

Ordinance No. 188554

Grant a franchise to LCP Oregon Holdings, LLC to construct, operate and maintain pipeline facilities under City streets for a period of 20 years (Ordinance)

The City of Portland ordains:

**Section 1.** The City Council finds:

1. By Ordinance No. 164748, effective December 15, 1991, the City of Portland granted Chevron U.S.A., Inc. (“**Chevron**”) a franchise to construct, operate and maintain pipeline facilities under City streets for a period of thirteen years. The term of that franchise was subsequently extended to June 30, 2006 by Ordinance No. 178939 and Ordinance No. 179429.
2. In February 2005, the City of Portland was notified that Paramount of Oregon, Inc. (“**Paramount**”) was in negotiations with Chevron to purchase certain Chevron facilities located on NW Front Street.
3. On February 23, 2005, the City Council granted a temporary, revocable permit to Paramount to own and operate pipeline facilities under City streets. Ordinance No. 179078.
4. On September 14, 2005, the City Council consented to Chevron’s transfer of those pipeline facilities under City streets to Paramount. Ordinance No. 179588.
5. By Ordinance No. 180378, effective October 15, 2006, the City of Portland granted Paramount a franchise to construct, operate and maintain pipeline facilities under City streets for a period of ten years.
6. On December 18, 2013, the City Council consented to the transfer of Paramount’s franchise and pipeline facilities under City streets to LCP Oregon Holdings, LLC (“**LCPOH**”). Ordinance No. 186387. LCPOH’s pipeline facilities are within that part of the City streets shaded in red on the map attached hereto as Exhibit A.
7. LCPOH has leased its pipeline facilities to Arc Terminal Holdings LLC as allowed under Section 14.2(A) of LCPOH’s existing franchise.
8. Section 17(A) of LCPOH’s existing franchise gives LCPOH a “first and preferential right” to renewal of its franchise.
9. On September 14, 2016, the City Council adopted Ordinance No. 187980, extending the term of the franchise through October 31, 2017.
10. LCPOH has requested the City grant to it a franchise for a renewed term. LCPOH and the City have reached final agreement on terms and conditions of a 20-year franchise consistent with other pipeline franchises granted by the City Council and with the City policy adopted in Resolution No. 37168 regarding fossil fuel infrastructure.

## Section 2. NATURE AND TERM OF GRANT.

### 2.1 Grant of Franchise.

(A) The City of Portland, Oregon grants to LCP Oregon Holdings, LLC, a Delaware limited liability company qualified to do business in Oregon, and to its successors and assigns as approved by the City under Section 8, a franchise to construct, operate, repair and maintain a Pipeline System, with all necessary pipeline facilities, together with pump stations and other facilities, for transportation of petroleum and/or petroleum products, in and under the Streets within the area outlined in red on the map attached hereto as Exhibit A, which is incorporated by reference.

(B) As provided in Section 3.2, the City of Portland, Oregon shall be referred to as the “City” and LCP Oregon Holdings, LLC shall be referred to as “Grantee” throughout this Franchise.

(C) At any point during the term of this Franchise, Grantee may seek to amend, alter or add to its Pipeline System within the Street area outlined in red on attached Exhibit A 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 in writing with its approval, modifications, or denial (and its reasoning for any modifications or denial) within forty-five (45) days from receiving Grantee’s proposal. However, Grantee’s pipeline Facilities in the Streets shall not extend outside the area outlined in red on attached Exhibit A unless separately authorized by the City Council by ordinance.

2.2 Duration of Franchise. The term of this Franchise, and all the rights and obligations pertaining thereto, shall be twenty (20) years from the Effective Date of this Franchise, unless terminated sooner as provided in this Franchise.

2.3 Effective Date. The “Effective Date” of this Franchise shall be sixty (60) days after the date of passage of this Franchise by the City Council, unless Grantee fails to file an unconditional written acceptance of this Franchise in accordance with Section 12.12, 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.

2.4 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.

2.5 Compliance with Laws. 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 materially in conflict with existing contractual rights of Grantee, now in effect or hereafter made effective. Sections 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 3. DEFINITIONS.

3.1 Captions and Sections. Throughout this Franchise, captions are intended solely to facilitate reading and to reference provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise. All references in this Franchise to sections shall be deemed to be references to sections of this Franchise unless specified otherwise.

3.2 Definitions. For the purpose of this Franchise, the following terms and 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) "**Annual**" or "**Annually**" means the period consisting of a full calendar year, beginning January 1 and ending December 31.

(B) "**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.

(C) "**City Council**" means the Council of the City of Portland.

