

182618

 <b>NW Natural</b> <i>We grew up here.</i>	<b>150</b> YEARS 1859-2009	220 NW 2ND AVENUE PORTLAND, OR 97209
		TEL 503.226.4211 800.422.4012 nwnatural.com

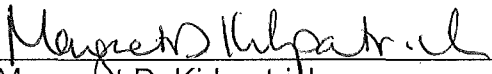
**Risk Environment & Land**

Senior Agent: Janis L. Pfannenstiel  
Telephone: (503) 721-2446  
Toll Free: (800) 422-4012 x2446  
Fax: (503) 220-2586

April 1, 2009

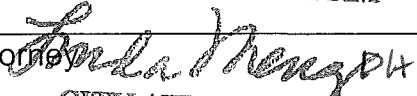
Auditor of the City of Portland  
City Hall – Room 140  
1221 SW 4<sup>th</sup> Avenue  
Portland, OR 97204

This is to advise the City of Portland, Oregon that Northwest Natural Gas Company hereby accepts the terms and provisions of Ordinance No. 182618, passed by the Portland City Council on March 25, 3009, **Grant a franchise to Northwest Natural Gas Company for a period of 20 years**, and in consideration of the benefits received there under by the corporation, Northwest Natural Gas Company hereby agrees to abide by and perform each and all of the applicable terms and provisions thereof.

  
\_\_\_\_\_  
Margaret D. Kirkpatrick  
Vice President & General Counsel

Northwest Natural Gas Company  
Sandra Hart  
Director of Risk, Environmental & Land  
220 NW Second Avenue  
Portland, OR 97209

Approved as to form:

**APPROVED AS TO FORM**  
  
\_\_\_\_\_  
City Attorney  
**CITY ATTORNEY**

BY \_\_\_\_\_  
GARY BLACKMER, AUDITOR  
CITY OF PORTLAND, OR

2009 APR -3 P 1:47

RECEIVED

**FINANCIAL IMPACT STATEMENT  
For Council Action Items**

(Deliver original to Financial Planning Division. Retain copy.)

1. Name of Initiator Mary Beth Henry		2. Telephone No. Ext. 3-5414	3. Bureau/Office/ Dept.  OCCFM
4a. To be filed (date) February 5, 2009	4b. Calendar (Check One) Regular      Consent 4/5ths <input type="checkbox"/> XX <input type="checkbox"/>		5. Date Submitted to FPD Budget Analyst: February 5, 2009

**1) Legislation Title:**

Grant a franchise to Northwest Natural Gas Company for a period of 20 years. (Ordinance)

**2) Purpose of the Proposed Legislation:**

The franchise outlines the respective responsibilities of both NWNG and the City in order for NWNG to use city streets over the next 20 years.

**3) Revenue:**

**Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If new revenue is generated please identify the source.** NWNG already made a one time payment of \$350,000 to settle an audit. The franchise agreement is the final element of the Settlement Agreement. NWNG will continue to pay franchise fees of over \$12 million annually to the City. Prior to the Franchise Agreement NWNG paid the City under Chapter 7.14 Utility License Fee. The payments going forward will be under the terms of the franchise. There will be no impact to the revenue.

**4) Expense:**

**What are the costs to the City as a result of this legislation? What is the source of funding for the expense? (Please include costs in the current fiscal year as well as costs in future years) (If the action is related to a grant or contract please include the local contribution or match required)** None

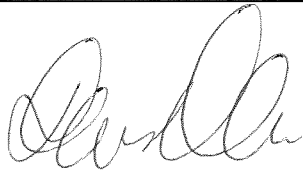
**Staffing Requirements:**

**5) Will any positions be created, eliminated or re-classified in the current year as a result of this legislation? (If new positions are created please include whether they will be part-time, full-time, limited term or permanent positions. If the position is limited term please indicate the end of the term.)** No

**6) Will positions be created or eliminated in future years as a result of this legislation?** NO

**Complete the following section only if an amendment to the budget is proposed.**

**7) Change in Appropriations** (If the accompanying ordinance amends the budget please reflect the dollar amount to be appropriated by this legislation. Include the appropriate center codes and accounts that are to be loaded by accounting. Indicate "new" in Center Code column if new center needs to be created. Use additional space if needed.) NA



APPROPRIATION UNIT HEAD (Typed name and signature) David C. Olson, Director



## CITY OF PORTLAND, OREGON

### Office of Cable Communications and Franchise Management

Amanda Fritz, Commissioner

David C. Olson, Director

1120 SW 5th Avenue, Room 1305 • Portland, Oregon 97204


503-823-5385 • Fax 503-823-5370 • TDD 503-823-6868

www.portlandonline.com/cable

### City Council Agenda Item Staff Supplemental Report

TO: Commissioner Amanda Fritz

THROUGH: Office of Cable Communications and Franchise Management

FROM: David C. Olson, Director   
Contact Person: Mary Beth Henry 503.823-5414

DATE: February 5, 2009

RE: Northwest Natural Gas Franchise

Requested Placement Date: Regular agenda, February 18, 2009.

#### I. RECOMMENDATION

The Office of Cable Communications and Franchise Management recommends that the Council approve the franchise with NWNG.

#### II. BACKGROUND

Staff conducted an audit of NWNG in 2005. As part of the audit settlement NWNG agreed to pay the City \$350,000 and enter into franchise negotiations. Council approved the Settlement Agreement in December of 2008. NWNG paid the \$350,000. The franchise has been published as required by the City Charter. OCC/FM staff worked with the City Attorney's office, PDOT, OSD, Water and BES to work through the issues with NWNG. The franchise agreement is supported by all the city offices involved.

#### III. FINANCIAL IMPACT

One time payment of \$350,000 to the City's General Fund and ongoing franchise fee payments of over \$12,000,000 annually. The one time money is new but the annual franchise fee payments are not new. NWNG has been paying the fees under Chapter 7.14 Utility License Fee. Henceforth NWNG will be paying the fees under the terms of the franchise agreement. There will be no change in the amount of the payment for the City.

IV. LEGAL ISSUES: None

V. CONTROVERSIAL ISSUES: None

**Ordinance No. 182618**

Grant a franchise to Northwest Natural Gas Company for a period of 20 years. (Ordinance)

The City of Portland ordains:

**Section 1. NATURE AND TERM OF GRANT**

**1.1 Grant of Franchise.**

(A) The City of Portland, Oregon (“City”), hereby grants to Northwest Natural Gas Company (NW Natural), an Oregon corporation qualified to do business in Oregon, and to its successors and assigns, as approved by the City Council under Section 13,a Franchise to operate a natural gas distribution and transmission system within the City, and to construct, maintain, and operate its Facilities within the Streets in the City, for the purpose of supplying natural gas to the City and its inhabitants, subject to the terms and conditions of this Franchise.

