

**Ordinance No. 334****AN ORDINANCE GRANTING A NON-EXCLUSIVE GAS UTILITY FRANCHISE TO NORTHWEST NATURAL GAS COMPANY WITHIN THE CORPORATE LIMITS OF THE CITY OF COOS BAY**

The Coos Bay City Council finds as follows:

1. The City of Coos Bay (“City”) is authorized by state statutes and its charter to grant non-exclusive franchises to Persons desiring to occupy Rights-of-Way within the City.
2. Northwest Natural Gas Company (“Grantee”), owns, maintains, and operates, in accordance with regulations promulgated by the Public Utility Commission, a natural gas utility system and desires to install, operate, and maintain its Gas Facilities in Rights-of-Way in the City.
3. The purposes of this Franchise are to: establish reasonable regulations applicable to the construction, operation and maintenance of Gas Facilities in, along, across, under and over City property and the provision of Services within the City; protect the health, safety and welfare of the public in the City; and to limit the City’s liability for claims arising from the granting of this Franchise and the operations of Grantee thereunder.
4. The City of Coos Bay agrees to grant a franchise to Grantee under the terms and conditions provided in this ordinance.

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

**Section 1. Definitions.** For the purposes of this ordinance and Franchise, the following words and terms have the meaning stated in this section, except where the context clearly indicates a different meaning. When not inconsistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number and vice versa. The words “shall” and “will” are mandatory and the word “may” is permissive.

- 1.1 **“City”** means the City of Coos Bay, an Oregon municipal corporation.
- 1.2 **“City Facilities”** means City-owned street light poles, lighting fixtures, pipes, cable, wire, conduit, or other City-owned structures or equipment located within the Right-of-Way.
- 1.3.1 **“City Limits”** means the corporate boundaries of the City, as those boundaries may change from time to time.
- 1.4 **“Construct”** or **“Construction”** means, without limitation, constructing, acquisition, laying, maintaining, testing, operating, extending, renewing, relocating, removing, replacing, repairing and using Gas Facilities.

- 1.5 **“Franchise”** means this franchise ordinance and agreement as approved by the Coos Bay City Council and accepted by Grantee under section 13.8 of this Franchise.
- 1.6 **“Gas”** means natural methane-based gas.
- 1.7 **“Gas Facilities”** means Grantee’s gas transmission, storage and distribution facilities, including pipes, pipe lines, mains, laterals, conduits, feeders, regulators, reducing and regulating stations, meters, fixtures, connections and all attachments, appurtenances, and all accessories necessary and incidental thereto located within City properties or within the City Limits, whether the facilities are located above or below ground.
- 1.8 **“Gas Utility System”** means the Gas Facilities used for the provision of Services.
- 1.9 **“Grantee”** means Northwest Natural Gas Company, a corporation duly organized and existing under the laws of the State of Oregon, and its lawful successors, assigns, and transferees.
- 1.10 **“Gross Revenues”** means revenues received from 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. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, 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, or revenue from joint pole use. “Gross Revenue” shall include revenues from the use, rental, or lease of Grantee's 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.
- 1.11 **“Maintenance,” “Maintaining,” or “Maintain”** means, without limitation, relaying, repairing, replacing, relocating, examining, testing, inspecting, removing, digging and excavating, and restoring operations incidental thereto.
- 1.12 **“Person”** means any individual, municipality, governmental entity, sole proprietorship, partnership, public or private corporation, limited liability company, association or other organization authorized to act or do business in the State of Oregon, and includes any natural person.
- 1.13 **“Public Place”** means any City-owned property that is open to the public and that is not a Right-of-Way, and includes public squares, fairgrounds and parks.
- 1.14 **“Public Utility Commission”** means the Public Utility Commission of the State of Oregon, or its successor agency.
- 1.15 **“Right-of-Way”** means the space in, upon, above, or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, 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 Grantee to use.

- 1.16 **“Services”** means the gas transmission, distribution, sales and marketing provided by Grantee to its customers located within the City Limits. “Services” does not include the use of any equipment, plant or facilities for the transmission of Gas which pass through or over but are not used to provide service in or do not terminate in the City.

