

**RESOLUTION NO. 2918**

**A RESOLUTION AUTHORIZING SMART (SOUTH METRO AREA REGIONAL TRANSIT) TO ENTER INTO AN AGREEMENT WITH NW NATURAL GAS, TO PROVIDE HIGH PRESSURE GAS SERVICE AT 28879 SW BOBERG ROAD.**

WHEREAS, SMART has an immediate need for high pressure gas service for the purpose of vehicle fueling; and

WHEREAS, NW Natural Gas is the gas utility provider for Wilsonville; and

WHEREAS, NW Natural Gas has a PUC approved program to provide such service; and

WHEREAS, upon researching all available gas service options, City staff has concluded that this is the most advantageous service available; and

WHEREAS, the City Council has duly appointed itself as the Local Contract Review Board, and acting as the Local Contract Review Board, is authorized to award this contract in accordance with State requirements as recommended by staff.

**NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:**

Section 1. Based on the above recitals, which are incorporated herein, the City Council, acting as the Local Contract Review Board, does hereby approve and authorize SMART to award a contract for the installation and maintenance of high pressure gas service equipment to NW Natural Gas.

Section 2. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting there of this 16<sup>th</sup> day of August 2021, and filed with the Wilsonville City Recorder this date.

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JULIE FITZGERALD, Mayor

ATTEST:

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Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Fitzgerald	Yes
Council President Akervall	Excused
Councilor Lehan	Yes
Councilor West	Yes
Councilor Linville	Yes

ATTACHMENTS:

- A. NW Natural Advice No. 17-21, January 19, 2018
- B. Draft Proposed Contract

PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: January 30, 2017

REGULAR  CONSENT  EFFECTIVE DATE February 1, 2018

DATE: January 19, 2018

TO: Public Utility Commission

FROM: Scott Gibbens *SG*

THROUGH: Jason Eisdorfer and John Crider *J E for JC*

SUBJECT: NORTHWEST NATURAL: (Docket No. ADV 694/Advice No. 17-21)  
Requests an extension for the Company's Schedule H "Large Volume  
Non-Residential High Pressure Gas Service (HPGS) Rider."

**STAFF RECOMMENDATION:**

Approve Northwest Natural's request in Advice No. 17-21 to extend the Company's Schedule H Rider, effective for service on and after February 1, 2018, for a period of five years, subject to the following condition:

- Staff will perform a review of market conditions prior to February 1, 2020 to determine if alternative Commission action is necessary or if the program should be allowed to continue until January 31, 2023.

**DISCUSSION:**

Issue

Whether the Commission should allow Northwest Natural Gas Company (NWN) to continue to offer its non-residential High Pressure Gas Service (HPGS), for which there is a potential competitive market, for an additional five-year period.

Applicable Rule or Law

The Commission may approve tariff changes if they are deemed to be fair, just and reasonable pursuant to ORS 757.210. Tariff revisions or corrections may be made by filing revised sheets with the information required under the Commission's administrative rules.

In this particular filing, NWN proposes to extend its provision of a regulated service in a potential competitive marketplace. The Commission addressed this issue in Order No. 14-014, concluding that “[a]lthough natural gas vehicle fueling is potentially a competitive business, CNG fueling is properly considered a utility service and may appropriately be offered under regulated tariffs.”<sup>1</sup> Additionally, the Commission adopted policy criteria for approval of NWN’s provision of CNG fueling as a regulated service. The criteria includes: (1) a demonstration that NWN customers are not only protected from the service offering, but will also receive a net benefit from the company’s entry into the market; (2) no competitive market for CNG vehicle fueling currently exists; and (3) the competitive market for the provision of CNG vehicle fueling may not develop absent utility participation, in other words, utility participation will likely be a catalyst to the growth of a competitive market.<sup>2</sup>

## Analysis

### *Background*

NWN filed Advice No. 17-21 on December 21, 2017, requesting a five-year extension of its Schedule H, Large Volume Non-Residential HPGS Rider. NWN originally asked for authority to provide this service in Advice No. 13-10, submitted on June 27, 2013. NWN proposed to add Schedule H, Large Volume Non-Residential HPGS Rider, to its Rate Schedules 3, 31, and 32 non-residential natural gas service schedules. Due to a significant number of parties expressing interest or concerns in the matter, the Public Utility Commission of Oregon (Commission) opened Docket No. UG 266 to investigate NWN’s proposal.

In Order No. 14-014, the Commission approved NWN’s proposal in Advice No. 13-10 as follows:<sup>3</sup>

We approve NW Natural's request. Although natural gas vehicle fueling is potentially a competitive business, CNG fueling is properly considered a utility service and may appropriately be offered under regulated tariffs. Moreover, NW Natural has structured its HPGS tariff rider in a manner that meets our requirements for a utility proposing to provide a regulated service in a potential competitive marketplace.

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<sup>1</sup> Order No. 14-104 at 6-7 (concluding that CNG fueling falls within the definition of utility service because the term "service" in ORS 756.010(8) is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served. The Commission further concluded the statutory definition of "public utility" in ORS 757.005 indicates that the legislature contemplated that alternative fuels for use in motor vehicles would be provided both as a regulated and non-regulated service.).

<sup>2</sup> Order No. 14-014 at 7-8.

<sup>3</sup> Order No. 14-014 at 6, 9, and 10.

In reaching these decisions, we acknowledge the concerns raised by Clean Energy and other [sic] that utilities may have certain advantages as marketplace participants. Due to these potential advantages, we conclude that reviews are necessary to assure the viability and integrity of competitive markets.

