

CHAPTER 4.20
NORTHWEST NATURAL GAS FRANCHISE

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4.20.010 DEFINITIONS AND EXPLANATIONS

As used in this Chapter.

1. **“BRIDGE”** includes a structure erected within the City to facilitate the crossing of a river, stream, ditch, ravine or other place, but does not include a culvert.
2. **“CITY”** means the City of Stayton and the areas within its boundaries, including its boundaries as extended in the future.
3. **“CITY FACILITIES”** means City-owned street light poles, lighting fixtures, pipes, mains, service lines, manholes, meters, vaults, cabinets, structures, cable, wire, conduit, or other City-owned structures or equipment located within Rights-of-Way.
4. **“COUNCIL”** means the legislative body of the City.
5. **“FRANCHISE”** means this Franchise ordinance and agreement as approved by the Stayton City Council and accepted by Grantee under Section 22 of this Franchise.
6. **“GAS”** means natural methane-based gas.

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7. **“GAS FACILITIES”** means Grantee’s gas transmission, storage and distribution facilities, including pipes, pipe lines, mains, laterals, conduits, feeders, regulators, reducing and regulating stations, meters, fixtures, connections and all attachments, appurtenances, and all accessories necessary and incidental thereto located within City properties or within the City limits, whether the facilities are located above or below the ground.
8. **“GAS MAINS”** includes all gas transmission and distribution facilities located on or under any Street, Right-of-Way, Bridge or Public Place within the City.
9. **“GAS UTILITY SYSTEM”** includes all gas transmission and distribution facilities located within the city.
10. **“GRANTEE”** means the corporation referred to in section 4.20.020.
11. **“GROSS REVENUES”** means revenues received from the use of the Gas Utility System within the City less related net uncollectibles. Gross Revenues includes revenues from the use, rental, or lease of the Gas Utility System, except when those revenues have been paid to Grantee by another Franchisee of the City and paid revenues are used in the calculation of the Franchise fee for the operations of the other Franchisee within the City. Gross Revenues do not include proceeds from the sale of bonds, mortgage, or other evidence of indebtedness, securities or stocks, or sales at wholesale by Grantee to any public utility or public agency when the public utility or public agency purchasing the gas is not the ultimate customer. Gross Revenues do not include public purpose charges, provided that such charges or surcharges are required or authorized by federal or state statute, administrative rule, or by tariff approved by the OPUC and raise revenue used solely for a public purpose and not to compensate Grantee for the sale or use of natural gas or for the use, rental, or lease of Grantee’s Utility System within the City. Public purpose activities include, but are not limited to, energy efficiency programs, market transformation programs, low-income energy efficiency programs, and carbon offset programs designed to benefit residential and commercial customers within Grantee’s service territory in Oregon.
12. **“MAINTENANCE,” “MAINTAINING,” “MAINTAIN”** means without limitations, relaying, repairing, replacing, relocating, examining, testing, inspecting, removing, digging and excavating, and restoring operations incidental thereto.
13. **“PERSON”** includes an individual, corporation, association, firm, partnership and joint stock company.
14. **“PUBLIC PLACE”** includes any City-owned, park, place or grounds within the City that is open to the public but does not include a Street, Bridge or Right-of-Way, and includes without limitation public squares, fairgrounds and parks.
15. **“PUBLIC UTILITY COMMISSION”** means the Public Utility Commission of the State of Oregon, or its successor agency.
16. **“QUALIFIED CONTRACTOR”** means a Person that is knowledgeable about the construction and operation of a natural gas transmission and distribution system, and must be subject to and comply with the qualifying standards as it relates to the work in question, set forth in 49 CFR Part 192, Subpart N – Qualifications of Pipeline Personnel. Additionally, this Person must adhere to all applicable requirements of NW Natural’s

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Quality Assurance program and Contractor Management group.

17. **“RIGHT-OF-WAY” or “RIGHTS-OF-WAY”** means the space in, upon, above, or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, bridges, and places used or intended to be used by the general public for travel as the same now or may hereafter exist, that the City has the right to allow Grantee to use.
18. **“SERVICES”** means the gas transmission, distribution, sales and marketing services provided by Grantee to its customers located within the City. “Services” does not include service provided through or by the use of any equipment, plant or facilities for the transmission of Gas which pass through or over but are not used to provide service in or do not terminate in the City.
19. **“STREET”** includes a street, alley, avenue, road, boulevard, way, lane, court, thoroughfare or public highway within the City, but does not include a Bridge.

