



CITY OF MILWAUKIE
"Dogwood City of the West"

Ordinance No. 2075

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

WHEREAS, Northwest Natural Gas Company ("Grantee") has been providing gas service within the City of Milwaukie ("City"); and

WHEREAS, Grantee is duly authorized by the Oregon Public Utility Commission ("OPUC") to supply gas within the City; and

WHEREAS, the City has the authority to regulate the use of the Public ROW (as defined below) within the City and to receive compensation for the use of the Public ROW; and

WHEREAS, the City and Grantee both desire Grantee to continue to be able to provide gas service within the City and to establish the terms by which Grantee shall use and occupy the Public ROW;

NOW THEREFORE, THE CITY OF MILWAUKIE

THE CITY OF MILWAUKIE ORDAINS AS FOLLOWS:

Section 1: Definitions and Explanations.

- (1) As used in this ordinance.
 - (a) "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.
 - (b) "City" means the City of Milwaukie, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, including its boundaries as extended in the future.
 - (c) "Council" means the legislative body of the City.
 - (d) "Gas mains" includes all gas transmission and distribution facilities located on or under any street, bridge or public place within the City.

- (e) "Grantee" means the corporation referred to in Section 2 of this ordinance.
 - (f) "Gross Revenue" means revenues received from the 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, 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. Gross Revenues shall not include proceeds from the sale of bonds, mortgage, or other evidence of indebtedness, securities or stocks, or sales at wholesale by Grantee to any public utility or public agency when the public utility or public agency purchasing the gas is not the ultimate customer. Gross Revenues will also not include public purpose charges, provided that such charges or surcharges are required or authorized by federal or state statute, administrative rule, or by tariff approved by the OPUC and raise revenue used solely for a public purpose and not to compensate Grantee for the sale or use of natural gas or for the use, rental, or lease of Grantee's Gas Facilities in the City.
 - (g) "Person" includes an individual, corporation, association, firm, partnership and joint stock company.
 - (h) "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.
 - (i) "Qualified Contractor" means a person that is knowledgeable about the construction and operation of a natural gas transmission and distribution system, and must be subject to and comply with the qualifying standards relating to the work in question as set forth in 49 CFR Part 192, Subpart N – Qualifications of Pipeline Personnel.
 - (j) "Right of way" means any right of way or public utility easement within the City and under City ownership, control, or administration. It includes, but is not limited to, streets, roads, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including the subsurface under and air space over these areas. "Right of way" does not include any state highway or county road.
- (2) As used in this ordinance, the singular number may include the plural and

the plural number may include the singular.

Section 2: Rights Granted.

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

- (1) Construct, maintain and operate a gas utility system within the City.
- (2) Install, maintain and operate on and under the right of way 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; and
- (3) Transmit, distribute and sell gas.

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

- (1) Before the Grantee may use or occupy any right of way, bridge or public place, the Grantee shall first obtain permission from the City to do so and shall comply with any special conditions the City desires to impose on such use or occupation.
- (2) The compensation paid by the Grantee for this franchise includes all compensation for the use of rights of way, bridges and public places located within the City as authorized.

Section 4: Duration.

This franchise is granted for a period of 10 years from and after the effective date of this ordinance.

Section 5: Franchise Not Exclusive.

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

- (1) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.
- (2) 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:

- (1) Construct, install, maintain and operate any public improvement, public work or facility.
- (2) Do any work that the City may find desirable on, over or under any right of way, bridge or public place.
- (3) Vacate, alter or close any right of way, bridge or public place, provided that the City shall attempt to make available to Grantee an alternative right of way for the location of its facilities. If the City is unable to provide an acceptable alternative location, Grantee may be responsible for purchasing an easement for its use outside existing City right of way.
- (4) Whenever the City shall excavate or perform any work in any of the present and future rights of way and public places of the City, or shall contract, or issue permits, for such excavation or work where such excavation or work may disturb Grantee's gas mains, pipes and appurtenances, the City shall, in writing, notify Grantee sufficiently in advance of such contemplated excavation or work to enable Grantee to take such measures as may be deemed necessary to protect such gas mains, pipes and appurtenances from damage and possible inconvenience or injury to the public. In any such case, the Grantee, upon request, shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work.
- (5) Whenever the City shall vacate any street or public place for the convenience or benefit of any person or governmental agency or instrumentality, the City shall reserve a public utility easement for Grantee's facilities then existing in such right of way or public place if reasonably practicable.
- (6) Grantee shall permit City, without charge, to run wires or place equipment in Grantee's trenches for municipal purposes, as long as such installation is consistent with federal pipeline safety regulations. The City shall indemnify and hold Grantee harmless from loss or damage resulting from the City's wires or equipment.

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 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.

- (1) The facilities of the Grantee shall at all times be maintained in a safe and workmanlike manner.
- (2) For the purpose of carrying out the provisions of this ordinance, 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.

The Grantee shall file with the City maps showing the location of any construction, extension or relocation of its Gas mains, pipes, and appurtenances 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, pipes, and appurtenances.

Section 10: Street Excavations and Restorations.

