

RESOLUTION NO. 22-03

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

WHEREAS, the City of Scappoose must periodically update franchise agreements active within the City when they expire; and

WHEREAS, a franchise with NW Natural Gas Company expired and is in need of renewal; therefore

BE IT RESOLVED, that the following text, written here as negotiated on by the City of Scappoose and NW Natural Gas, shall be the text of the new franchise with NW Natural Gas:

Section 1. Definitions and Explanations.

(A) As used in this Resolution:

- (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 Scappoose and the areas within its boundaries, including its boundaries as extended in the future.
- (3) "Council" means the legislative body of the City.
- (4) "Effective Date" means the date the City receives the acceptance of this Franchise from Northwest Natural Gas Company pursuant to Section 19.
- (5) "Grantee" means the corporation referred to in Section 2 of this Resolution.
- (6) "Gas Mains" includes all gas transmission and distribution facilities, including but not limited to pipes and appurtenances to such facilities, that are owned by Grantee and located on or under any Street, Bridge or Public Place within the City.
- (7) "Gross Revenue" means revenues received from utility operations within City limits less related net uncollectibles. Gross Revenues shall include 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 the paid revenues are used in the calculations of the franchise fee for the operations of the other franchisee within the city limits. Gross Revenue shall not include: i) proceeds from the sale of bonds, mortgage, or other evidence of indebtedness, securities or stocks, ii) revenues derived from the sale or transportation of gas supplied under an interruptible tariff schedule, iii) revenues paid directly by the United States of America or any of its agencies, or iv) revenues derived from

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 Revenue also shall 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 Oregon Utility Commission and that the revenue raised is used solely for Public Purpose Activities and not to compensate Grantee for the sale or use of natural gas or for the use, rental, or lease of the 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.

- (8) "Person" includes an individual, corporation, association, firm, partnership, and joint stock company.
 - (9) "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 or Bridge.
 - (10) "Street" includes a Street, alley, avenue, road, boulevard, thoroughfare or public highway within the City, but does not include a Bridge or a county road or state highway.
 - (11) This Resolution shall be known as the Northwest Natural Franchise Resolution and within this document, it shall be referred to as "this Resolution", "this Franchise", or "the Franchise".
- (B) As used in this Resolution, the singular number may include the plural and the plural number may include the singular.
 - (C) Unless otherwise specified in this Resolution, any action authorized or required to be taken by the City may be taken by the Council or by an official or agent designated by the Council.

Section 2. Rights Granted.

Subject to the conditions and reservations contained in this Resolution, the City hereby grants to NORTHWEST NATURAL GAS COMPANY, a corporation, the right, privilege and franchise to:

- (A) Construct, maintain and operate a gas utility system within the City.
- (B) Install, maintain and operate on and under the Streets and Bridges and Public Places 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;

- (C) Transmit, distribute and sell gas; and
- (D) All other rights, privileges and franchises necessary or incident to the business of providing gas service.

Section 3. Use of Streets, Bridges and Public Places by Grantee.

- (A) Before the Grantee may use or occupy any Street, Bridge or Public Place, the Grantee shall first obtain permission from the City to do so and shall comply with any special conditions, consistent with applicable law, the City desires to impose on such use or occupation.
- (B) The compensation paid by the Grantee for this Franchise includes all compensation for the use of Streets, Bridges and Public Places located within the City as authorized.

Section 4. Duration.

This Franchise is granted for a period of ten (10) years from and after the Effective Date of this Resolution.

Section 5. Franchise Not Exclusive.

This Franchise is not exclusive, and shall not be construed as a limitation on the City in:

- (A) Granting rights, privileges and authority to other persons similar to or different from those granted by this Resolution.
- (B) Constructing, installing, maintaining or operating any City-owned public utility.

Section 6. Public Works and Improvements Not Affected by Franchise.

The City reserves the right to:

- (A) Construct, install, maintain and operate any public improvement, work or facility.
- (B) Do any work that the City may find desirable on, over or under any Street, Bridge or Public Place.
- (C) Vacate, alter or close any Street, Bridge or Public Place, provided that the City shall make a reasonable effort to accommodate Grantee's facilities, including but not limited to reservations protecting Grantee's facilities consistent with the public interest. Whenever the City shall vacate any Street 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 facilities then-existing in such Street or Public Place.

- (D) Whenever the City shall excavate or perform any work in any of the present and future Streets, Bridge 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 or other 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 its facilities 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 approximate location of all its structures in the area involved in such proposed excavation or other work.

