

**ORDINANCE NO. 863
STAYTON, OREGON**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE GAS UTILITY
FRANCHISE TO NORTHWEST NATURAL GAS COMPANY AND FIXING TERMS,
CONDITIONS AND COMPENSATION OF SUCH FRANCHISE.**

WHEREAS, the City of Stayton (“City”) is authorized by state statutes and its charter to grant non-exclusive franchises to Persons desiring to occupy Rights-of-Way within the City; and

WHEREAS, Northwest Natural Gas Company (“Grantee”), owns, maintains, and operates, in accordance with regulations promulgated by the Public Utility Commission, a natural gas utility system and desires to install, operate, and maintain its Gas Facilities in Rights-of-Way in the City; and

WHEREAS, the purposes of this Franchise are to: establish reasonable regulations applicable to the construction, operation and maintenance of Gas Facilities in, along, across, under and over City property and the provision of Services within the City; protect the health, safety and welfare of the public in the City; and limit the City’s liability for claims arising from the granting of this Franchise and the operations of Grantee thereunder; and

WHEREAS, the City Council for the City of Stayton deems it in the public interest to grant a franchise to Grantee under the terms and conditions provided in this ordinance.

NOW, THEREFORE, THE CITY OF STAYTON ORDAINS AS FOLLOWS:

Section 1. Definitions. For the purposes of this ordinance and Franchise, the following words and terms have the meaning stated in this Section, except where the context clearly indicates a different meaning. When not inconsistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number and vice versa. The words “shall” and “will” are mandatory and the word “may” is permissive.

- 1.1 **“City”** means the City of Stayton, an Oregon municipal corporation.
- 1.2 **“City Facilities”** means City-owned street light poles, lighting fixtures, pipes, cable, wire, conduit, or other City-owned structures or equipment located within the Right-of-Way.
- 1.3 **“City Limits”** means the corporate boundaries of the City, as those boundaries may change from time to time.
- 1.4 **“Construct”** or **“Construction”** means, without limitation, constructing, acquisition, laying, maintaining, testing, operating, extending, renewing, relocating, removing, replacing, repairing and using Gas Facilities.

- 1.5 **“Franchise”** means this franchise ordinance and agreement as approved by the Stayton City Council and accepted by Grantee under Section 12.8 of this Franchise.
- 1.6 **“Gas”** means natural methane-based gas.
- 1.7 **“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 ground.
- 1.8 **“Gas Utility System”** means the Gas Facilities used for the provision of Services.
- 1.9 **“Grantee”** means Northwest Natural Gas Company, a corporation duly organized and existing under the laws of the State of Oregon, and its lawful successors, assigns, and transferees.
- 1.10 **“Gross Revenues”** means revenues received from use of the Gas Utility System within the City Limits less related net uncollectibles. Gross revenues shall include revenues from the use, rental, or lease of the Gas Facilities. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, 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, or revenue from joint pole use. “Gross Revenue” shall include revenues from the use, rental, or lease of Grantee’s Gas Facilities, except when those revenues have been paid to Grantee by another franchisee of the City and the paid revenues are used in the calculation of the franchise fee for the operations of the other franchisee within the City Limits.
- 1.11 **“Maintenance,” “Maintaining,” or “Maintain”** means, without limitation, relaying, repairing, replacing, relocating, examining, testing, inspecting, removing, digging and excavating, and restoring operations incidental thereto.
- 1.12 **“Person”** means any individual, municipality, governmental entity, sole proprietorship, partnership, public or private corporation, limited liability company, association or other organization authorized to act or do business in the State of Oregon, and includes any natural person.
- 1.13 **“Public Place”** means any City-owned property that is open to the public and that is not a Right-of-Way, and includes public squares, fairgrounds and parks.
- 1.14 **“Public Utility Commission”** means the Public Utility Commission of the State of Oregon, or its successor agency.

- 1.15 **“Right-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.
- 1.16 **“Services”** means the gas transmission, distribution, sales and marketing services provided by Grantee to its customers located within the City Limits. “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.

Section 2. Nature and Term of Grant.

