

**ORDINANCE NO. 714**

**AN ORDINANCE GRANTING A NON-EXCLUSIVE  
FRANCHISE TO NORTHWEST NATURAL GAS COMPANY**

**THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**

1. The City of Troutdale ("City") is authorized to grant non-exclusive franchises to companies desiring to occupy public Rights-of Way within the City boundaries.
2. Applicant Northwest Natural Gas Company ("Applicant"), owns, maintains, and operates, in accordance with regulations promulgated by the Public Utility Commission, or other appropriate agency, a natural gas transmission and distribution system and desires to install, operate, and maintain its Equipment in Rights-of-Way in the City of Troutdale.
3. Applicant has been operating its system in the City of Troutdale pursuant to a franchise granted by Ordinance 567-0. Ordinance No. 693 requires anyone installing facilities in, on or over the Rights-of-Way in the City to first obtain a franchise authorizing use of the Rights-of-Way.
4. The City of Troutdale agrees to extend the franchise to Applicant under the terms and conditions provided in this ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF  
TROUTDALE**

**Section 1. Definitions.** The following definitions shall apply generally to the provisions of this Franchise:

- 1.1 **Applicant.** "Applicant" means Northwest Natural Gas Company, a corporation duly organized and existing under the laws of Oregon, and its lawful successors, assigns, and transferees, as approved by the City under Section 11 of this Franchise.
- 1.2 **City.** "City" means the City of Troutdale, an Oregon municipal corporation, and all of the territory within its corporate boundaries, as may change from time to time.
- 1.3 **City Facilities.** "City Facilities" means City-owned street light poles, lighting fixtures, electroliers, pipes, cable, wire, conduit, or other City-owned structures or equipment located within the Right-of-Way.

- 1.4 **Existing Structures.** "Existing Structures" means light poles, utility poles, pipes, cable, wire, conduit, vaults, ducts, fiber or similar equipment that is not owned or operated by the City and that is lawfully placed in the Right-of-Way.
- 1.5 **Equipment.** "Equipment" means any tangible component, whether referred to singly or collectively, installed, maintained, or operated by Applicant for the provision of Services.
- 1.6 **Franchise.** "Franchise" means this franchise agreement as approved by the Troutdale City Council and accepted by Applicant, according to the terms in Section 13.7 of this Franchise.
- 1.7 **Gross Revenues.** "Gross Revenues" means the gross dollar amount received by Applicant from its customers for gas consumed within the city. Gross revenue shall be computed by deducting from the total billings of Applicant 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 Applicant to any public utility or public agency where such agency or utility is not the ultimate consumer of the gas. Applicant may deduct from gross revenue any license, permit or other fees paid to the City in connection with the Applicant's use of the streets, bridges and public places of the City.
- 1.8 **Person.** "Person" means any individual, sole proprietorship, partnership, corporation, association or other organization authorized to do business in the State of Oregon, and includes any natural person.
- 1.9 **Right-of-Way.** "Right-of-Way" means the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, parks, bridges and places used or intended to be used by the general public for travel as the same now or may hereafter exist, that the City has the right to allow Applicant to use.
- 1.10 **Services.** "Services" means the transmission, distribution and sale of natural gas provided by Applicant.

## **Section 2. Nature and Term of Grant.**

- 2.1 **Grant of Franchise.** The City hereby grants Applicant a franchise to install, operate, maintain, remove, reinstall, relocate, and replace a gas utility system, including on Existing Structures or City Facilities in the Right-of-Way for the purposes of transmitting, distributing and selling natural gas. Before Applicant installs Equipment on Existing Structures in the Right-of-Way, Applicant shall obtain permission from the owner of the Existing Structure. This Franchise

authorizes Applicant to use the Right-of-Way for Services. This Franchise does not authorize Applicant to install or use facilities in the Right-of-Way for anything other than the Services as defined in Paragraph 1.10. This Franchise does not authorize Applicant to install Equipment on or in City Facilities unless Applicant enters into a separate written agreement with the City that authorizes such installations.