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

- 2.1 **Grant of Franchise.** Subject to the terms and conditions of this Franchise, the City grants Grantee a right, privilege and franchise during the term of this Franchise to:
- 2.1.1 Construct, Maintain and operate a Gas Utility System and exercise all authority conferred upon Grantee by state law within the City Limits for the purpose of providing Services to customers within the City Limits.
  - 2.1.2 Install, operate, Maintain, remove, reinstall, relocate, and replace Gas Facilities on and under the Right-of-Way and to use the Right-of-Way for the provision of Services. This Franchise does not authorize Grantee to install or use Gas Facilities in the Right-of-Way for anything other than the provision of Services. Unless Grantee or its lessee or licensee obtains the written consent of the City, Gas Facilities shall not be used directly or indirectly for the provision of telecommunications services not required by Grantee to operate its Gas Utility System.
  - 2.1.3 Install, operate, Maintain, remove, reinstall, relocate and replace Gas Facilities for the transmission of Gas which are located within the City Limits but are not used to provide Services in or do not terminate in the City Limits.
  - 2.1.4 Offer and sell Services to customers within the City Limits.
- 2.2 **Duration.** The term of this Franchise, and all rights and obligations pertaining thereto, shall be twenty (20) years from the date Grantee signs and accepts this Franchise in accordance with Section 13.8, unless terminated sooner as provided herein. Upon thirty (30) days written notice by either party to the other of a requested modification, the provisions of this Franchise may be renegotiated. A written notice of requested renegotiation may only be given during the eleventh full year of the franchise term, i.e., between ten (10) and eleven (11) years after the date the Grantee signs and accepts this Franchise in accordance with Section 13.8. If the parties are unable to agree to renegotiated terms or to a continuation of the same provisions within one hundred and eighty (180) days of receipt of the notice of requested renegotiation, or such longer time as may be agreed to by the parties, the Franchise shall terminate.
- 2.3 **Non-Exclusive.** This Franchise is not exclusive. The City expressly reserves the right to grant franchises or rights to other Persons similar to or different from those granted by this Franchise. 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 Grantee a real property interest in land, including any fee, leasehold interest, or easement. The Franchise shall not be deemed to create any compensable property right in any condemnation by City of any or all of Grantee's Gas Facilities.

**2.4 Reservation of City Rights.** The City reserves the rights to:

- 2.4.1 Construct, install, Maintain and operate any City Facility, Right-of-Way or Public Place.
- 2.4.2 Do any work that the City may find desirable on, over or under any Right-of-Way or Public Place. Whenever the City shall excavate or perform any work in any Right-of-Way or Public Place, or shall contract for such excavation or work where such excavation or work may disturb Grantee's Gas Facilities, 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 its Gas Facilities 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 showing the approximate location of all its Gas Facilities in the area involved in the proposed excavation or other work. The City shall treat any such map or drawing as confidential, subject to the provisions of state law and the Oregon Public Records Law.
- 2.4.3 Exercise any non-regulatory power that the City currently holds, or may hereafter be authorized or granted by the laws of the State of Oregon or the City Charter, except where that power may be preempted or superseded by the constitutions of the United States or the State of Oregon.
- 2.4.4 Vacate, alter or close any Right-of-Way or Public Place. Whenever the City shall vacate any Right-of-Way 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 Gas Facilities then existing in the Right-of-Way or Public Place if reasonably practicable. To the extent Grantee's rights in the Right-of-Way cannot be preserved, City shall provide an alternative Right-of-Way for the location of Grantee's Gas Facilities. If Grantee's Gas Facilities must be relocated from a vacated Right-of-Way, the petitioners, other than City, of such vacation shall bear the costs of relocating the Gas Facilities. In no event shall the City be responsible for paying the costs of any such relocation. Upon receipt of a notice of a petition for vacation, Grantee shall as soon as practicable investigate and advise the City and petitioners in writing whether the Gas Facilities must be relocated, the estimated costs of relocation and the time needed for this relocation.
- 2.4.5 Abate any nuisance or dangerous condition.
- 2.4.6 Control or prevent the use of any Public Place by Grantee and require payment of additional compensation for the use of the Public Place in any amount that the City finds to be reasonable.