(B) NW Natural may construct, operate, repair, and maintain its natural gas distribution and transmission Facilities within the Streets in the manner and under the conditions set forth in this Franchise.

(C) NW Natural’s above-ground Facilities located with the Streets as of the effective date of this Franchise will be allowed to remain in place until such time as NW Natural determines the Facilities require replacement, or when construction or reconstruction of that Street occurs. NW Natural has provided the City with a list of all of its above ground Facilities.

(D) (1) To the extent the City has the authority to allow NW Natural to use any Bridges within the City, NW Natural’s existing Facilities located in or under any Bridge as of the effective date of this Franchise may remain in place until such time as NW Natural determines the Facilities require replacement, or when construction or reconstruction of that Bridge occurs. NW Natural has provided the City with a list of Bridges on which it has any existing Facilities.

(2) For any future proposed Facilities in or under any Bridge over which the City has authority, NW Natural will submit applications including plans with details on how NW Natural will attach or install the proposed Facilities. The City Engineer may approve the proposed Facilities, together with any necessary conditions, or may deny the application. If the application is denied, the City Engineer will cooperate with NW Natural in identifying alternative locations for the proposed Facilities.

1.2 Term. The term of this Franchise, and all rights and obligations pertaining thereto, shall be twenty (20) years from the effective date of this Franchise, unless terminated earlier as provided herein.

1.3 Effective Date. The effective date of this Franchise shall be upon passage of the authorizing ordinance by the City Council, unless NW Natural fails to file an unconditional written acceptance of this Franchise in accordance with Section 19.8 of this Franchise, in which

event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of this ordinance, as stamped by the Council Clerk.

1.4 Franchise Not Exclusive. This Franchise is not exclusive. The City expressly reserves the right to grant franchises, licenses, permits or other similar rights to other Persons, as well as the right in its own name as a municipality, to use its Streets for the same or similar purposes allowed NW Natural under this Franchise.

1.5 Additional Facilities Subject to Franchise. Within thirty (30) days of NW Natural's acquisition of any gas distribution or transmission Facilities in the Streets, or upon any addition or annexation to the City of any area in which NW Natural retains any such Facilities in the Streets, NW Natural shall submit to the City a written statement describing all Facilities involved, whether authorized by franchise, license, permit or any other similar form of right granted by the City, and specifying the location of all such Facilities. At the City's sole option, as expressed by ordinance adopted by the City Council, such acquired Facilities shall be subject to the terms of this Franchise, with a reasonable period of time provided to NW Natural to bring such acquired Facilities into compliance with this Franchise, including payment of appropriate franchise fees as determined by the City in accordance with Section 3.

## **Section 2. DEFINITIONS**

For the purpose of this Franchise, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

2.1 "Bridge" means an overpass, viaduct or other elevated structure, including approaches and ramps providing a means of access or departure, erected for crossing over a depression or an obstruction, such as river, stream, gully, highway or railway, having a paved surface for motor vehicle traffic.

2.2 "City" means the City of Portland, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

2.3 "City Council" means the Council of the City of Portland, Oregon.

2.4 "Facility" or "Facilities" means any tangible component of NW Natural's gas distribution and transmission system, located within the Streets of the City, including, but not limited to, pipelines, conduit, valves, meters, or other physical assets used for the delivery of natural gas.

2.5 "Gross Revenue" means any and all revenue derived by NW Natural within the City from NW Natural's distribution and transmission Facilities, and includes but is not limited to the sale of and use of gas and any revenue earned within the City for the use, rental, or lease of NW Natural's Facilities. Gross revenues may be adjusted for the net write-off of uncollectible amounts of such revenues. "Gross revenue" does not include proceeds from the sale of bonds, mortgages, or other evidence of indebtedness, securities, stocks, or sales of gas at wholesale to

another utility when the utility purchasing such utility service is not the ultimate consumer. “Gross Revenues” also do not include revenue from charges for late payments or finance charges collected by NW Natural from ratepayers within the City. “Gross Revenues” also does not include revenue from Public Purpose Charges. For purposes of this subsection, “Public Purpose Charges” means a charge or surcharge to a gas customer of NW Natural required or authorized by federal or state statute, administrative rule, or by tariff approved by the OPUC, that raises revenue used for a public purpose and not to compensate NW Natural for the sale of or use of natural gas or for the use, rental, or lease of NW Natural’s Facilities in 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 NW Natural’s service territory in Oregon. The parties acknowledge that during the term of the Franchise specific Public Purpose Charges may be modified or repealed and additional Public Purchase Charges may be approved or required.

2.6 “Hazardous Substances” has the meaning given by ORS 465.200(16) (2007).

2.7 “Franchise” means this Franchise agreement, as approved by the City Council and accepted by NW Natural pursuant to Section 19.8.

2.8 “OPUC” means the State of Oregon Public Utility Commission.

2.9 “Person” means any individual, sole proprietorship, partnership, association, corporation, cooperative, governmental entity, or other form of organization authorized to do business in the State of Oregon, and includes any natural person.

2.10 “System” means NW Natural’s distribution and transmission system, including its Facilities located within the Streets of the City.

2.11 “Street” means the surface of, and the space below, any public street, road, alley, bridge or highway within the City, used or intended to be used by the general public for travel, to the extent the City has the authority to allow NW Natural to use them.

2.12 “Year,” “Annual,” or “Annually” means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

### **Section 3. COMPENSATION**

3.1 Amount of Compensation. During the term of this Franchise, NW Natural shall pay the City a Franchise fee equal to five percent (5%) of NW Natural’s Gross Revenues, as compensation for the benefits and privileges under this Franchise, and in consideration of permission to use the Streets. Except as may otherwise be permitted by law or regulation, no portion of this franchise fee shall be noted separately on any bill to any customer or user of services or commodities furnished by NW Natural.

### 3.2 Payment of Compensation.

(A) Payments to the City under Section 3.1 shall be computed based on NW Natural's Gross Revenues from each calendar year quarter period (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31) and paid on or before the forty-fifth (45th) day following each calendar quarter period during the term of this Franchise.

(B) Payment not received by the City by the due date shall be assessed interest equal to the rate of one percent (1%) over the existing prime rate as set by the Wells Fargo Bank, National Association, or its successors and assigns as designated by the City, compounded daily. Interest shall be due on the entire late payment from the date on which the payment was due until the date on which the City receives the payment.