- (1) Subject to the provisions of this ordinance, 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 right of way, bridge or public place, and, when required by the City, in any untraveled portion of any right of way, bridge, or any public place, the Grantee shall obtain from the City approval of the proposed excavation and of its location. Grantee shall give notice to the City by telephone,

electronic data transmittal or other appropriate means prior to the commencement of service or maintenance work and as soon as is practicable after the commencement of work performed under emergency conditions.

- (2) When any excavation is made by the Grantee, the Grantee shall promptly restore the affected portion of the right of way, bridge or public place to the same condition in which it was prior to the excavation. The restoration shall be in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration. If the Grantee fails to promptly restore the affected portion of a right of way, bridge or public place to the same condition in which it was prior to the excavation, the City may make the restoration, and the cost thereof shall be paid by the Grantee.

Section 11: Location and Relocation of Facilities.

- (1) All facilities of the Grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the rights of way, bridges and public places and in accordance with any specifications adopted by the City governing the location of facilities.
- (2) The City may require, in the public interest, the removal or relocation of facilities maintained by the Grantee in the rights of way of the City, and the Grantee shall remove and relocate such facilities within a reasonable time after receiving notice to do so from the City. The 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 12: Compensation.

- (1) As compensation for the franchise granted by this ordinance, the Grantee shall pay the City an amount equal to five percent (5%) of gross revenue.
- (2) The compensation required by this section shall be payable semi-annually on or before March 15 for the six month period ending December 31, and September 15 for the six month period ending June

30. Within sixty (60) days after the termination of this franchise, compensation shall be paid for the period elapsing since the close of the last six month period for which compensation has been paid.

- (3) 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 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. Interest at the rate of nine percent (9%) per annum will accrue on late payments.

- (4) 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.
- (5) During the term of this franchise, and if allowed by law, the City may elect to receive increased compensation for the remaining term in an amount allowed by law. The City shall make this election by giving 90 days' written notice to Grantee.
- (6) The City specifically reserves the right to impose a fee or tax, as allowed by law, on any new business undertaking of Grantee that is operated within the City. For the purposes of this Section, "new business undertaking" means a business other than use of the City right of way for the transmission, distribution, and sale of natural gas as described in this ordinance. 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 Grantee, as allowed by law.

Section 13: 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 12 of this ordinance. 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. All amounts of Franchise Fees paid by Grantee shall be subject to audit or financial review by the City, 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.

Section 14: 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, pipes, and appurtenances of the Grantee in the City.

Section 15: Indemnification.

The Grantee shall indemnify and save harmless the City and its officers, agents, elected officials, and employees from any and all loss, cost and expense arising from damage to property and/or injury to, or death of, persons due to any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise hereby granted.

Section 16: Assignment of Franchise.

This franchise binds and benefits the successors, legal representatives and assigns of the Grantee. No assignment of the franchise shall be effective without the written approval of the City Council of Milwaukie. The Council may condition that approval upon a reasonable adjustment to the rate of compensation under section 12 of this franchise.

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 or pursuant to this ordinance. 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, or if such failure cannot reasonably be cured within sixty (60) days, to commence and diligently pursue curing such failure.

Section 18: Remedies Not Exclusive, When Requirement Waived.

All remedies and penalties under this ordinance, 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 ordinance, 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 ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance 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: 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 shall be controlled by this Franchise until the City grants a new franchise and Grantee accepts it.

Section 20: Confidential and Proprietary Information.

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

Section 21: Severability

If any section or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, all portions of the ordinance that are not held to be invalid or unconstitutional shall remain in effect until the ordinance is terminated or expired.

Section 22: Acceptance.

The Grantee shall, within thirty (30) days from the date this ordinance takes

effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails so to do, this ordinance shall be void.

PASSED by the Milwaukie City Council this 4th day of February, 2014.

Signed and approved by the Mayor this 4th day of February, 2014.



Jeremy Ferguson, Mayor

ATTEST:

APPROVED AS TO FORM:
Jordan Ramis PC



Pat DuVal, City Recorder



Jordan Ramis
City Attorney

ACCEPTANCE

City Manager
City of Milwaukie
10722 SE Main Street
Milwaukie, OR 97222

This is to advise the City of Milwaukie, Oregon (the "City") that Northwest Natural Gas Company (the "Grantee") hereby accepts the terms and provisions of Ordinance No. 2075 passed by the Milwaukie City Council on February 4th, 2014 (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 thirty days after adoption of Ordinance No. 2075 and after acceptance of said agreement by NW Natural Gas Company (the "Grantee").

BY: 
Name: Jeremy Ferguson
TITLE: Mayor
DATE: Feb 4, 2014

This Acceptance was received by the City of Milwaukie on February 4, 2014.


City Recorder

ACCEPTANCE

City Manager
City of Milwaukie
10722 SE Main Street
Milwaukie, OR 97222

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BY: [Signature]
Name: Marilyn Sadhwani
TITLE: Vice President & Corporate Secretary
Legal, Risk & Compliance
DATE: February 28, 2014

This Acceptance was received by the City of Milwaukie on March 7, 2014.

Pat Duval
City Recorder