Accordingly, we condition our approval of NW Natural's HPGS to a period of two years from the effective date of the tariffs. Following that period, we will revisit the offering to determine whether the regulated service should continue, or whether it should be modified or discontinued on a going-forward basis. To assist that effort, we instruct our Staff to undertake an investigation of the CNG fueling market and NW Natural's participation in it, and to make such recommendations to the Commission as will further the growth of a robust competitive market. We specifically direct Staff to examine whether circumstances on which we based our decision have changed, and to report on the market development in parts of Oregon not served by NW Natural.

On December 14, 2015 NWN filed ADV 173/Advice No. 15-19 which requested a two-year extension of the HPGS program. As directed by Commission Order No. 14-014, Staff investigated the status of the CNG market to determine if circumstances had changed following the Commission's original decision. Staff found that the market had not changed in a significant manner and recommend approval of the proposed extension. The Commission adopted Staff recommendation in Commission Order No. 16-013, which extended the program through February 1, 2018.

#### *HPGS Service<sup>4</sup>*

This optional rider provides HPGS through NWN owned and maintained compression equipment sited on a HPGS customer's premises. According to NWN, the HPGS rider responds to customer requests for utility services that would provide the infrastructure needed to support the customer's ability to fuel vehicles using compressed natural gas (CNG).

NWN states that service under Schedule H provides a non-residential customer with a turn-key solution not otherwise available for providing the gas pressure required for vehicle fueling, without a significant upfront capital investment into compression facilities. The terms of service and pricing for HPGS will vary for each installation and will be laid out in the customer's HPGS Service Agreement. The customer will be billed a monthly facility charge designed to recover all equipment, permitting and siting costs. NWN proposes that the monthly facility charge be derived by multiplying the actual

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<sup>4</sup> The summary in this section is excerpted from the October 14, 2013, Staff Report in Advice No. 13-10, pp. 2 and 3.

project costs by an annual cost recovery factor, divided by 12. The cost recovery factor is designed to recover in each year the depreciation on the HPGS equipment plus NWN's financing costs, at its authorized return, for the investment made on behalf of the customer.

In addition, NWN states the HPGS customer's monthly bill will also include a charge for scheduled maintenance, and when applicable, charges for any other services such as unscheduled maintenance or back-up gas service that NWN may provide. The charges under Schedule H will be in addition to the charges for natural gas service billed in accordance with the non-residential rate schedule on which the customer is served. Both the costs and the revenues of this rate rider are treated as "above-the-line" rate regulated services. HPGS customers served under Schedule H will pay all costs associated with the provision of HPGS, and the addition of this service offering will have no negative cost impact on, and in fact benefit, other ratepayers.

This year NW Natural executed the first HPGS Agreement with the City of Portland. This is the first customer to be on Schedule H. Installation of the CNG equipment was completed in December 2017, and operations are expected to begin in the first quarter of 2018. The Company also has two signed feasibility agreements with customers interested in participating in the Schedule H program.

#### *Market Analysis*

Unlike Order No. 14-014, Commission Order No. 16-013 did not direct Staff to perform an investigation into the current status and effects of NWN's participation in the CNG fueling market. However, the Staff report stated:

Prior to the end of the two-year period, the Commission should determine whether the service should be continued as is, modified, or discontinued.

In an attempt to determine whether the service should be continued or modified at this point in time, Staff reviewed three questions in this filing that it derived from the direction found in prior Commission orders<sup>5</sup>:

1. Has the CNG fueling market changed in the previous two years? If so, how?
2. Is there or will there be a competitive CNG market in Oregon in the foreseeable future? Does NWN's participation impact the market in a harmful way?
3. Does the program provide a net benefit to NWN customers?

#### *CNG Market Changes*

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<sup>5</sup> See Order No. 16-013 at 4.

Based on information provided by the U.S. Department of Energy, Staff found a total of sixteen CNG fueling stations currently open and operating in Oregon. Comparatively, there were fifteen open stations in October of 2016. Two new stations opened in southern Oregon, both of which are outside of NWN's service territory; one station closed outside of NWN's service territory; and two stations located in Vancouver, WA opened within NWN's service territory. Roughly 30 percent of the CNG locations in Oregon are NWN owned sites. Table 1 below displays a list of the CNG stations open over time. Based on the information from the U.S. DOE, Staff concludes that there is little to no change in the CNG fueling market.