(D) "**CPI**" means the Consumer Price Index for Urban Wage Earners and Clerical Workers for the Portland, Oregon metropolitan region, 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.

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

(F) "**Franchise**" means this ordinance, as approved by the City Council and accepted by Grantee pursuant to Section 12.12.

(G) "**Grantee**" means LCP Oregon Holdings, LLC and its successors and assigns as approved by the City under Section 8.

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

(I) "**Pipeline System**" means all of Grantee's pipeline facilities, together with its pump stations, gathering lines and distribution facilities for the transportation of petroleum and/or petroleum products, including asphalt, aviation gasoline, and distillate fuel oil, located in or below the Streets.

(J) “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.

#### **Section 4. COMPENSATION.**

##### **4.1 Amount of Compensation.**

(A) As compensation for the benefits and privileges under this Franchise, and in consideration of permission to use the Streets within the area outlined in red on attached Exhibit A, Grantee shall pay to the City an Annual franchise fee for each calendar year through the duration of this Franchise. The franchise fee shall be thirty-five thousand dollars (\$35,000) (for calendar year 2017).

(B) The franchise fee shall be adjusted Annually by a percentage equal to the change in the CPI during the prior calendar year. For example, if the percentage increase in the CPI for calendar year 2017 is 2.3%, then the franchise fee for calendar year 2018 would be \$35,805 (i.e., \$35,000 \* 102.3%).

(C) If the City Council authorizes Grantee to extend its Facilities outside the Street area outlined in red on attached Exhibit A, the authorizing ordinance shall specify the agreed-to compensation for such extension outside such area.

##### **4.2 Payment of Compensation.**

(A) Grantee’s Annual franchise fee under Section 4.1 shall be paid to the City on or before May 15 of the following calendar year. For example, the Annual franchise fee for calendar year 2017 shall be due on or before May 15, 2018.

(1) If the first effective year of this Franchise is less than a full calendar year, then (1) the franchise fee under Section 4.1 for the first effective year of this Franchise shall be pro-rated (rounded to the nearest end of month) and (2) the franchise fee for the last effective year of the franchise granted under Ordinance No. 180378 shall be pro-rated (rounded to the nearest end of month) with any excess amount Grantee has paid under Ordinance No. 180378 being credited against the franchise fee owed under Section 4.1 for the first effective year of this Franchise.

(2) If the last effective year of this Franchise is less than a full calendar year, then the franchise fee under Section 4.1 for the last effective year of this Franchise shall be pro-rated (rounded to the nearest end of month).

(B) Payment not received by the City by the due date shall be assessed interest equal to the rate of one percent (1%) per month, compounded monthly. 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.

(C) Grantee shall set up electronic funds transfer within sixty (60) days after the Effective Date to submit payments to the City by Automated Clearing House (“ACH”) payment

receipts. The City may approve any written requests from Grantee for waivers from the ACH requirement.

4.3 Reports. In conjunction with each payment to the City under Section 4.1, Grantee shall file with the City a written report setting forth its calculation of the Annual franchise fee payment. Such reports shall use the City's form.

4.4 Cost of Publication. Grantee shall pay the costs of publication of this Franchise and any amendments thereto, if such publication is required by the City Charter.

4.5 Acceptance of Payment and Recomputation. Acceptance of payment pursuant to Section 4 shall not 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 or any claim Grantee may have for a refund. All amounts paid under Section 4 shall be subject to review by the City, provided that only payments which were due 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 and the City shall not audit any period for which it previously conducted an audit. If no such audit is conducted within the sixty (60) month period, then any claim that the City might have had for additional compensation shall be forever waived and relinquished. Grantee agrees to pay the City for:

(A) Interest on any underpayment of an amount due under Section 4 that is disclosed as the result of an audit, such interest to be calculated at the interest rate pursuant to Section 4.2(B).

(B) A penalty of five percent (5%) of the underpayment shall be due within forty-five (45) days after written notice from the City, if the City's review discloses that Grantee has paid ninety-five percent (95%) or less of the principal amount owing under Section 4 for the period under audit. The City will waive this penalty if the City determines that Grantee has established that the underpayment was due to a clerical error, mistake of fact, or other inadvertence that:

- (1) Is manifest from the record or is otherwise clearly established by documentary evidence provided to the City;
- (2) Does not require the use of judgment or subjective decision making for their correction; or
- (3) Does not amount to an error in the construction of a law.

