the City may assess liquidated damages of \$1,000. Liquidated damages may be assessed by the City based upon the number of incidents of such violations.

(3) The liquidated damage amounts are stated in 2013 dollars and shall be adjusted each year for any increase in the amount of change in the Consumer Price Index for urban age earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor and as published in such Bureau of Labor Statistics' Detailed Report (CPI). The adjustment will be calculated by multiplying the base liquidated damages amount by the ratio of 1) the average CPI for January through June of the current Year, to 2) the average CPI for January through June of the prior Year.

(4) The assessment and recovery of liquidated damages will not constitute a waiver by the City of any other right or remedy it may have under the Franchise or applicable law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by City by reason of the breach of this Franchise. The assessment and recovery of liquidated damages for a particular violation will substitute for the recovery of actual damages for such violation for the period of the assessment.

(5) Each violation of any material provision of this Franchise shall be considered a separate violation for which separate liquidated damages may be imposed. Thereafter, if Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue any other remedies available under this Franchise or applicable law.

(D) In determining which of the remedies available under this Franchise is appropriate, the City may consider, among other things: (1) the nature and extent of the violation; (2) whether Grantee has had a history of similar violations; (3) the Person burdened by the violation and the cost of remedying the violation; (4) the nature of the remedy required in order to prevent further such violations; and (5) such other factors as the City may deem appropriate.

(E) The City may shorten the term of this Franchise or revoke this Franchise in the manner described in Sections 14.1(A)(5) and (6) upon the occurrence of any of the following acts or events:

(1) Any failure to comply with the requirements of Section 4 of this Franchise, including but not limited to, any failure to provide uninterrupted insurance or performance bonds;

(2) Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City; or

(3) Grantee fails to obtain and maintain any permit required by any federal or state regulatory body in order to own and operate the Pipeline System.

(F) In addition to its other rights and remedies as set forth in this Franchise, the City shall have the right to revoke this Franchise after the appointment of a receiver or trustee to take over and conduct Grantee's business, or the initiation of receivership, reorganization, insolvency or other similar action or proceeding, unless Grantee, its receiver or trustee timely and fully perform all obligations, until such time as this Franchise is either rejected or assumed by Grantee, its receiver or trustee.

14.2 Notice and Opportunity to Cure.

(A) The City shall give Grantee thirty (30) days prior written notice of its intent to exercise any of its rights under Section 14.1, identifying the reasons for such action.

(B) If Grantee removes or otherwise cures to the satisfaction of the City the asserted violation constituting the stated reason within the thirty (30) day notice period, or if cure is not reasonably possible within the thirty (30) day period and Grantee initiates good faith efforts satisfactory to the City within the thirty (30) day period to cure the asserted violation constituting the stated reason and the efforts continue in good faith, the City shall not exercise its rights under Section 14.1.

(C) If Grantee fails to remove or otherwise cure the asserted violation constituting the stated reason within the thirty (30) day notice period, or if Grantee does not undertake and continue efforts satisfactory to the City to remedy the stated reason, then the City may exercise any or all of the remedies available under Section 15.1 or such other rights as the City may possess.

14.3 Removal of Facilities. If the City has revoked this Franchise as provided in Section 14.1, or if this Franchise has expired without being renewed or extended, or in the event of the City's purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, all of Grantee's rights under this Franchise shall immediately cease and be divested. Thereafter, except as provided in this Section, or as otherwise provided by ordinance, Grantee

shall at its own expense remove its Facilities from the Streets and restore the Streets to the standards provided in applicable regulations of the City. In the event of a failure by Grantee to properly perform such work, then the City may perform the work and collect the cost thereof from Grantee. The cost thereof shall be a lien upon the system of Grantee and a set-off against any sums owed Grantee by City.

Section 15. RENEGOTIATION.

In the event that any provision of this Franchise becomes invalid or unenforceable and the City Council or Grantee expressly finds that such provision constituted a consideration material to entering into this Franchise, the City and Grantee may mutually agree to renegotiate the terms of this Franchise. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the offer to renegotiate, the parties shall have ninety (90) days to conduct and complete the renegotiation. If both parties agree to renegotiations under Section 15, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

Section 16. EXPIRATION.