Table 1

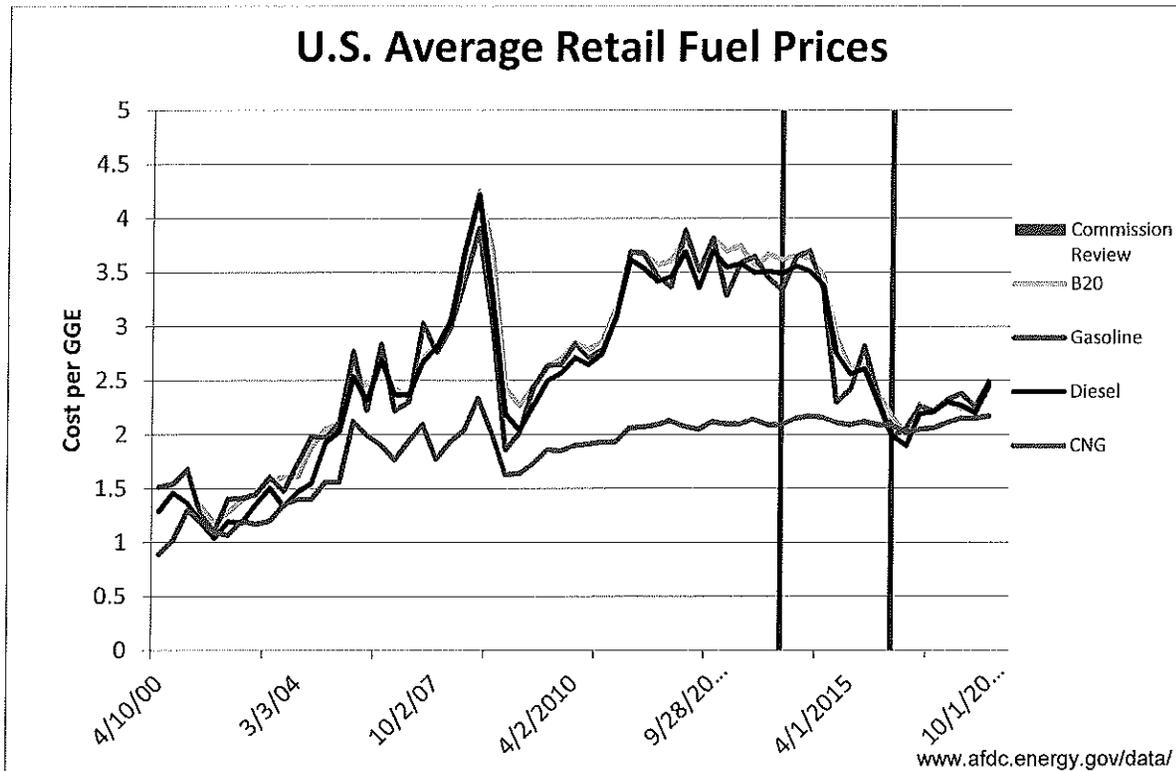
<u>May 2013 Stations</u>	<u>October 2015 Stations</u>	<u>December 2017 Stations</u>
Northwest Natural Gas - Parkrose Service Center	Northwest Natural Gas - Parkrose Service Center	Northwest Natural Gas - Parkrose Service Center
Northwest Natural Gas - Mt Scott Service Center	Northwest Natural Gas - Mt Scott Service Center	Northwest Natural Gas - Mt Scott Service Center
Northwest Natural Gas - Salem Service Center	Northwest Natural Gas - Salem Service Center	Northwest Natural Gas - Salem Service Center
Oregon Department of Administrative Services Motor Pool	Oregon Department of Administrative Services Motor Pool	Oregon Department of Administrative Services Motor Pool
Northwest Natural Gas - Sunset Service Center	Northwest Natural Gas - Sunset Service Center	Northwest Natural Gas - Sunset Service Center
Rogue Valley Transportation District	Rogue Valley Transportation District	Rogue Valley Transportation District
Port of Portland Airport	Port of Portland Airport	Port of Portland Airport
Salem - Keizer Transit	Salem - Keizer Transit	Salem - Keizer Transit
Avista Klamath Falls Service Center	Avista Klamath Falls Service Center	Avista Klamath Falls Service Center
Northwest Natural Gas - Sherwood Service Center	Northwest Natural Gas - Sherwood Service Center	Northwest Natural Gas - Sherwood Service Center
Northwest Natural Gas - Tualatin Service Center	Waste Management - Portland Hauling	Waste Management - Portland Hauling
Northwest Natural Gas - South Service Center	Truck 'N Travel CFN #746	Truck 'N Travel CFN #746
Jackson County Motorpool	Waste Management - Washington County	Waste Management - Washington County
	South Metro Area Regional Transit Agency	South Metro Area Regional Transit Agency

	Jackson County Motorpool	Clean Energy - Central Point Pilot #391
		TruStar Energy - Rogue Green Fuels LLC
		<b>Clean Energy - Waste Connections*</b>
		<b>Trillium CNG*</b>

\* Station located in Vancouver, WA

Staff also analyzed how external market forces have affected the growth of the CNG fueling market over the past two years. Table 2 below shows the price of CNG compared to several substitute fuels. The relative price of CNG compared to other fuels which could be utilized to power large vehicles has gotten more expensive. Although the gross price has remained relatively flat, the competing fuels have become cheaper. This occurred dramatically during 2014 and 2015, where the price of CNG went from being roughly 40 percent cheaper than competing fuels to roughly the same price. This makes building new CNG stations less attractive to investors as the long run cost savings or revenues are less likely to offset upfront capital costs in a given amount of time. The dramatic change in relative price was occurring around the same time frame as Staff's previous review of the CNG market. Since that point, prices have remained relatively close, although the most recent data shows a small divergence.

Table 2



### CNG Market Competition

Staff finds relatively little change in the competitive nature of the CNG market both within NWN's service territory and outside of NWN's service territory. Although Staff lacks the data to perform a more traditional test of competition in a given market (Herfindahl index or concentration ratio), Staff notes that little has changed since the previous Commission finding of an infant industry with little evidence of a robust competitive market. An increase of a single station does not warrant a change in the previous Commission position in Staff's view. Likely, the decrease in diesel and gasoline prices due to the shale oil boom had a dampening affect on the growth of the CNG market.

In examining how NWN may have or may be affecting competition in the industry, Staff also finds little impact. NWN's service territory encompasses over 50% of the entire population of the state, including the majority of the major population centers. Similarly, the majority of the CNG fueling stations are located within NWN's service territory. In

2015, 70 percent of the non-NWN-owned stations were located in NWN's service territory. In 2017, 69 percent were located within NWN's service territory. Likewise, half of the public CNG fuel stations were located within NWN's territory in 2015 and in 2017.

In summary, Staff finds that the CNG market has developed roughly the same between NWN's service territory and outside of its territory, which have both seen limited development. The changes have been small and insufficient to change Staff's position on the CNG fuel market. The outlook depends largely on the relative pricing of CNG compared to comparative fuels. This is the predominant reason for Staff's recommendation to approve the Company's request to extend the service for five more years, but on the condition that a follow up review of the market conditions be performed no later than two years from the new effective date of the tariff to ensure that circumstances have not changed enough to warrant a shift in Commission policy. To accomplish this, Staff recommends that the Company file a report which discusses the current state of the CNG market, including:

1. The number of new and existing entrants within and outside of NWN's service territory;
2. The current number of customers enrolled and beginning the process of enrolling in the HPGS program; and
3. Other outside factors affecting the development of a competitive market.