(C) Accompanying each payment to the City under Section 3.1, NW Natural shall file with the City a written report containing an accurate statement in summarized form, as well as in detail, of its calculation of the amount of the payment, verified by an officer or other authorized representative of NW Natural, setting forth its Gross Revenues according to their accounting subdivisions, and any deductions claimed for the period upon which the payment is computed. Such reports shall be in form satisfactory to the City. Northwest Natural shall keep and preserve for not less than three (3) years following the submittal of each report accurate documents and records, including state and federal income or excise tax returns, to adequately support the information submitted in its written report and the calculation of its Franchise fee.

3.3 Other City Taxes, Fees, Charges Apply; Exception. Payment of the Franchise fee as described in Section 3.1 shall not exempt NW Natural from the payment of any license fee, tax, or charge on the business, occupation, property, or income of NW Natural that may be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license, fee, tax, or charge.

3.4 Cost of Publication. The City Charter contains a formal process granting a franchise, including publication of the franchise in its entirety and a separate summary notice. The Charter requires that the franchisee must bear the costs of such publication. NW Natural has deposited funds with the City to cover these costs.

3.4 Acceptance of Payment and Recomputation. No acceptance by the City of any payment of Franchise fees by NW Natural shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable.

(A) Interest. NW Natural agrees to pay the City for interest on any underpayment amount due under this Section 3 that is disclosed as the result of an audit, such interest to be calculated at one percent (1%) over the existing prime rate as set by Wells Fargo Bank, National Association or its successors and assigns as designated by the City, compounded quarterly from the date on which the payment was due. If such payment is not received within thirty (30) days of

notice from the City, then interest shall be compounded daily from the date on which the payment was due until the date the City receives the payment.

(B) Overpayments. If there is a final determination in any audit or review by the City under Section 3.5 of this Franchise that NW Natural made an overpayment to the City of amounts due under this Section 3, NW Natural may deduct the overpayment 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.

### 3.5 Right to Audit or Financial Review.

(A) The City and its agents and representatives shall have authority to arrange for and conduct audits or financial reviews of NW Natural's payments of Franchise fees under Section 3, within the Portland metropolitan region, upon no less than thirty (30) days' prior written notice for financial reviews and no less than forty-five (45) days for audits, and during normal business hours. Within the limitations established under this Section 3, the City may determine the scope of audit or financial review in each instance.

(B) All amounts of Franchise fees paid by NW Natural shall be subject to audit or review by the City pursuant to Section 3.5. Only Franchise fee payments that occurred during the period of thirty-six (36) months prior to the date the City notifies NW Natural in writing of its intent to perform an audit or financial review shall be subject to such audit or financial review. No underpayment that may have occurred prior to the thirty six (36)-month audit period shall be subject to interest charges as described in Section 3.4(A), nor shall any overpayment that may have occurred prior to the thirty six (36)-month audit period be subject to Section 3.4(B).

(C) Neither the City nor NW Natural shall be responsible to the other for payment of any underpayment or overpayment that may have occurred prior to the thirty six (36)-month audit period described in Section 7, below.

## **Section 4. CONSTRUCTION AND RELOCATION**

4.1 Construction. Subject to applicable regulations of the City, NW Natural may perform all of the construction, repair, and maintenance of its Facilities within the Streets to consumers' premises, and other points as may be required to provide natural gas service. All construction and maintenance of any and all Facilities within the Streets incident to NW Natural's provision of natural gas service to the consumers' premises shall, regardless of who performs construction, be and remain the responsibility of NW Natural. NW Natural shall apply for and obtain all permits necessary for construction of any such Facilities. NW Natural shall pay all applicable fees due for City construction permits.

NW Natural may make all excavations in the Streets for any Facility, provided that prior to doing such work NW Natural applies for and obtains appropriate permits from the City and gives appropriate notices to other utilities, bureaus of the City, and other units of government owning or maintaining facilities which may be affected by the proposed excavation. Compliance with the requirements of ORS 757.542-757.562 and ORS 757.993 (2005), and the rules and regulations promulgated thereunder in OAR Chapter 952, will satisfy the notice requirements of this



Section 4.1. Notwithstanding the forgoing, if NW Natural determines that emergency conditions required excavation or other activities in Streets, NW Natural may immediately perform all such activities. NW Natural shall apply for the appropriate permits within 48 hours of discovery of the emergency. Except as provided in this Franchise, NW Natural must comply with all Charter and ordinance provisions relating to such excavations or construction, including payment of permit or license fees.

#### 4.2 Maps.

(A) Prior to beginning any new construction in the Streets, NW Natural shall provide the City Engineer through the permitting process with an initial construction schedule for work in the Streets and the estimated total cost of such work together with its permit application. When NW Natural's construction in the Streets is completed, NW Natural shall provide the City with maps showing the location of its installed Facilities in the Streets, as built. Such "as-built" maps shall be in a form acceptable to the City Engineer. Within one (1) year of the effective date of this Franchise, NW Natural shall begin providing "as-built" maps in electronic form.

(B) One (1) year after the effective date of this Franchise, and annually thereafter in the event of any alterations, NW Natural shall provide a map to the City Engineer and the City's Office of Cable Communications and Franchise Management, or its successor, showing the location of NW Natural's Facilities in the Streets on a scale of three thousand five hundred feet (3,500') per inch, or whatever scale the City and NW Natural agree upon. NW Natural shall also provide such maps in an electronic format acceptable to the City and to NW Natural.

(C) The level of detail in maps provided by NW Natural shall be limited to that which is needed for the City's administration of the Streets in order to protect NW Natural's confidential business information and the security of NW Natural's System.

4.3 Relocation. The City shall have the right to require NW Natural to change the location of its Facilities within the Streets when the public convenience requires such change, and the expense thereof shall be paid by NW Natural (however, payment by NW Natural shall in no way limit NW Natural's right, if any, to seek reimbursement for such costs from any third party). Except as to materials or design requirements for bridge maintenance or seismic upgrading, if in ordering relocation, the City imposes additional specifications regarding materials or design for NW Natural's Facilities, the additional marginal increase shall not be considered relocation costs that are NW Natural's responsibility. The City Engineer shall have unlimited discretion in determining the reasonable relocation schedule, based upon the City Engineer's consideration of the total circumstances of the project schedule. If after receiving the City Engineer's relocation schedule, NW Natural identifies in writing that the work associated with relocating NW Natural's Facilities will be of such size or scope that NW Natural believes that it is probable that NW Natural will not be able to complete the work within the schedule, NW Natural may request a meeting with the City Engineer to discuss whether modification of the relocation schedule, alternate construction methods, or alternate locations are reasonably possible given other project constraints. The City Engineer, working with City bureaus, will consider NW Natural's safety, reliability, and cost concerns while considering potential effects on project schedules, project budget, and any other relevant matters. However, the City Engineer will retain full authority and