As used in the Chapter, the singular number may include the plural and the plural number may include the singular.

4.20.020 RIGHTS GRANTED

Subject to the conditions and reservations contained in this Chapter, the City hereby grants to Northwest Natural Gas Company, a corporation, the right, privilege and Franchise to:

1. Construct, maintain, and operate a Gas Utility System within the City.
2. Install, maintain, operate on and under the Streets, Rights-of-Way and Bridges of the City, facilities for the transmission and distribution of gas to the City and its inhabitants and to other customers and territory beyond the limits of the City; and
3. Transmit, distribute, and sell gas.
4. This Franchise does not authorize Grantee to install or use the Gas Utility System in the Right-of-Way for anything other than the provision of Services. Unless Grantee or its lessee obtains written consent of the City, the Gas Utility System may not be used directly or indirectly for the provision of services not required by Grantee to operate its Gas Utility System. The Gas Utility System may not be placed or operated in any Public Place without separate written consent of the City.

4.20.030 USE OF STREETS, BRIDGES, RIGHTS-OF-WAY, AND PUBLIC PLACES BY GRANTEE

1. Before the Grantee may use or occupy any Street, Bridge, Right-of-Way or Public Place, the Grantee shall first obtain permission from the City to do so and shall comply with any special conditions the City desires to impose on such use or occupation.
2. The compensation paid by the Grantee for this Franchise includes all compensation for the use of Streets, Rights-of-Way and Bridges located within the City as authorized.

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4.20.040 DURATION

This Franchise is granted for a period of 10 years from and after the effective date of this ordinance (Ordinance 980, December 17, 2015).

4.20.050 FRANCHISE NON-EXCLUSIVE

This Franchise is not exclusive. This Franchise is intended to convey limited rights and interest only as to those Public Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Public Right-of-Way. It does not confer rights other than those expressly provided in the grant hereof. It is subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title of record that may affect the Right-of-Way. Nothing in this Franchise grants, conveys, creates, or vests in Grantee a real property interest in land, including any fee, leasehold interest, or easement.

1. Reservation of City Rights. This Franchise does not limit the City in:
 - a. Granting rights, privileges and authority to other Persons similar to or different from those granted by this ordinance.
 - b. Constructing, installing, maintaining or operating any City-owned public utility.

4.20.060 PUBLIC WORKS AND IMPROVEMENTS NOT AFFECTED BY FRANCHISE

The City reserves the right to:

1. Construct, install, maintain and operate any public improvement, work or facility;
2. Do any work that the City may find desirable on, over or under any Street, Bridge, Right-of-Way or Public Place.
3. Vacate, alter or close any Street, Bridge, Right-of-Way or Public Place. However, if the City vacates any Street, Bridge, Right-of-Way or Public Place for the convenience or benefit of any Person or governmental agency or instrumentality, the City will make available to Grantee an alternative Right-of-Way for the location of its facilities. In such an event, Grantee's right under this Franchise is preserved as to any of its facilities then existing in such Street, Bridge, or Public Place.
 - a. Whenever the City shall excavate or perform any work in any of the present and future Streets, Rights-of-Way, and Public Places of the City, or shall contract, or issue permits, for such excavation or work where such excavation or work may disturb Grantee's Gas Mains, pipes and appurtenances, the City shall, in writing, notify Grantee sufficiently in advance of such contemplated excavation or work to enable Grantee to take such measures as may be deemed necessary to protect such Gas mains, pipes and appurtenances from damage and possible inconvenience or injury to the public. In any such case, the Grantee, upon request, shall furnish maps or drawings to the City or contractor, as the case may be, showing the locations of all its structures in the area involved in such proposed excavation or

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other work. The City will treat any such map or drawings as confidential, subject to the provisions of state law and the Oregon Public Records Law.