This report should be provided by to the Commission via electronic filing no later than December 1, 2019. Staff will then have approximately 60 days to review the market status and inform the Commission should alternative actions be necessary via a public meeting before the two-year anniversary of February 1, 2020.

#### *Net Benefit to Customers*

As discussed above, because NWN is offering a regulated utility service in a competitive market, customers must receive a net benefit from the company's entry into the market. Similar to market conditions, Staff sees little change in the benefit to customers found by the Commission in UG 266. As stated in Staff's report dated December 29, 2015:

The additional sales made through the HPGS offering will provide net benefits generally to other customers. The sales of natural gas to the new HPGS customers will make the same contribution to fixed costs as gas purchases by other commercial gas customers. By spreading these costs over a larger volume of sales, the amount affixed costs that are recovered per unit of sales is reduced. The Commission found that NWN's provision of CNG fueling as a regulated service will provide a net benefit to other customers.

Staff recognizes that NWN has an executed contract with a customer and is actively working at the feasibility study stage with two additional customers. NWN will not likely be able to conclude that work without an extension of Schedule H. Staff concludes there is no evidence that NWN's participation in the market has disrupted the development of a competitive market for CNG fueling stations, and notes that such a market has been slow to develop. As a result of these considerations, Staff recommends that NWN's Schedule H, High Pressure Gas Service Rider, be allowed to continue for an additional five years, with a review of market conditions in no longer than two years' time.

Staff concludes that no legitimate competitive market for CNG vehicle fueling currently exists; and NWN's participation is likely to help with the CNG fueling market, which continues to struggle to develop absent utility participation.

**CONCLUSION:**

Staff finds that circumstances have not changed in the CNG fuel market. There is no legitimate competitive market for CNG vehicle fueling in Oregon. NWN is providing a service that would not otherwise be available to customers without the utility's involvement in the market. The HPGS program provides a net benefit to all NWN ratepayers.

**PROPOSED COMMISSION MOTION:**

Approve Northwest Natural's request in Advice No. 17-21 to extend the Company's Schedule H Rider, effective for service on and after February 1, 2018, subject to the following condition:

- Staff will perform a review of market conditions prior to February 1, 2020 to determine if alternative Commission action is necessary or if the program should be allowed to continue until January 31, 2023.

## HIGH PRESSURE GAS SERVICE AGREEMENT

This High Pressure Gas Service Agreement (“Agreement”), dated \_\_\_\_\_, 2021 (“Effective Date”) is made by and between Northwest Natural Gas Company dba NW Natural, an Oregon corporation located at 220 NW Second Avenue, Portland, Oregon 97209 (“NW Natural”), and The City of Wilsonville, a municipality located at 29799 SW Town Center Loop E, Wilsonville, Oregon 97070, (“Customer”) (collectively, “the Parties”).

### RECITALS

NW Natural provides Large Volume Non-Residential High Pressure Gas Service under its Schedule H, HPGS Rider (“HPGS Rider”);

This Agreement is Phase 3 of a three-phase process to provide information to the Customer to evaluate and obtain service under the HPGS Rider;

In Phase 1 of this process, the Parties entered into a High-Pressure Natural Gas Feasibility Agreement under which the Company evaluated the Customer’s site, fuel needs, facilities, and other factors relevant to service under the HPGS Rider. The Company provided information to Customer to allow Customer to evaluate and estimate costs associated with service under the HPGS Rider;

In Phase 2 of this process, the Parties entered into a High-Pressure Natural Gas Service Site Design and Permit Evaluation Agreement under which NW Natural designed, planned, engineered, and confirmed permit requirements (“Phase 2 Services”) for high pressure gas service facilities (“HPGS Facilities”). For the avoidance of doubt, “Facilities” shall not include any real property or equipment owned by Customer and existing on-site prior to and independent of the planned development;

Customer has provided written notice to NW Natural that it wishes to proceed with Phase 3 of this process and to receive service under the HPGS Rider for a primary term of 10 years and desires NW Natural to proceed with designing, planning, engineering, permitting, constructing, installing, inspecting, testing, and maintaining the HPGS Facilities; and

The Parties are entering into this Agreement in order to set forth the terms and conditions under which NW Natural will provide service to Customer under the HPGS Rider and Customer will pay for service under the HPGS Rider.

**NOW, THEREFORE**, the Parties agree as follows:

### **Article 1. SCOPE OF SERVICE BEFORE IN SERVICE DATE**

1.1 Description of High Pressure Natural Gas Services. NW Natural shall permit, construct, install, inspect, test, and maintain HPGS Facilities as necessary to allow Customer to take service under the HPGS Rider at the designated location on the Customer’s premises designated in the High-Pressure Natural Gas Service Site Design and Permit Evaluation Agreement (“Site”) and in accordance with applicable state and federal specifications and standard natural gas industry practice. NW Natural may provide these services through its agents.

1.2 Permitting, Constructing, Installing, and Testing

(a) NW Natural shall permit, construct, install, and test the HPGS Facilities at the Site in accordance with drawings and specifications contained in Exhibit A.

- (i) HPGS Facilities include only those facilities installed beyond the Custody Transfer Point, as defined in the Company's General Rules and Regulations contained in NW Natural's currently-effective filed Tariff. The HPGS Facilities are described in Exhibit B.
  - (ii) The HPGS Facilities do not include the optional, non-standard equipment described in Exhibit C ("Optional Equipment"). However, upon request from the Customer, NW Natural may supply, install, and maintain the Optional Equipment described in and under the terms described in Exhibit C. NW Natural will not be liable for damage to or damage caused by non-standard equipment.
- (b) NW Natural shall make best efforts to limit disruptions to Customer's operations during construction during normal business hours.
- (c) NW Natural shall provide Customer the training described in Section 5.1(e).