- 2.1 **Grant of Franchise.** Subject to the terms and conditions of this Franchise, the City grants Grantee a right, privilege and franchise during the term of this Franchise to:
- 2.1.1 Construct, Maintain and operate a Gas Utility System and exercise all authority conferred upon Grantee by state law within the City Limits for the purpose of providing Services to customers within the City Limits.
- 2.1.2 Install, operate, Maintain, remove, reinstall, relocate, and replace Gas Facilities on and under the Right-of-Way and to use the Right-of-Way for the provision of Services. This Franchise does not authorize Grantee to install or use Gas Facilities in the Right-of-Way for anything other than the provision of Services. Unless Grantee or its lessee or licensee obtains the written consent of the City, Gas Facilities shall not be used directly or indirectly for the provision of telecommunications services not required by Grantee to operate its Gas Utility System. Gas Facilities may not be placed or operated in any Public Place without separate written consent of the City.
- 2.1.3 Install, operate, Maintain, remove, reinstall, relocate and replace Gas Facilities for the transmission of Gas which are located within the City Limits but are not used to provide Services in or do not terminate in the City Limits.
- 2.1.4 Offer and sell Services to customers within the City Limits.
- 2.2 **Duration.** The term of this Franchise, and all rights and obligations pertaining thereto, shall be ten years from the date Grantee signs and accepts this Franchise in accordance with Section 12.8, unless terminated sooner as provided herein.
- 2.3 **Franchise Non-Exclusive.** This Franchise is not exclusive. The City expressly reserves the right to grant franchises or rights to other Persons similar to or

different from those granted by this Franchise. This Franchise is intended to convey limited rights and interests 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 provide the Grantee with any interest in any particular location within the Public Rights-of-Way; and it does not confer rights other than as expressly provided in the grant hereof. This Franchise 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 shall be deemed to grant, convey, create, or vest in Grantee a real property interest in land, including any fee, leasehold interest, or easement.

2.4 Reservation of City Rights. The City reserves the rights to:

2.4.1 Construct, install, Maintain and operate any City Facility, Right-of-Way or Public Place.

2.4.2 Do any work that the City may find desirable on, over or under any Right-of-Way or Public Place.

2.4.2.1 Whenever the City shall excavate or perform any work in any Right-of-Way or Public Place, or shall contract, or issue permits, for such excavation or work where such excavation or work may disturb Grantee's Gas Facilities, 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 its Gas Facilities from damage and possible inconvenience or injury to the public, consistent with the Oregon Utility Notification Center requirements if applicable. In any such case, the Grantee, upon request, shall furnish maps or drawings to the City showing the approximate location of all its Gas Facilities in the area involved in the proposed excavation or other work. The City shall treat any such map or drawing as confidential, subject to the provisions of state law and the Oregon Public Records Law.

2.4.3 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.

2.4.4 Vacate, alter or close any Right-of-Way or Public Place. Whenever the City shall vacate any Right-of-Way or Public Place for the convenience or benefit of any person or governmental agency or instrumentality, Grantee's rights under this Franchise shall be preserved as to any of its Gas Facilities then existing in the Right-of-Way or Public Place if reasonably practicable. To the extent Grantee's rights in the Right-of-

Way cannot be preserved, City shall provide an alternative Right-of-Way for the location of Grantee's Gas Facilities.

2.4.5 Abate any nuisance or dangerous condition.

2.4.6 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.

2.4.7 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 Facilities 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, City of Stayton Standard Specifications, Design Standards and Drawings and other safety or construction standards, and other applicable requirements), provided that these regulations, by ordinance or otherwise, are reasonable and not in conflict with the rights granted in this Franchise. These regulations shall be subject to any superseding provisions of state or federal law or regulations and shall be in conformance with standard engineering practices. The City may amend and add to these regulations from time to time. Grantee shall promptly comply with these regulations.

2.5 **Franchise as Contract.** This ordinance and the written acceptance by Grantee constitutes a contract between the City and Grantee, and is binding upon and inures to the benefit of Grantee and its successors, legal representatives and assigns, under the conditions imposed herein.

Section 3. Compensation.

3.1 **Amount.** As compensation for the benefits and privileges granted under this Franchise, and for Grantee's entry upon and deployment within the Right-of-Way, Grantee shall pay to the City an amount equal to five percent (5%) of Grantee's Gross Revenues (the "Franchise Fee"). The Franchise Fee includes all compensation for the use of the Right-of-Way. The City may charge additional compensation for the use of any Public Place. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or, or to participate in, or to levy upon the property of Grantee.

3.2 **Due Date.** The Franchise Fee shall be 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. Any

payment not made when due shall accrue interest at nine percent (9%) per annum until paid.