- 2.2 **Duration.** The term of this Franchise, and all rights and obligations pertaining thereto, shall be 10 years from the date Applicant accepts this Franchise in accordance with Section 13.7, unless terminated sooner as provided herein.
- 2.3 **Non-Exclusive.** This Franchise is not exclusive. The City expressly reserves the right to grant franchises or rights to other Persons, as well as the City's right to use the Right-of-Way for similar or different purposes, as allowed hereunder. This Franchise is subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the Right-of-Way. Nothing in this Franchise shall be deemed to grant, convey, create, or vest in Applicant a real property interest in land, including any fee, leasehold interest, or easement.
- 2.4 **Reservation of City Rights.** Nothing in this Franchise shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Right-of-Way, laying down, repairing or removing water mains or constructing or establishing any other public work, utility or improvement, including repairs, replacement or removal of City Facilities. All work shall be done, insofar as practicable, so as to not obstruct, injure or prevent the unrestricted use and operation of Applicant's Services under this Franchise. However, if any of Applicant's Equipment interferes with the construction or repair of any Right-of-Way, public work, utility or improvement, or City Facility, Applicant's Equipment shall be removed or relocated in the manner the City shall reasonably direct. Any and all removal or relocation shall be at Applicant's sole expense, except 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. Should Applicant fail to remove, adjust or relocate its Equipment in no less than ten (10) nor more than sixty (60) days, or as otherwise agreed to by the City, the City may cause and/or effect such removal, adjustment or relocation, by a contractor specifically qualified to perform work on gas transmission utilities and the expense thereof shall be paid by Applicant.

### **Section 3. Compensation.**

- 3.1 **Amount.** As compensation for the benefits and privileges granted under this Franchise, and for Applicant's entry upon and deployment within the Right-of-

Way, Applicant shall pay to the City an amount equal to 5.94% of Applicant's Gross Revenues (the "Franchise Fee").

- 3.2 **Due Date.** The Franchise Fee shall be computed and paid within sixty (60) days of the last date in each calendar year quarter period (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31) for the term of this Franchise. Within sixty (60) days after the termination of this Franchise, the Franchise Fee shall be paid for the period elapsing since the end of the last calendar year quarter period for which compensation has been paid.
- 3.3 **Report.** Applicant shall furnish to the City with each payment of compensation required by this section a statement, in a form acceptable to the City, executed by an authorized officer of Applicant or the officer's authorized designee, showing the amount of Gross Revenues for the period covered by the payment. Applicant may identify information submitted to the City as confidential by prominently marking any such information with the mark "Confidential" in letters at least one-half inch in height. The City shall treat any such information as confidential and not subject to public disclosure until the City receives any public records request. Applicant understands and accepts the City's obligation to disclose information in accordance with the Oregon Public Record law.
- 3.4 **Acceptance of Payment and Recomputation.** If Applicant discovers any error in the correct amount of compensation due, the City shall be paid within thirty (30) days of discovery of the error or determination of the correct amount. Any overpayment to the City through a confirmed error shall be refunded or offset against the next payment. Acceptance by the City of any payment due under this section shall not be deemed as an accord that the amount paid is the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for additional funds or as a waiver by the City of any breach of this Franchise.

#### **Section 4. Construction, Installation and Relocation.**

- 4.1 **Construction and Installation.** Subject to applicable City regulations, Applicant may enter upon the Right-of-Way to perform all work that is necessary to install, operate, maintain, remove, reinstall, relocate, and replace Equipment in or on Existing Structures within the Right-of-Way, in or on City Facilities, provided the City has authorized the installation on a City Facility in a separate written agreement, as required under Section 2.1, or under the surface of the Right-of-Way. Applicant shall be responsible for all construction, installation, and maintenance that is performed, on or to the Applicant's facilities. Applicant is also responsible for returning the Right-of-Way, City Facilities, Existing Structures, and all appurtenances to their pre-construction condition or better.