### 1.3 Maintaining the HPGS Facilities

- (a) NW Natural shall provide Scheduled Maintenance, Unscheduled Maintenance, Back-Up Services, and Removal of HPGS Facilities in accordance with:
- (i) The General Rules and Regulations contained in NW Natural's currently-effective filed Tariff;
  - (ii) The terms and conditions set forth in the HPGS Rider;
  - (iii) All rules and regulations prescribed by regulatory authorities;
  - (iv) This Agreement and any amendment thereto; and
  - (v) Prudent natural gas industry practices.
- (b) Scheduled Maintenance. NW Natural shall procure and furnish all materials, utilities, equipment, services, supplies, and labor necessary for the routine operation and maintenance of the HPGS Facilities ("Scheduled Maintenance"). Scheduled Maintenance shall include but shall not be limited to, providing periodic testing, adjustment, and calibration of the meter, external inspection of above-ground portions of the HPGS Facilities, and maintenance of all valves, piping, meter and instruments. Scheduled Maintenance does not include maintenance of Optional Equipment.
- (c) Unscheduled Maintenance. NW Natural shall procure and furnish all materials, equipment, supplies, services, and labor necessary for performing non-routine maintenance to the HPGS Facilities ("Unscheduled Maintenance"). Such Unscheduled Maintenance shall include the repair and replacement of HPGS Facilities or their components as the result of normal wear or facility failure associated with the HPGS Facilities or any part thereof required to keep the HPGS Facilities operating efficiently at the design pressures and in accordance with general industry practices and standards. Unscheduled Maintenance includes equipment additions, upgrades, or replacements that are required as the result of changes in law, evolving industry and/or NW Natural engineering design, or field operational standards. Unscheduled Maintenance includes dispatching NW Natural personnel to investigate any abnormality or emergency situation affecting the HPGS Facilities, including the tripping of a compressor system

alarm observed by NW Natural or Customer through its monitoring of HPGS Facilities. Unscheduled Maintenance does not include maintenance of Optional Equipment.

(d) Back-Up Service. If Unscheduled Maintenance disrupts the flow of natural gas through the HPGS Facilities for an extended period of time (mutually agreed upon by NW Natural and Customer), NW Natural will make Back-Up Service available to Customer, subject to availability (“Back-Up Service”).

- (i) NW Natural may provide Back-Up Service at designated NW Natural fueling stations or via deliveries of compressed natural gas (CNG) to the Site at NW Natural’s discretion. If Back-Up Service is unavailable (i.e., redeployed elsewhere or down for maintenance), Customer is not relieved of its obligations under this Agreement, including Customer’s obligation to pay any charges set forth in this Agreement.
- (ii) If Customer receives Back-Up Service under this Agreement, Customer will be charged for the natural gas commodity at the rate set forth in the Rate Schedule under which Customer takes commodity service, and charged for time and materials at the applicable labor rate.

(e) Removal of HPGS Facilities. Upon termination of this Agreement, NW Natural will safely cap utilities used at the HPGS Facilities and remove the HPGS Facilities, except for all cement concrete pads, underground conduits, trenches, bollards, underground piping, underground electrical feeds, and signal cables.

(f) Attempts to Minimize Disruption to Customer. NW Natural will attempt to conduct Scheduled Maintenance and Unscheduled Maintenance that is not due to an emergency condition in a manner that minimizes disruption of the flow of natural gas through the HPGS Facilities.

(g) Notice of Disruption of Flow of Natural Gas through HPGS Facilities. As circumstances permit, when NW Natural determines that any necessary Scheduled Maintenance or Unscheduled Maintenance will prevent the flow of natural gas through the HPGS Facilities, NW Natural will give reasonable notice to Customer prior to making such maintenance, repair, or replacement.

## **Article 2. CUSTOMER OBLIGATIONS**

2.1 Update Notice of Conditions. Pursuant to the High-Pressure Natural Gas Service Site Design and Permit Evaluation Agreement, Customer provided NW Natural notice of all hazardous and potentially hazardous conditions, zoning requirements, permit restrictions, the presence of hazardous wastes, substances, or contaminants, as defined under state or federal law (“Hazardous Substances”), and any other conditions differing materially from those ordinarily encountered and generally recognized as inherent to the work provided under this Agreement that may exist at the Site. Customer shall update such notice as necessary. This notice obligation continues for the term of this Agreement.

2.2 Site Access to NW Natural. Customer shall provide NW Natural access to the Site as described in Article 6.

2.3 Site Security.

- (a) Customer shall own and maintain a lockable security fence around the Site or the HPGS Facilities and a secure staging facility for use during construction and while providing services under this Agreement.
- (b) Customer shall provide NW Natural with a site security plan.
- (c) With the sole exception of the use of the fueling apparatus, Customer may not access or modify, or allow another party to access or modify, the HPGS Facilities without the express written permission of NW Natural.
- (d) Notwithstanding the requirement to secure the HPGS Facilities, Customer shall provide reasonable access at all times to NW Natural personnel performing their duties.

2.4 Operation of Fueling Apparatus and Conducting Activities Near HPGS Facilities.

- (a) Customer shall ensure that the fueling apparatus is operated and activities near the HPGS Facilities are conducted in a safe manner and in compliance with applicable laws.
- (b) Customer shall maintain the minimum clearances around the HPGS Facilities as directed by NW Natural or any authority having jurisdiction over the HPGS Facilities.
- (c) Customer shall not fuel any receptacle that is not fit and certified for transporting and/or containing CNG.
- (d) Customer shall notify NW Natural as soon as reasonably possible of any conditions that may affect operation of HPGS Facilities, including, but not limited to, fires, vandalism, accidents, planned construction, or power disruptions at Customer's premises and specifically on or near the Site.

