

ORDINANCE NO. 5029

An Ordinance repealing Ordinance 4267 and granting a non-exclusive gas utility franchise to Northwest Natural Gas Company.

RECITALS:

On October 4, 1983, the City Council adopted Ordinance 4267, granting Northwest Natural Gas Company (Company) a 20-year Non-Exclusive Gas Utility Franchise Agreement.

The Franchise Agreement expired by its own terms in late 2003, and the parties now desire to update the terms of the Franchise Agreement and grant a new 20-year terms, subject to the revised terms and conditions, including an increase in the franchise fee charged to the Franchisee.

Now, therefore, THE COMMON COUNCIL FOR THE CITY OF McMINNVILLE ORDAINS AS FOLLOWS:

1. Ordinance 4267 is hereby repealed.
2. A non-exclusive gas utility franchise is granted to Northwest Natural Gas Company, subject to the terms and conditions set forth in Exhibit 1.
3. The Grantee shall, within thirty (30) days from the passage of this ordinance, file with the City its written unconditional acceptance of this franchise in the form set forth in Exhibit 2, and if the Grantee fails to do so, this ordinance shall be void.
4. This Ordinance shall become effective September 1, 2017.

Passed by the Council June 27, 2017, by the following votes:

Ayes: Garvin, Jeffries, Stassens, Ruden

Nays: \_\_\_\_\_

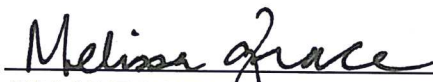
Approved: June 27, 2017.

  
\_\_\_\_\_  
MAYOR

Approved as to form:

  
\_\_\_\_\_  
CITY ATTORNEY

Attest:

  
\_\_\_\_\_  
CITY RECORDER

## EXHIBIT 1

### FRANCHISE AGREEMENT NON-EXCLUSIVE GAS UTILITY FRANCHISE NORTHWEST NATURAL GAS COMPANY

#### 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 McMinnville and the area within its 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 revenue collected by the Grantee from its customers for gas consumed through 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 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 calculation of the franchise fee for the operation 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 derived from the sale of gas supplied for industrial purposes under an interruptible tariff schedule, and 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 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 Public Utility Commission and the revenue raised from such charges is used solely for the 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 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.
  - (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) "Street" includes a Street, alley, avenue, road, boulevard, thoroughfare or public highway within the City, but does not include a Bridge.
- (2) As used in this ordinance, the singular number may include the plural and the plural number may include the singular.
  - (3) Unless otherwise specified in this ordinance, 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 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 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; and
- (3) Transmit, distribute and sell gas.

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

- (1) Before the Grantee may use or occupy any 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 Streets, Bridges and Public Places located within the City as authorized.

Section 4: Duration.

This franchise is granted for a period of twenty (20) 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, work or facility.
- (2) Do any work that the City may find desirable on, over or under any Street, Bridge or Public Place.
- (3) Vacate, alter or close any Street, Bridge or Public Place.
- (4) 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.
- (5) Whenever the City shall vacate any Street or Public Place for the convenience or benefit of any Person or governmental agency and instrumentality other than the City, Grantee's rights shall be preserved as to any of its facilities then existing in such Streets or Public Place.

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 state or federal authorities and to standards of the City which are not in conflict with those adopted by the state or federal 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, substantial and workmanlike manner.
- (2) 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, subject to any superseding provisions of state or federal law or regulations. The City may

amend and add to such specifications from time to time and provide the Grantee with notice and opportunity to comment upon such changes that may affect the location, construction, maintenance and operation of the Grantee's gas utility system; provided that, if such changes to the specifications are adopted by Ordinance of the City Council in an open public meeting, then no specific notice to Grantee shall be required. In recognition of the potential impacts that such changes may have upon Grantee's operations, the City will use best efforts to consult with Grantee's representatives about such changes in advance of such public meetings.

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 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.

Section 10: Street Excavation and Restorations.