Section 7. 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 applicable standards adopted by federal and state authorities and to standards of the City which are not in conflict with those adopted by the federal and state authorities. Under no circumstances shall the Grantee be liable for an interruption or failure of service caused by act of God, unavoidable accident or other circumstances beyond the control of the Grantee through no fault of its own.

Section 8. Safety Standards and Work Specifications.

- (A) The facilities of the Grantee shall at all times be maintained in a safe, substantial and workmanlike manner.
- (B) 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, and except in an emergency where immediate action is required to protect the health or safety of persons or property in imminent danger, the City will provide the Grantee with notice and opportunity to consult and comment upon such changes that may affect Grantee's operations within the City.

Section 9. Control of Construction.

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

construction, extension or relocation of any of its Gas Mains.

- (B) In all of its work authorized under this Resolution, Grantee shall comply with all generally applicable regulations of the City concerning work in the right of way, including permitting, insurance, bonding, and work scheduling, as well as the payment of any applicable fees required under Section 11 of this Resolution.

Section 10. Street Excavations and Restorations.

- (A) Subject to the provisions of this Resolution, 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, when on private property, prior to making an excavation in the traveled portion of any Street, Bridge or Public Place, and, when required by the City, in any untraveled portion of any Street, 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 work and as soon as is practicable after the commencement of work performed under emergency conditions.
- (B) Except as provided in subsection (C) of this Section, when any excavation is made by the Grantee, the Grantee shall promptly restore the affected portion of the Street, 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, Bridge or Public Place to the same condition in which it was prior to the excavation, and provided that the City and the Grantee have not otherwise come to an agreement upon a reasonable restoration schedule, the City may make the restoration after providing Grantee fourteen (14) business days' written notice to restore, and the reasonable cost thereof shall be paid by the Grantee
- (C) At its option, and after providing fourteen (14) business days' written notice to Grantee, the City may restore or resurface the affected portion of any Street, Bridge or Public Place excavated by the Grantee, and charge Grantee for the reasonable cost thereof.

Section 11. Other Fees/Taxes.

Nothing in this Resolution shall give Grantee any credit against any nondiscriminatory business tax or ad valorem property tax now or hereafter levied against real or personal property within the City, or against any local improvement assessment levied on Grantee's property. Nothing in this Resolution shall be construed to limit City's right to require Grantee to pay reasonable costs

incurred by City in connection with the issuing of a permit, making an inspection, or performing any other service for or in connection with Grantee or its facilities pursuant to this Resolution. To the extent that such fees, other than building permit fees for structures are imposed by the City, such fees may be deducted from the franchise fee imposed by this Resolution. However, Grantee shall not deduct charges and penalties imposed by the City for noncompliance with charter provisions, Agreements, resolutions, or permit conditions from the franchise fees imposed by this Resolution.

Section 12. New Businesses by Grantee.

The City specifically reserves the right to impose a fee or tax, as allowed by law, on any new business undertaking of Grantee if operated within the City, and to otherwise separately regulate and obtain compensation for any other use of the City's rights of way than that specifically authorized herein.

Section 13. Location and Relocation of Facilities.

- (A) 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, Bridges and Public Places and in accordance with any specifications adopted by the City governing the location of facilities.
- (B) The City may require, in the public interest, the removal or relocation of facilities maintained by the Grantee in the Streets 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 cost of such removal or relocation of its facilities shall be paid by the Grantee, but when such removal or relocation is required for the convenience, accommodation or benefit of any Person, governmental agency or instrumentality other than the City, or is required by the City as a condition for a permit for or issued to such third party, Grantee shall be entitled to reimbursement for the reasonable cost thereof from such Person, agency or instrumentality and Grantee may refuse to accomplish such removal or relocation unless or until such other party agrees to pay the reasonable cost thereof. 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 of removal or relocation and as necessary, identifying new locations for Grantee's facilities.

Section 14. Compensation

- (A) As compensation for the franchise granted by this Resolution, the Grantee shall pay to the City an amount equal to five percent (5%) of the Gross Revenue collected by the Grantee from its customers for gas consumed within the City.

