

FRANCHISE AGREEMENT

The City of West Linn, an Oregon municipal corporation ("City"), and Northwest Natural Gas Company, a corporation ("NW Natural"), enter into this agreement, which is effective July 1, 2002.

1. Rights Granted

- A. This agreement sets forth the terms of the nonexclusive franchise granted by the City to NW Natural and accepted by NW Natural by signing this agreement. In return for the payment and other obligations set forth in this franchise agreement, NW Natural shall have a nonexclusive right and privilege to operate a natural gas utility system providing natural gas services to residents within the City and to install, maintain and operate facilities for the transmission of natural gas within rights of way, as well as related communications system for the distribution of natural gas. Nothing in this agreement limits the City from granting others the right to carry on activities similar to or different from the ones described in this agreement.
- B. All facilities in possession of NW Natural currently located within rights of way are covered by this agreement and are deemed lawfully placed in their current locations. The City may require relocation as further specified in this agreement.

2. Term

This agreement shall be effective as of July 1, 2002 and shall remain effective through June 30, 2012, unless sooner terminated as provided in this agreement.

3. Construction Work

- A. *Non-emergencies.* Except in the case of an emergency, NW Natural shall file with the City Engineer maps or plans showing the location of any facilities to be placed in the right of way prior to the placement of those facilities. NW Natural shall also file with the City Engineer maps or plans showing the location of any construction work to be performed in the right of way, even if no new facilities are placed. No non-emergency work involving excavation, new facilities or relocated facilities may be performed until the City Engineer has approved the location for the work and facilities. No facilities shall be attached to a bridge without approval by the City Engineer of the design of facilities and method of attachment. In issuing the approval for non-emergency work, the City Engineer may restrict the times or dates when the work may be performed in order to minimize disruption of rights of way and may require work by NW Natural to be coordinated with work of the City or of others using the rights of way.

- B. *Emergencies.* NW Natural may conduct emergency work at any time and must provide the City Engineer with oral notice of the emergency work as soon as reasonably possible and no later than one business day after the emergency work has commenced. NW Natural shall provide the City Engineer a map of any excavations and repavings conducted on an emergency basis within 30 days of completion of the work. NW Natural shall also provide the City Engineer a map of any new facilities constructed on an emergency basis within 30 days of completion of the work.
- C. *Reasonable care.* All work by NW Natural within the rights of way shall be conducted with reasonable care and with the goal of eliminating or minimizing the risk to those using city rights of way and to eliminate or minimize the risk of damage to public or private property. All work shall be performed in accordance with all applicable laws and regulations. NW Natural shall not move, cut, modify or otherwise affect any facility of any other entity in the right of way without the consent of the other entity and notification to the City.

4. **Maps**

NW Natural shall maintain maps and operations data pertaining to its operations in the City on file at an office in Oregon. With 24 hours prior notice, the City may inspect the maps at any time during business hours. Upon request of the City and without charge, and subject to the provisions of this section, NW Natural shall furnish current maps to the City, either in a printed form, or, if the City maintains compatible data base capability, then by electronic data in read-only format, showing the location of its facilities, but not other proprietary information, used in operating NW Natural's transmission and distribution facilities within the City's Urban Growth Boundary area served by NW Natural. NW Natural 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, NW Natural is under no obligation to provide records of the location of these facilities to City and the City shall treat any public record disclosing the location of these facilities as confidential, subject to the provision 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 will not sell or transmit NW Natural maps or data to third parties unless permitted by NW Natural. The City will make available to NW Natural any City-prepared maps or data.

5. **Excavation**

Subject to Sections 3 and 6 of this agreement, NW Natural may make all necessary excavations within any right of way for the purpose of installing, repairing or maintaining any facility.

6. **Restoration After Excavation**

Except as otherwise provided in this section, NW Natural shall restore the surface of any right of

way disturbed by any excavation by NW Natural to the same condition it was in prior to its excavation. In the event that NW Natural's work is coordinated with other construction work in the right of way, the City Engineer may excuse NW Natural from restoring the surface of the right of way, providing that as part of the coordinated work, the right of way surface is restored at least to the condition it was in prior to any excavation. All restoration of right of way surface shall be subject to the approval of the City Engineer, who may issue an order requiring correction of the restoration work. If the correction order is not complied with within 30 days or such other time as may be specified in the order, the City may restore the surface of the right of way, in which case NW Natural shall pay the City for the cost of resurfacing, including all administrative costs of resurfacing and of issuing the correction order.