discretion to make any final decisions regarding any modifications to the relocation schedule, based upon the City Engineer's consideration of the total circumstances of the project schedule. The City shall provide NW Natural with the standard notice given under the circumstances to other Persons franchised, permitted, licensed, or otherwise granted authority by the City. Should NW Natural fail to remove or relocate any such Facilities by the date established by the City Engineer's schedule, the City may cause and/or effect such removal or relocation by Qualified Workers and the expense thereof shall be paid by NW Natural, including all direct, indirect, and/or consequential costs and expenses incurred by the City due to NW Natural's delay (however, payment by NW Natural shall in no way limit NW Natural's right, if any, to seek reimbursement for such costs from any third party). If the City requires NW Natural to relocate its Facilities located within the Streets, the City will make a reasonable effort to provide NW Natural with an alternate location for its Facilities within the Streets, or if an alternate location is unavailable, will make the City's project management personnel available to meet with affected property owners and explain City project needs in support of NW Natural's efforts to secure an alternate location on private property.

For purposes of this subsection, "Qualified Worker" means one who is knowledgeable about the construction and operation of the natural gas generation, transmission, and distribution system as it relates to his or her work, along with the associated hazards, as demonstrated by satisfying the qualifying requirements for the qualification of pipeline personnel with regard to the work in question as set forth in 49 CFR 192.801 to 192.809 and by completion of NW Natural's in-house contractor safety certification program. The Parties acknowledge that for purposes of this Franchise, a Qualified Worker need not be an employee of the City or NW Natural.

4.4 Maintenance of Facilities. All Facilities of NW Natural shall be placed so that they do not interfere unreasonably with the use by the City and the public of the right-of-way and public places and in accordance with any specifications adopted by the City governing the location of Facilities. All Facilities constructed or erected by NW Natural pursuant to this Franchise shall be of good quality and workmanship and shall be maintained in good repair and efficiency.

4.5 Provision of Ducts. The City has a policy of seeking to install additional ducts when a franchisee is conducting new construction in the streets. The installation of additional ducts when a trench is already open generally presents an opportunity to avoid base costs of excavation and restoration, with the City assuming the marginal costs of materials and labor. NW Natural generally does not install additional ducts for excess capacity when undertaking new construction. Accommodating the installation of additional ducts would require NW Natural to modify its general trenching standards to increase width and depth. Under these circumstances, the parties do not anticipate that there could be any reasonable expectation of achieving reduced expenses through the City's otherwise established process of cost-sharing by purchasing duct to place into NW Natural's trenches for new construction.

## **Section 5. RESTORATION OF STREETS**

5.1 Street Repairs. Whenever NW Natural disturbs the surface of any Street for any purpose, NW Natural shall promptly restore the Street to at least its prior condition, to the satisfaction of

the City Engineer. When any opening is made by NW Natural in a hard surface pavement in any Street, NW Natural shall promptly refill the opening and restore the surface to a condition satisfactory to the City Engineer.

5.2 Excavation Repairs. If NW Natural excavates the surface of any Street, NW Natural shall be responsible for restoration of the Street and its surface within the area affected by the excavation. The City may, after providing notice to NW Natural, refill and/or repave any opening made by NW Natural in the Street, and the expense thereof shall be paid by NW Natural. The City reserves the right, after providing notice to NW Natural, to remove and/or repair any work done by NW Natural which, in the determination of the City Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by NW Natural. All excavations made by NW Natural in the Streets shall be properly safeguarded for the prevention of accidents. All of NW Natural's work under this Section 5.2 shall be done in strict compliance with all applicable rules, regulations, and ordinances of the City. NW Natural's responsibility for maintaining repairs to any surface areas disturbed by NW Natural's work shall end upon the occurrence of either a reconstruction of the Street in an approved manner by the City (curb to curb) or upon subsequent work at the same location by any other Person franchised, permitted, licensed, or otherwise granted authority by the City, whichever occurs first.

## **Section 6. RESERVATION OF CITY STREET RIGHTS**

Nothing in this Franchise shall be construed to prevent the City from constructing sewers, grading, paving, repairing, and/or altering any Street or laying down, repairing, or removing water mains or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure, or prevent the unrestricted use and operation of the Facilities of NW Natural under this Franchise. However, if any of the Facilities of NW Natural interfere with the construction or repair of any Street or public improvement, including construction, repair, or removal of a sewer or water main, the City may direct NW Natural to relocate all such Facilities as provided in Section 4.3 of this Franchise.

## **Section 7. GENERAL FINANCIAL AND INSURANCE PROVISIONS**

### 7.1 Insurance.

(A) NW Natural shall maintain public liability and property damage insurance that protects NW Natural from the claims referred to in Section 8, to the extent that liability coverage for the indemnity is available in the marketplace. The insurance shall provide coverage at all times of not less than \$1,000,000 combined single limit for bodily injury liability and property damage liability per occurrence with an annual aggregate limit of not less than \$3,000,000. The limits of the insurance shall be subject to any changes as to maximum statutory limits of liability imposed on municipalities of the State of Oregon during the term of the Franchise. 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 herein 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. The insurance shall provide that the coverage shall not be canceled or materially altered without thirty (30) days' prior written notice first being given to the City Auditor. If the insurance is canceled or materially altered within the term of this Franchise, NW Natural shall obtain a replacement policy with the same terms. NW Natural agrees to maintain continuous uninterrupted coverage, in the terms and amounts required, for the duration of this Franchise.

(B) NW Natural shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required above. The City Attorney's Office will review the certificate to determine whether the certificate demonstrates compliance with the coverage required in Section 7.1(A). The City Attorney's Office may reject any proposed certificate if the insurance proposed to be provided is not the same as the coverage required in Section 7.1(A), may reject the certificate if it is not clear or may require that the underlying policy be presented for review. If the City Attorney's Office rejects the proposed certificate, NW Natural shall provide a revised certificate to demonstrate that the insurance coverage required in Section 7.1(A) has been obtained. Review or approval by the City Attorney's Office of any insurance certificate will not excuse the Contractor from providing the insurance coverage required in Section 7.1(A). Failure to maintain liability insurance shall be cause for immediate termination of this Franchise by the City.