2.4.7 In addition to the reservations contained in this Franchise and existing applicable ordinances, adopt such additional generally applicable regulations of the construction, maintenance and operation of Grantee's Gas Facilities as the City may find necessary in the exercise of its police powers or for the orderly development of the City (including but not limited to zoning, land use, historic preservation ordinances, safety or construction standards, and other applicable requirements), provided that these regulations, by ordinance or otherwise, are reasonable and not in conflict with the rights granted in this Franchise. These regulations shall be subject to any superseding provisions of state or federal law or regulations and shall be in conformance with standard engineering practices. The City may amend and add to these regulations from time to time. Grantee shall promptly comply with these regulations.

- 2.5 **Franchise as Contract.** This ordinance and the written acceptance by Grantee constitutes a contract between the City and Grantee, and is binding upon and inures to the benefit of Grantee and its successors, legal representatives and assigns, under the conditions imposed herein.

### Section 3. Compensation.

- 3.1 **Amount.** As compensation for the benefits and privileges granted under this Franchise, and for Grantee's entry upon and deployment within the Right-of-Way, Grantee shall pay to the City an amount equal to five percent (5%) of Grantee's Gross Revenues (the "Franchise Fee"). The Franchise Fee includes all compensation for the use of the Right-of-Way pursuant to this Franchise. The City may charge additional compensation for the use of any Public Place. The Grantee may offset against the Franchise Fee the amount of any license fee, permit fee or other fee or charge paid to the City in connection with Grantee's use of the Right-of-Way when the fee or charge would not be assessed against another franchised person or business entity which has installed a line, pipe or other devices or instrumentalities in the Right-of-Way, or who seeks to connect to such line, pipe, or instrumentality. The intent of this provision is to allow the City to impose non-discriminatory construction permit fees for work in the Right-of-Way, but to allow offset for charges for the use of the Right-of-Way granted by this Franchise. Grantee may also offset against the Franchise Fee the amount of any privilege tax particularly imposed upon energy utilities. The Franchise Fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or, or to participate in, or to levy upon the property of Grantee.
- 3.2 **Due Date.** The Franchise Fee shall be paid semi-annually for the previous six-month period, with payments due on or before August 1<sup>st</sup> of each year for the January 1<sup>st</sup> through June 30<sup>th</sup> period, and on or before March 1<sup>st</sup> of each year for the July 1<sup>st</sup> through December 31<sup>st</sup> period of the previous year. 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.
- 3.3 **Report.** Grantee shall furnish a statement to the City with each payment of compensation, in a form acceptable to the City, executed by an authorized officer of Grantee or the officer's authorized designee, showing the amount of Gross Revenues

for the period covered by the payment. The compensation for the period covered by the statement shall be computed on the basis of the reported Gross Revenues. Grantee 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. Subject to the disclosure requirements of state or federal law, including the Oregon Public Records Law, the City shall treat any such information as confidential and not subject to public disclosure.

- 3.4 **Acceptance of Payment and Recomputation.** If Grantee discovers any underpayment in the correct amount of compensation due, the City shall be paid the difference due within thirty (30) days of 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. 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 payment 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.
- 3.5 **Favored Customer Provision.** In the event the Grantee enters into a franchise agreement with another municipality in the State of Oregon for a term comparable to this Franchise and Grantee agrees to pay a franchise fee that is higher than the fees set out in this Franchise, Grantee shall notify City in writing of the details of this arrangement within sixty (60) days of its effective date. Upon receipt by the City of this notice, City may elect to re-negotiate the franchise fee for this Franchise and require payment of a similar fee as provided to the third party. Any change in the franchise fee under this section shall become effective on January 1<sup>st</sup> of the following calendar year.
- 3.6 **Renegotiation of Franchise Fee.** Upon thirty (30) days written notice by either party to the other of a requested modification, the provisions of section 3.1 of this Franchise may be modified. A written notice of requested modification may only be given during the sixth full year of the franchise term, i.e., between five (5) and six (6) years after the date the Grantee signs and accepts this Franchise in accordance with section 13.8. If the parties are unable to agree to a modification of section 3.1 or to a continuation of the same provisions within ninety (90) days of receipt of the notice of requested modification, or such longer time as may be agreed to by the parties, the Franchise shall terminate.
- 3.7 **Itemization of Franchise Fee on Utility Billings.** Any description of a customer charge for a portion of the Franchise Fee under OAR 860-022-0040 or any successor regulation shall be stated on the regular billings as a "fee" and not as a "tax."