- (B) Upon 30 days' prior written notice by either party to the other, the amount of such annual compensation shall be subject to renegotiation at or before the expiration of the first five-year period of the term of the Franchise hereby granted, for the remaining five-year period of such franchise term. If the parties are unable to reach agreement, the franchise fee set out in subsection (A) of this Section shall continue for the remainder of the term of the Franchise.
- (C) The compensation required by this Section shall be due for each calendar year, or fraction thereof, within sixty (60) days after the close of such calendar year, or fraction thereof. Within sixty (60) 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.
- (D) The Grantee shall furnish to the City with each payment of compensation 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 and the compensation to be paid to the City computed on the basis set out in subsection (1) of this Section. The compensation for the period covered by the statement shall be computed on the basis of the Gross Revenue so reported. If the Grantee fails to pay the entire amount of the compensation due the City through error or otherwise, the difference due the City shall be paid by the Grantee within thirty (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.
- (E) Acceptance by the City of any payment due under this Section shall not be deemed to be a waiver by the City of any breach of this Franchise occurring prior thereto, nor shall the acceptance by the City 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.

Section 15. Book of Account and Reports.

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 14 of this Resolution. Upon reasonable notice, the City may inspect the books of account at any time during business hours and may audit the books from time to time, provided that only 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 will be included. The Council may require periodic reports from the Grantee relating to its operations and revenues within the City. 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 to the Grantee's reasonable satisfaction that such records will not be subject to public disclosure request seeking customer information and oppose such records' disclosure should a public request be made.

Section 16. 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. Upon reasonable notice, 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. Grantee may determine that the locations of certain other gas facilities should be confidential as the public interest or as public safety or security laws applicable to Grantee may require. In such a case, the City and Grantee agree to work together to ensure that records disclosing the location of these specifically identified facilities are treated as confidential and access by the City is limited 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 records in a secure and private place and avoid making and distributing copies of the record.

Section 17. Termination of Franchise for Cause.

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 the Grantee to perform promptly and completely each and every material term, condition or obligation imposed upon it under this Resolution. The City shall provide the Grantee written notice of any such failure and the Grantee shall have sixty (60) days from receipt of notice to cure such failure. Notice to Grantee required by this Section or any other section within this Franchise shall be sent by U.S. mail via registered or certified postage prepaid or by express mail or overnight courier as follows: Northwest Natural Gas Company, Legal Department – Franchises, 250 SW Taylor Street, Portland, Oregon 97204. Such addresses may be changed by either party upon written notice to the other party given as provided in this Section. When appropriate, and within the discretion of the City, the City may consent to extend such time for cure, which consent shall not unreasonably be withheld.

Section 18. Remedies Not Exclusive, When Requirement Waived.

All remedies and penalties under this Resolution, 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 Resolution, including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any agreement 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 Resolution. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this Resolution 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.

Section 19. Acceptance.

The Grantee shall, within thirty (30) days from the date this Resolution is adopted by the City, file with the City its written unconditional acceptance of this Franchise substantially in the form attached as Exhibit 1.

Section 20. Indemnity.

Grantee shall defend, save, hold harmless and indemnify City and its agents, officers and employees, from any and all claims, demands, suits, actions and damages of any kind, including attorney fees, resulting from or arising out of the wrongful or negligent acts or omissions of the Grantee, its agents, officers, employees or subcontractors in the performance of activities under this Resolution. The City shall provide Grantee with prompt notice of any such claim and shall consult and cooperate with Grantee in the course of Grantee's defense of the City. The duty to indemnify and defend shall not extend to any negligence or willful misconduct by the City, its officers, elected official, agents, contractors or employees. The obligations imposed by this Section are intended to survive termination of this Franchise. Any notice to Grantee required by this Section or any other section within this Franchise shall be sent by U.S. mail via registered or certified postage prepaid or by express mail or overnight courier as follows: Northwest Natural Gas Company, Legal Department – Franchises, 250 SW Taylor Street, Portland, Oregon 97204. Such addresses may be changed by either party upon written notice to the other party given as provided in this Section.

Section 21. Insurance.

Grantee shall secure, and maintain throughout the term of this Franchise, insurance against liability in the forms of coverage and minimum amounts herein stated, and shall insure both Grantee and the City, its elected and appointed officers, officials, departments, divisions, agents and employees as additional insureds, with respect to Grantee's activities performed under this Resolution. Proof of such insurance shall be submitted to City within 30 days of execution of this Resolution by both parties, and in advance of the performance of any work within the public right of way.