(C) In the alternative to providing a certificate of insurance to the City certifying liability insurance coverage as required in Section 7.1(A), NW Natural may provide the City with an annual statement regarding its self-insurance. NW Natural's self-insurance shall provide at least the same amount and scope of coverage for NW Natural and the City, its officers, agents, and employees, as otherwise required under Section 7.1(A). The adequacy of such self-insurance shall be subject to the City Attorney's review and approval. Upon NW Natural's election to provide self-insurance coverage under this Section 7.1(C), any failure by NW Natural to maintain adequate self-insurance shall be cause for the City to declare a forfeiture of this Franchise.

## 7.2 Faithful Performance Bond.

(A) Upon the effective date of this Franchise, NW Natural shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of not less than \$100,000, conditioned that NW Natural shall well and truly observe, fulfill, and perform each term and condition of the Franchise. NW Natural shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of the Franchise, including, if necessary, the time required for removal of all of NW Natural's Facilities. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days' prior written notice first being given to the City Auditor. The bond shall be reviewed and approved as to form by the City Attorney.

(B) During the term of the Franchise, NW Natural shall file with the City Auditor a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights against the performance bond under this

Section 7.2 if a bona fide, good faith dispute exists between the City and NW Natural.

7.3 Construction Bond. During all times when NW Natural is performing any construction work in or under the Streets requiring a Street opening permit, NW Natural shall post a faithful performance bond running to the City, as is required for Street opening permits, with good and sufficient surety approved by the City, in the sum of \$100,000. The bond shall be conditioned that NW Natural shall well and truly observe, fulfill, and perform each term and condition under Section 4. NW Natural shall pay all premiums or other costs associated with maintaining the bond, and shall keep the same in full force and effect at all times during the construction work. The bond shall provide that it may be terminated upon final approval of NW Natural's construction work in or under the Streets by the City Engineer. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section 7.3. During the duration of the construction work, NW Natural shall file with the City Auditor a copy of the bond, along with written evidence of the required premiums. The bond shall be subject to the approval of the City Attorney as to its adequacy under the requirements of this Section 7.3.

## **Section 8. COVENANT TO INDEMNIFY AND HOLD CITY HARMLESS**

8.1 Indemnification – General. NW Natural hereby agrees and covenants to indemnify, defend, and hold the City, its officers, agents, and employees, harmless from any claim for injury, damage, loss, liability, cost, or expense, including court and appeal costs and reasonable attorney fees or expenses, arising from any casualty or accident to any person or property by reason of any construction, excavation, or any other act done under this Franchise, by or for NW Natural, its agents, or employees, or by reason of any neglect or omission of NW Natural to keep its Facilities in a safe condition. Notwithstanding anything to the contrary in this Section 8.1, NW Natural is not required to indemnify the City, its officers, employees, or agents from and against liability for damages arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents, or employees. The City shall provide NW Natural with prompt notice of any such claim which NW Natural shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done without the prior written approval of NW Natural. NW Natural and its agents, contractors, officers, and employees shall consult and cooperate with the City while conducting its defense of the City, and the City, its officers, agents, and assigns shall consult and cooperate with NW Natural while conducting its defense of the City. Such indemnification shall not extend to claims by the City for outages, power quality or other claims by the City related to gas services provided by NW Natural to the City.

8.2. Indemnification – Relocation. NW Natural also hereby agrees to indemnify the City, its officers, agents and employees, for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from NW Natural's failure to remove, adjust or relocate any of its Facilities with all related Facilities in the Streets in a timely manner in accordance with a reasonable relocation schedule furnished to NW Natural by the City Engineer in writing as provided in Section 6.3, unless NW Natural's failure arises directly from the City's negligence or willful misconduct.

8.3 Indemnification – Hazardous Substances. NW Natural agrees to forever indemnify the

City, its officers, agents, and employees, from and against any claims, costs, and expenses of any kind, whether direct or indirect, or pursuant to any state or federal law, statute, regulation, or order, for the removal or remediation of any leaks, spills, contamination, or residues of Hazardous Substances, directly attributable to NW Natural's Facilities in the Streets.

### **Section 9. STREET VACATION**

Upon receipt of any request for vacation of any Street or portion thereof used by NW Natural, the City shall provide NW Natural with the standard notice provided for street vacations. If any Street or portion thereof used by NW Natural is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to NW Natural the right to continue its installation in the vacated Street area or NW Natural secures such right from the third party that will have title to the area in which NW Natural has its Facilities, NW Natural shall, without expense to the City, remove its Facilities from such Street, restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area in such condition as may be required by the City Council, which shall be no worse than the condition of such Street immediately prior to removal. In the event of failure, neglect, or refusal of NW Natural, after thirty (30) days' written notice by the City Council, to repair, improve, or maintain such Street portions, the City may do such work or cause it to be done, and the direct cost thereof, as found and declared by the City Council, shall be entered in the Docket of City Liens against any property of NW Natural which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such Docket. The City shall make reasonable efforts to assist NW Natural in identifying potential available alternative locations within the Streets, or, if requested by NW Natural, will cooperate with NW Natural's efforts to secure an alternate location in the vacated Street area from the third party that shall have ownership after vacation.

### **Section 10. CONTROL OF NATURAL GAS**

NW Natural shall provide and put in use equipment and appliances necessary to control and distribute natural gas to the point of NW Natural's delivery to its customers consistent with applicable pipeline safety rules and regulations. NW Natural, at its own expense, shall repair, renew, change, and improve its Facilities from time to time as may be necessary to accomplish this purpose. NW Natural shall not connect natural gas service in a manner that requires the customer to install a natural gas line, conduit, or other facility, under or over a Street.

### **Section 11. HAZARDOUS SUBSTANCES**

11.1 Compliance with Applicable Law. NW Natural shall comply with all applicable state and federal laws, statutes, regulations, and orders concerning Hazardous Substances relating to its Facilities in the Streets.

11.2 Maintenance, Inspection, and Remediation. NW Natural shall maintain and inspect its Facilities located in the Streets. If NW Natural discovers any Hazardous Substances in the course of NW Natural's work on its Facilities in the Streets, NW Natural shall provide a written report of the discovery to the City within two (2) business days. NW Natural shall immediately proceed to remove and remediate, in accordance with, and only to the extent required by, all applicable local,

state, and federal laws, any Hazardous Substances in the Streets directly attributable to or caused by NW Natural's Facilities or the acts or omissions of NW Natural. Nothing in this Franchise transfers or is intended to transfer any liability to the City for removal or remediation of any such Hazardous Substances in the Streets.

