



ORDINANCE 2006-016

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

WHEREAS, for many years the City has had a non-exclusive gas utility franchise with the Northwest Natural Gas Company;

WHEREAS, the previous franchise has expired;

WHEREAS, the City Council wishes to grant a new 10-year franchise to Northwest Natural Gas Company with permission to use public rights of way within the City subject to specific limitations and conditions.

NOW THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. The non-exclusive gas utility franchise attached as Exhibit A to this ordinance is granted to the Northwest Natural Gas Company.

Section 2. This ordinance takes effective 30 days from the date of its adoption.

Adopted by the City Council this 17th day of October, 2006.



 Keith Mays, Mayor

Attest:



 Sylvia Murphy, City Recorder

	<u>AYE</u>	<u>NAY</u>
Luman	✓	_____
King	✓	_____
Henderson	✓	_____
Heironimus	✓	_____
Grant	✓	_____
Durrell	✓	_____
Mays	✓	_____

EXHIBIT A

A NON-EXCLUSIVE GAS UTILITY FRANCHISE GRANTED TO NORTHWEST NATURAL GAS COMPANY, AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE.

Section 1: Definitions and Explanations.

- (1) As used in this ordinance:
 - (a) "City" means the City of Sherwood and the areas within its boundaries, including its boundaries as extended in the future.
 - (b) "Council" means the legislative body of the City.
 - (c) "Gas mains" includes all gas transmission and distribution facilities located on or under any street, bridge or public place within the City.
 - (d) "Grantee" means Northwest Natural Gas Company, its lawful successors in interest and assigns.
 - (e) "Gross Revenues" shall be as defined by OAR 860-22-040(2).
 - (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 right of way.
 - (h) "Right of Way" includes a street, alley, avenue, road, boulevard, thoroughfare, bridge or public highway within the City, but does not include a public place.
- (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 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, bridges and rights of way 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 Public Right of Way by Grantee.

- (1) Subject to City-established requirements concerning work in the public Rights of Way, including permitting, insurance, bonding, work scheduling, and payment of administrative fees for permits, Grantee may enter upon the Right of Way to perform all work that is necessary to install, operate, maintain, remove, reinstall, relocate, and replace Gas Facilities in or under the surface of the Right of Way. Grantee shall be responsible for all Construction, installation, and maintenance work, regardless of who performs the work. Except in emergencies, prior to making an excavation in any portion of any Right of Way, 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 concurrent with work performed under emergency conditions. Excavations are further governed by Section 10 of this franchise.
- (2) The compensation paid by the Grantee for this franchise includes all compensation for the use of public rights of way located within the city as authorized, but does not include permit fees or other city charges associated with Grantee's use and occupancy of city rights of way.

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 right of way or public place.

- (3) Vacate, alter or close any right of way or public place, provided that the City shall reserve any required easements to accommodate Grantee's existing facilities.
- (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. Such notice shall not be required in cases of emergency work by the City.

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 an 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. The City may amend and add to such specifications from time to time.
- (3) The Grantee will, concurrent with its acceptance of this franchise, provide the City with an Emergency Response Plan detailing procedures for response to emergencies involving facilities and other system components. To the extent practicable, the Emergency Response Plan will include at least the following information:
 - (a) The names and 24-hour telephone numbers of responsible parties with the authority to commit the resources of the Grantee.

(b) The name and 24-hour telephone numbers of the Grantee's Emergency Coordinator and other emergency contacts available to respond during emergencies.

(c) A description of resources available to respond to emergencies, including equipment, personnel and levels of training, and communications.

(d) The method of dispatch for the emergency resources and estimated response time objectives within the Franchise Area, and dispatch center 24-hour numbers.

(e) How the Grantee's response personnel will interface with local first responders during emergencies. This should include communication plans and a description of positions and personnel designated to interface with the first responder incident command staff.

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 right of way and public places 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. In addition, Grantee must follow the requirements for permit application and work in city rights of way as set forth in the Sherwood Municipal Code and other applicable City rules and regulations.

Section 10: Right of Way 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 or public place, and, when required by the City, in any untraveled portion of any right of way 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 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 right of way or public place to the same condition in which it was prior to the excavation, upon thirty 30 days prior

written notice to Grantee, the City may make the restoration and the cost thereof shall be paid by the Grantee. Upon receipt of a demand for payment from the City, Grantee shall promptly reimburse the City for the costs the City incurred.

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 right of way 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 and public places 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. Such entitlement to reimbursement shall not delay Grantee's obligation to relocate the facilities in a timely manner. 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 of removal or relocation.

Section 12: Compensation.

- (1) As compensation for the franchise granted by this ordinance, the Grantee shall pay to the City an amount equal to 5% of the gross revenue collected by the Grantee from its customers for gas consumed within the City. The City may charge additional compensation for use of any public place. Any increase in the rate of compensation payable under this franchise will be paid on charges billed and paid by Grantee customers after the date of franchise acceptance by Grantee.
- (2) The compensation required by this section shall be due for each calendar year, or fraction thereof, within 60 days after the close of such calendar year, or fraction thereof. Within 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 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. The City may

audit payments made to it by Grantee. 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 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.

- (4) The City specifically reserves the right to impose a fee or tax, as allowed by generally applicable law, on any new business undertaking of Grantee that is operated within the City. 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 the Grantee as allowed by law.
- (5) 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.
- (6) Payments not made when due shall bear interest at the rate of nine (9) percent per annum, compounded monthly.

Section 13: Expiration.

At the end of the Franchise term, if the City and Grantee are negotiating in good faith toward a renewal 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 14: Books of Account and Reports.

The Grantee shall keep accurate books of account at an office in the Portland metropolitan area 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.

Section 15: Supplying Maps Upon Request.

The Grantee shall maintain on file, at an office in the Portland metropolitan area, maps and operational data pertaining to its operations in the City. Upon reasonable notice, an authorized representative of the City may inspect the maps and data any time during business hours at an office of the Grantee. Grantee and the City may determine that the locations of certain gas facilities should be confidential as the public interest 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 16: Insurance and indemnification.

- (1) The Grantee shall secure and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials and agents and employees as coinsured:
 - a. \$3,000,000 for bodily injury or death to each person;
 - b. \$3,000,000 for property damage resulting from any one accident; and
 - c. \$3,000,000 for all other types of liability.
 - d. Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000 for each person and \$3,000,000 for each accident.
 - e. Workers' compensation consistent with statutory limits and employer's liability insurance with limits of not less than \$1,000,000.
- (2) As an alternative to the insurance requirements contained in this franchise, the Grantee may provide evidence of self-insurance subject to review and approval by the City.
- (3) 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 17: Assignment of Franchise.

This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee. Grantee will not sell, assign, transfer, or convey this franchise without the prior consent of the Sherwood City Council.

Section 18: 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 60 days from receipt of notice to cure such failure, or if such failure cannot reasonably be cured within 60 days, to commence and diligently pursue curing such failure.

Section 19: 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 of 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 20: Severability of Provisions.

If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Franchise is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by State or federal legislation, rules, regulations, or decisions, the remainder of the Franchise shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining article, section, subsection, sentence, clause, phrase, terms, provision, condition, covenant, and portion of this Franchise shall be valid and enforceable to the fullest extent permitted by law.

Section 21: Acceptance.

The Grantee shall, within 30 days from the date the franchise ordinance takes effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails so to do, the franchise ordinance is void.

ACCEPTED:

NW Natural Gas

By:

Printed Name

Title

Date