4. Abate any nuisance or dangerous condition.
5. Control or prevent the use of any Public Place by Grantee and require payment of additional compensation for the use of the Public Place in any amount that the City finds to be reasonable. Any portion of the Gas Utility System located within a Public Place on this Franchise's effective date or located within an easement within a Public Place as of this Franchise's effective date may be maintained, repaired, or replaced without additional charge, subject to any special conditions imposed by the City on Grantee at the time the City permitted Grantee to place facilities in the Public Place.
6. Exercise any non-regulatory power that the City currently holds, or may hereafter be authorized or granted by the laws of the State of Oregon or the City Charter.
7. In addition to the reservations contained in this Franchise and existing applicable ordinances, adopt such additional generally applicable regulations of the construction, maintenance, and operation of Grantee's Gas Utility System as the City finds necessary in the exercise of its police powers, or for the orderly development of the City (including but not limited to zoning, land use, historic preservation ordinances, standard specifications, design standards and drawings, and other safety or construction standards, and other applicable requirements), or for the protection of City Facilities. These regulations are subject to any superseding provisions of state or federal law or regulations and must be in conformance with standard engineering practices. The City may amend and add to these regulations from time to time. The City will make a good faith effort to provide Grantee written notice and opportunity to comment on any proposed new or amended regulations that would affect the construction, Maintenance, and operation of Grantee's Gas Utility System, but the City's failure to provide such notice does not affect Grantee's obligation to comply with these regulations nor is it a material breach of the Franchise. Grantee must promptly comply with these regulations.

4.20.070 CONTINUOUS SERVICE

The Grantee shall maintain and operate an adequate system for the distribution of gas in the City. The Grantee shall use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall the Grantee be liable for an interruption or failure of service cause by act of God, unavoidable accident or other circumstances beyond the control of the Grantee through no fault of its own.

4.20.080 SAFETY STANDARDS AND WORK SPECIFICATIONS

1. Grantee must maintain its facilities in a safe, substantial and workmanlike manner.
2. Grantee must construct and maintain the Gas Utility System in a manner that does not injure the Right-of-Way, City Facilities, City property or the property belonging to another Person within the City Limits. Grantee must, at its own expense, repair, renew,

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change, and improve the Gas Utility System from time to time as may be necessary to accomplish this purpose.

3. If the Public Utility Commission abandons its jurisdiction over or regulation of rates and/or standards of service required by Grantee, the City reserves the right to exercise this jurisdiction if so allowed by state law, and Grantee agrees to comply with all reasonable ordinances, rules, and regulations made by the City in the exercise of this jurisdiction or right of regulation.
4. For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

4.20.090 CONTROL OF CONSTRUCTION

The Grantee shall file with the City maps showing the location of any construction, extension or relocation of its Gas Mains in the Streets and Rights-of-Way of the City and shall obtain from the City approval of the location and plans prior to commencement of work. The City may require the Grantee to obtain a permit before commencing the construction, extension or relocation of any of its Gas Mains.

4.20.100 STREET EXCAVATIONS AND RESTORATIONS

1. Subject to provisions of this chapter, the Grantee may make necessary excavations for the purpose of constructing, installing, maintaining and operating its facilities. Except in emergencies, and in the performance of routine service connections and ordinary maintenance, on private property, prior to making an excavation in the traveled portion of any Street, Right-of-Way, Bridge or Public Place, and, when required by the City, in any untraveled portion of any Street, Rights-of-Way, Bridge, or any Public Place, the Grantee shall obtain from the City approval of the proposed excavation and of its location. Grantee shall give notice to the City by telephone, electronic data transmittal or other appropriate means prior to the commencement of service or maintenance of work and as soon as is practicable after the commencement of work performed under emergency conditions.
2. When any excavation is made by the Grantee, the Grantee shall promptly restore the affected portion of the Street, Rights-of-Way, Bridge or Public Place to the same condition in which it was prior to the excavation. The restoration shall be in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration. If the Grantee fails to restore promptly the affected portion of a Street, Rights-of-Way, Bridge or Public Place to the same condition in which it was prior to the excavation, the City may make the restoration, and the cost thereof shall be paid by the Grantee.

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4.20.110 LOCATION AND RELOCATION OF FACILITIES

1. All facilities of the Grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the Streets, Rights-of-Way, Bridges and Public Places and in accordance with any specifications adopted by the City governing the location of facilities.
2. The City may require, in the public interest, the removal or relocation of facilities maintained by the Grantee in the Streets or Rights-of-Way of the City, and the Grantee shall remove and relocate such facilities within a reasonable time after receiving notice to do so from the City. The Grantee must pay the cost of such removal or relocation of its facilities, except when such removal or relocation is required for the convenience or benefit of any Person, governmental agency or instrumentality other than the City, in which case Grantee is entitled to reimbursement for the reasonable cost thereof from such Person, agency or instrumentality. The City shall provide the Grantee with timely notice of any anticipated requirement to remove or relocate its facilities and shall cooperate with the Grantee in the matter of assigning or allocating the costs or removal or relocation.

