

**CITY OF SILVERTON**  
**ORDINANCE**

18-10

**AN ORDINANCE OF THE SILVERTON CITY COUNCIL GRANTING A NON-EXCLUSIVE GAS UTILITY FRANCHISE TO NORTHWEST NATURAL GAS COMPANY, AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE, REPEALING ORDINANCE 06-12 AND STATING AN EFFECTIVE DATE.**

**THE CITY OF SILVERTON ORDAINS AS FOLLOWS:**

**Section 1: Definitions and Explanations.**

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) As used in this ordinance:
  - (a) “City” means the City of Silverton and the areas within its boundaries, including its boundaries as extended in the future.
  - (b) “Council” means the legislative body of the City.
  - (c) “Franchise” means this Franchise ordinance and agreement as approved by the Council and accepted by Grantee under Section 27.
  - (d) “Grantee” means the corporation referred to in Section 2 of this ordinance.
  - (e) “Gas” means natural methane-based gas.
  - (f) “Gas Facilities” means Grantee’s Gas transmission 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 the City Limits, whether the facilities are located above or below ground.
  - (g) “Gross Revenues” means revenues derived by Grantee from its Gas Facilities within the City less related net uncollectibles. Gross Revenues includes revenues from the use, rental, or lease of the 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. Gross Revenues do not include proceeds from the sale of bonds, mortgage, or other evidence of indebtedness, securities or stocks. Gross Revenue shall not include public purpose charges, provided that such charges or surcharges are required or authorized by federal or state statute, administrative rule, or by tariff approved by the OPUC and provided that the revenue raised is used solely for Public Purpose Activities and not to compensate Grantee for the sale or use of natural gas or for the use, rental, or lease of Grantee's Gas Facilities within the City. "Public Purpose Activities" include, but are not limited to, energy efficiency programs, market transformation programs, low-income energy efficiency programs, and carbon offset programs designed to benefit residential and commercial customers within Grantee's service territory in Oregon.

- (h) "Person" includes an individual, corporation, association, firm, partnership and joint stock company.
- (i) "Public Place" means any City-owned property within the City that is open to the public that is not a Right-of-way, including public squares and parks.
- (j) "Right-of-way" (or in the plural, Rights-of-way) means the space in, upon, above, or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, bridges, easements dedicated for the use by more than one utility, 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 for the purposes authorized in this Franchise.
- (2) As used in this ordinance, the singular number may include the plural and the plural number may include the singular.

**Section 2: Privileges Granted.**

- (1) Subject to the conditions and reservations contained in this ordinance, the City hereby grants to NORTHWEST NATURAL GAS COMPANY, a corporation, the privilege and franchise to construct, install, maintain and operate Gas Facilities on, in and under the Rights-of- way of the City for the purposes of transmitting, transporting, distributing and selling Gas to customers in the City and to territory beyond the limits of the City. This Franchise does not authorize Grantee to install or use the Gas Facilities in the Right-of-way for any purpose other than the purposes described in the preceding sentence.
- (2) The privileges granted herein shall not confer on Grantee any right, title or

interest in any Right-of-way beyond that expressly conferred by the provisions of this Section, nor shall it confer any right or privilege to use or occupy any Public Place or other property of the City or any other entity.

- (3) Each and every term, provision, and condition herein is subject to the provisions of federal law, Oregon law, the Charter of the City of Silverton, and the ordinances and regulations enacted pursuant thereto. Grantee's rights hereunder are subject to the police powers of the City to adopt and enforce ordinances necessary to the safety, health, good order, comfort, and general welfare of the public, and as may be deemed necessary in the exercise of its police power. Grantee agrees to comply with all applicable laws and ordinances enacted, or hereafter enacted, by the City or any other legally constituted governmental unit having jurisdiction over the subject matter hereof.

**Section 3: Use of Rights-of-Way by Grantee.**

Before the Grantee may use or occupy any Right-of-way, the Grantee shall first obtain permission from the City to do so and shall comply with any special conditions the City may impose on such use or occupation.