- (A) Grantee shall obtain, at its expense, and maintain throughout the term of this Franchise, Comprehensive or Commercial General Liability (CGL) coverage, covering bodily injury and property damage, with no exclusions for explosion, collapse or underground subsidence or claims between insureds, with limits not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000 in the aggregate);
- (B) The insurance policies may provide for self-retention or deductibles in reasonable amount. The limits on 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.

- (C) Grantee shall obtain, at its expense, and maintain throughout the terms of this Franchise, Automobile Liability coverage for any motorized vehicle, with limits of not less than One Million Dollars (\$1,000,000) per occurrence. The coverage may be written in combination with the Comprehensive or Commercial General Liability Insurance;
- (D) Grantee, its subcontractors, if any, and all employees providing work, labor or materials under this Franchise, are subject employers under the Oregon Workers' Compensation Law and shall comply with all applicable statutes, rules and regulations, including providing workers' compensation coverage for all their subject workers in amounts required by law;
- (E) Insurance required under this Resolution to be carried by Grantee shall be the primary coverage, and the City's insurance is excess and solely for damages or losses for which the City is responsible;
- (F) Grantee's failure to comply with reporting or other provisions of its insurance policies shall not affect the coverage afforded to City. All policies shall be endorsed to require 60 days' prior written notice to City of any change or lapse in coverage, including but not limited to suspension, material change, exhaustion of aggregate limits, intent not to renew, or cancellation of coverage. In the event of any suspension, material change, exhaustion of aggregate limits, notice of intent not to renew, or cancellation of coverage, Grantee shall show proof of replacement coverage in amounts required by this Section no later than 30 days after the date the City is so notified.

Section 22. Sale of Grantee.

In the event of sale or transfer of the majority of assets or stock of Grantee, Grantee shall notify City of such sale or transfer within 30 days of the execution of an agreement for sale or transfer. Upon such notice, City may elect to renegotiate this Franchise.

Section 23. Assignment.

This Franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee. Grantee shall not transfer or assign any rights under this Franchise to a third party, without City's written approval. Approval of the transfer or assignment shall not be unreasonably withheld.

Section 24. Survival.

If any portion of this Resolution is declared illegal or void by a court of competent

jurisdiction, the remainder of the Resolution shall survive and not be affected thereby. In such case, the parties shall proceed with due diligence to attempt to draft provisions that will achieve the original intent.

Section 25. Attorneys' Fees.

In the event of litigation arising under this Franchise, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

Section 26. Amendment.

This Franchise may only be amended in writing signed by both parties.

Section 27. Removal of Structures Upon Expiration of Franchise.

Upon expiration or termination of this Franchise, and subject to Section 29 below, all of Grantee's property and materials shall be subject to removal from City Streets, Bridges, and Public Places according to state law.

Section 28. Emergency Declared.

Inasmuch as it is necessary for the peace, health and safety of the citizens of Scappoose, an emergency is hereby declared, and this Resolution is put into full force and effect immediately upon its passage by the Council and approval by the Mayor, with the Effective Date of the Franchise as set out in Section 1 upon Grantee's acceptance in accordance with Section 19.

Section 29. Expiration.

At the end of the Franchise term, if the City and Grantee are negotiating another franchise and have not concluded their negotiations, Grantee's rights and responsibilities, including the duty to pay the required fees, shall be controlled by this Franchise until the City grants a new franchise and the Grantee accepts it.

PASSED AND ADOPTED by the Council this 7th day of February, 2022 and signed by the Council President, and City Recorder in authentication of its passage.

CITY OF SCAPPOOSE, OREGON



Mayor Scott Burge

ATTEST: 

City Recorder Susan M. Reeves, MMC

EXHIBIT 1

ACCEPTANCE

City of Scappoose
33568 E. Columbia Ave.
Scappoose, OR 97056

This is to advise the City of Scappoose, Oregon (the "City") that Northwest Natural Gas Company (the "Grantee") hereby accepts the terms and provisions of Resolution No. 22-03 passed by the Scappoose City Council on February 7th, 2022 (the "Franchise") granting a Franchise for ten (10) years to Grantee. The Grantee agrees to abide by each and every term of the Franchise and shall become effective upon acceptance of said agreement by Northwest Natural Gas Company (the "Grantee").

(Name)

BY _____
MardiLyn Saathoff

TITLE Senior Vice President, Regulation & General Counsel

DATE _____

This Acceptance was received by the City of Scappoose on _____, 2022.

City Recorder Susan M. Reeves, MMC