4.20.120 COMPENSATION

1. **Amount.** As compensation for the Franchise granted by this chapter for Grantee's entry upon and deployment within the Right-of-Way, the Grantee shall pay the City an amount equal to 5% of the Gross Revenue. This section shall not prevent the City from requiring additional compensation as a condition for the use of any Public Place. The Franchise Fee is not in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of Grantee.
2. **Renegotiation.** If any applicable state law limitation on the City's authority to collect Franchise fees later authorizes the City to collect a Franchise fee greater than 5% of Grantee's Gross Revenues, then upon 30 days' notice from the City, Grantee agrees to engage in good faith negotiations to modify this up to applicable state law limitations. If the parties are unable to agree to a modification of this section to increase the Franchise fee above 5% within 90 days of sending of the notice requesting the modification, or such longer time as may be agreed to by the parties, the City may, in its sole discretion, give written notice to Grantee that the duration of this Franchise will be changed to 5 years or, if 5 years or less remain in the term of the Franchise, the Franchise will expire one year from the date of the notice.
3. **Due Date.** The compensation required by this section is due for each quarter ending March 31, June 30, September 30, and December 31, or fraction thereof, within 45 days after the close of such quarter, or fraction thereof. Within 45 days after the termination of this Franchise, compensation shall be paid for the period elapsing since the close of the last calendar year for which compensation has been paid.
4. **Late Payment.** Any payment not made when due, including late payments and any underpayment, accrues interest at 9% per annum until paid. If any payment becomes 90 days in arrears, an additional 10% penalty will be applied to the amount past due.
5. **Report.** The Grantee shall furnish to the City with each payment of compensation

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required by this section a statement showing the amount of Gross Revenue of the Grantee within the City for the period covered by the payment computed on the basis set out in subsection 1 of this section. The compensation for the period covered by the statement must be computed on the basis of the Gross Revenue so reported. If the Grantee fails to pay the entire amount of compensation due the City through error or otherwise, Grantee must pay the difference due to City within 30 days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be offset against the next payment due from the Grantee.

6. **Acceptance of Payment.** Acceptance by the City of any payment due under this section is not a waiver by the City of any breach of this Franchise occurring prior thereto, nor does the City's acceptance of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.
7. **New Business.** The City specifically reserves the right to impose a fee or tax, as allowed by generally applicable law, on Grantee's operation of any new business undertaking within the City. The City may otherwise separately regulate and obtain compensation for any other use of the City's Rights-of-Way than those specifically authorized herein.
8. **Additional Taxes.** Payment of the Franchise fee under this Section does not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee that may be now or hereafter imposed, or from the payment of any reimbursement or indemnity to the City. The City reserves the right to impose and collect any privilege tax in addition to the Franchise fee set forth in this Franchise to the extent permitted by state and federal law.

4.20.130 BOOKS OF ACCOUNT AND REPORTS

1. The Grantee must keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under section 4.20.120. The City may inspect the books of account at any time during business hours and may audit the books from time to time. All amounts of Franchise fees paid by Grantee are subject to audit or financial review by the City, provided the City may audit only those payments that occurred or should have occurred during a period of thirty-six (36) months prior to the date the City notifies the Grantee of its intent to perform an audit or financial review. The Council may require periodic reports from the Grantee relating to its operations and revenues within the City.
2. The City may cause an audit or financial review of the Franchise fees paid by Grantee. The City will pay the cost of any such audit or financial review, unless the results of any such audit or financial review reveal an underpayment of more than 5% of the Franchise fee for the period audited or reviewed. In the case of such an underpayment, Grantee must reimburse the City for the full cost of such audit or financial review, up to the amount of such underpayment. In the case of any underpayment, Grantee must pay the City the difference due within 30 days of discovery of the error or determination of the correct amount, including any interest and/or penalties due as set forth in this Franchise. Any overpayment to the City through error or otherwise will be offset against the next payment. In order to conduct such audits and financial reviews, Grantee must make

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available for review to the City's authorized representatives all necessary books of accounts and records at no cost to the City, provided the City gives at least 30 days' written notice. Notwithstanding the foregoing, the Grantee will not provide the City with records containing customer information that identifies or can be attributed to a specific customer, without a written legal opinion by the City that such records will not be subject to public disclosure under state law, and that the City will inform NW Natural and oppose their disclosure should a public disclosure request be made.

4.20.140 SUPPLYING MAPS UPON REQUEST

The Grantee shall maintain on file, at an office in Oregon, maps and operational data pertaining to its operations in the City. The City may inspect the maps and data at any time during business hours. Upon request of the City, the Grantee shall furnish to the City, without charge and on a current basis, maps showing the location of the Gas Mains of the Grantee in the City.