**Section 4: Duration and Expiration.**

This Franchise is granted for a period of ten (10) years from and after the effective date of this ordinance. At the end of the Franchise term, if the City and Grantee are negotiating another franchise agreement and have not concluded their negotiations, Grantee's rights and responsibilities shall be controlled by this Franchise until the City grants a new franchise and the Grantee accepts it, provided that the grant and acceptance of the new franchise occur within six (6) months of the end of the Franchise term. At the end of the six (6) month period referred to in the previous sentence, or in the event the parties are not negotiating another franchise in good faith at the end of the Franchise term, this Franchise shall terminate and be of no further force or effect unless the parties mutually agree in writing to a further extension of the Franchise term.

**Section 5: Franchise Not Exclusive.**

This Franchise is not exclusive. This Franchise is intended to convey limited authority and interests only as to those Rights-of-way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-way and it does not provide the Grantee with any interest in any particular location within the Rights-of-way. It does not confer rights other than those expressly provided in the grant hereof. It 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 grants, conveys, creates, or vests in Grantee a real property interest in land, including any fee, leasehold interest, or easement. This Franchise 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 street. Whenever the City shall vacate any Right-of-way 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 if reasonably practicable. To the extent Grantee's rights in the Right-of-way cannot be preserved in any street vacation, City shall work cooperatively with Grantee and wherever reasonably practicable attempt to identify an alternative Right-of-way for the location of Grantee's Gas Facilities, provided that the City shall not be required to condemn or purchase property or properties to provide an alternative Right-of-way.
- (4) Whenever the City shall perform, cause or permit any work in any present or future Right-of-way of the City on its behalf, where such work may disturb Grantee's Gas Facilities in the same Right-of-way, the City shall use best efforts to notify, or require its permittee to notify, Grantee in writing sufficiently in advance of such contemplated work to enable Grantee to take such measures, as Grantee may deem necessary to protect such facilities, at its own expense. These best efforts are in addition to any notifications the City is otherwise required by law to provide prior to any excavation. 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.

- (5) In addition to the reservations contained in this Franchise and existing applicable ordinances, the City may adopt such additional generally applicable regulations of the construction, maintenance, and operation of Grantee's Gas Facilities as the City finds 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, standard specifications, design standards and drawings, and other safety or construction standards, and other applicable requirements), or for the protection of City facilities. These regulations are subject to any superseding provisions of state or federal law or regulations and must be in conformance with and not in conflict with Grantee's adopted standard engineering practices. The City may amend and add to these regulations from time to time. The City will provide Grantee written notice and opportunity to comment on any proposed new or amended regulations that would affect the location, construction, maintenance, and operation of Grantee's Gas facilities, but the City's failure to provide such notice does not affect Grantee's obligation to comply with these regulations nor is it a material breach of the Franchise.

**Section 7: Continuous Service.**

Grantee shall maintain and operate an adequate system for the distribution of Gas in the City. 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 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 Grantee through no fault of its own.

**Section 8: Safety Standards and Work Specifications.**

- (1) The facilities of Grantee shall at all times be maintained in a safe, substantial and workmanlike manner and in accordance with all applicable governmental regulations.
- (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: Street Excavations and Restorations.**

- (1) Subject to the provisions of this Franchise, the Grantee or its subcontractor may make necessary excavations in the Rights-of-way for the purpose of constructing, installing, maintaining, relocating, repairing and operating its Gas Facilities. In all circumstances pertinent to this agreement, any action by Grantee's subcontractors shall be the responsibility of Grantee.
- (2) Except in the event of an emergency and in the performance of routine service connections and ordinary maintenance in the Right-of-way, before commencing any work in the Right-of-way Grantee shall apply for and receive all applicable permits and pay applicable permit fees. The permit application shall include drawings, in such form as may be acceptable to the City Engineer, showing the location of existing facilities and facilities to be constructed, maintained, or relocated and such other information requested by the City Engineer. If permits are required for work done in the event of an emergency, Grantee shall apply for appropriate permits the next business day or as soon as reasonably possible following discovery of the emergency. For purposes of this subsection, "routine service connections and ordinary maintenance" do not include any activity that requires excavation of or within the Right-of-way or blocking vehicular, bicycle or pedestrian traffic within the Right-of-way.
- (3) Grantee shall give notice to the City by telephone, electronic data transmittal or other appropriate means prior to the commencement of any work in the Right-of-way as required by this Section, and as soon as reasonably possible after the commencement of work performed in the event of the emergency.
- (4) All work done within the Rights-of-way shall be done in the location approved by the City Engineer and in accordance with any permit issued by the City and plans and specifications approved by the City Engineer. Such construction work shall be done in a safe manner subject to the approval of the City Engineer and in accordance with standard engineering practices and the requirements of applicable Federal and State laws and City ordinances and regulations. Except where a permit is not required pursuant to subsection (2) of this Section, any work within the Rights-of-way without a permit, or that is not in accordance with the permit issued by the City, shall be subject to rejection or correction as directed by the City Engineer.
- (5) When Grantee does any work in the Right-of-way, Grantee or its subcontractor shall promptly restore the Right-of-way to at least the same condition in which it was prior to the excavation unless otherwise required by the terms and conditions of any permit issued by the City and any specifications, requirements and regulations of the City in effect at the time of the work. All work done shall be subject to the rejection and