#### **Section 4. Services Standards, Safety Standards and Work Specifications.**

- 4.1 **Quality of Services.** 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 the Public Utility Commission and other 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.

- 4.2 **Construction and Maintenance of Gas Facilities.** Grantee's Gas Facilities shall be Constructed and Maintained in good order and condition, in a safe manner, and in accordance with standard engineering practice and all lawful governmental regulations.
- 4.3 **Protection of Property.** Grantee shall install and maintain all Gas Facilities in a manner that does not injure the Right-of-Way, the City's property or the property belonging to another Person within the City Limits. Grantee shall, at its own expense, repair, renew, change, and improve the Gas Facilities from time to time as may be necessary to accomplish this purpose.
- 4.4 **Compliance with State and Federal Regulations.** The rates to be charged and the rules and regulations in respect to the conditions, character, quality and standards of service to be furnished by Grantee shall be that as may be lawfully prescribed by the Public Utility Commission. In the event this jurisdiction or right of regulation, or any part thereof, is abandoned by the Public Utility Commission and is not vested exclusively by law in any other state regulatory body, and in the event this jurisdiction may be lawfully exercised by the City, consistent with section 2.4.9, the City reserves the right, and Grantee shall comply with, all reasonable ordinances, rules and regulations made by the City in the exercise of this jurisdiction or right of regulation.

## **Section 5. Construction, Installation and Relocation.**

- 5.1 **Construction and Installation.** Subject to applicable City ordinances and regulations adopted by the City Council concerning work in the Rights-of-Way, including, but not limited to, permitting, insurance, bonding, work scheduling, standards for restoration 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 the traveled portion of any Right-of-Way, and, when required by the City, in any untraveled 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 as soon as is practicable after commencement of work performed under emergency conditions.
- 5.2 **Permit Imposition and Fee.** Consistent with its authority under section 2.4.9 of this Franchise, and except when work is necessary during an emergency or to remedy an immediate risk of harm to persons or property, the City may require Grantee to obtain a permit before commencing the Construction, Maintenance, extension or relocation of any of its Gas Facilities in the Right-of-Way or a Public Place. Subject to the provisions of section 3.1 of this Franchise, the City may charge Grantee a permit fee no greater than the reasonable administrative costs and expenses of the City in administering the permit, supervising the work and

inspecting the Gas Facilities. The City shall promptly respond to Grantee's requests for permits and shall otherwise cooperate with Grantee in facilitating the deployment of equipment in the Right-of-Way in a reasonable and timely manner.