- 3.3 **Report.** Grantee shall furnish a statement to the City with each payment of compensation, in a form acceptable to the City, showing the amount of Gross Revenues for the period covered by the payment computed on the basis set out in subsection 3.1 of this Section. The compensation for the period covered by the statement shall be computed on the basis of the reported Gross Revenues. Grantee may identify information submitted to the City as confidential by prominently marking any such information with the mark "Confidential" in letters at least one-half inch in height. Subject to the disclosure requirements of state or federal law, including the Oregon Public Records Law, the City shall treat any such information as confidential and not subject to public disclosure. The Grantee shall provide written verification of the amount of Gross Revenues, executed by an authorized officer of Grantee or the officer's authorized designee, upon demand by the City.
- 3.4 **Acceptance of Payment and Recomputation.** If Grantee discovers any underpayment in the correct amount of compensation due, the City shall be paid the difference due within thirty (30) days of 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. Acceptance by the City of any payment due under this Section shall not be deemed as an accord that the amount paid is the correct amount, nor shall any acceptance of payment be construed as a release of any claim the City may have for additional funds or as a waiver by the City of any breach of this Franchise.
- 3.5 **New Business.** The City specifically reserves the right to impose a fee or tax, as allowed by generally applicable law, on any new business undertaking of Grantee that is operated 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. The provisions of this franchise agreement do not impair the imposition of ad valorem taxes on the property of the Grantee as allowed by law.
- 3.6 **Renegotiation of Franchise Fee.** Upon 30 days written notice by either party to the other of a requested modification, the provisions of section 3.1 of this Franchise may be modified. A written notice of requested modification may only be given during the sixth full year of the franchise term, i.e., between five (5) and six (6) years after the date the Grantee signs and accepts this Franchise in accordance with section 12.8. If the parties are unable to agree to a modification of section 3.1 or to a continuation of the same provisions within 90 days of receipt of the notice of requested modification, or such longer time as may be agreed to by the parties, the Franchise shall terminate. City shall provide Grantee at least 30 days notice before any other increase in the Franchise Fee may take effect.

Section 4. Services Standards, Safety Standards and Work Specifications.

- 4.1 **Quality of Services.** 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 the Public Utility Commission and other 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.
- 4.2 **Construction and Maintenance of Gas Facilities.** Grantee's Gas Facilities shall be Constructed and Maintained in good order and condition, in a safe manner, and in accordance with standard engineering practice and all lawful governmental regulations.
- 4.3 **Protection of Property.** Grantee shall install and maintain all Gas Facilities in a manner that does not injure the Right-of-Way, the City's property or the property belonging to another Person within the City Limits. Grantee shall, at its own expense, repair, renew, change, and improve the Gas Facilities from time to time as may be necessary to accomplish this purpose.
- 4.4 **Compliance with State and Federal Regulations.** The rates to be charged and the rules and regulations in respect to the conditions, character, quality and standards of service to be furnished by Grantee shall be those as may be lawfully prescribed by the Public Utility Commission. In the event this jurisdiction or right of regulation, or any part thereof, is abandoned by the Public Utility Commission and is not vested exclusively by law in any other state regulatory body, and in the event this jurisdiction may be lawfully exercised by the City, consistent with Section 2.4.7, the City reserves the right, and Grantee shall comply with, all reasonable ordinances, rules and regulations made by the City in the exercise of this jurisdiction or right of regulation.

Section 5. Construction, Installation and Relocation.

- 5.1 **Construction and Installation.** Subject to City-established requirements concerning work in the Rights of Way, including permitting, insurance, bonding, work scheduling, and payment of administrative fees for permits, Grantee may enter upon the Right-of-Way to perform all work that is necessary to install, operate, Maintain, remove, reinstall, relocate, and replace Gas Facilities in or under the surface of the Right-of-Way. Grantee shall be responsible for all Construction, installation, and Maintenance work, regardless of who performs the work. Except in emergencies, prior to making an excavation in any untraveled portion of any Right-of-Way, 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 work and consistent with Section 5.5 after commencement of work performed under emergency conditions.