correction requirements of the City Engineer. If Grantee or its subcontractor fails to restore promptly the affected portion of a Right-of-way in accordance with permit conditions and specifications, requirements and regulations in effect at the time of the work, the City may make the restoration, and the cost thereof shall be paid by Grantee.

**Section 10: Location and Relocation of Facilities.**

- (1) All Gas Facilities of Grantee shall be placed so that they do not interfere unreasonably with the use of the Right-of way by the City and the public and in accordance with any specifications adopted by the City governing the location of facilities.
- (2) The City may require the removal or relocation, temporarily or permanently, of facilities maintained by Grantee in the Rights-of-way of the City. Grantee shall remove and relocate such facilities within a reasonable timeframe, not to exceed 120 days, as specified in a written notice from the City, provided that the City may in its sole discretion extend the time beyond that specified in the written notice after consultation with Grantee. The City will act in accordance with ORS 758.025 and applicable law in providing notice as soon as practicable prior to requiring Grantee to remove or relocate its Gas Facilities. The cost of such removal or relocation shall be paid by Grantee; however in the event that the removal, relocation, change or alteration is requested by or is needed to accommodate private development or other private use of the Right-of-way, nothing in this Franchise prohibits Grantee from seeking payment or reimbursement from the developer or other private party requiring the action and any payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third party. If the relocation of the Gas Facilities is caused or required by the conditions placed by the City on approval for projects of third parties Grantee shall be responsible for the costs of such relocation where the improvements requiring relocation are (i) within existing Right-of-way or are conditioned by the City to be dedicated as Right-of-way (except when Grantee has a private right, such as an easement, to be in the location that will be dedicated as right-of-way, in which case the private right may control), and (ii) included in any master plan, transportation systems plan or comprehensive plan or regulation adopted or approved in a public process by the City. Nothing herein prohibits the Grantee from seeking payment or reimbursement from said third party for relocation costs. In the event of a dispute as to whether the removal, relocation, change or alteration is a public improvement or accommodates a third party, the dispute shall be referred to the City Administrator, whose decision shall be final and binding.

**Section 11: Compensation.**

- (1) In consideration of the rights, privileges, and Franchise hereby granted, Grantee shall pay to the City of Silverton from and after the effective date of the acceptance of this Franchise five (5) percent per annum of Gross

Revenue. Any increase in the rate of compensation payable under this Franchise shall be owed only for charges both billed to and paid by Grantee's customers after the date of Franchise acceptance by the Grantee.