- (1) Subject to 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 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, teletype, 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) 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 within a reasonable period of time or as otherwise mutually agreed, the City may make the restoration after providing written notice to the Grantee of its intent to do so, and the cost thereof shall be paid by the Grantee. Except when the City determines that prompt action should be taken to address an immediate public

safety concern, the City will endeavor to provide the Grantee with not less than fourteen (14) days written notice of its intent to make the restoration.

- (3) At its option and upon advance written notice to the Grantee to facilitate the coordination of work and minimize potential costs, the City may restore or resurface the affected portion of any Street, Bridge or Public Place excavated by the Grantee to the same condition in which it was prior to the excavation, and the reasonable 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 Streets, Bridges and Public Places and in accordance with any specification 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 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 development by a private 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.

Section 12: Compensation.

- (1) As compensation for the franchise granted by this ordinance, the Grantee shall pay to the City an amount equal to five percent (5%) of the Gross Revenue.
- (2) 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.
- (3) The Grantee shall furnish to the City with each payment of compensation required by this section a written 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 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.

- (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) Upon 30 days' prior written notice by either party to the other, the amount of such annual compensation shall be subject to renegotiation and redetermination 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 said franchise term. In the event the parties are unable to agree on any proposed change in compensation, the franchise will continue in effect as originally agreed upon.

#### 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. Upon reasonable notice the City may inspect the books for 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 under state law, and provided that the City will inform Grantee of any public disclosure request seeking customer information and oppose such records' disclosure should a public disclosure request be made.

#### 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. Upon reasonable notice, the City may inspect the maps and data any time during business hours at an office of the Grantee. 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. This information may also be provided to the City in a data format to allow integration into the

City's Geographic Information System (GIS). Grantee may determine that the locations of certain gas facilities should be confidential as the public interest or safety or security considerations may require. In such a case, Grantee is under no obligation to provide records of the location of these facilities to the City and 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.

Section 15: Indemnification.

The Grantee shall indemnify and save harmless the City and its officers, agents 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. The City shall provide the Grantee with prompt notice of any such claim and shall consult and cooperate with Grantee in the course of the Grantee's defense of the City. Notice to Grantee required by this section 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, 220 NW Second Ave., Portland, Oregon 97209. Such addresses may be changed by the either party upon written notice to the other party given as provided in this Section. The duty to indemnify and defend shall not extend to any negligence or willful misconduct by the City, its officers, elected officials, agents and employees. The obligations imposed by this section are intended to survive the termination of this franchise.

Section 16: Assignment of Franchise.

This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee.

Section 17: Termination of Franchise for Cause.

Upon the willful failure of the Grantee, after sixty (60) days' notice and demand in writing, to perform promptly and completely each and every term, condition or obligation imposed upon it under or pursuant to this ordinance, the City may terminate this franchise, subject to Grantee's right to a court review of the reasonableness of such action. Notice to Grantee required by this section 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, 220 NW Second Ave., Portland, Oregon 97209. Such addresses may be changed by the either party upon written notice to the other party given as provided in this Section.



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 the Grantee accepts it.

**EXHIBIT 2**  
**ACCEPTANCE**

City of McMinnville  
City Recorder  
230 NE 2nd Street  
McMinnville, Oregon 97128

This is to advise the City of McMinnville, Oregon (the "City") that Northwest Natural Gas Company (the "Grantee") hereby accepts the terms and provisions of Ordinance No. \_\_\_\_\_ passed by the McMinnville City Council on \_\_\_\_\_, 2017 (the "Franchise") granting a Franchise for twenty (20) years to Grantee. The Grantee agrees to abide by each and every term of the Franchise, and shall become effective September 1, 2017.

(Name)  
BY \_\_\_\_\_

TITLE Senior Vice President & General Counsel

DATE \_\_\_\_\_

This Acceptance was received by the City of McMinnville on \_\_\_\_\_, 2017.

\_\_\_\_\_  
City Recorder