

ORDINANCE NO. 8 FOR 2017

ORDINANCE NO. 1262

AN ORDINANCE GRANTING A NON-EXCLUSIVE GAS UTILITY FRANCHISE TO NORTHWEST NATURAL GAS COMPANY, FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE; AND REPEALING SWEET HOME ORDINANCE NO. 1145.

The City of Sweet Home does ordain as follows:

Section 1: Definitions and Explanations.

- (1) As used in this ordinance.
  - (a) “Bridge” includes a structure erected within the City to facilitate the crossing of a river, stream, ditch, ravine or other place, but does not include a culvert.
  - (b) “City” means the City of Sweet Home and the area within its boundaries, including its boundaries as extended in the future.
  - (c) “Council” means the legislative body of the City.
  - (d) “Day” means calendar day, not working (Monday – Friday) Day.
  - (e) “Grantee” means the corporation referred to in Section 2 of this ordinance.
  - (f) “Gas Mains” includes all gas transmission and distribution facilities and services located on or under any Street, Bridge or Public Place within the City.
  - (g) “Gross Revenue” means revenues received from the use of the gas utility system within the City limits less related net uncollectibles. Gross Revenue shall include revenues from the use, rental or lease of the gas utility system, 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. Gross Revenue shall not include proceeds from the sale of bonds, mortgage, or other evidence of indebtedness, securities or stocks, or sales at wholesale by Grantee to any public utility or public agency when the public utility or public agency is not the ultimate customer. Gross Revenues also 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 raised revenue is used solely for a public purpose and not to compensate Grantee for the sale or use of natural gas or for the use, rental, or lease of Grantee's utility system within the City. Gross Revenue also shall not include revenues derived from the sale or transportation of gas supplied under an interruptible tariff schedule or revenues paid directly by the United States of America or any of its agencies.

- (h) "Person" includes an individual, corporation, association, firm, partnership and joint stock company.
  - (i) "Public Place" includes any city-owned park, place or grounds within the City that is open to the public but does not include a Street or Bridge.
  - (j) "Street" includes a street, alley, avenue, road, boulevard, thoroughfare or public highway within the City, but does not include a Bridge.
- (2) As used in this ordinance, the singular number may include the plural and the plural number may include the singular.
  - (3) Unless otherwise specified in this ordinance, any action authorized or required to be taken by the City may be taken by the Council or by an official or agent designated by the Council.

## Section 2: Rights Granted.

Subject to the conditions and reservations contained in this ordinance, the City hereby grants to NORTHWEST NATURAL 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 and Bridges and Public Places of the City, facilities for the transmission and distribution of gas to the City and its inhabitants and to other customers and territory beyond the limits of the City; and
- (3) Transmit, distribute and sell gas.

Section 3: Use of Bridges and Public Places by Grantee.

- (1) Before the Grantee may use or occupy any Bridge or Public Place, the Grantee shall first obtain a permit from the City to do so and shall comply with any special conditions the City requires on such use or occupation.
- (2) The compensation paid by the Grantee for this franchise includes compensation for the use of Bridges and Public Places located within the City as authorized.

Section 4: Duration.

This franchise is granted for a period of ten (10) years from and after the effective date of this ordinance.

Section 5: Franchise Not Exclusive.

This franchise is not exclusive, and shall not be construed as a limitation on the City in:

- (1) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.
- (2) Constructing, installing, maintaining or operating any City-owned public utility.

Section 6: Public Works and Improvements Not Affected by Franchise.

The City reserves the right to:

- (1) Construct, install, maintain and operate any public improvement, work or facility.
- (2) Do any work that the City may find desirable on, over or under any Street, Bridge or Public Place.
- (3) Vacate, alter or close any Street, Bridge or Public Place.
- (4) Whenever the City shall excavate or perform any work in any of the present and future Streets, alleys and Public Places of the City, or shall contract, or issue permits, for such excavation or work where such excavation or work may disturb Grantee's Gas Mains, pipes and appurtenances, the City shall, in writing, notify Grantee sufficiently in advance of such contemplated excavation or work to enable Grantee to take such measures as may be deemed necessary to protect such Gas Mains, pipes and appurtenances from damage

and possible inconvenience or injury to the public. In any such case, the Grantee, upon request, shall furnish maps, drawings or field utility locate markings 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.