- (2) In the event that during the term of this Franchise agreement Grantee shall agree in a negotiated franchise to pay any city in Oregon a rate of compensation exceeding 5.94%, and provided the City of Silverton agrees to initiate any increased rate of compensation within ninety (90) days of being notified by Grantee of the agreement in a franchise to pay another Oregon city a rate of compensation exceeding 5.94%, the higher rate shall thereafter be payable to the City of Silverton and this ordinance and Franchise amended accordingly. Grantee shall notify the City within thirty (30) days of the effective date of a franchise with any other Oregon city wherein Grantee has agreed to a rate of compensation higher than 5.94%.
- (3) The compensation required by this Section shall be due for each calendar year on a quarterly basis, payments to be mailed or otherwise transmitted to the City within thirty (30) days of the end of each quarter. Acceptance by the City of any payment due under this Section is not a waiver by the City of any breach of this Franchise occurring prior thereto, nor does the City's acceptance 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. All amounts of franchise fees paid by Grantee are subject to audit or review by the City.
- (4) Grantee shall furnish to the City with each payment of compensation required by this Section a written statement showing the amount of Gross Revenue of Grantee within the City for the period covered by the payment computed on the basis set out in subsection (1) of this Section. If Grantee fails to pay the entire amount of compensation due to the City through error or otherwise within the times allotted for payment in subsection (3) of this Section, the amount of the compensation due and not timely paid shall be subject to one percent (1%) per month interest. Additionally, if any payment becomes ninety (90) days in arrears, a ten percent (10%) penalty shall be applied.
- (5) Nothing contained in this Franchise shall give Grantee any credit against an ad valorem property tax now or hereafter levied against real or personal property within the City, or reimbursement or indemnity paid to the City.
- (6) If for any reason the franchise fee or compensation is invalidated or amended by the act of any court or governmental agency, the City and Grantee shall renegotiate the compensation section of this Franchise, and the compensation due under the new negotiated basis shall be payable (or credited to Grantee, as may be applicable) retroactive to the time at which payments based on Gross Revenues ceased.
- (7) The franchise fee to be paid to the City under this Section is for the



Grantee's use of the City's Rights-of-way. Payment of the franchise fee under this Section does not exempt Grantee from the payment of any generally applicable license, permit fee or other generally applicable fee, tax or charge on the business, occupation, property or income of Grantee that may be now or hereafter imposed, or from the payment of any reimbursement or indemnity to the City. The City reserves the right to impose and collect any fee, tax or charge on the business, occupation, property or income of Grantee, in addition to the franchise fee set forth in this Franchise, to the extent permitted by state and federal law.

**Section 12: 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 identified on the regular billings as a fee imposed by the City and not as a tax.

**Section 13: Books, Records and Reports.**

- (1) The City may inspect the Grantee's books and records reasonably related to the administration or enforcement of this Franchise and conduct an audit or financial review of Grantee's franchise fee payments. The Grantee must keep its books and records at an office in Oregon and permit the City to inspect the books and records as provided in this Section at any time during regular business hours upon thirty (30) days prior written notice. Grantee may make such books and records available to the City through other means, such as an electronic format, as agreed to by the City, and within a reasonable timeframe required by the City. The City may not audit or review Grantee more than once for Gross Revenue calculations made during a specific period of time.
  
- (2) If an audit or financial review by the City, its contractor or its agent of Grantee's records determines that there has been an underpayment of more than five percent (5%) of the franchise fee for the period audited, Grantee must pay the City the difference due and shall reimburse the City for the total reasonable cost of the audit or financial review within thirty (30) days of City's written demand for the same. All amounts underpaid shall accrue interest at the statutory rate from the effective date of the underpayment. Likewise, in the event the City's audit or financial review demonstrates an overpayment by Grantee, the Grantee may, after it has refunded to its customers the full amount of the overpayment, deduct the overpaid amount from the next subsequent franchise fee payment due the City and may continue to make such deductions until the overpayment is repaid in full. City agrees to provide notice to Grantee of any boundary changes and annexations to ensure Grantee revises its billing as necessary. In the event the City does not provide notice of boundary changes and annexations to Grantee, and this results in an overpayment or underpayment by Grantee, no interest shall accrue on the over- or underpayment for the affected properties.

**Section 14: Classification of Fees.**

The City Council determines that any fees imposed by this Franchise are not taxes subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

**Section 15: As-Built Drawings.**

The Grantee shall maintain on file, at an office in Oregon, record drawings and operational data pertaining to its operations in the City. Authorized representatives of the City, subject to the confidentiality limits below, may inspect the record drawings 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, record drawings showing the location of the Gas Facilities of the Grantee in the City.

The Grantee and the City may determine that the location of certain portions of the Gas Facilities should be confidential. In such a case, the Grantee shall notify the City of which records disclosing the location of the Gas Facilities should be treated as confidential. The City shall treat any public record disclosing the location of these Gas 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. This paragraph is not a limitation of Grantee's obligation to provide required permit information as set forth in Section 9 of this Franchise.