4.6 Authority to Conduct Audits.

(A) The City and its agents and representatives shall have authority to arrange for and conduct audits of the relevant financial obligations payable under this Franchise, upon no less than thirty (30) days' prior written notice to Grantee, and during normal business hours at reasonable locations in the City or the Portland metropolitan area designated by Grantee. The City's thirty (30) day notice shall provide Grantee with a preliminary list of documentation requested by the City for review. Following availability being made by Grantee of complete, necessary documentation, the City and its agents and representatives shall use best efforts to complete any review under this Section 4.6 within sixty (60) days; in any event, any review shall

not exceed ninety (90) days unless by mutual consent of the parties. Any documentation made available by Grantee to the City for the review shall not be copied or removed from the reasonable locations designated by Grantee, and both the documents and the information contained therein shall be accorded the maximum level of confidential treatment to the extent authorized by Oregon law.

(B) Grantee agrees to reimburse the City for the reasonable costs of such review if the review discloses that Grantee has paid ninety percent (90%) or less of the principal amount owing under Section 4 for the period at issue. The City will waive the reimbursement if the City determines that Grantee has established that the underpayment was due to a clerical error, mistake of fact or other inadvertence that:

- (1) Is manifest from the record or is otherwise clearly established by documentary evidence provided to the City;
- (2) Does not require the use of judgment or subjective decision making for their correction; or
- (3) Does not amount to an error in the construction of a law.

(C) Subject to the requirement set forth in Section 4.7, Grantee shall reimburse the City within forty-five (45) days after receipt of an invoice from the City showing such costs were actually incurred and were directly related to the review.

4.7 Grantee Dispute of Review. Grantee shall have the ability to dispute any determination of underpayment by the City within thirty (30) days after receipt of written notice from the City related to the review. If Grantee disputes the City's determination of any underpayment under this Franchise, Grantee shall place the disputed amount in an escrow account (at a financial institution acceptable to the City pursuant to escrow instructions reasonably acceptable to the City, Grantee and escrow agent) until final resolution of the dispute.

4.8 Liability for Licenses and Taxes. Payment of the franchise fee and other financial obligations under this Franchise 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 lawfully be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge.

## **Section 5. GENERAL FINANCIAL AND INSURANCE PROVISIONS.**

### 5.1 Insurance.

(A) Grantee shall maintain in full force and effect, at no cost and expense to the City, continuously during this Franchise, insurance and other forms of financial guarantees in accordance with applicable Portland City Code and administrative regulations. Until the time when such implementing administrative regulations are effective, Grantee shall maintain insurance in accordance with the following insurance coverage:

(1) Commercial General Liability Insurance with limits of not less than two million dollars (\$2,000,000) combined single limit covering property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of Grantee's Pipeline System, and the conduct of Grantee's business in the City to the extent authorized by this Franchise. Grantee may satisfy this insurance requirement through a single policy, or a primary policy in combination with excess liability insurance or umbrella insurance. If Grantee's coverage is through a combination of insurance, the excess liability insurance or umbrella insurance must provide the same type of coverage as the primary policy, and the combined policies must provide aggregate limits of not less than two million dollars (\$2,000,000). The excess liability or umbrella coverage shall be subject to the other requirements of this Section 5.1.

(2) Automobile Liability Insurance with limits of not less than one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

(3) Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.

(4) Employers' Liability Insurance with limits of not less than the following amounts:

(a) Bodily Injury by Accident: one hundred thousand dollars (\$100,000); and

(b) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) employee limit; five hundred thousand dollars (\$500,000) policy limit.

(5) Pollution Liability Insurance for a pollution event from Grantee's Pipeline System, which shall include coverage as follows:

(a) Bodily injury including death, sickness, disease, mental anguish or shock sustained by any person;

(b) Property damage including natural resource damages, and physical injury to or destruction of tangible property, including resulting loss of use, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;

(c) Defense, including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;

(d) Remediation costs, including the costs to investigate, monitor, mitigate, abate, and implement engineered and institutional controls and any other response actions as required by law; and defense costs, including costs and expenses incurred in the

investigation, defense, or settlement of claims related to remediation; and

- (e) Coverage shall have a limit of not less than two million dollars (\$2,000,000) and shall apply to sudden accidental, and gradual pollution conditions resulting from either (1) the escape or release of hazardous substances from Grantee's Pipeline System or (2) the escape or release of hazardous substances due to Grantee's Pipeline System operations, including, but not limited to, Grantee's Pipeline construction, maintenance, and inspection operations. If the coverage is written on a claims-made basis, Grantee warrants that any retroactive date applicable to coverage under its policy precedes the Effective Date, provided that coverage provided by any successor or assign of Grantee shall be effective no later than the effective date of the City's approval of the Transfer to such successor or assign under Section 8 or, if the successor or assign controls, is controlled by, or is under common control with Grantee, no later than the effective date of the transfer.