2.5 Emergency Shut-Off. Customer shall comply with NW Natural's emergency shut-off procedures as indicated on the drawings, site manual and signs posted within the site, or as otherwise communicated to NW Natural.

2.6 Electric Service. Customer shall maintain electric service to the HPGS Facilities through the term of this Agreement.

2.7 Financial Assurance. Customer shall provide the financial assurance required by Article 8.

2.8 Payment for Services. Customer shall make all payments required under Article 4.

2.9 Payment of State and Federal Highway or Other Taxes. Customer is solely responsible for payment of any state and federal highway or other taxes associated with or related to the use or sale of CNG.

### **Article 3. PROJECT COSTS**

3.1 Estimated Project Costs. Estimated Project Costs are shown in Exhibit D. Estimated Project Costs reflect (1) the Site Design Costs agreed to by the Parties in the High-Pressure Natural Gas Service Site Design and Permit Evaluation Agreement; and (2) the Initial Estimated Project Costs provided to Customer pursuant to the High-Pressure Natural Gas Service Site Design and Permit Evaluation Agreement, which includes a contingency amount of 2.5 percent of the Initial Estimated Project Costs.

The Estimated Project Costs, amended as set forth below, will be used to calculate the Monthly Facility Charge under this Agreement as described in Article 4.

### 3.2 Updates to Project Costs.

- (a) Prior to the Commencement of Service Date defined in Article 5, NW Natural shall update the Estimated Project Costs and amend Exhibit D to reflect:
- (i) The difference between the actual cost to NW Natural to purchase the HPGS Facilities and to design, plan, engineer, permit, construct, install, inspect, and test the HPGS Facilities (“Actual Project Costs”) and the Estimated Project Costs, if the Actual Project Costs are lower than the Estimated Project Costs;
  - (ii) Customer-initiated Change Orders for any reason; and
  - (iii) NW Natural-initiated Change Orders for Material Events. NW Natural shall initiate a Change Order upon the occurrence of a Material Event that is not attributable to the negligence of NW Natural or its agents or NW Natural’s breach of this Agreement, and provided that NW Natural has taken all reasonable action to minimize the impact of such Material Event.
- (b) Prior to the Commencement of Service Date defined in Article 5, NW Natural shall provide Customer with an updated Exhibit D that reflects the Estimated Project Costs and all amendments to date, which will be the “Final Project Costs.”
- (c) After the Commencement of Service Date defined in Article 5, NW Natural shall amend Exhibit D to reflect changes to the Final Project Costs for:
- (i) Capital Additions and Improvements. The cost of capital additions or improvements to the HPGS Facilities that result from Unscheduled Maintenance (“Capital Additions and Improvements”) shall be added to the Final Project Costs and amortized over the remaining contract term.
  - (ii) Other Funding Sources. If tax credits, refunds, grants, rebates, or other monetary benefits are recognized for accounting purposes as a result of the installation of an HPGS Facility at a Customer’s premise, NW Natural will credit such amount, net of any applicable taxes, to the Final Project Costs at the time of recognition (“Other Funding Sources”).

### 3.3 Material Events.

- (a) For purposes of this Agreement, a “Material Event” shall mean:
- (i) Delays or interference affecting NW Natural’s services resulting from the acts or omissions of Customer or its agents;
  - (ii) The occurrence of a Force Majeure event;
  - (iii) The discovery of Hazardous Substances not brought on the Site by NW Natural or its agents;

- (iv) The occurrence of a material change in any laws, statutes, acts, ordinances, regulations, codes, rules, orders, decrees, permits or rulings after the Effective Date of this Agreement that directly affects the services to be performed under this Agreement; and
  - (v) The discovery of unforeseen site conditions, including but not limited to geotechnical conditions that affect structural support for HPGS Facilities and the presence of archeological resources.
- (b) NW Natural will notify customer in writing of any change orders to include the particulars of the Material Event and estimating the event's expected duration; and the impact on Project Costs.
- (c) The occurrence of a Material Event does not excuse any liability of Customer that arose before the occurrence of the Material Event.

#### **Article 4. PRICE AND PAYMENT TERMS**

4.1 Monthly Charges. Upon the commencement of service defined in Article 5 below, Customer shall pay the following four separate monthly charges for services provided under this Agreement, calculated as provided in this Article: (1) Facility Charge; (2) Scheduled Maintenance Charge; (3) Unscheduled Maintenance Charge; and (4) Backup Service Charge.

- (a) Monthly Facility Charge. The Monthly Facility Charge is calculated by multiplying the Final Project Costs contained in Exhibit D by the Capital Recovery Factor set forth in the HPGS Rider and dividing by 12. The Estimated Facility Charge (based on the Estimated Project Costs) is shown in Exhibit D. The Estimated Facility Charge will be adjusted to reflect:
- (i) Changes to Project Costs. Any changes to Estimated and Final Project Costs resulting from the events described in Section 3.2.
  - (ii) Changes to Capital Recovery Factors. If the Public Utility Commission of Oregon approves changes to the Capital Recovery Factors in the HPGS Rider, the Monthly Facility Charge will be revised to reflect the changes.
- (b) NW Natural will provide Customer with a Final Monthly Facility Charge upon commencement of service, and a revised Monthly Facility Charge calculation whenever the Monthly Facility Charge changes.
- (c) Scheduled Maintenance Charge. Customer shall pay a monthly charge for the costs associated with providing Scheduled Maintenance and administrative services. The Monthly Scheduled Maintenance Charge will be calculated as set forth in Exhibit E. Customer's charge for Scheduled Maintenance shall be \$\_\_\_ per month at the outset of the Agreement. NW Natural will adjust the charge for Scheduled Maintenance on an annual basis to reflect NW Natural's expected actual cost of providing Scheduled Maintenance and administrative services. NW Natural will provide Customer with the updated Scheduled Maintenance Charge on an annual basis.
- (d) Unscheduled Maintenance Charge. Customer shall pay a monthly charge for the costs associated with providing Unscheduled Maintenance in the prior month, if any. However, as explained in Section 3.2, Capital Additions or Improvements that result from Unscheduled

Maintenance shall be added to the Project Costs and amortized over the remaining contract term.