- (5) Whenever the City shall vacate any Street or Public Place for the convenience or benefit of any Person or governmental agency and instrumentality other than the City, Grantee's rights shall be preserved as to any of its facilities then existing in such Street or Public Place.

Section 7: Continuous Service.

The Grantee shall maintain and operate an adequate system for the distribution of gas in the City. The Grantee shall use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall the Grantee be liable for an interruption or failure of service caused by act of God, unavoidable accident or other circumstances beyond the control of the Grantee through no fault of its own.

Section 8: Safety Standards and Work 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 specification from time to time.

Section 9: Control of Construction.

The Grantee shall file with the City maps showing the location of any existing, new construction, extension or relocation of its Gas Mains in the Streets of the City and shall obtain from the City approval of the location and plans prior to commencement of the work. The City shall require the Grantee to obtain a permit before commencing the construction, extension or relocation of any of its Gas Mains and service lines. Permit applications must be filed ten (10) working days in advance of the commencement of the work.

Section 10: Street Excavation and Restorations.

- (1) Subject to provisions of this ordinance, the Grantee may make necessary excavations for the purpose of constructing, installing, maintaining and operating its facilities. Except in emergencies, prior to making an excavation in the traveled portion of any Street, Bridge, or Public Place, and when required by the City, in any untraveled portion of any Street, Bridge, or 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 at least 24 hours 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) Except as provided in subsection (3) of this section, when any excavation is made by the Grantee, the Grantee shall promptly restore the affected portion of the Street, Bridge or Public Place to the same condition in which it was prior to the excavation within ten (10) working days or specific permit requirements. 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 Street, Bridge or Public Place to the same condition in which it was prior to the excavation, the City may make the restoration, and the cost thereof shall be paid by the Grantee.
- (3) At its option and upon written notice to Grantee, provided Grantee has not already started restoration efforts as provided in subsection (2) of this section, the City may restore or resurface the affected portion of any Street, Bridge or Public Place excavated by the Grantee to the same condition in which it was prior to the excavation, and the cost thereof shall be paid by the Grantee.

Section 11: Location and Relocation of Facilities.

- (1) All facilities of the Grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the Streets, Bridges and Public Places and in accordance with any specification adopted by the City governing the location of facilities.
- (2) The City may require, in the public interest, the removal or relocation of facilities maintained by the Grantee in the Streets of the City, and the Grantee shall remove and relocate such facilities within a reasonable time after receiving notice 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.

Section 12: Compensation.

- (1) As compensation for the franchise granted by this ordinance, the Grantee shall pay to the City an amount equal to five percent (5%) of the Gross Revenue collected by the Grantee from its customers for gas consumed within the City. The Grantee may offset against such compensation the amount of any license, permit or other fees paid to the City in connection with the Grantee's use of the Streets, Bridges and Public Places of the City. Grantee may also offset against such compensation the amount of any privilege tax particularly imposed upon energy utilities.
- (2) During the first year of the franchise agreement, the City may, upon thirty (30) days' prior written notice, initiate the renegotiation of the level of compensation. During the nine (9) remaining years of the franchise agreement, the compensation may be subject to annual renegotiation at or before the anniversary date of the term of the franchise hereby granted, and provided the Grantee is notified, in writing, at least thirty (30) days prior to the anniversary date.
- (3) The compensation required by this section shall be due for each quarter ending March 31, June 30, September 30 and December 31, or fraction thereof, within thirty (30) days after the close of each quarter, or fraction thereof. Within thirty (30) 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.
- (4) The Grantee shall furnish to the City with each annual compensation adjustment required by this section a written 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. If the Grantee fails to pay the entire amount of compensation due the City through error or otherwise, the difference due the City shall be paid by the Grantee within thirty (30) 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.
- (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.

Section 13: Books of Account and Reports.

The Grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under Section 12 of this ordinance. The City may inspect the books of account at any time during business hours and may audit the books from time to time. The Council may require periodic reports from the Grantee relating to its operations and revenues within the City. All amounts of the Franchise Fee shall be subject to audit or review by the City, provided that only payments that occurred or should have occurred during a period of thirty-six (36) months prior to the date that the City notifies Grantee of its intent to perform an audit shall be subject to such audit. The Grantee will not provide the City with records containing customer information that identifies or can be attributed to a specific customer, without a written legal opinion by or on behalf of the City to the Grantee's reasonable satisfaction that such records will not be subject to public disclosure under state law, and that any requests for such records will be opposed by the City.

Section 14: Supplying Maps Upon Request

The Grantee shall maintain on file, at an office in Oregon, maps and operational data pertaining to its operations in the City. The City may inspect the maps and data at any time during business hours. Upon request of the City, the Grantee shall furnish to the City, without charge and on a current basis, maps showing the location of the Gas Mains of the Grantee in the City. Said maps shall be submitted within thirty (30) days of the request from the City. Maps shall be in electronic (CD) format, readable by AutoCAD© or ArcView© software.

These records are submitted in confidence, and the City will keep those records in confidence and not allow others to view or copy them. The City agrees to keep the documents confidential, subject to the provisions of state law and the Oregon Public Records law, and to take the position that they are exempt from public disclosure. The City shall limit access to the as-built drawings provided by Grantee to City employees or City contractors with a need to know where the Grantee's facilities are located and shall review the as-built drawings only as necessary to plan City projects, coordinate the use of the rights of way, and to protect the public health and safety.

Section 15: Indemnification.

Grantee by accepting the franchise agrees to indemnify, defend and save harmless the City and its officers, agents and employees from and against all claims, actions, causes of action, demands, judgements, costs, expenses and all damages of every kind and nature, incurred by or

on behalf of any person or corporation whatsoever, predicated upon injury to or death of any person or the loss of or damage to property of whatever ownership, including the parties to this franchise, and their employees, and in any manner arising out of or connected with, directly or indirectly, to any wrongful or negligent act or omission of the Grantee, its agents or employees in the exercise of the rights or privileges herein granted.

Section 16: Insurance.

Upon request by the City, Grantee shall at all times during the existence of this franchise, furnish proof of public liability insurance or self-insurance, with minimum coverage of not less than that required by ORS 30.270 (tort claim limits).

Section 17: Permit and Inspection Fees.

Nothing in this ordinance shall be construed to limit the right of the City to require the Grantee to pay reasonable costs incurred by the City in connection with the issuing of a permit, making of an inspection, or performing any other service for or in connection with the Grantee or its facilities, whether pursuant to this ordinance or any other ordinance or resolution now in effect or hereafter adopted by the City.

Section 18: Assignment of Franchise.

This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee.

Section 19: Termination of Franchise for Cause and Expiration of Franchise.

Upon the willful failure of the Grantee, after thirty (30) days' notice and demand in writing, to perform promptly and completely each and every term, condition or obligation imposed upon it under or pursuant to this ordinance, the City may terminate this franchise, subject to Grantee's right to a court review of the reasonableness of such action. At the end of the franchise term, 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 20: Remedies Not Exclusive. When Requirement Waived.

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



including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver or 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 21: Acceptance.

The Grantee shall, within thirty (30) days from the date the Council passes and the Mayor approves this ordinance, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails to do so, this ordinance shall be void.

Section 22: Repeal of Ordinance.

Sweet Home Ordinance No. 1145 is hereby repealed.

PASSED by the Council and approved by the Mayor this 8<sup>th</sup> day of August, 2017.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Manager – Ex Officio City Recorder

ACCEPTANCE

City of Sweet Home  
City Recorder  
1140 12 Ave.  
Sweet Home, OR 97386

This is to advise the City of Sweet Home, Oregon (the "City") that Northwest Natural Gas Company (the "Grantee") hereby accepts the terms and provisions of Ordinance No. 1262 passed by the Sweet Home City Council on August 8, 2017 (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 NW Natural Gas Company (the "Grantee").

(Name)  
BY \_\_\_\_\_

TITLE Senior Vice President Regulation & General Counsel

DATE \_\_\_\_\_

This Acceptance was received by the City of Sweet Home on \_\_\_\_\_, 2017.

\_\_\_\_\_  
City Recorder