- 5.2 **Permits and Fees.** Consistent with its authority under Section 2.4.7 of this Franchise, and except when work is necessary during an emergency or to remedy an immediate risk of harm to persons or property, the City may require Grantee to obtain a permit before commencing the Construction, Maintenance, extension or relocation of any of its Gas Facilities in the Right-of-Way or a Public Place. The City in all cases may charge Grantee any applicable permit fees. The City shall promptly respond to Grantee's requests for permits and shall otherwise cooperate with Grantee in facilitating the deployment of equipment in the Right-of-Way in a reasonable and timely manner. Applications for permits to construct or modify a Gas Utility System shall be submitted upon forms approved by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:
- 5.2.1 That the facilities will be constructed in accordance with all applicable codes, rules and regulations.
 - 5.2.2 That the facilities will be constructed in accordance with the Franchise if applicable.
 - 5.2.3 The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route. Existing facilities shall be differentiated on the plans from new construction.
 - 5.2.4 The location and plan view of all of applicant's existing utilities, conduits, ducts, pipes, mains and installations which are within the Public Rights-of-Way along the route proposed by the applicant. A profile and plan view shall be provided showing new facilities in relation to the Street, curb, sidewalk or Public Right-of-Way. The locations of utilities shall be defined using a survey point or other identifiable monument or marker.
- 5.3 **No Interference.** All Gas Facilities of Grantee shall be Constructed and laid in such a manner as not to interfere with the use by the City and the public of the Right-of-Way and Public Places or with any public or private irrigation or drain ditches, sewers, water mains, conduits, sidewalks, paving or other public improvements or utility structures. Further, if any of Grantee's Gas Facilities unreasonably interfere with the Construction or repair of any Right-of-Way or City Facility, Grantee's Gas Facility shall be removed or replaced in coordination with the City. Any and all removal or replacement shall be at Grantee's sole expense. Should Grantee fail to remove, adjust or relocate its Gas Facility by the date established by the City, the City may cause such removal, adjustment or

relocation through the use of qualified contractors, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay.

5.4 **Relocation.**

5.4.1 In case of any future improvement, Maintenance or Construction of City Facilities in the Right-of-Way or upon a Public Place, or of any of the streets, avenues, lanes, alleys, highways, sidewalks or pedestrian ways in the Right-of-Way, where any Gas Facilities are located, and the City determines it is necessary to change the location of the Gas Facilities in connection with the improvement, Maintenance or Construction, Grantee shall, upon reasonable notice by City and after reasonable evaluation of alternatives by City in cooperation with Grantee, at Grantee's own expense, move and change any Gas Facility to conform to the public improvement.

5.4.2 The City shall avoid the need for moving or changing a Gas Facility whenever reasonably possible, as determined by the city manager or administrator, or his or her designee.

5.4.3 When removal or relocation of a Gas Facility is required for the convenience or benefit of any Person other than the City, Grantee shall be entitled to reimbursement for the reasonable cost thereof from that Person.

5.4.4 If Grantee shall fail to relocate or remove any Gas Facility as requested by the City by the date established by the City, the City may cause the Gas Facility to be removed by qualified contractors at Grantee's sole expense. Upon receipt of a demand for payment from the City, Grantee shall promptly reimburse the City for the costs the City incurred.

5.5 **Emergencies.** In the event of an emergency, the City shall notify Grantee as soon as is reasonably possible. Upon request, Grantee shall furnish maps or drawings to the City showing locations of all distribution facilities subject to proposed excavation or other work, and shall confirm by actual physical examination the depth of such facilities. In the event emergency repairs of an existing facility are necessary, work may commence prior to the application for a permit. The application for a permit for an emergency repair must be submitted within 72 hours following the initial emergency.

5.6 **Damage to Right-of-Way.** Whenever the installation, operation, Maintenance, removal, reinstallation, replacement or relocation of Gas Facilities damages or disturbs the Right-of-Way, Grantee, at its sole cost and expense, shall promptly repair and return the Right-of-Way to the condition it was in before it was damaged or disturbed, as approved by the City. If Grantee does not repair the Right-of-Way as just described, then the City may, upon 30 days' prior written notice to Grantee, repair the Right-of-Way at Grantee's sole expense. Upon the

receipt of a demand for payment from the City, Grantee shall promptly reimburse the City for the costs the City incurred.

5.7 **Safety.** Grantee shall insure that all work performed in the Right-of-Way is performed in a manner that ensures safety of workers and the public.

5.8 **Emergency Operation Provisions.** The Grantee has provided the City with an Emergency Response Plan detailing procedure for response to emergencies involving facilities and other system components. The Emergency Response Plan attached to this franchise ordinance as Exhibit A is acceptable in content and form as complying with the requirements of this section 5.8. To the extent practicable, the Emergency Response Plan will include at least the following information:

5.8.1 The names and 24-hour telephone numbers of responsible parties with the authority to commit the resources of the Grantee.