11.3 Construction, Modification, or Removal of Facilities. In the course of construction, modification, or removal of any of its Facilities in the Streets, to the extent necessary to safely proceed with such work, NW Natural shall remove and remediate Hazardous Substances encountered in the course of its activities in accordance with, and only to the extent required by, all applicable state and federal laws, statutes, regulations, and orders. NW Natural may use reasonable business efforts to recover its costs for such removal and disposal from all legally responsible third parties.

## **Section 12. COOPERATION REGARDING LOCAL ACTION PLAN ON GLOBAL WARMING**

NW Natural's services shall include assistance to its customers in increasing the efficiency of their energy consumption. The level of expenditure on efficiency programs is established by the OPUC. NW Natural shall support efficiency programs for its customers consistent with OPUC requirements. Within the regulatory framework established by state law and the OPUC, NW Natural agrees to work with the City to identify mutually acceptable ways for Grantee to support the City's efforts to meet the goals contained in the April 2001 Local Action Plan on Global Warming, or successor climate-protection action plans adopted by the Council during the Franchise term.

## **Section 13. CITY'S CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE, OR MORTGAGE**

13.1 Neither this Franchise nor all or substantially all of the System located in the Streets by authority of this Franchise shall be sold, leased, mortgaged, assigned, merged, or otherwise transferred, except to entities that control, are controlled by, or are under common control with NW Natural, without the prior written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld. NW Natural shall give written notice to the City of any transfers to entities under such common control within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained in this Franchise shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of NW Natural's System for the purpose of financing the acquisition of equipment for or the construction and operation of NW Natural's System, within or outside the City, without the City's consent, but any such mortgage, pledge, or assignment with respect to NW Natural's System shall be subject to the City's other rights contained in this Franchise.

### 13.2 Review.

(A) In determining whether the City will consent to any sale, lease, mortgage, assignment, merger, or transfer, the City may inquire into the technical, legal, and financial

qualifications of the prospective party. NW Natural shall assist the City in any such inquiry. The City may condition any sale, lease, mortgage, assignment, merger, or transfer upon such conditions related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of this Franchise, as it deems appropriate. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer, or merger.

(B) If a sale, lease, mortgage, assignment, merger, or transfer of NW Natural's System located in the Streets by authority of this Franchise is subject to review and approval by the OPUC under ORS 757.480 to 757.516, the City shall accept final approval by the OPUC of the sale, lease, mortgage, assignment, merger, or transfer as conclusive evidence of the technical, legal, and financial qualifications of the prospective party regarding operation of the System. The sale, lease, mortgage, assignment, merger, or transfer shall still be subject to consent by the City Council as expressed by ordinance, as required by the Charter of the City of Portland, Oregon.

(C) No sale, lease, mortgage, assignment, transfer, or merger for which the City's consent by ordinance is required may occur until the successor, assignee, or lessee has complied with the requirements of Section 7, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, NW Natural shall file with the City Auditor an executed counterpart or certified copy thereof.

13.3. Leases. NW Natural shall not lease any portion of its franchised System without the City's prior consent as expressed by ordinance. However, and notwithstanding Section 13.1, NW Natural may lease any portion of its System in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as NW Natural remains solely responsible for locating, servicing, repairing, relocating, or removing such portion of its System. A lessee of any portion of NW Natural's System shall not obtain any rights under this Franchise.

13.4. Sales.

(A) Notwithstanding Section 13.1, NW Natural may sell portions of its Facilities in the ordinary course of its business, without otherwise obtaining the City's consent by ordinance, so long as NW Natural complies with the following conditions:

(1) The sale is to the holder of a current existing, valid franchise, license, permit, or other similar right granted by the City;

(2) Within fourteen (14) days of the sale being executed and becoming final, NW Natural shall provide written notice to the City, describing the portions of the Facilities sold by NW Natural, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the requirements of Section 4.2) and providing an executed counterpart or certified copy of the sales documents;

(3) NW Natural remains solely responsible for locating, servicing, repairing, relocating, or removing its remaining System; and,



(4) Within fourteen (14) days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the City that it has assumed sole responsibility for locating, servicing, repairing, relocating, or removing the purchased Facilities under the purchaser's current, existing valid franchise, license, permit, or other similar right granted by the City. The purchaser shall not obtain any of NW Natural's rights under this Franchise.

#### **Section 14. REGULATION AND NONENFORCEMENT BY THE CITY**

The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest. NW Natural shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect. Services furnished by NW Natural under this Franchise shall be rendered using the best practicable commercial methods and practices, insuring the least danger to life and property compatible with good engineering practice. For purposes of this Section 14, "best practicable commercial methods and practices" shall mean compliance with federal and state gas pipeline and safety rules, regulations and standards, and applicable City ordinances.

#### **Section 15. DISCONTINUING USE OF FACILITIES**

15.1 Abandonment. If NW Natural intends to permanently abandon a Facility within all or part of a particular portion of the Streets by physically disconnecting it from its operating System, NW Natural shall submit to the City Engineer a completed right-of-way permit application describing the structures or other Facilities and the date on which NW Natural intends to permanently abandon such Facilities. NW Natural may elect to remove the abandoned Facilities or request that the City allow them to remain in place. NW Natural's sale of a portion of its System shall not, by itself, be considered abandonment under this Section 15.

15.2 Removal or Modification. Upon receiving notice from NW Natural of the intent to abandon a Facility by permanently disconnecting it from its operating system, the City may consent to having the ownership of the abandoned Facilities in the Streets transfer to the City and NW Natural shall have no further obligation therefore. Notwithstanding NW Natural's request that any abandoned Facility remain in place, the City Engineer may require NW Natural to remove the Facility from the Street or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require NW Natural to perform a combination of modification and removal of the Facility. NW Natural shall complete such removal or modification in accordance with a reasonable schedule set by the City Engineer. The City Engineer shall have unlimited discretion in determining a reasonable schedule for removal or modification of the abandoned Facility, based upon the Engineer's consideration of the total circumstances of the schedule. Until such time as NW Natural removes or modifies the Facility as directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by the City or by another Person having authority to construct and maintain Facilities with the Streets, NW Natural shall continue to be responsible for all necessary repairs and relocations of the abandoned Facility, as well as restoration of the Street, in the same manner

and degree as if the abandoned Facility were in active use, and NW Natural shall retain all liability for the abandoned Facility.

#### **Section 16. CHARTER AND GENERAL ORDINANCES TO APPLY**

This Franchise is subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, now in effect, or hereafter made effective, and particularly to the applicable provisions presently contained in Sections 10-101 through 10-218, inclusive, of the Charter of the City of Portland (1942 compilation and revised in part by subsequent amendments), as the same now exist or hereafter are amended by the people of the City of Portland. Except as provided in Section 3.3, nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid, or the manner of construction.