(e) Back-up Service Charges. Customer shall pay the costs associated with providing Back-Up Service. The Back-Up Service Charge will be calculated as set forth in Exhibit F.

4.2 Payment. In accordance with the Rate Schedule 32 (RS32) billing cycle of each month, NW Natural shall give to Customer an invoice reflecting the Monthly Facility Charge, the Monthly Scheduled Maintenance Charge, and, if applicable, the Unscheduled Maintenance Charge and the Back-Up Service Charge. Customer shall pay or cause to be paid the full amount of such invoice within thirty (30) days of the date of the invoice. If Customer fails to make payment of such invoice within said thirty (30) day period, interest shall accrue on the unpaid portion of the billing(s) determined to be due under this Agreement, at the applicable interest rate set forth in NW Natural's Tariff. Further, Customer shall reimburse NW Natural for any reasonable attorney's fees that may be incurred in connection with any activities concerning collection of any payments due.

4.3 Compensation for Optional Equipment. Customer shall pay the actual cost of Optional Equipment as set forth in C upon execution of this Agreement.

4.4 Taxes and Fees. As set forth in NW Natural's Tariff, Customer shall pay all business or occupation taxes, license, franchise or operating permit fees, or similar exactions imposed upon NW Natural by any city or county for engaging in business therein or for use and occupancy of streets and public ways.

4.5 Compensation During Service Outages Required. Customer is required to pay the Monthly Facility Charge and the Monthly Maintenance Charge for the period during which Customer does not receive service. If Customer receives Back-Up Service, Customer will be required to pay the Back-Up Service Charge calculated as set forth in Exhibit F.

4.6 Disconnection of Service. If Customer fails to pay any amount required under this Agreement, NW Natural may disconnect utility service to Customer pursuant to Oregon Administrative Rule 860-021-0305.

#### **Article 5. COMMENCEMENT OF SERVICE**

5.1 Service Commencement. Operation at the HPGS Facilities shall become available on or after the date that:

(a) NW Natural provides Customer with written notice that the HPGS Facilities have been installed, tested, and placed in-service;

(b) NW Natural provides Customer with the Monthly Facility Charge and the Monthly Maintenance Charge;

(c) Customer has paid in full the actual cost of Optional Equipment upon execution of this Agreement;

(d) Customer has provided any financial assurance required by Article 8; and

(e) NW Natural provides customer with the training on the HPGS Facilities, including safety requirements, emergency shut-off procedures, and how to dispense CNG from the HPGS facilities.

5.2 Notice of Service Commencement Date. NW Natural will notify Customer of the date upon which these conditions have been satisfied. This date will be the "Service Commencement Date."

## **Article 6. LEASE, ACCESS, AND OWNERSHIP**

6.1 Lease. Customer shall lease to NW Natural the Site consisting of approximately 200 square feet on the Customer's property for NW Natural to provide the HPGS. The Site is more specifically described in Exhibit G. The lease shall additionally include a reasonable right of ingress and egress to and across Customer's property to allow NW Natural to access the Site and a utility easement sufficient to allow access to the HPGS Facilities on the Site. Such lease shall commence on the Effective Date and shall terminate 60 days after the date this Agreement is terminated. No rental shall be payable by NW Natural to Customer for such lease and Customer acknowledges that the consideration for such lease is the Customer's and NW Natural's rights and obligations under this Agreement. Customer shall at its sole cost pay all real property taxes and assessments levied against the Site.

6.2 NW Natural Site Access. Customer shall provide reasonable access to the Site to NW Natural personnel and NW Natural's agents performing their duties. Customer shall provide Site Authorization as described in Exhibit H.

6.3 Ownership of HPGS Facilities. NW Natural retains ownership of the HPGS Facilities through the term of this Agreement and after termination of this Agreement.

6.4 Encumbrances.

(a) For each party (an "Encumbering Party") with a trust deed, lien, or other encumbrance (an "Encumbrance") on the Site, Customer will obtain the Encumbering Party's written agreement with the following: (1) NW Natural owns the HPGS Facilities; (2) the Encumbering Party has no interest in the HPGS Facilities; (3) the HPGS Facilities are not subject to any Encumbrance in which the Encumbering Party has an interest; and (4) NW Natural has the right, at any time, to remove the HPGS Facilities from the Property.

(b) NW Natural may, at its discretion, file a memorandum of lease and gas service agreement or similar memorandum in the county recorder's office to put the public on record notice that (i) NW Natural has the right to access and locate the HPGS Facilities on the Site, (ii) NW Natural owns the HPGS Facilities and has the obligation to remove the HPGS Facilities upon the termination of the Agreement as set forth in the Agreement; and (iii) such other matters covered by the Agreement. Customer shall fully cooperate with NW Natural in connection with the same..

## **Article 7. HAZARDOUS SUBSTANCES**

7.1 Notice of Remediation of Hazardous Substances or Conditions. NW Natural may require Customer to remediate Hazardous Substances or conditions at the Site before NW Natural continues or begins work under this Agreement, or NW Natural may terminate this Agreement pursuant to Section 12.4(b) if the condition or restriction materially affects NW Natural's ability to safely provide the HPGS.