5.8.2 The name and 24-hour telephone numbers of the Grantee's Emergency Coordinator and other emergency contacts available to respond during emergencies.

5.8.3 A description of resources available to respond to emergencies, including equipment, personnel and levels of training, and communications.

5.8.4 The method of dispatch for the emergency resources and estimated response time objectives within the Franchise Area, and dispatch center 24-hour numbers.

5.8.5 How the Grantee's response personnel will interface with local first responders during emergencies. This should include communication plans and a description of positions and personnel designated to interface with the first responder incident command staff.

Section 6. General Financial, Liability and Insurance Provisions.

6.1 Insurance.

6.1.1 Grantee shall maintain public liability and property damage insurance that protects Grantee and the City, as well as the City's officers, agents, and employees, with the following limits and coverages:

- i. Comprehensive general liability insurance with limits not less than:
 - a. One million dollars for bodily injury or death to each Person;
 - b. One million dollars for property damage resulting from any one accident; and,
 - c. Three million dollars for all other types of liability.

ii. 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.

iii. Workers' compensation coverage at a minimum consistent with statutory requirements, and employer's liability insurance with limits of not less than one million dollars.

iv. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars.

6.1.2 The insurance policies may provide for self-retention or deductibles in reasonable amounts. The limits of the insurance shall be subject to statutory changes as to increases in the maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise.

6.1.3 The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this Section 6.1.3 shall operate 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.

6.1.4 The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days' prior written notice first being given to the City. If the insurance is canceled or materially altered within the term of this Franchise, Grantee shall provide a replacement policy with the same terms. Grantee shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this Franchise.

6.2 **Indemnification.**

6.2.1 Grantee hereby agrees and covenants to indemnify, defend, and hold the City, its officers, agents, and employees harmless from any claims for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property by reason of any act done under this Franchise, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its Gas Facilities in a safe condition. The duty to indemnify shall not extend to any gross negligence or willful misconduct by the City, its officers, agents or employees.

6.2.2 The City shall provide Grantee with prompt notice of any such claim, which Grantee shall defend with counsel of the City's choosing, and no settlement or compromise of any such claim will be done by either Party without the prior written approval of the other. Grantee and its agents, contractors and others shall consult and cooperate with the City while conducting its defense.

Section 7. Books of Account and Reports and Audits. The Grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under Section 3 of this Franchise. Authorized representatives of the City may inspect the books of account at any time during business hours and may audit the books from time to time. The City may require periodic reports from the Grantee relating to its operations and revenues within the City Limits. The City shall treat any public record relating to Grantee's operations or revenues as confidential, subject to the provisions of state law and the Oregon Public Records Law.

The City shall have the right to conduct, or cause to be conducted, an audit of Gross Revenues as defined herein for the purpose of ascertaining whether Grantee's franchise fee payments have met the requirements of this franchise. The cost of any such audit shall be borne by City, unless the results of any such audit reveal an underpayment of more than five percent (5%) of the franchise fee for the period audited. In the case of such underpayment, the full cost of such audit shall be paid by Grantee. Any difference of payment due either the City or the Grantee following audit shall be payable within thirty (30) days of written notice to the affected party. All books will be made available to authorized representatives of the City at no cost to the City.

Section 8. 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 Limits. Authorized representatives of 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 Facilities of the Grantee in the City.

Grantee and the City may determine that the location of certain Gas Facilities should be confidential as the public interest may require. In such a case, the Grantee shall notify the City of which records disclosing the location of Gas Facilities should be treated as confidential. The City shall treat any public record disclosing the location of these facilities as confidential, subject to the provisions of state law and the Oregon Public Records law. The City shall limit access to any such confidential record to trustworthy employees of the City with a need to know the information set out in the record. The City shall store any such confidential record in a secure and private place and avoid making and distributing copies of the record. This paragraph is not a limitation of Grantee's obligation to provide required permit information as set forth in Section 5.2 of this agreement.

Section 9. Notices.

9.1 **Manner.** All notices that shall or may be given pursuant to this 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) by facsimile or e-mail transmission, if a hard copy 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 facsimile or e-mail, addressed as follows:

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

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

- 9.2 **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 one business day after in the case of facsimile, e-mail, 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.

Section 10. Forfeiture and Remedies.