#### **Section 17. MEDIATION**

Any dispute between the parties concerning any aspect of this Franchise which is not resolved by mutual agreement of the parties may be submitted to mediated negotiation prior to any party commencing litigation. In such event, the City and NW Natural agree to participate in a non-binding mediation process. The mediator shall be selected by mutual agreement of the parties. In the absence of such mutual agreement, each party shall select a temporary mediator, and those mediators shall jointly select a permanent mediator. If the City and NW Natural are unable to successfully conclude the mediation within forty-five (45) days from the date of the selection of the mediator, either party may terminate further mediation by sending written notice. After written notice has been received by the other party, either party may request arbitration, as set forth in Section 17, or may pursue whatever legal remedies exist. All costs associated with mediation shall be borne, equally and separately, by the parties.

#### **Section 18 FORFEITURE AND REMEDIES**

18.1 Forfeiture. In addition to any other rights set out elsewhere in this Franchise, the City reserves the right to declare a forfeiture of the Franchise, and all of NW Natural's rights arising thereunder, in the event that:

(A) NW Natural violates any material provision of the Franchise. For purposes of this Section 18.1, the following are material provisions of this Franchise, allowing the City, without limitation, to exercise its rights under this Section 18.1 or as set forth elsewhere in this Franchise:

- (1) The invalidation, failure to pay, or any suspension of NW Natural's payments of Franchise fees to the City for use of the Streets under this Franchise;
- (2) Any failure by NW Natural to submit timely reports regarding the calculation of its Franchise fees to the City;
- (3) Any failure by NW Natural to maintain the liability insurance required under this Franchise;

(4) Any failure by NW Natural to maintain the performance bond required under this Franchise;

(5) Any failure by NW Natural to provide copies of requested information as provided under Section 3.5; or

(6) Any failure by NW Natural to otherwise fully comply with the material requirements of this Franchise.

(B) NW Natural is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City;

(C) There is a final determination that NW Natural has failed, refused, neglected, or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding NW Natural's operation of its System within the City; or

(D) NW Natural becomes unable or unwilling to pay its debts, or is adjudged bankrupt.

18.2 Additional Remedies. In addition to any rights set out elsewhere in this Franchise, as well as its rights under the City Code, the City reserves the right at its sole option to apply any of the following, alone or in combination:

(A) Impose a financial Penalty of up to \$1,000 per Franchise violation; or

(B) Suspend NW Natural's Franchise rights related to the violation, until NW Natural corrects or otherwise remedies the violation.

(C) The City Council may revoke this Franchise in the event that any provision becomes invalid or unenforceable and the City Council expressly finds that such provision constituted a consideration material to the grant of the Franchise.

18.3 Assessment of Remedies. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, NW Natural's efforts to cure the violation after notice thereof, the Persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate.

18.4 Notice and Opportunity to Cure. The City shall give NW Natural thirty (30) days' prior written notice of its intent to exercise its rights under this Section 18, stating the reasons for such action. If NW Natural cures the stated reason within the thirty (30)-day notice period, or if NW Natural initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue, the City shall not exercise its remedy rights. If NW Natural fails to cure the stated reason within the thirty (30)-day notice period, or if NW Natural does not undertake and/or maintain efforts satisfactory to the City to remedy the stated reason, then the City Council may impose any or all of the remedies available under this Section 18. However, in no event shall the City exercise its rights under this Section 18 if a bona fide, good faith dispute exists between the City and NW Natural. The City shall also not exercise its rights under this Section 18 if the parties have elected to arbitrate a dispute and shall not exercise its rights under Section 18 until

conclusion of mediation, if the parties have elected to mediate the dispute under Section 17.

## **Section 19. MISCELLANEOUS PROVISIONS**

### **19.1 Compliance with Laws.**

(A) Both NW Natural and the City shall comply with all applicable federal and state laws.

(B) NW Natural shall comply with all applicable City ordinances, resolutions, rules, and regulations adopted or established pursuant to the City's lawful authority.

19.2 Severability. If any section, provision, or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, unless the City Council determines such section, provision, or clause was material to the City's agreement to issue a franchise to NW Natural.

### **19.3 Force Majeure.**

(A) For the purposes of this section, "Force Majeure" means any cause not reasonably within the control of a party. Force Majeure shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms, or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage, or accident; (ii) weather-related events, such as low temperatures which cause freezing or failure of wells or lines of pipe; and (iii) acts of others such as strikes, lockouts, or other operational disturbances, riots, sabotage, insurrections, or wars. NW Natural and the City shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to resolve the event or occurrence once it has occurred in order to resume performance. Notwithstanding anything to the contrary herein, the parties agree that the settlement of strikes, lockouts, or other operational disturbances shall be within the sole discretion of the party experiencing such disturbance.

(B) If NW Natural is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, NW Natural shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and NW Natural's obligations under this Franchise, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. NW Natural agrees to use its best efforts to remedy as soon as possible, under the circumstances, NW Natural's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Franchise.

19.4 Choice of Forum. Any litigation between the City and NW Natural arising under or regarding this Franchise shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Portland.

19.5 Choice of Law. This Franchise shall be governed by and construed in accordance with the

laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the law of a different state.

19.6 Notices. Any notice provided for under this Franchise shall be sufficient if in writing and (i) delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; (ii) sent by overnight or commercial air courier (such as Federal Express); or (iii) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

(A) If to the City:

Office of Cable Communications and Franchise Management  
City of Portland, Oregon  
1120 SW 5<sup>th</sup> Avenue, Room 1305  
Portland, Oregon 97204  
FAX (503) 823-5370

With a copy to:

City Attorney's Office  
City of Portland  
1221 SW 4<sup>th</sup> Avenue, Room 430  
Portland, Oregon 97204  
FAX (503) 823-3089

(B) If to NW Natural:

Risk, Environment and Land Department  
NW Natural  
220 NW Second Avenue  
Portland, Oregon 97202  
FAX (503) 220-2585

With a copy to:

Office of the General Counsel  
NW Natural  
220 NW Second Avenue  
Portland, Oregon 97202  
FAX (503) 220-2584

(C) Any such notice, communication, or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail as aforesaid, one (1) business day after shipment by commercial air courier as aforesaid, or the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday, or legal holiday).

