

CITY OF SCAPPOOSE

ORDINANCE NO: 706

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

THE CITY OF SCAPPOOSE ORDAINS AS FOLLOWS:

Section 1 Definitions and Explanations.

- a. As used in this Agreement.
 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. "Grantee" means the corporation referred to in Section 2 of this Agreement.
 5. "Gas mains" includes all gas transmission and distribution facilities located on or under any street, bridge or public place within the City.
 6. "Person" includes an individual, corporation, association, firm, partnership and joint stock company.
 7. "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.
 8. "Street" includes a street, alley, avenue, road, boulevard, thoroughfare or public highway within the City, but does not include a bridge.
- b. As used in this Agreement, the singular number may include the plural and the plural number may include the singular.
- c. Unless otherwise specified in this Agreement, 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 Agreement, 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 so to do and shall comply with any special conditions 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 20 years from and after the effective date of this Agreement.

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 Agreement.
- 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, alleys 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 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 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.

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.

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 Agreement, 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 Agreement.

Section 10 Street Excavations and Restorations.

- a. Subject to the provisions of this Agreement, 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, 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 (3) 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, the City may make the restoration, and the cost thereof shall be paid by the Grantee.
- c. At its option, and upon reasonable 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 cost thereof.

Section 11 Other Fees/Taxes. Nothing in this Agreement 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 Agreement 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 Agreement. 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 Agreement. 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 Agreement.

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 so to do 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 or benefit of any person, governmental agency or instrumentality other than the City, Grantee shall be 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.

Section 14 Compensation.

- a. As compensation for the franchise granted by this Agreement, 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. Gross revenue shall be computed by deducting from the total billings of the grantee the total net write-off of uncollectable accounts, revenues derived from the sale or transportation of gas supplied under an interruptible tariff schedule, revenues paid directly by the United States of America or any of its agencies, and sales of gas at wholesale by the Grantee to any public utility or public agency where the public utility or public agency purchasing such gas is not the ultimate consumer.
- 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, second and third successive five-year periods, respectively, of the term of the franchise hereby granted, for the ensuing five-year period of such franchise term.
- 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, administered under oath and executed by an officer of Grantee, 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 shall 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, the difference due to City shall be paid by the Grantee within fifteen (15) 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 Books 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 Agreement. The City may inspect the books of account at any time during business hours and may audit the books from time to time. The Council may require periodic reports from the grantee relating to its operations and revenues within the City.

Section 16 Collection Facilities. The Grantee may maintain a location in the City where its customers may pay their bills for gas service during normal business hours.

Section 17 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.

Section 18 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 Agreement. 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. 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 19 Remedies Not Exclusive, When Requirement Waived. All remedies and penalties under this Agreement, 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 Agreement, 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 Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this Agreement 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 20 Acceptance. The Grantee shall, within thirty (30) days from the date this Agreement takes effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails so to do, this Agreement shall be void.

Section 21 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 this Agreement.

Section 22 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 Agreement. Proof of such insurance shall be submitted to City within 30 days of execution of this Agreement 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 Agreement, 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. Grantee shall obtain, at its expense, and maintain throughout the term of this Agreement, 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;
- c. Grantee, its subcontractors, if any, and all employers providing work, labor or materials under this Agreement, 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;
- d. Insurance required under this Agreement 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;
- e. 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 that City is so notified.

Section 23 Publication Costs. Grantee shall pay for all expenses relating to the publication of notice and Agreements arising out of the process for obtaining this franchise.

Section 24 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 Agreement.

Section 25 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 26 Survival. If any portion of this Agreement is declared illegal or void by a court of competent jurisdiction, the remainder of the Agreement 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 27 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 28 Amendment. This agreement may be amended in a writing signed by both parties.

Section 29 Removal of Structures Upon Expiration of Franchise. Upon expiration or termination of this Agreement, all of Grantee's property and materials shall be removed from City streets, bridges, and public places according to state law.


Section 30 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 Agreement is put in full force and effect immediately upon its passage by the Council and approval by the Mayor.

PASSED AND ADOPTED by the Council this 4th day of September, 2001 and signed by the Council President, and City Recorder in authentication of its passage.

CITY OF SCAPPOOSE, OREGON



Floyd Pittard, Council President

ATTEST: 
Debi G. Schmit, City Recorder

1st reading 8/20/01

2nd reading 9/4/01