(6) The minimum limits of the insurance as provided in this Section 5.1 shall be subject to any changes as to the maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise.

(B) The City shall be designated as an additional insured under each of the insurance policies required in this Section 5.1 by endorsement on the policies, except Workers' Compensation Insurance, Employers' Liability Insurance and Automobile Liability Insurance. The insurance shall be without prejudice to coverage otherwise existing.

(C) Grantee shall not cancel any insurance policy required under this Section 5.1, nor shall Grantee allow the required insurance to lapse, without obtaining alternative insurance in conformance with this Franchise. For any of the insurance policies identifying the City as an additional insured, as provided under this Section 5.1, Grantee shall notify the City within thirty (30) days of any notice of non-renewal or cancellation or any change in coverage materially adverse to the City. Notices will be provided in accordance with the applicable policies. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 5.1 during the term of this Franchise, Grantee shall provide a replacement policy.

(D) Unless Grantee opts to follow self-insurance procedures described in Section 5.1(F), each of the required insurance policies shall be with insurers authorized or permitted to do business in the State of Oregon, with an A-: VII or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition or an equivalent rating entity.

(E) Grantee shall provide the City, within fifteen (15) days after the Effective Date, and thereafter maintain on file with the City written evidence of insurance certifying the coverage required, which evidence shall be subject to the approval of the City Attorney's Office as to whether the insurance provided is consistent with the requirements of this Section 5.1. Failure to

maintain adequate insurance as required under this Section 5.1 shall be deemed sufficient cause for the City to declare a revocation of this Franchise under and subject to Section 9.

(F) In the alternative to providing written evidence of insurance to the City certifying liability insurance coverage as required in this Section 5.1, 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 and its officers, agents and employees, as otherwise required under this Franchise. 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 this Section 5.1(F), any failure by Grantee to maintain adequate self-insurance shall be deemed sufficient cause for the City to declare a revocation of this Franchise under and subject to Section 9.

## 5.2 Faithful Performance Bond.

(A) Grantee shall maintain in full force and effect, at its own cost and expense, continuously during this Franchise, a faithful performance bond running to the City, with good and sufficient surety approved by the City, in accordance with applicable Portland City Code and administrative regulations. Until the time when such implementing administrative regulations are effective, and upon the Effective Date, 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 one hundred thousand dollars (\$100,000), conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of this Franchise. Such bond shall be maintained by Grantee throughout the term of this Franchise.

(B) Grantee shall pay all premiums charged for the bond, and unless the City Council specifically directs otherwise, shall keep the bond in full force and effect at all times throughout the term of this Franchise, including the later of either:

- (1) The remaining term of this Franchise; or
- (2) If required by the City, the removal of all Grantee's Pipeline System installed in the City's Streets.

(C) 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 is subject to review and approval by the City Attorney as to its adequacy under the requirements of this Section 5.2. During the term of this 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 5.2 if a bona fide, good faith dispute exists between the City and Grantee.

(D) Subject to the City's prior approval, Grantee may provide an irrevocable letter of credit or equivalent form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the City substantially the same rights and guarantees provided by a faithful performance bond.

## **Section 6. COVENANT TO INDEMNIFY AND HOLD CITY HARMLESS.**

6.1 Indemnification - General. Grantee shall indemnify, defend and hold harmless the City and its officers, agents and employees, from any claims, damages, costs or expenses, including but not limited to reasonable attorney fees, arising from any personal injury or property damage arising out of or by reason of: (1) any construction, excavation, operation, maintenance, reconstruction or any other act done under this Franchise, by or for Grantee or its agents or employees, or (2) any neglect or omission of Grantee to keep its Pipeline System with all necessary Facilities in a reasonably safe condition. Grantee's indemnification obligation shall not extend to liability to the extent caused by the negligence or willful misconduct of the City or its officers, agents, boards or employees or any other third party. The City shall notify Grantee in writing as soon as reasonably practical after receiving written notice of any third-party action or other claim against it. The notice shall describe the claim, the amount of the claim (if known and quantifiable) and the basis for the claim. Grantee shall have the sole and absolute right, upon written notice to the City, to defend the claim with counsel of its own choosing. No settlement or compromise of any such claim will be made by Grantee without the prior written approval of the City, which approval shall not be unreasonably withheld, delayed or conditioned. Grantee and its agents, contractors, officers and employees shall consult and cooperate with the City while conducting its defense of the City, and the City shall fully cooperate with Grantee.

6.2 Indemnification - Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting 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 a relocation schedule consistent with the Portland City Code, furnished to Grantee by the City's duly authorized agent in writing, unless Grantee's failure arises from the City's or the City's contractor's negligence or willful misconduct.