### 19.7 Confidentiality/Public Records.

(A) NW Natural may identify information submitted to the City pursuant to this Franchise as confidential or proprietary. Prior to submitting such information to the City, NW Natural shall prominently mark any such information with the mark "Confidential." The City shall treat any information so marked as confidential and not subject to public disclosure, until the City receives any public records request for disclosure of such information. Within five (5) working days of receiving any such request, the City shall provide NW Natural with written notice of the request, including a copy of the request. NW Natural shall have five (5) working days within which to provide a written response to the City, before the City may release any of the requested confidential information. Whether NW Natural submits any written response to the City, the City shall retain final discretion to determine whether to release the requested confidential information, provided that the City shall give NW Natural at least five (5) days written notice after receipt of any response from NW Natural, prior to releasing such information.

(B) Public Records. NW Natural and the City acknowledge that documents and records submitted by NW Natural to the City may be subject to or exempt from public inspection, under the Oregon Public Records Law. NW Natural acknowledges its responsibility for becoming familiar with the provisions of the Oregon Public Records Law.

(1) Some information submitted by NW Natural to the City may be relevant to NW Natural's obligation to pay franchise fees. Requiring such information to be submitted to the City in order to determine fees payable or paid to the City may qualify such information as being exempt from public disclosure under ORS 192.501(5) (2007) of the Oregon Public Records Law.

(2) Some information submitted by NW Natural to the City may otherwise be used to conduct its business and known to certain individuals within the organization, with actual or potential commercial value, and giving NW Natural a business advantage over its competitors. Such information may constitute trade secrets and be exempt from public disclosure under ORS 192.501(2) (2007) of the Oregon Public Record Law.

(3) Some information submitted by NW Natural to the City may identify areas of structural or operational vulnerability that might, if disclosed, permit unlawful disruption to, or interference with, delivery of utility services. Such information may be exempt from public disclosure under ORS 192.501(22) (2007) of the Oregon Public Records Law.

(4) Identification in this Subsection 20.7 of certain exemptions under the Oregon Public Records Law which may apply to information submitted by NW Natural to the City is not intended as an exhaustive list of exemptions possibly applicable to such information during the term of this Franchise.

19.8 Written Acceptance. On or before the thirtieth (30th) day after this Franchise becomes effective, NW Natural shall file in the Office of the Auditor of the City of Portland a written acceptance of this Franchise, executed by NW Natural, meeting the approval of the City Attorney. Any failure on the part of NW Natural to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this

Franchise shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions, and restrictions contained in this Franchise.

19.9 Renegotiation. In the event any provision of this Franchise becomes invalid or unenforceable and the City Council or NW Natural expressly finds that such provision constituted a consideration material to entering into this Franchise, the City and NW Natural may mutually agree to renegotiate the terms of this Franchise. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the offer to renegotiate, the parties shall have ninety (90) days to conduct and complete the renegotiation. If both parties agree to renegotiations under this Section, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

19.10 NW Natural's Territorial Grant. In agreeing to this Franchise, NW Natural does not relinquish, waive, or otherwise abandon claim to any rights it may have to operate a natural gas distribution system, a coke manufacturing plant, and related distribution facilities in the City of Portland under a grant made by the Legislative Assembly of the Territory of Oregon on January 7, 1859, or any other grant of franchise, rights, or other authorities (the "Territorial Grant"). During the term of this Franchise, NW Natural agrees not to assert rights under the Territorial Grant in a manner inconsistent with this Franchise. In granting this Franchise, City does not in any way relinquish, waive, or otherwise abandon any claim, defense or other argument that the City may have that the Territorial Grant has expired, is not valid, or does not grant the rights asserted by NW Natural.

19.11 Captions. Throughout this Franchise, captions to sections are intended solely to facilitate reading and to reference the sections and provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

## **Section 20. FRANCHISE RENEWAL**

29.1 Renewal. The parties acknowledge that renewal negotiations will require reasonably adequate time; therefore, at least one year before the expiration of this Franchise, either party may request renewal of the Franchise. If either the City or NW Natural so requests, the parties agree to enter into good faith negotiations with regard to renewal of the Franchise and the terms and conditions thereof. If such negotiations extend beyond the expiration date of this Franchise, NW Natural's rights and responsibilities within the City shall be controlled by the terms of this Franchise during the period of such negotiations. If at any time during the negotiations, either party determines that negotiations have deadlocked and no future progress is possible, the party may terminate negotiations by mailing sixty days written notice of termination of negotiations. The parties may alternatively agree to mediation as provided by Section 17 of this Franchise. An agreement to mediate shall be considered a continuation of negotiations under this Section.

20.2 City's Rights. If the parties are unable to agree upon the terms and conditions of a renewal of this Franchise, the City may exercise such rights as it may have under applicable law.

~~162~~

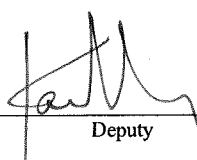

- 315

JMD

T

Agenda No.  
**ORDINANCE NO. 182618**  
Title

Grant a franchise to Northwest Natural Gas Company for a period of 20 years. (Ordinance)

<b>INTRODUCED BY</b>	CLERK USE: DATE FILED <u>FEB 12 2009</u>
<i>Comm. Amanda Fritz</i>	Gary Blackmer Auditor of the City of Portland
<b>NOTED BY COMMISSIONER</b>	By:  Deputy
Mayor—Finance and Administration	<b>ACTION TAKEN:</b>  <b>FEB 18 2009 PASSED TO SECOND READING MAR 25 2009 9:30 A.M.</b>
Position 1—Utilities <i>Amanda Fritz</i>	
Position 2—Works	
Position 3—Affairs	
Position 4—Safety	
<b>BUREAU APPROVAL</b>	
Bureau: Office of Cable Communications & Franchise Management	
Prepared by: Mary Beth Henry Date Prepared: February 5, 2009	
Financial Impact Statement <input checked="" type="checkbox"/> Completed <input type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required	
Portland Policy Document If "Yes," requires City Policy paragraph stated in document. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Council Meeting Date February 18, 2009	
Bureau Head: David Olson 	

AGENDA		FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
			YEAS	NAYS
Consent	Regular <input checked="" type="checkbox"/>	1. Fritz	<input checked="" type="checkbox"/>	
NOTED BY		2. Fish	<input checked="" type="checkbox"/>	
<input checked="" type="checkbox"/>	City Attorney <i>Benjamin Walter</i>	3. Saltzman	<input checked="" type="checkbox"/>	
		4. Leonard	<input checked="" type="checkbox"/>	
		Adams	<input checked="" type="checkbox"/>	



Passed by Council: MAR 25 2009  
Commissioner Amanda Fritz  
MBHenry/BWalters  
February 12, 2009

**GARY BLACKMER**  
Auditor of the City of Portland  
By *Susan Lacroix*  
Deputy