

**A BILL FOR AN ORDINANCE GRANTING A) ORDINANCE BILL NO. 2011-12
NON-EXCLUSIVE GAS UTILITY FRANCHISE)
TO NORTHWEST NATURAL COMPANY AND) ORDINANCE NO. 2825
FIXING TERMS, CONDITIONS, AND)
COMPENSATION OF SUCH FRANCHISE)**

THE CITY OF LEBANON 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 Lebanon and the area within its boundaries, including as extended in the future.
 - (c) "Council" means the legislative body of the City.
 - (d) "Grantee" means the corporate referred to in Section 2 of this ordinance.
 - (e) "Gas mains" includes all gas transmission and distribution facilities located on or under any street, bridge or public place within the City.
 - (f) "Person" includes an individual, corporation, association, firm, partnership and joint stock company.
 - (g) "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.
 - (h) "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**, 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 Streets, Bridges and Public Places by Grantee

- (1) 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.
- (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 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, 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, provided that the City shall make available to Grantee existing rights-of-way for the location of its facilities.
- (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 contractors, 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, Grantee's rights under this franchise shall be preserved as to any of its facilities then existing in such street 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 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 Specification

- (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. 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 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 will require the Grantee to obtain a right-of-way permit and pay applicable fees before commencing the construction, extension or relocation of any of its gas mains.

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 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 a permit for the proposed excavation and 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 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 City requests that the removal or relocation shall be completed within a reasonable specified time period, Grantee shall complete the removal or relocation within said time period or shall indemnify the City for any costs arising from Grantee's failure to do so. Grantee shall be responsible for any defect or inadequacy which may develop in such restorations and shall within sixty (60) days after receiving notice from the City of the existence of a defect or inadequacy, make corrections thereto in a manner satisfactory to the City. If the City determines that the defect or inadequacy presents a danger or serious inconvenience to the public or the defect or inadequacy causes or threatens to cause damage to adjacent pavement, utilities, structures, or other improvements, the City may require that the repairs be made or that acceptable temporary measures be taken within 24 working hours of the time of the request. In the event that Grantee fails to make restoration to the affected portion of the street, bridge, or public place to the satisfaction of the City, the City may make the restoration, and 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 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 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.

Section 12: Compensation

- (1) As compensation for the privileges granted herein, Grantee, or any affiliate of Grantee, shall pay to the City an amount equal to five and 94/100 percent (5.94%) of the gross revenue derived from all sources of operations of the system within the Franchise Area allowed by law to be included within the term of gross revenue less related net un-collectables. Gross revenue shall include revenues from the use, rental, or lease of the Grantee's operating facilities other than residential-type space and water heating equipment. 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 one utility to another when the utility purchasing the service is not the ultimate customer. No expenses, encumbrances, or expenditures shall be deducted from the gross revenue in determining the gross revenue. Accrual of such franchise fee shall commence as of the effective date of this franchise. The compensation required by this section shall be paid each and every month on or before the end of the following month. Any payments not made on or before the date it is due shall accrue interest at the rate of nine percent (9%) per annum until paid. Compensation herein may be subject to annual renegotiations on or before the anniversary date of the term of the franchise granted, and provided the grantee to notified, in writing, at least sixty (60) days prior to the anniversary date.
- (2) The Grantee shall furnish to the City with each payment of compensation, required by this section, a written statement executed by an authorized officer of the Grantee or the officer's authorized designee, showing the amount of gross revenues 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 the 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.
- (3) 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 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 Council may require periodic reports from the Grantee relating to its operations and revenues within the City. The City shall treat any public record relating to Grantee's operations or revenues as confidential, subject to the provisions of state law and the Oregon Public Records Law. 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 shall be subject to such 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 of the Grantee in the City.

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.

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.

Section 18: Remedies Not Exclusive, When Requirement Waived

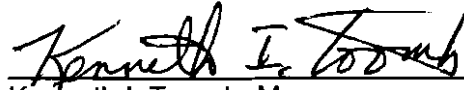
All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination 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: 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.

Adopted by the Lebanon City Council and approved by the Mayor this 10th day of August, 2011, with 5 Yeas and 0 Nays.

CITY COUNCIL OF LEBANON, OREGON



Kenneth I. Toomb, Mayor
Bob Elliott, Council President



ATTEST:


Linda Kaser, City Clerk