4.20.150 INDEMNIFICATION

1. The Grantee agrees to indemnify, defend and save harmless the City and its officers, agents and employees from any and all loss, cost and expense arising from damage to property or injury to, or death of, Persons, to the extent caused by any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and Franchise hereby granted. The costs and expenses include court and appeal costs and reasonable attorney fees or expenses. The duty to defend does not extend to any gross negligence or willful misconduct on the part of the City, its officers, agents or employees.
2. The City must provide Grantee with prompt notice of any such claim, which Grantee must defend at Grantee's sole cost and expense. Grantee shall not settle or compromise any such claim without the prior written approval of the City. Grantee and its agents, contractors, and others must consult and cooperate with the City while Grantee is conducting its defense. The City may, at its own cost, defend or participate in the defense of a claim.

4.20.160 ASSIGNMENT OF FRANCHISE

This Franchise binds and benefits the successors, legal representatives and assigns of the Grantee. No assignment of the Franchise is effective without the written approval of the Council of the City of Stayton. The Council may condition its approval upon a reasonable adjustment to the rate of compensation.

4.20.170 TERMINATION OF FRANCHISE FOR CAUSE AND REMEDIES

1. The City may terminate this Franchise upon the willful failure of the Grantee to perform promptly and completely each and every material term, condition or obligation imposed upon it under or pursuant to this Chapter. The termination is subject to Grantee's right to a court review of the reasonableness of such action. The City will provide the Grantee written notice of any such failure and the Grantee has 60 days from the sending of such

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notice to cure the failure, or if the failure cannot reasonably be cured within 60 days, to commence and diligently pursue curing the failure.

2. **Additional Remedies.** In addition to any other rights set out in this Franchise and the Stayton City Municipal Code, the City reserves the right at its sole option to establish a lesser sanction that may include imposing a fine of not more than \$500 for each offense. A separate and distinct offense is committed each day on which a violation occurs or continues.
3. **Assessment of Remedies.** When determining the penalty amount described above, City may take into consideration the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors. Whether:
 - a. The misconduct was egregious.
 - b. Substantial harm resulted.
 - c. The violation was intentional.
 - d. There is a history of prior violations of the same or other requirements.
 - e. There is a history of overall compliance.
 - f. The violation was voluntarily disclosed, admitted or cured.
4. **Notice and Opportunity to Cure.** The City must give Grantee 60 days' prior written notice of its intent to exercise its rights under this section, stating the reasons for declaring a termination. If Grantee cures the stated reason within the 60 day notice period, or if Grantee initiates efforts to remedy the stated reason and, to the City's satisfaction, the efforts continue in good faith, the City will not exercise its right to terminate the Franchise or seek other remedies. If Grantee fails to cure the stated reason within the 60 day notice period, or if Grantee does not undertake and/or maintain efforts to remedy the stated reason to the City's satisfaction, the City may impose any or all of the remedies available under this Section.

4.20.180 REMEDIES NOT EXCLUSIVE, WHEN REQUIREMENT WAIVED

All remedies and penalties under this Chapter, including termination of the Franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this Chapter, including termination of the Franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this Chapter. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this Chapter shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

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4.20.190 INSURANCE

1. Throughout the term of this Franchise, Grantee must maintain general liability and property damage insurance, and it must furnish the City with Certificates of Insurance in a form acceptable to the City, with the following limits and coverages:
 - a. Comprehensive general liability insurance with limits not less than:
 - i. One million dollars for bodily injury or death to each Person; and
 - ii. One million dollars for property damage resulting from any one accident; and,
 - iii. Three million dollars for all other types of liability.
 - iv. Automobile liability for owned, non-owned, and hired vehicles with a limit of one million dollars for each Person and a combined limit of three million dollars for each accident.
 - v. Workers' compensation coverage at a minimum consistent with state law, and employer's liability insurance with limits of not less than one million dollars.
2. The insurance policies may provide for a self-retention or deductibles in reasonable amounts, provided that any self-retention or deductibles do not in any way limit Grantee's liability to the City. The insurance limits are subject to statutory changes as to increases in the maximum limits of liability imposed on State of Oregon municipalities during the term of this Franchise.
3. The insurance is without prejudice to coverage otherwise existing and must name as additional insureds the City, its elected and appointed officials, officers, agents, employees, and volunteers. Notwithstanding the naming of additional insureds, the insurance must protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this subsection operates to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy.
4. The insurance must provide that it may not be canceled or materially altered without giving 30 days' prior written notice to the City. If the insurance is canceled or materially altered within the term of this Franchise, Grantee must provide a replacement policy with the same terms as required by this Franchise. Grantee must maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this Franchise.
5. As an alternative to the coverage listed above, the Grantee may provide proof of and keep in force self-insurance, or a self-insured retention plus insurance, equivalent to the coverage required above.