**Section 16: Ongoing Communication.**

Grantee shall keep the City informed of all new developments, issues or concerns affecting its Gas Facilities within the City. The City shall endeavor to notify the Grantee of any major or financially significant developments or issues concerning the franchise through the development review process in advance of any public announcement by the City on the subject.

**Section 17: Indemnification and Insurance.**

- (1) Grantee shall indemnify and save harmless and defend the City and its officers, elected officials, agents and employees from and against any and all claims, damage, liability, loss, cost and expense, including court and appeal costs and attorney fees or expenses, arising from any acts, omissions, negligence or gross negligence by, or willful misconduct of Grantee, or its affiliates, officers, employees, agents, contractors or subcontractors, in exercising the rights, privileges and Franchise hereby granted. The City shall provide Grantee with prompt notice of any such claim and shall consult and cooperate with Grantee in the course of Grantee's defense of the City. The duty to indemnify and defend shall not extend to any negligence or willful misconduct by the City, its officers, elected officials, agents and employees. The obligations imposed by this

Section are intended to survive termination of this Franchise.

- (2) Throughout the term of this Franchise, Grantee must maintain general liability and property damage insurance, and it must furnish the City with Certificates of Insurance in a form acceptable to the City, with the following limits and coverages:
  - (a) Comprehensive general liability insurance with limits not less than:
    - i. Two million dollars (\$2,000,000) for bodily injury or death to each Person;
    - ii. Two million dollars (\$2,000,000) for property damage resulting from any one accident;
    - iii. Three million dollars (\$3,000,000) for all other types of liability;
    - iv. Automobile liability for owned, non-owned, and hired vehicles with a limit of one million dollars (\$1,000,000) for each Person and a combined limit of three million dollars (\$3,000,000) for each accident; and
    - v. Workers' compensation coverage at a minimum consistent with state law, and employer's liability insurance with limits of not less than one million dollars (\$1,000,000).
- (3) The insurance policies may provide for self-retention or deductibles in reasonable amounts, provided that any self-retention or deductibles do not in any way limit Grantee's liability to the City. The insurance limits are subject to statutory changes as to increases in the maximum limits of liability imposed on State of Oregon municipalities during the term of this Franchise.
- (4) The insurance is without prejudice to coverage otherwise existing and must name as additional insureds the City, its elected and appointed officials, officers, agents, employees, and volunteers. Notwithstanding the naming of additional insureds, the insurance must protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this subsection operates 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.
- (5) The insurance must provide that it may not be canceled or materially altered without giving 30 days' prior written notice to the City. If the insurance is canceled or materially altered within the term of this Franchise, Grantee must provide a replacement policy with the same terms

as required by this Franchise. Grantee must maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this Franchise.

- (6) As an alternative to the coverage listed above, the Grantee may provide proof of and keep in force self-insurance, or a self-insured retention plus insurance, equivalent to the coverage required above.

**Section 18: Sale or Assignment of Franchise.**

Grantee shall not during the term of this Franchise sell, assign, transfer or convey this Franchise, or effect a change in control of Grantee, without first obtaining the consent of the City Council, by ordinance or resolution, which consent shall not be unreasonably withheld. If a sale, lease, mortgage, assignment, merger, transfer or change in control of Grantee's Gas Facilities located within the City is subject to review and approval by the Oregon Public Utility Commission ("OPUC"), the City shall accept final approval by the OPUC of such sale, lease, mortgage, assignment, merger, transfer or change of control. Nothing in this Franchise requires the City's consent for any sale, lease, mortgage, assignment, merger, or other transfer to entities that control, are controlled by, or are under common control with Grantee, so long as the entity is subject to substantially the same regulations of the Oregon Public Utility Commission as Grantee in relation to the Gas Facilities within the City. NW Natural shall give written notice to the City of any transfers to entities under such common control within thirty (30) days of such transfers. Nothing contained in this Franchise shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantee's Gas Facilities for the purposes of financing the acquisition of equipment for or the construction or operation of Grantee's Gas Facilities, within or outside the City, without the City's consent, but any such mortgage, pledge, or assignment with respect to Grantee's Gas Facilities shall be subject to the City's other rights contained in this Franchise. All of the provisions of this Franchise shall inure to and bind the successors and assigns of the Grantee. Whenever Northwest Natural shall be mentioned in this ordinance, it shall be understood to include such successors or assigns in interest of Northwest Natural as shall have been so consented to by the City Council.