- 10.1 **Forfeiture.** The City may terminate this Franchise as provided in this Section, subject to Grantee's right to a court review of the reasonableness of such action, upon the willful failure of Grantee to comply promptly and completely with each and every material term, condition or obligation imposed upon Grantee by this Franchise.
- 10.2 **Notice and Opportunity to Cure.** The City shall give Grantee 90 days' prior written notice of its intent to exercise its rights under Section 10.1, stating the reasons for declaring a forfeiture. If Grantee cures the stated reason within the ninety (90) 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 shall not exercise its right to terminate the Franchise by forfeiture. If Grantee fails to cure the stated reason within the ninety (90) day notice period, or if Grantee does not undertake and/or maintain efforts to remedy the stated reason to the City's satisfaction, then the City may declare the Franchise forfeited and terminate the Franchise. In no event shall the City exercise its rights under this Section if a bona fide, good-faith dispute exists between the City and Grantee as to the basis of the forfeiture.
- 10.3 **Remedies Not Exclusive.** All remedies and penalties under this Franchise, 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 of penalty. The remedies and penalties contained in this Franchise, 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 Franchise. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violation, and any other matters the City deems appropriate.

Section 11. Assignment. This Franchise shall not be assigned or transferred without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed, provided the Franchise is transferred or assigned to an entity that controls, is controlled by, or is under the common control of the Grantee. If the City consents to an assignment or transfer of the Franchise, the transfer or assignment shall not be effective until the assignee or transferee has complied with the requirements in Section 6 and filed a signed acceptance of the terms of this Franchise. Notwithstanding anything in this Franchise to the contrary, Grantee may mortgage this Franchise, together with its Gas Utility System and properties within the City Limits, in order to secure any legal bond issue or other indebtedness of Grantee, with no prior pre-approval by the City under this Section.

Section 12. Miscellaneous Provisions.

- 12.1 **Waiver of Breach.** The waiver by either party of any breach or violation of any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Franchise.
- 12.2 **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 preempted by federal or state laws or regulations, such provision(s) shall be deemed severable from the remaining provisions of this Franchise and shall not affect the legality, validity, or constitutionality of the remaining portions of this Franchise.
- 12.3 **Governing Law and Choice of Forum.** This Franchise shall be governed and construed by and in accordance with the laws of the State of Oregon without reference to its conflicts of law principles. If suit is brought by a party to this Franchise, the parties agree that trial of such action shall be vested exclusively in the state courts of Oregon, County of Marion, or in the United States District Court for the District of Oregon.
- 12.4 **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

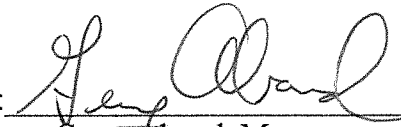
and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

- 12.5 **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.
- 12.6 **Independent Contractor Status.** When performing under this Franchise, Grantee shall be 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.
- 12.7 **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.
- 12.8 **Acceptance.** Within thirty (30) days after the Council adopts this Franchise Ordinance and the Mayor signs the Franchise Ordinance Grantee shall file with the City Recorder a written unconditional acceptance of this Franchise. If Grantee fails to file its acceptance, this Franchise Ordinance shall be void, unless the City grants Grantee an extension of time.
- 12.9 **Entire Agreement.** This Franchise contains the entire understanding between the parties with respect to the subject matter herein. 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.


ADOPTED BY THE STAYTON CITY COUNCIL this 19th day of April, 2004.

CITY OF STAYTON

Signed APRIL 20, 2004.

By: 
Gerry Aboud, Mayor

Signed April 20, 2004.

By: 
Chris Childs, City Administrator

APPROVED AS TO FORM:

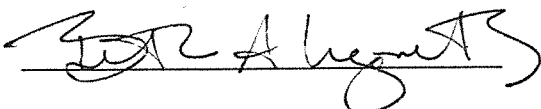

David A. Rhoten, City Attorney

ACCEPTANCE

Chris Childs
City Administrator
City of Stayton
362 North Third Avenue
Stayton, OR 97383

This is to advise the City of Stayton, Oregon ("City") that Northwest Natural Gas Company ("Grantee") hereby accepts the terms and provisions of Ordinance No. 863, passed by the Stayton City Council on April 19, 2004 (the Franchise) granting a Franchise for Ten (10) years to Northwest Natural Gas Company. The Grantee agrees to abide by each and every term of the Franchise.


[Name] Beth A. Ugoretz

BY 

TITLE Senior VP & General Counsel

DATE May 3, 2004

This Acceptance was received by the City of Stayton on May 4, 2004.


Chris Childs
City Administrator