- 4.2 **No Interference.** Applicant, in the performance and exercise of its rights and obligations under this Franchise, shall not interfere in any manner with the existence and operation of any Rights-of-Way, sanitary sewers, water mains, storm drains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, communication system or municipal property, without the express written approval of the owner or owners of the affected property or properties.
- 4.3 **Prohibitions.** Chapter 12.11 of the Troutdale Municipal Code requires all new utility lines to be placed below ground. Therefore, Applicant is prohibited from installing any new overhead utility lines. Additionally, except for emergencies or when reasonably necessary, Applicant may not perform work in the Right-of-Way before 8:00 a.m. or after 8:00 p.m.
- 4.4 **Compliance With Laws.** Applicant shall comply with all applicable federal and state laws and City ordinances, resolutions, rules and regulations in the exercise and performance of its rights and obligations under this Franchise.
- 4.5 **Obtaining Required Permits.** If the excavation, installation, operation, maintenance, removal, reinstallation, relocation or replacement of the Equipment in the Right-of-Way requires any permits, Applicant shall obtain the permits and pay any standard and customary permit fees. The City shall promptly respond to Applicant's requests for permits and shall otherwise cooperate with Applicant in facilitating Applicant's deployment of Equipment in the Right-of-Way in a reasonable and timely manner.
- 4.6 **Location of Equipment.** Applicant shall install all Equipment in the Right-of-Way below ground (except for regulators, reliefs, metersets and any other equipment for which the City grants a specific exception in writing) and in a general location prescribed by the City. Applicant shall maintain a map showing the proposed locations of Applicant's planned initial installation of Equipment in the Rights-of-Way prior to deployment of the Equipment. Applicant shall allow the City to review the updated map as needed. The updated map shall identify all new Equipment that was installed
- 4.7 **Relocation.** Applicant understands and acknowledges that City shall have the right to require Applicant to change the location of its Equipment or to remove its Equipment from the Right-of-Way. Applicant shall, at the City's direction, relocate or remove Equipment at Applicant's sole cost and expense, whenever the City reasonably determines that the public interest requires the relocation or removal. If Applicant shall fail to relocate or remove any Equipment as requested by the City, which shall be no less than ten (10) nor more than sixty (60) days or as otherwise agreed to by the City, the City may cause the Equipment to be relocated or removed by contractors qualified to perform work on gas transmission utilities at Applicant's sole expense. Upon receipt of a demand for payment from the City, Applicant shall promptly reimburse the City for the

reasonable costs the City incurred. Whenever removal or relocation of Applicant's equipment is required for the convenience or benefit of any person or entity other than the City, Applicant shall be entitled to reimbursement for its costs from such person or entity. The City shall not be responsible for obtaining such reimbursement.

**4.8 Damage to Right-of-Way.** Whenever the installation, operation, maintenance, removal, reinstallation, replacement or relocation of Equipment damages or disturbs the Right-of-Way, City Facilities, or Existing Structures, Applicant, at its sole cost and expense, shall promptly repair and return them to the condition they were in before they were damaged or disturbed, as approved by the Public Works Director. If Applicant does not repair them as just described, within thirty (30) working days or as otherwise agreed to by the City, then the City may, upon fifteen (15) days prior written notice to Applicant, repair them at Applicant's sole expense. Upon the receipt of a demand for payment from the City, Applicant shall promptly reimburse the City for the reasonable costs the City incurred.

**4.9 Safety.** Applicant shall insure that all work performed in the Right-of-Way is performed in a manner that ensures safety of workers and the public. As a minimum, Applicant shall provide signs, signals, and flaggers as necessary to control traffic.

**Section 5. Maintenance.** Applicant shall install and maintain all Equipment in a manner that prevents injury to the Right-of-Way, the City's property or the property belonging to another Person within the City. Applicant shall, at its own expense, repair, renew, change, and improve Equipment from time to time as may be necessary to accomplish this purpose.

**Section 6. Vacation.** 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, Applicant's rights shall be preserved as to any of its facilities then existing in such street or public place.

**Section 7. General Financial, Liability and Insurance Provisions.**

**7.1 Insurance.**

(A) Applicant shall maintain public liability and property damage insurance that protects Applicant and the City, as well as the City's officers, agents and employees, from the claims referred to in Section 7.2. The insurance shall provide coverage at all times of not less than \$200,000 for personal injury to each person, \$500,000 for each occurrence, and \$50,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$500,000 covering all claims per occurrence, plus costs of defense. The limits of

the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this Section 7.1(A) shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days' prior written notice first being given to the City. If the insurance is canceled or materially altered within the term of this Franchise, Applicant shall maintain continuous uninterrupted coverage, in the terms and amount required, upon and after the effective date of this Franchise.