**Section 19: Termination of Franchise for Cause.**

- (1) The City may terminate this Franchise as provided in this Section, subject to any right Grantee may have to a court review of such action, upon the failure of the Grantee to substantially 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 sixty (60) days from receipt of notice to cure such failure, or if such failure cannot reasonably be cured within sixty (60) days, to commence and diligently pursue curing such failure.
- (2) **Additional Remedies.** In addition to any other rights set out in this Franchise and the Silverton Municipal Code, the City reserves the right at its sole option to establish a lesser sanction that may include imposing a

penalty of not more than five hundred dollars (\$500.00) for each offense. A separate and distinct offense is committed each day on which a violation occurs or continues.

- (3) **Assessment of Remedies.** When determining the penalty amount described above, City may take into consideration the nature, circumstances, extent, and gravity of the violation as reflected by one or more of the following factors. Whether:
  - (a) The misconduct was egregious.
  - (b) Substantial harm resulted.
  - (c) The violation was intentional.
  - (d) There is a history of prior violations of the same or other requirements.
  - (e) There is a history of overall compliance.
  - (f) The violation was voluntarily disclosed, admitted or cured.
  
- (4) **Notice and Opportunity to Cure.** The City must give Grantee sixty (60) days' prior written notice of its intent to exercise its rights under this Section, stating the reasons for declaring a termination. If Grantee cures the stated reason within the sixty (60)-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 will not exercise its right to terminate the Franchise or seek other remedies. If Grantee fails to cure the stated reason within the sixty (60)-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 impose any or all of the remedies available under this Section.

**Section 20: Miscellaneous.**

- (1) At all times during the term of this Franchise, Grantee shall comply with all applicable laws, ordinances, rules and regulations of the United States of America, the State of Oregon, and the City of Silverton including all agencies and subdivisions thereof. Grantee shall be subject to the lawful exercise of the police power of the City of Silverton and to such reasonable regulations as the City may from time to time hereafter by resolution or ordinance provide. No provision of this Franchise shall be construed as a waiver of local, State or Federal law, or as a limit of liability.
  
- (2) All notices, reports, or demands required to be given in writing under this Franchise shall be deemed to be given when delivered personally to the persons designated below, or when five (5) days have elapsed after it is deposited in the United States mail in a sealed envelope, with registered or certified mail postage prepaid, or on the next addressed business day if sent by express mail or overnight air courier to the party to which notice is being given, as follows: If to the City: City of Silverton, Attn: City

Manager, 306 S. Water Street, Silverton, Oregon 97381. If to Grantee: Northwest Natural Gas Company, Legal Department – Franchises, 220 NW Second Ave., Portland, Oregon 97209. Such addresses may be changed by the either party upon written notice to the other party given as provided in this Section.

- (3) Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure to enforce prompt compliance.
- (4) Where the performance or doing of any act, duty, matter, payment, or thing is required hereunder and the period of time or duration for the performance or during thereof is prescribed and fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period or duration of time. When the last day of the period falls on a Saturday, Sunday or a legal holiday, that day shall be omitted from the computation.

**Section 21: 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 Marion, or in the United States District Court for the District of Oregon.

**Section 22: 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.

**Section 23: Amendment of Franchise.**

This Franchise may not be amended, except pursuant to a written instrument signed by Grantee and approved by the City Council.

**Section 24: Renegotiation of the Franchise.**

If the State of Oregon or the OPUC amends or adopts a state statute or administrative rule that would affect a term, condition, right or obligation under this agreement, either party may reopen the Franchise at any time with regard to such term, conditions, right or obligation in order to address the change required or allowed by the new or amended state statute or administrative rule.