7. Relocation

- A. *Permanent Relocation - General.* The City may by written order require NW Natural to move any facility in the right of way. If the relocation is the result of a public project, NW Natural shall be responsible for the costs of relocation. If the relocation is required to accommodate an individual development, NW Natural shall have the right to seek reimbursement from the developer. In no event shall the City be responsible for the costs of relocation of any of NW Natural's facilities.
- B. *Notice.* The notice required by Subsection A of this Section shall be in writing and shall be provided at least 90 days before the date that NW Natural is required to move its facilities. The City will endeavor to provide as much notice as possible. The notice shall specify the date by which the existing facilities must be removed. Nothing in this provision shall prevent the City and NW Natural from agreeing, either before or after notice is provided, to a schedule for relocation. In the event that NW Natural fails to comply with a notice to relocate and the City and NW Natural have not reached agreement on a schedule for relocation, the City may remove NW Natural's facilities that were the subject of the relocation notice at NW Natural's expense. All personnel or contractors employed by City to relocate NW Natural facilities shall be qualified to perform the work.
- C. *Location for Relocated Facilities.* The City shall provide NW Natural with a suitable location in existing right-of-way for all facilities required to be relocated.

8. City Public Works and Improvements

Nothing in this agreement shall be construed in any way to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or doing any work that may be needed or convenient in any right of way. The City shall coordinate any such work with NW Natural to avoid, to the extent reasonably foreseeable, any obstruction, injury or restrictions on the use of any of NW Natural's facilities.

9. **Payment by NW Natural for Use of Rights of Way**

- A. In consideration for its use of rights of way and for the City's administration of the rights of way, NW Natural agrees to pay City a franchise fee of five percent of the gross revenue received by NW Natural from customers for natural gas consumed within the City. The fee shall be paid semi-annually for the preceding six month period. To the extent permissible under state law and regulation, the franchise fee imposed by this subsection shall be considered an operating expense of NW Natural and shall not be itemized or billed separately to consumers within the City.
- B. NW Natural shall pay the franchise fee to the City Finance Director for the period from July 1 through December 31 of each year on or before April 1 of the following year. NW Natural shall pay the franchise fee for the period from January 1 through June 30 of each year on or before October 31 of the same year. Interest on late payments shall accrue from the due date at a rate equal to the prime rate of interest as established by the Bank of America or its successor, and shall be computed based on the actual number of days elapsed from the due date until payment. Interest shall accrue without regard to whether the City has provided notice of delinquency. However, should payment be insufficient due to an error in computation, interest payments shall not begin to accrue until 10 days after the discovery of the error by NW Natural or receipt by NW Natural of notice of the error.
- C. With its payments, NW Natural shall provide the City a statement under oath showing NW Natural's gross revenue for the period for which the payment is made.
- D. The City may audit NW Natural at any time while this agreement is in effect to determine the accuracy of the reporting of gross revenues. NW Natural shall make all records available to the City and any auditor retained by the City on demand. Any such audit shall be at City's expense unless the audit reveals an underpayment of one percent in any one year, in which case NW Natural shall reimburse the City for the costs of the audit.
- E. In consideration of NW Natural's agreement to pay the franchise fee, the City agrees that it will not impose any additional license fee, tax, or charge on the business of NW Natural while this agreement is in effect, but this provision shall not exempt the property of NW Natural from lawful ad valorem property taxes. This provision shall be void and have no effect if NW Natural fails to or refuses to pay the franchise fee or if the franchise fee is held to be invalid or void for any reason.
- F. The obligation to pay the franchise fee imposed by Subsection A of this Section shall

survive expiration of this agreement. In the event this agreement is terminated before expiration, NW Natural shall pay City the franchise fee based on gross revenue through the date of termination within 60 days of the termination date.

10. Vacation of Right of Way

Whenever the City vacates any right of way for the convenience or benefit of any person or government agency or instrumentality, NW Natural's rights under this agreement shall be preserved as to any of its facilities then existing in the right-of-way if reasonably practicable. To the extent NW Natural's rights in the right of way cannot be preserved, City shall attempt to provide an acceptable alternative right of way for the location of NW Natural's facilities. If the City is unable to provide an acceptable alternative location, NW Natural may be responsible for purchasing an easement for its use outside existing City right of way. If NW Natural's facilities must be relocated from a vacated right of way, the petitioners of such vacation, unless in support of a public project, shall bear the costs of relocating the facilities. Upon receipt of a notice of a petition for vacation, NW Natural shall as soon as practicable investigate and advise the City and petitioners in writing whether the facilities must be relocated, the estimated costs of relocation and the time needed for this relocation.