(B) Applicant shall maintain on file with the City a certificate of insurance certifying the coverage required above. The certificate of insurance shall be reviewed and approved as to form by the City Attorney.

**7.2 Indemnification.**

The Applicant 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 Applicant, its agents or employees in exercising the rights, privileges and franchise hereby granted.

**Section 8. Vegetation.** Applicant shall prune or cause to be pruned any vegetation, including but not limited to tree limbs and roots, that protrudes into the Right-of-Way and in the opinion of the Applicant inhibits the safe operation of Equipment. Before pruning any vegetation, Applicant shall obtain any required permits from the City. All pruning shall be done using proper arboricultural practices. Applicant shall be responsible for the costs of replacing or treating any vegetation that is not pruned in accordance with proper arboricultural practices and that is damaged or dies as a result. If applicant fails to replace or treat damaged or dead vegetation, the City may replace or treat the vegetation at Applicant's sole expense. Upon receipt of a demand for payment from the City, Applicant shall promptly pay the City for the costs the City incurred.

**Section 9. Notices.**

**9.1 Manner.** All notices that shall or may be given pursuant to this Franchise shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid





10.3 **Additional Remedies.** In addition to any rights set out elsewhere in this Franchise, as well as its rights under the City Code, the City reserves the right at its sole option to :

(A) Revoke this Franchise in the event that any provision becomes invalid or unenforceable and the City expressly finds that such provision constituted a consideration material to the grant of the Franchise.

10.4 **Electing Remedies.** In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violation, and any other matters the City deems appropriate.

**Section 11. Assignment.** This Franchise shall not be assigned or transferred without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed, provided the Franchise is transferred or assigned to an entity that controls, is controlled by, or is under the common control of the Applicant. If the City consents to an assignment or transfer of the Franchise, the transfer or assignment shall not be effective until the assignee or transferee has complied with the requirements in Section 7 and filed a signed acceptance of the terms of this Franchise.

**Section 12. Expiration.** At the end of the Franchise term, if the City and Applicant are negotiating another franchise and have not concluded their negotiations, Applicant's rights and responsibilities shall be controlled by this Franchise until the City grants a new franchise and Applicant accepts it.

**Section 13. Miscellaneous Provisions.**

13.1 **Waiver of Breach.** The waiver by either party of any breach or violation of any provision of this Franchise shall not be deemed to be a waiver or continuing waiver of any subsequent breach or violation of the same or any other provision of this Franchise.

13.2 **Severability of Provisions.** If any one or more of the provisions of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable or preempted by federal or state laws or regulations, such provision(s) shall be deemed severable from the remaining provisions of this Franchise and shall not affect the legality, validity, or constitutionality of the remaining portions of this Franchise.

13.3 **Contacting Applicant.** Applicant shall be available to the staff of any City department twenty-four (24) hours a day, seven (7) days a week, to respond to problems or complaints resulting from the installation, operation, maintenance, or


removal of the Equipment. The City may contact Applicant at (503) 226-4211 regarding such problems or complaints.

- 13.4 **Governing law and Choice of Forum.** This Franchise shall be governed and construed by and in accordance with the laws of the State of Oregon without reference to its conflicts of law principles. If suit is brought by a party to this Franchise, the parties agree that trial of such action shall be vested exclusively in the state courts of Oregon, County of Multnomah, or in the United States District Court for the District of Oregon.
- 13.5 **Representations and Warranties.** Each of the parties to this Franchise 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, except as required in Section 2.1 above.
- 13.6 **Amendment of Franchise.** This Franchise may not be amended, except pursuant to a written instrument signed by Applicant and approved by the Troutdale City Council.
- 13.7 **Acceptance.** Applicant shall, within thirty (30) days after the Council adopts this ordinance, file with the City Recorder a written unconditional acceptance of this Franchise. If Applicant fails to file its acceptance, this ordinance shall be void, unless the City grants Applicant an extension of time.
- 13.8 **Entire Agreement.** This Franchise contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Franchise that are not fully expressed herein.

YEAS: 7  
NAYS: 0  
ABSTAINED: 0

  
Paul A. Thalhoffer, Mayor

Dated: 1-10-02

  
Debbie Stickney, City Recorder  
Adopted: 1-8-02