6.3 Indemnification - Hazardous Substances. Grantee agrees to forever indemnify the City and 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, directly attributable to Grantee's structures or other Facilities in the Streets. For purposes of this Section 6.3, "**Hazardous Substances**" shall have the meaning given by ORS 465.200(16) (2015).

## **Section 7. GENERAL STREET USE AND CONSTRUCTION.**

7.1 In General. Grantee shall maintain its Pipeline System, and all new Facilities shall be constructed in accordance with applicable City regulations and ordinances. The City shall perform its obligations with regard to the Pipeline System construction in accordance with applicable ordinances and regulations and the City's processes and practices generally made available to all third parties.

7.2 Permits.

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

(B) In accordance with Section 10-209(C) of the Portland City Charter, Grantee shall, when submitting permit application(s) for work in the Streets, provide the City Engineer, with an initial construction schedule for work in the Streets and the estimated total cost of such work.

(C) *Maps.* As Grantee undertakes any construction and maintenance of its Pipeline System requiring a Street opening permit, Grantee shall update the “as-built” maps submitted to the City Engineer showing the location of Grantee’s installed Facilities in the Streets related to such Street opening permit. Such “as-built” maps shall be on a scale of three thousand five hundred (3,500) feet per inch or whatever scale the City and Grantee agree upon. Grantee’s “as-built” maps shall be provided in an electronic format (such as pdf or a successor format) acceptable to the City and Grantee. The level of detail in maps provided by Grantee shall be limited to that which is needed for the City’s administration of the Streets in order to protect Grantee’s confidential business information and the security of Grantee’s Pipeline System.

7.3 Locates. Grantee shall comply with the requirements of the Oregon Utility Notification Law, ORS Chapter 757 (2015), and the related rules and administrative regulations promulgated thereunder in OAR Chapter 952 regarding the Oregon Utility Notification Center.

7.4 Restoration of Streets. Grantee’s responsibility for maintaining repairs to any Street surface areas disturbed by Grantee’s work shall end upon the occurrence of either a reconstruction of the Street in an approved manner by the City (curb to curb) or upon subsequent work at the same location by any other Person franchised, permitted, licensed or otherwise granted authority by the City, whichever occurs first.

7.5 Relocation. Grantee shall relocate its Pipeline System within the Streets when public convenience requires such change, in compliance with the requirements of applicable Portland City Code and administrative regulations, and the expense thereof shall be paid by Grantee (however, payment by Grantee shall in no way limit Grantee’s right, if any, to seek reimbursement for such costs from any third party).

7.6 Acquisition of Facilities. Within thirty (30) days after Grantee’s acquisition of Facilities in the Streets, or upon any addition or annexation to the City of any area in which Grantee owns or operates any Facility within 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 acquired Facilities. At the City’s sole option, as expressed by ordinance adopted by the City Council, such acquired Facilities shall immediately be subject to the terms of this Franchise with a reasonable period of time given to bring such acquired Facilities into compliance with this Franchise.

7.7 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 7.5.

7.8 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 consistent with the Portland City Code, 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 the City Engineer, to restore, repair, or reconstruct such Street, the City may do such work or cause it to be done, and the cost thereof, as found and declared by the 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.

7.9 Discontinuing Use of Facilities. If Grantee decides to discontinue use of any Facilities within all or a portion of the Streets and does not intend to use those Facilities again in the future, the City may direct Grantee to remove such Facilities or may permit such Facilities to be left in place as abandoned, which permission shall not be unreasonably withheld or delayed. If Grantee is permitted to abandon such Facilities in place, upon written consent of the City, the ownership of such Facilities in the City's Streets shall transfer to the City, and Grantee shall have no further obligation therefor. Notwithstanding Grantee's request that any such Facilities remain in place, the City Engineer may require Grantee to remove such Facilities from the Street area or modify such Facilities in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require Grantee to perform a combination of modification and removal of such Facilities. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the City Engineer. Until such time as Grantee removes or modifies such Facilities as directed by the City Engineer, or until the rights to and responsibility for such Facilities are accepted by another Person having authority to construct and maintain such Facilities, Grantee shall be responsible for all necessary repairs and relocations of such Facilities, as well as restoration of the Street, in the same manner and degree as if such Facilities were in active use, and Grantee shall retain all liability for such Facilities.