Upon the expiration of this Franchise, the City shall have the right, at its election, to: (1) renew or extend Grantee's Franchise; (2) invite additional proposals and award the Franchise to another Person; (3) allow the Franchise to expire without further action; or (4) take such further action as the City deems appropriate. Until such time as the City exercises its rights under Section 16, Grantee's rights and responsibilities within the City shall be controlled by the terms of this Franchise.

Section 17. MISCELLANEOUS PROVISIONS.

17.1 Compliance with Laws.

(A) Both Grantee and the City shall comply with all applicable federal and state laws.

(B) Grantee shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.

17.2 Severability. If any section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, unless the City Council determines such section, provision, or clause was material to the City's agreement to issue a franchise to Grantee. All provisions concerning indemnity shall survive the termination of this Franchise for any cause. Expiration or termination of this agreement shall not extinguish, prejudice or limit either party's right to enforce this Franchise with respect to any default or defect in performance that has not been corrected.

17.3 Regulation and Nonenforcement by the City. The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this

186402

Franchise in the public interest. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

17.4 Force Majeure.

(A) For the purposes of Section 17.4, the term "Force Majeure" shall mean Acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events which are not reasonably within the control of the parties hereto.

(B) If Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, Grantee shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Franchise, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Franchise.

17.5 Choice of Forum. Any litigation between the City and Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Portland.

17.6 Choice of Law. This contract shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state.

17.7 Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; (2) sent by overnight or commercial air courier (such as Federal Express); or (3) sent by electronic mail addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

(A) If to the City:

Office for Community Technology
City of Portland, Oregon
111 SW Columbia Street, Suite 600
Portland, Oregon 97201
Email: ComTech@portlandoregon.gov

With a copy to:

186402

City Attorney's Office
City of Portland
1221 SW 4th Avenue, Room 430
Portland, Oregon 97204

(B) If to Grantee:

Chevron U.S.A. Inc.
145 S. State College Blvd., Suite 400
Brea, CA 92821
Attn: Property Manager

With a copy to:

Chevron U.S.A. Inc.
6001 Bollinger Canyon Road
San Ramon, CA 94583
Attn: Property Manager, Chevron Products

(C) Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail as aforesaid, one (1) business day after shipment by commercial air courier as aforesaid, or the same day as electronic mail transmission (or the first business day thereafter if sent by electronic mail on a Saturday, Sunday or legal holiday) but, in the case of electronic mail, only if followed by transmittal by national overnight courier or hand for delivery on the next Business Day.

17.8 Public Records. Information and records submitted to the City are subject to disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. If Grantee reasonably believes that any information or records it submits to the City may be exempt from disclosure under the Oregon Public Records Law, Grantee must identify such information with particularity and include the following statement:

"This data is exempt from disclosure under the Oregon Public Records Law pursuant to ORS 192, and is not to be disclosed except in accordance with the Oregon Public Records Law, ORS 192.410 through 192.505."

If Grantee fails to identify with particularity the portions of such information that Grantee believes are exempt from disclosure, and the basis for its conclusion that the identified information is exempt from disclosure, Grantee is deemed to waive any future claim regarding non-disclosure of that information.

17.9 Franchise Amendment. The City has negotiated this Franchise in good faith, in reliance upon the information provided by Grantee regarding the scope of its authority to offer services associated with its Pipeline System. In the event that Grantee offers or receives authority to offer services outside the scope of this Franchise that utilize Grantee's Facilities in the Streets, Grantee

186402

shall immediately notify the City. Within ninety (90) days of receiving such notice, the City may elect, without limitation, to enter into negotiations with Grantee to revise or amend this Franchise, or to extend separate authority to Grantee for such services to reflect such changed circumstances, or may proceed with early revocation of this Franchise. The parties will negotiate in good faith to reach mutual agreement on the lawful means to provide the necessary authority for Grantee to provide such services using Streets.

17.10 Written Acceptance. On or before the thirtieth day after this ordinance becomes effective, Grantee shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by Grantee, meeting the approval of the City Attorney. Any failure on the part of Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this ordinance.

17.11 Other Authority Superseded. Upon effectiveness of this Franchise, any and all authority to operate previously granted to Grantee by the City is superseded by this Franchise.

Passed by Council, JAN 02 2014
Mayor Charlie Hales
Prepared by JLi/BE Walters
March 29, 2013

LaVonne Griffin-Valade
Auditor of the City of Portland

By *Susan Larrour*
Deputy