**Section 25: Remedies Not Exclusive, When Requirement Waived.**

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. A specific waiver of a particular breach of any term, condition or obligation imposed upon Grantee by or pursuant to this Franchise 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 26:    Damage to Grantee’s Facilities.**

Unless directly and proximately caused by negligent, willful, intentional, or malicious acts by the City, the City is not liable for any damage to or loss of all or any portion of the Gas Facilities within the Rights-of-way of the City as a result of or in connection with any public works, public improvement, construction, excavation, grading, filling, or work of any kind in the Rights-of- way by or on behalf of the City, or for any consequential losses resulting directly or indirectly therefrom.

**Section 27:    Acceptance and Effective Date.**

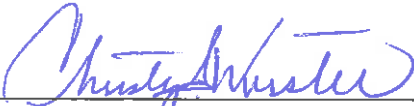
The Grantee shall, within thirty (30) days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this Franchise in the form set forth in Exhibit A, and if the Grantee fails so to do, this ordinance shall be void. Provided the Grantee timely files its written acceptance, the effective date of this Franchise shall be the date the Grantee signs the acceptance.

**Section 28:    Prior Ordinance Repealed.**

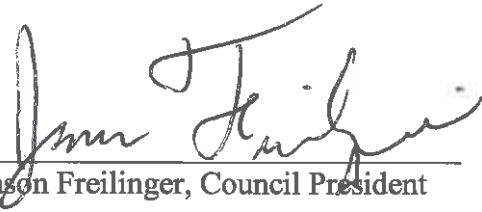
Ordinance No. 06-12 is hereby repealed.

Ordinance passed by the City Council of the City of Silverton this 7th day of May, 2018.

RECORDER'S OFFICE:



Christy Wurster, Recorder/Manager



Jason Freilinger, Council President



**EXHIBIT A ACCEPTANCE**

Christy Wurster City Manager 306 S Water St  
Silverton, Oregon 97381

This is to advise the City of Silverton, Oregon, that Northwest Natural Gas Company (the "Grantee") hereby unconditionally accepts the terms and provisions of Ordinance No.18-\_\_\_\_, passed by the City Council on \_\_\_\_\_, 2018 (the "Franchise") granting a Franchise for ten (10) years to Grantee. The Grantee agrees to abide by each and every term and condition of the Franchise, and shall become effective upon acceptance of said agreement by the Grantee.

**NORTHWEST NATURAL GAS COMPANY**

BY \_\_\_\_\_

TITLE Senior Vice President, Regulations & General Counsel \_\_\_\_\_

DATE \_\_\_\_\_

**This Acceptance was received by the City of Silverton on \_\_\_\_\_, 2018.**

\_\_\_\_\_  
Christy Wurster



City of Silverton

Office of the City Manager  
306 S. Water St. • Silverton, OR 97381  
(503) 873-5321  
www.silverton.or.us

May 10, 2018

**NW NATURAL**

MAY 15 2018

**LEGAL DEPT.**

Northwest Natural Gas Company  
Legal Department – Franchises  
220 NW Second Avenue  
Portland, OR 97209

Re: Ordinance Authorizing a Non-Exclusive Gas Utility Franchise

Enclosed find Ordinance 18-10 authorizing a non-exclusive gas utility franchise to Northwest Natural Gas Company as approved by the Silverton City Council at their meeting on Monday, May 7, 2018.

The Ordinance requires acceptance within 30 days along with the required insurance documentation.

Feel free to contact me if you have any questions or concerns.

Sincerely,


Christy S. Wurster  
City Manager

Enclosure

**ACCEPTANCE**

City of Silverton  
Christy Wurster, City Manager  
306 S. Water St.  
Silverton, Oregon 97381

This is to advise the City of Silverton, Oregon (the "City") that Northwest Natural Gas Company (the "Grantee") hereby accepts the terms and provisions of Ordinance No. 18-10, passed by the Silverton City Council on May 7, 2018 (the "Franchise") granting a Franchise for ten (10) years to Grantee. The Grantee agrees to abide by each and every term of the Franchise, and shall become effective upon acceptance of said agreement by Northwest Natural Gas Company (the "Grantee").

BY   
TITLE Senior Vice President, Regulations & General Counsel  
DATE May 31, 2018

This Acceptance was received by the City of Silverton on June 11, 2018.

  
City Recorder  Date