## 7.10 Tree Trimming.

(A) When Permits Needed. Upon obtaining a written permit from the City Forester, Grantee may prune or cause to be pruned, using proper arboricultural practices and in accordance with such permit, any tree in or overhanging the Streets that interferes with Grantee's Facilities. Except in emergencies or by special written permission of the City Forester, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until seven (7) calendar days after written notice has been given to the owner or occupant of the premises abutting the Street in or over which the tree is growing. The owner or occupant shall have seven (7) calendar days from receipt of notice to have such trees pruned by a qualified line clearance arborist at his or her own expense in accordance with Grantee's standards for reliable service, provided that the owner or occupant agrees to use tree pruning personnel that are qualified to work in close proximity to power lines. If the owner or occupant fails to do so in compliance with the notice, Grantee may prune such tree at its expense.

(B) Programmatic Permits. The City Forester may, at the City Forester's discretion, waive the notification and single tree permit process and issue a programmatic tree pruning permit if Grantee adequately demonstrates to the City Forester's satisfaction the ability to consistently apply proper arboricultural practices to the pruning of trees. Before any programmatic permit may be issued, any contractor of Grantee shall be subject to the approval of the City Forester. The City Forester shall have discretion to cancel the programmatic permit, notification and single tree permit process if, at any time, Grantee or its agents fail either to use proper arboricultural practices or to properly notify the public in accordance with applicable City requirements.

(C) Emergencies. Notwithstanding the permit and notice requirements of this Section 7.10, in the event of an emergency, Grantee may prune a tree or trees as necessary to abate the emergency. For purposes of this Section 7.10(C), emergencies exist when it is necessary to prune a tree or trees in order for Grantee to restore Pipeline System operations, or to protect the public from imminent danger, or to prevent the imminent destruction of Facilities.

## **Section 8. CITY'S CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE OF FRANCHISE.**

8.1 City 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 Transferred without the prior written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld or delayed. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. "**Transfer**" means any sale, lease, mortgage, assignment, merger or other form of transfer of this Franchise or of the rights and privileges granted or authorized by this Franchise, but excluding Transfers 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 that control, are controlled by, or are under common control with Grantee within ten (10) days after such transfers.

## 8.2 Review.

(A) In determining whether the City will consent to any Transfer of this Franchise as required by Portland City Charter Section 10-216, 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 Transfer of this Franchise upon such 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 reasonably appropriate. The City shall not unreasonably delay or withhold its consent to any Transfer of this Franchise.

(B) No Transfer 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 5, 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 Auditor an executed counterpart or certified copy thereof.

8.3 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 8.1, nothing contained in this Franchise shall be deemed to prohibit the lease of all or any portion of Grantee's Pipeline System in the ordinary course of its business without obtaining the City's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing the leased portion of its Pipeline System. A lessee of any portion of Grantee's Pipeline System shall not obtain any rights under this Franchise.

8.4 Sales. Notwithstanding Section 8.1, 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;

(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 and the location of the Facilities (in accordance with the requirements of Section 7.2(C)), 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.

8.5 Mortgages. Nothing contained in this Franchise shall be deemed to prohibit or limit the mortgage, pledge, sale or assignment of all or any portion 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.

## **Section 9. FRANCHISE VIOLATIONS AND REMEDIES.**

### **9.1 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 franchise fees, submitting timely and accurate reports, providing timely access to records, and maintaining all required insurance and performance bonds:

- (1) Impose liquidated damages as provided in Section 9.1(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, however, 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, expenses 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 the circumstances identified in this Section 9.1(C)(1), where proof of specific, actual damages would not be feasible, the City and Grantee agree that the City may require Grantee to pay liquidated damages to the City. The parties agree that such amounts are a reasonable estimate by the parties of the 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 Section 4 and Section 7;
- (b) Failure to respond to audit requests as required by Section 4.6;
- (c) Failure to provide or maintain insurance or bonds as required by Section 5; and
- (d) Failure to comply with Section 8 in connection with any Transfer, as defined in Section 8.1.

(2) Subject to Grantee's right to notice and the opportunity to cure as provided in Section 9.2, if the City determines that Grantee has violated any of the provisions listed in Section 9.1(C)(1), the City may assess liquidated damages of one thousand dollars (\$1,000) on a per-violation basis.

(3) The liquidated damage amounts are stated in 2017 dollars and shall be adjusted each year for any increase in the amount of change in 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 calendar year, to (2) the average CPI for January through June of the prior calendar 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 this Franchise or applicable law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by the 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 the period of the assessment.

(5) Each violation of the provisions listed in Section 9.1(C)(1) 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 9.1(A)(5) and (6) only upon the occurrence of any of the following acts or events:

(1) Any failure by Grantee to comply with the requirements of Section 5, 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 its Pipeline System.

(F) In addition to its other rights and remedies as set forth in this Franchise, and subject to applicable bankruptcy laws, 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 or its receiver or trustee timely and fully performs all obligations, until such time as this Franchise is either rejected or assumed by Grantee or its receiver or trustee.