- 5.3 **No Interference.** All Gas Facilities of Grantee shall be Constructed and laid in such a manner as not to interfere unreasonably with the use by the City and the public of the Right-of-Way and Public Places or with any present public or private irrigation or drain ditches, sewers, water mains, conduits, sidewalks, paving or other public improvements or utility structures. However, if any of Grantee's Gas Facilities unreasonably interfere with the Construction or repair of any Right-of-Way or City Facility, Grantee's Gas Facility shall be removed or replaced in coordination with the City. Any and all removal or replacement shall be at Grantee's sole expense. Should Grantee fail to remove, adjust or relocate its Gas Facility by the date established by the City, the City may cause such removal, adjustment or relocation through the use of qualified contractors, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay.
- 5.4 **Location of Gas Mains.** Grantee shall install all Gas Facilities in the Right-of-Way in a general location prescribed by the City, and in accordance with any ordinances adopted by the City governing the location of the facilities in the Right-of-Way. Grantee shall provide the City a map showing the proposed locations of Grantee's planned installation of gas mains in the Rights-of-Way prior to construction of the facility.
- 5.5 **Relocation.**
- 5.5.1 In case of any future improvement, Maintenance or Construction of City Facilities in the Right-of-Way or upon a Public Place, or of any of the streets, avenues, lanes, alleys, highways, sidewalks or pedestrian ways in the Right-of-Way, where any Gas Facilities are located, and the City determines it is necessary to change the location of the Gas Facilities in connection with the improvement, Maintenance or Construction, Grantee shall, upon reasonable notice by City and after reasonable evaluation of alternatives by City in cooperation with Grantee, at its own expense, move and change any Gas Facility to conform to the public improvement.
- 5.5.2 The City shall avoid the need for moving or changing a Gas Facility whenever reasonably possible, as determined by the city manager or administrator, or his or her designee. In the event federal, state or other funds are available and budgeted in whole or in part for utility relocating purposes, City shall apply for these funds and Grantee will be reimbursed to the extent any such funds are actually obtained.
- 5.5.3 When removal or relocation of a Gas Facility is required for the convenience or benefit of any Person other than the City, Grantee shall be entitled to reimbursement for the reasonable cost thereof from that Person.
- 5.5.4 If Grantee shall fail to relocate or remove any Gas Facility as requested by the City by the date established by the City, the City may cause the Gas Facility to be removed by qualified contractors at Grantee's sole expense.



Upon receipt of a demand for payment from the City, Grantee shall promptly reimburse the City for the costs the City incurred.

- 5.6 **Damage to Right-of-Way.** Whenever the installation, operation, Maintenance, removal, reinstallation, replacement or relocation of Gas Facilities damages or disturbs the Right-of-Way, Grantee, at its sole cost and expense, shall promptly repair and return the Right-of-Way to the condition it was in before it was damaged or disturbed, as approved by the City. If Grantee does not repair the Right-of-Way as just described, then the City may, upon thirty (30) days prior written notice to Grantee, repair the Right-of-Way at Grantee's sole expense. Upon the receipt of a demand for payment from the City, Grantee shall promptly reimburse the City for the costs the City incurred.
- 5.7 **Safety.** Grantee shall insure that all work performed in the Right-of-Way is performed in a manner that ensures safety of workers and the public.

## **Section 6. General Financial, Liability and Insurance Provisions.**

### **6.1 Insurance.**

- 6.1.1 Grantee shall maintain public liability and property damage insurance that protects Grantee and the City, as well as the City's officers, agents, and employees, from the claims referred to in section 6.2. The insurance shall provide coverage at all times of not less than \$1,000,000 for personal injury to each person, \$2,000,000 for each occurrence, and \$500,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$2,000,000 covering all claims per occurrence, plus costs of defense. The insurance policies may provide for self-retention or deductibles in reasonable amounts. 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.
- 6.1.2 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 6.1.2 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.
- 6.1.3 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, Grantee shall provide a replacement policy with the same terms. Grantee shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this Franchise.

**6.2 Indemnification.**

- 6.2.1 Grantee hereby agrees and covenants to indemnify, defend, and hold the City, its officers, agents, and employees harmless from any claims for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property by reason of any act done under this Franchise, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its Gas Facilities in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees.
- 6.2.2 The City shall provide Grantee with prompt notice of any such claim, which Grantee shall defend with counsel of the City's choosing, and no settlement or compromise of any such claim will be done by the City without the prior written approval of Grantee. Grantee and its agents, contractors and others shall consult and cooperate with the City while conducting its defense.

**Section 7. 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 3 of this Franchise. Authorized representatives of the City may inspect the books of account at any time during business hours and may audit the books from time to time. Except as provided herein, any audit shall be at the expense of City. If an audit of the records determines that franchise fees have been underpaid by three percent (3%) or more, Grantee shall reimburse the City for the total cost of the audit within thirty (30) days of City's written demand for reimbursement. The City may require periodic reports from the Grantee relating to its operations and revenues within the City Limits. 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.