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4.20.200 CONFIDENTIALITY

When requested by Grantee, and subject to the provisions of state law and the Oregon Public Records Law, the City will treat as confidential any public record or information provided by Grantee and designated by Grantee as confidential.

4.20.210 MISCELLANEOUS PROVISIONS

1. **Waiver of Breach.** The waiver by either party of any breach or violation of any provision of this Franchise is not a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Franchise.
2. **Severability of Provisions.** If any one or more of the provisions of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable or pre-empted by federal or state laws or regulations, such provision(s) are invalid, unenforceable or preempted only to the extent required by law, are deemed severable from the remaining provisions of this Franchise, and do not affect the legality, validity, or constitutionality of the remaining portions of this Franchise. IN the event such federal or state law, rule, or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of either party.
3. **Governing Law and Choice of Forum.** This Franchise is governed and construed by and in accordance with the laws of the State of Oregon without reference to its conflicts of law principles. If a party brings suit to this Franchise, the parties agree that trial of such action will be vested exclusively in the state courts of Oregon, County of Marion, or in the United States District Court for the District of Oregon.
4. **Representations and Warranties.** Each of the parties to this Franchise represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other Person or entity in connection herewith.
5. **No Third-Party Beneficiaries.** Nothing in this Franchise shall be construed or applied to create rights in or grant remedies to any third party as a beneficiary of this Franchise or any duty or obligation established in this Franchise.
6. **Independent Contractor Status.** When performing under this Franchise, Grantee is an independent contractor and not an agent, employee or representative of the City in the performance of work pursuant to this Franchise. No term or provision of this Franchise, or act of the Grantee or its agents, shall be construed as changing that status.
7. **Amendment of Franchise.** This Franchise may not be amended, except pursuant to a written instrument signed by Grantee and approved by the Stayton City Council.
8. **No Representations.** There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Franchise that are not fully expressed herein.

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9. **Damage to Grantee's Facilities.** Unless directly and proximately caused by negligent, willful, intentional, or malicious acts by the City, the City is not liable for any damage to or loss of all or any portion of the Gas Utility System within the Rights-of-Way of the City as a result of or in connection with any public works, public improvement, construction, excavation, grading, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, or for any consequential losses resulting directly or indirectly therefrom.

10. **Notices.**

- a. Manner. All notices that shall or may be given pursuant to the Franchise shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) email transmission, if a hard cop of the same is followed by delivery through the United States mail or by overnight delivery service as just described and there is written confirmation of the email, addressed as follows:

If to the City: City of Stayton
 362 N. Third Avenue
 Stayton, Oregon 97383
 Attention: City Administrator

If to the Grantee: NW Natural
 220 NW Second Avenue
 Portland, Oregon 97209
 Attention: Franchise Manager

- b. Date of Notices: Changing Notice Address. Notices shall be deemed effective upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or on the business day after in the case of email or overnight delivery. Either party may from time to time designate other addresses for providing notice, if the change of address is provided in writing and delivered in the manner set forth above.

11. **City Approval.** In all instances in this Agreement in which the Grantee must obtain "City approval" before taking an action, that approval may only be given by the City Administrator or its designee.

4.20.220 ACCEPTANCE

The Grantee must, within 30 days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this Franchise, and if the Grantee fails to do so, this ordinance is void.

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4.20.230 DISPUTE RESOLUTION

In the event a dispute arises regarding the terms of this Agreement, the parties agree to first attempt a resolution by mandatory mediation. Either party may initiate the mediation process by sending the other party a “Notice of Request to Mediate” and briefly describing the disputed Agreement term. The parties will then select a mutually agreeable mediator within 30 days. If the matter is not resolved by mediated settlement within six months from the sending of the “Notice of Request to Mediate,” then the parties agree to submit the matter to binding arbitration. The parties will mutually agree upon an arbitration service. Each party will be responsible for its own costs and attorney fees related to any mediation, arbitration or other dispute resolution.