## 9.2 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 Sections 9.1(A)-(F), 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 reasonably 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 9.1.

(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 reasonably satisfactory to the City to remedy the stated reason, then the City may exercise any or all of the remedies available under Section 9.1 or such other rights as the City may possess.

9.3 Removal of Facilities. If the City has revoked this Franchise as provided in Section 9.1, 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 the entirety of Grantee's Pipeline System, all of Grantee's rights under this Franchise shall immediately cease

and be divested. Thereafter, except (1) as provided in this Section 9.3, (2) as otherwise provided by ordinance, (3) in the event of a sale of Facilities or the Pipeline System to another party who has or obtains a franchise, or (4) in accordance with Section 7.9, 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 reasonable cost thereof from Grantee. Such cost shall be a lien upon Grantee's Pipeline System and a set-off against any sums owed Grantee by City.

#### **Section 10. 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 this Section 10, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

#### **Section 11. 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) allow this Franchise to expire without further action; or (3) take such further action as the City deems appropriate. Until such time as the City exercises its rights under this Section 11, Grantee's rights and responsibilities within the City shall be controlled by the terms of this Franchise. At least six (6) months prior to the expiration of this Franchise, Grantee and the City shall communicate regarding the extension or renewal of this Franchise.

#### **Section 12. MISCELLANEOUS PROVISIONS.**

##### **12.1 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.

12.2 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 or Grantee reasonably 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 revocation of this Franchise for any cause. Expiration or revocation of this Franchise 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.

12.3 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 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.

12.4 Force Majeure.

(A) For the purposes of this Section 12.4, 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 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.

12.5 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.

12.6 Choice of Law. This Franchise 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.

12.7 Notice.

(A) Any notice provided for under this Franchise shall be in writing and: (1) delivered personally to the following addressee; (2) sent by United States mail, postage prepaid, certified mail, return receipt requested; (3) sent by overnight or commercial air courier (such as Federal Express); or (4) sent by electronic mail but only with respect to those recipients for whom an email address has been specified for notice under this Section 12.7. Notice will be deemed to have been given three (3) business days following the date of mailing, or immediately if personally served. Notice given by electronic mail will be deemed given at the beginning of the next business day, but only if followed by transmittal by national overnight courier for delivery on the next business day. Notices shall be addressed as follows, or to such other address as the receiving party specifies in writing:

## 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](mailto:ComTech@portlandoregon.gov)

## With a copy to:

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

## If to Grantee:

LCP Oregon Holdings, LLC  
 ATTN: President  
 1100 Walnut Street, Suite 3350  
 Kansas City, MO 64106

## With copies to:

Arc Terminals Holdings LLC  
 ATTN: President  
 3000 Research Forest Dr., Suite 250  
 The Woodlands, TX 77381  
 Email: [jblanchard@arcxlp.com](mailto:jblanchard@arcxlp.com)

Arc Terminals Holdings LLC  
 c/o Arc Logistics Partners LP  
 ATTN: General Counsel  
 725 Fifth Avenue, 19th Floor  
 New York, NY 10022

(B) In accordance with the Portland City Code, the Office for Community Technology (“OCT”), within the Revenue Division, Bureau of Revenue and Financial Services (or such other City bureau as the City Council may designate) is responsible for supervising and coordinating franchising in the City, monitoring the performance of all franchisees for franchise compliance, overseeing franchise and utility audits and revenues in coordination with other City offices, and performing all other necessary work relating to City franchises. As the designated City representatives for franchise responsibilities, OCT may give any notices from the City under this Franchise.

## 12.8 Public Records.

(A) Grantee acknowledges that information submitted by Grantee to the City may be open to public inspection under the Oregon Public Records Law. Grantee is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.

(B) Grantee may identify information submitted to the City as confidential, if Grantee reasonably believes such information is qualified for an exemption recognized under the Oregon Public Records Law. Grantee shall prominently mark each page, or portion thereof, for which it is claiming confidentiality as "Confidential" prior to submitting such information to the City. When submitting such information to the City, Grantee shall submit documentation to the City that specifically identifies the applicable exemption under the Oregon Public Records Law (for example, but not limited to, ORS 192.501(2), (22), (23) (2015)), and that states the reason(s) Grantee believes the information is exempt from public inspection. The City shall take reasonable steps to keep the identified information confidential, acting consistently with the Oregon Public Records Law.