**Section 8. 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 Limits. Upon reasonable notice, authorized representatives of the City may inspect the maps and data at any time during business hours at a Coos County office of Grantee. Grantee and the City may determine that the location 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 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 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 overnight delivery service; or (c) by facsimile or e-mail transmission, if a hard copy of the same is followed by delivery through the United States mail or by overnight delivery service as just described and there is written confirmation of the facsimile or e-mail, addressed as follows:

If to the City: City of Coos Bay  
500 Central Avenue  
Coos Bay, OR 97420  
Attention: City Manager's Office

If to Grantee: Northwest Natural Gas Company  
220 NW Second Avenue  
Portland, Oregon 97209  
Attention: Franchise Manager

- 9.2 **Date of Notices; Changing Notice Address.** Notices shall be deemed effective upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or one business day after in the case of facsimile, e-mail, or overnight delivery. Either party may from time to time designate other addresses for providing notice, if the change of address is provided in writing and delivered in the manner set forth above.

#### **Section 10. Forfeiture and Remedies.**

- 10.1 **Forfeiture.** 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 Grantee to comply promptly and completely with each and every material term, condition or obligation imposed upon Grantee by this Franchise.
- 10.2 **Notice and Opportunity to Cure.** The City shall give Grantee ninety (90) days prior written notice of its intent to exercise its rights under Section 10.1, stating the reasons for declaring a forfeiture. If Grantee cures the stated reason within the ninety (90) day notice period, or if Grantee initiates efforts to remedy the stated reason and, to the City's satisfaction, the efforts continue in good faith, the City shall not exercise its right to terminate the Franchise by forfeiture. If Grantee fails to cure the stated reason within the ninety (90) day notice period, or if Grantee does not undertake and/or maintain efforts to remedy the stated reason to the City's satisfaction, then the City may declare the Franchise forfeited and terminate the Franchise. In no event shall the City exercise its rights under this section if a bona fide, good-faith dispute exists between the City and Grantee.
- 10.3 **Remedies Not Exclusive.** All remedies and penalties under this Franchise, 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 Franchise, 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 Franchise. 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 Grantee. 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 6 and filed a signed acceptance of the terms of this Franchise. Notwithstanding anything in this Franchise to the contrary, Grantee may mortgage this Franchise, together with its Gas Utility System and properties within the City Limits, in order to secure any legal bond issue or other indebtedness of Grantee, with no requirement that the trustees accept this Franchise.

**Section 12. Expiration.** At the end of the Franchise term, or termination of the Franchise under sections 2.2 or 3.6, 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 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 a 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 to the extent consistent with the original intent of the parties.
- 13.3 **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 Coos, or in the United States District Court for the District of Oregon.
- 13.4 **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.
- 13.5 **No Third Party Beneficiaries.** Nothing in this Franchise shall be construed or applied to create rights in or grant remedies to any third party as a beneficiary of this Franchise or any duty or obligation established in this Franchise.

- 13.6 **Independent Contractor Status.** When performing under this Franchise, Grantee shall not be an agent, employee or representative of the City in the performance of work pursuant to this Franchise. No term or provision of this Franchise, or act of the Grantee or its agents shall be construed as changing that status.
- 13.7 **Amendment of Franchise.** This Franchise may not be amended, except pursuant to a written instrument signed by Grantee and approved by the Coos Bay City Council.
- 13.8 **Acceptance.** Within thirty (30) days after the Council adopts this Franchise Ordinance or the Mayor signs the Franchise Ordinance, whichever is earlier, Grantee shall file with the City Recorder a written unconditional acceptance of this Franchise. If Grantee fails to file its acceptance, this Franchise Ordinance shall be void, unless the City grants Grantee an extension of time.
- 13.9 **Notice of Change in Compensation.** City shall provide Grantee at least 30 days notice prior to the effective date of this Franchise Ordinance before any increase in the Franchise Fee may take effect.
- 13.10 **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.

**Section 14. Emergency Clause.** Inasmuch as it is necessary for the health, safety, comfort and convenience of the people of the City of Coos Bay that this ordinance be immediately effective, so that the provisions of the Franchise can take effect at the earliest opportunity, an emergency is hereby declared to exist and this ordinance shall be in full force and effect from and after its passage by the City Council and approval by the Mayor.

The foregoing ordinance was enacted by the City Council of the City of Coos Bay on the 3<sup>rd</sup> day of June, 2003.