11. City's Right to Use NW Natural Facilities

NW Natural shall permit City, without charge, to run wires or place equipment in NW Natural trenches for municipal purposes. The City shall indemnify and hold NW Natural harmless from loss or damage resulting from the City's wires and equipment.

12. Scope of Right Granted

This agreement grants NW Natural the right to place gas transmission facilities and related facilities in the right of way and to operate those facilities. It does not give NW Natural the right to place other resources or facilities in the right of way.

13. Termination

- A. *By City.* The City may terminate this agreement upon one year's written notice to NW Natural in the event that the City decides to provide natural gas to customers throughout the City.
- B. *By City for Nonpayment.* City may terminate this agreement and NW Natural's franchise if NW Natural fails to pay the franchise fee. The City shall provide 30 days' notice of termination prior to any termination for non-payment. The agreement shall not be terminated if NW Natural pays the full amount, including interest, within 30 days of the notice.

- C. *By City for Cause.* If NW Natural ceases to maintain its facilities and the lack of maintenance increases the risk of personal injury or property damage, the City may terminate this agreement by providing NW Natural 30 days' notice of termination. The agreement shall not be terminated if NW Natural restores its facilities to the satisfaction of the City within 30 days of the notice.

14. Sale of Franchise

NW Natural shall not sell or assign this franchise to an entity that is not authorized by the Oregon Public Utilities Commission to provide service as a natural gas utility in the City.

15. Removal of Facilities

If this agreement is terminated or expires on its own terms and is not replaced by a new franchise agreement or similar authorization, NW Natural shall remove the facilities pursuant to ORS 221.470, provided, however, that NW Natural and City may agree in writing to some other disposition of the facilities.

16. Nondiscrimination

NW Natural shall provide service to natural gas consumers in the City without discrimination or undue preference or disadvantage.

17. Hold Harmless

NW Natural shall indemnify and hold harmless the City, its public officials and employees against any and all claims, damages, costs and expenses to which they may be subjected as a result of any action by NW Natural under this agreement or otherwise arising from the rights and privileges granted by this agreement. This indemnity does not extend to claims that arise primarily from the City's own negligence or fault.

18. Notice

Any notice under or relating to this agreement shall be sent by first class mail or delivered by hand to the following addresses:

IF TO CITY:

Finance Director
City of West Linn
22500 Salamo Road
West Linn, OR 97068

IF TO NW NATURAL:

NW Natural Gas Company
220 NW Second Avenue
Portland, Oregon 97209
Attn: Franchise Manager

19. Effect of Invalidity of a Portion of this Agreement

If any section, subsection, sentence, clause, phrase, or other portion of this ordinance is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, all portions of the agreement that are not held to be invalid or unconstitutional shall remain in effect until the contract is terminated or expired. After any declaration of invalidity or unconstitutionality of a portion of this agreement, either party may demand that the other party meet to discuss amending the agreement to adjust the relationship of the parties to conform to their original intent in entering into this agreement. If the parties are unable to agree on a revised franchise agreement within 90 days after a portion of the agreement is found to be invalid or unconstitutional, either party may terminate the agreement on 180 days' notice to the other party.

20. Third-Party Beneficiaries

Nothing in this agreement shall be construed or applied to create rights in or grant remedies to any third party as a beneficiary of this agreement or any duty or obligation established in this agreement.

21. Representations and Warranties

Each of the parties to this agreement 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.

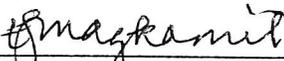
22. Definitions

- A. "Facility" includes any poles, wires, fixtures, equipment, conduit, circuits, and other property necessary or convenient to the supply of natural gas owned or operated by NW Natural within the City.
- B. "Right of way" means any right of way or public utility easement within the City and under City ownership, control or administration. "Right of way" does not include any state highway or county road.
- C. "Install" means to erect, construct, build or place.

- D. "Gross revenue" includes any and all revenue earned by NW Natural within the City from the sale of natural gas after adjustment for the net write-off of uncollectible accounts. Gross revenue shall also include revenue from the use, rental or lease of NW Natural's operating facilities other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgages, or other evidence of indebtedness, securities, or stocks, sales at wholesale to a public utility when the utility purchasing the service is not the ultimate consumer, or revenue paid directly by the United States of America or any of its agencies.

CITY OF WEST LINN

NW NATURAL GAS COMPANY


By: Elma Magkamt
Title: Finance Director
Dated: 8-8-02


By: Mark S. Dodson
Title: President & COO
Dated: _____

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