(C) Within five (5) business days after receiving a public records request to inspect any information identified by Grantee as confidential, the City shall provide Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) business days after being given such notice within which to provide a written response to the City, before the City may disclose any of the requested confidential information. After reviewing Grantee's written response, the City shall determine whether any identifiable exemptions are applicable. If the City determines that it will be necessary to reveal the information consistent with the Oregon Public Records Law, the City shall promptly notify Grantee, and do so at least five (5) business days prior to the information being released. The City shall retain discretion to determine whether to release the requested information in response to any public records request, consistent with the Oregon Public Records Law. Nothing in this Section 12.8 affects Grantee's right to seek legal relief to prevent or remedy the City's release of Grantee's confidential information to the public.

12.9 Franchise Amendment. The City has negotiated this Franchise in good faith, in light of statutory provisions in place at the time of the negotiation, and 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 services outside the scope of this Franchise that utilize Grantee's Facilities in the Streets, Grantee shall immediately notify the City. Within ninety (90) days after 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 additional 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 additional services using Streets.

12.10 Changes in Law or Unenforceability of Franchise Provisions. The parties have entered into this Franchise under the federal and state laws in effect on the Effective Date. The parties mutually reserve the right to each request modifications to this Franchise to account for changes in the law during the term of this Franchise. Upon written notice from either party, the City and Grantee shall voluntarily negotiate, in good faith, to modify the terms and conditions of this Franchise to address changes in the law during the term of this Franchise. The parties also reserve the right to request modifications to this Franchise if any material provision of this Franchise becomes, or is declared, invalid or unenforceable.

12.11 Mutual Reservation of Rights. This Franchise shall not be deemed a waiver by Grantee or the City of any legal rights under applicable state or federal law. The parties agree that neither this Franchise nor Grantee's acceptance of it may be used as evidence that Grantee or the City has waived any rights or is estopped from asserting any legal rights.

12.12 Written Acceptance. On or before the thirtieth (30th) day after the Effective Date, Grantee shall file in the Office of the Auditor of the City of Portland a written acceptance of this Franchise, 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 Franchise shall thereupon be null and void. Such acceptance shall be unqualified (subject to Grantee's reservation of rights under Section 12.11) and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this Franchise.

12.13 Other Authority Superseded. Upon effectiveness of this Franchise, any and all authority to construct, operate and maintain pipeline facilities under the Streets previously granted to Grantee by the City, including Ordinance No. 180378, is superseded by this Franchise.

Passed by the Council:  
Mayor Ted Wheeler  
Prepared by: JL/BEW  
Date Prepared: March 27, 2017

Mary Hull Caballero  
Auditor of the City of Portland

By  
Deputy

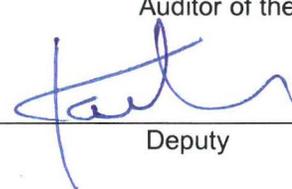
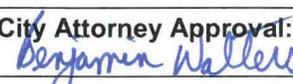


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Agenda No. **ORDINANCE NO. 188554**  
Title

Grant a franchise to LCP Oregon Holdings, LLC to construct, operate and maintain pipeline facilities under City streets for a period of 20 years (Ordinance)

<b>INTRODUCED BY</b> Commissioner/Auditor: <b>Mayor Wheeler</b>	CLERK USE: DATE FILED <u>JUL 03 2017</u>
<b>COMMISSIONER APPROVAL</b> Mayor—Finance & Administration - Wheeler Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Eudaly	Mary Hull Caballero Auditor of the City of Portland  By:  Deputy  <b>ACTION TAKEN:</b>
<b>BUREAU APPROVAL</b> Bureau: OMF/BRFS, Revenue CAO: Tom Rinehart CFO, Bureau Head: Kenneth L. Rust Division Head: Thomas W. Lannom	
Prepared by: Jennifer Li Date Prepared: 6/27/17	<b>JUL 13 2017 PASSED TO SECOND READING AUG 16 2017 9:30 A.M.</b>
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
<b>City Auditor Office Approval:</b>	
<b>City Attorney Approval:</b> 	
Council Meeting Date <b>July 12, 2017</b>	

<b>AGENDA</b>
<b>TIME CERTAIN</b> <input type="checkbox"/> Start time: _____  Total amount of time needed: _____ (for presentation, testimony and discussion)
<b>CONSENT</b> <input type="checkbox"/>
<b>REGULAR</b> <input checked="" type="checkbox"/> <span style="float: right;">15</span> Total amount of time needed: <b>5</b> (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz	<input checked="" type="checkbox"/>
2. Fish	2. Fish	<input checked="" type="checkbox"/>
3. Saltzman	3. Saltzman	<input checked="" type="checkbox"/>
4. Eudaly	4. Eudaly	<input type="checkbox"/>
Wheeler	Wheeler	<input checked="" type="checkbox"/>