7.2 Hazardous Substances. Customer shall bear all costs and expenses and shall be solely liable for any response, removal, investigation, cleanup, or other remedial action required by applicable environmental laws related to any Hazardous Substance that is not brought on the Site by NW Natural or its agents. NW Natural shall not be responsible for any costs or expenses related to the introduction of Hazardous Substance to the Site by any party other than NW Natural or its agents

## **Article 8. FINANCIAL ASSURANCE**

8.1 Customer agrees to comply with NW Natural's General Rules and Regulations relating to credit and collection policies including, at NW Natural's sole discretion, the requirement for Customer to provide either a payment to NW Natural or a letter of credit that is equal to part or all of the Estimated Project Costs ("Adequate Assurance"). The Adequate Assurance is intended to cover NW Natural's costs in the event that the HPGS Facilities are constructed and Customer fails to make payments under this Agreement.

## **Article 9. INSURANCE**

NW Natural must carry and maintain insurance of the type and in the amounts stated herein throughout the term of this Agreement. Such insurance must cover all risks arising directly or indirectly out of NW Natural's activities or work required pursuant to the terms of this Agreement. Customer acknowledges that NW Natural elects to self-insure its liability to third parties for bodily injury and/or property damage arising out of performance under this Agreement. NW Natural also maintains excess insurance policies that exceed its self-insured limits.

(a) **General Liability Insurance.** NW Natural and all subcontractors shall obtain, at each of their own expense, and keep in effect during the term of this Agreement, comprehensive Excess General Liability Insurance covering Bodily Injury and Property Damage, written on an "occurrence" form policy. This coverage shall include broad form Contractual Liability insurance for the indemnities provided under this Agreement and shall be for the following minimum insurance coverage amounts: The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$3,000,000** general aggregate and shall include Products-Completed Operations Aggregate in the minimum amount of **\$2,000,000** per occurrence, Fire Damage (any one fire) in the minimum amount of **\$50,000**, and Medical Expense (any one person) in the minimum amount of **\$10,000**. All of the foregoing coverages must be carried and maintained at all times during this Agreement.

(b) **Business Automobile Liability Insurance.** If NW Natural or any subcontractors will be using a motor vehicle in the performance of the work herein, NW Natural shall provide Customer with a certificate indicating that NW Natural and its subcontractors have business automobile liability coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than **\$2,000,000**.

(c) **Pollution Liability Coverage.** NW Natural shall carry sudden and accidental and gradual release pollution liability coverage that will cover, among other things, any spillage of paints, fuels, oils, lubricants, de-icing, anti-freeze or other hazardous materials, or disturbance of any hazardous materials, as that term is defined under Oregon law, during the performance of this agreement. NW Natural will be fully responsible for the cost of any clean-up of any materials released by NW Natural or disturbance to the extent caused by NW Natural, in accordance with Oregon Department of Environmental Quality ("DEQ") and Federal Environmental Protection Agency ("EPA") clean-up requirements. The coverage shall be in the amount of **\$2,000,000** for each occurrence and **\$2,000,000** general aggregate.

(d) **Workers Compensation Insurance.** NW Natural, its subcontractors, and all employers providing work, labor, or materials under this Agreement that are subject employers under the Oregon Workers Compensation Law shall comply with ORS 656.017, which requires them to provide workers compensation coverage that satisfies Oregon law for all their subject workers under ORS 656.126. Out-of-state employers must provide Oregon workers compensation

coverage for their workers who work at a single location within Oregon for more than thirty (30) days in a calendar year. Contractors who perform work without the assistance or labor of any employee need not obtain such coverage. This shall include Employer's Liability Insurance with coverage limits of not less than **\$500,000** each accident.

(e) Additional Insured and Termination Endorsements. Customer will be named as an additional insured with respect to NW Natural's liabilities hereunder in insurance coverages. Additional Insured coverage under NW Natural's General Liability, Automobile Liability, Pollution Liability, and Excess Liability Policies, as applicable, will be provided by endorsement. Additional insured coverage shall be for both ongoing operations via ISO Form CG 2010 or its equivalent, and products and completed operations via ISO Form CG 2037 or its equivalent. Coverage shall be Primary and Non-Contributory. Waiver of Subrogation endorsement via ISO Form CG 2404 or its equivalent shall be provided. The following is included as additional insured: "The City of Wilsonville, its elected and appointed officials, officers, agents, employees, and volunteers." An endorsement shall also be provided requiring the insurance carrier to give Customer at least thirty (30) days' written notification of any termination or major modification of the insurance policies required hereunder. NW Natural must be an additional insured on the insurance policies obtained by its subcontractors performing any of the work contemplated under this agreement.

Primary Coverage. The coverage provided by these policies shall be primary with respect to NW Natural's liabilities under this Agreement, and as primary to any applicable insurance policies carried by Customer. NW Natural shall be responsible for any retention amounts payable under all policies of insurance.

9.2 Customer shall carry and maintain Excess General Liability Insurance in the amount of \$1 million per occurrence and \$2 million in the aggregate. NW Natural shall be named as an additional insured on Customer's Commercial General Liability Insurance and the policy shall contain a cross liability endorsement and contractual liability coverage for obligations assumed by Customer under the indemnity provisions of this Agreement.

#### **Article 10. FORCE MAJEURE**

10.1 The Parties shall not be liable to one another for the failure to perform any of the obligations under this Agreement, to the extent that such failure is a result of Force Majeure. The term "Force Majeure" as employed herein means any cause, event, act or omission whether of the kind enumerated herein or otherwise that is not reasonably within its control.

10.2 Force Majeure shall include, but shall not be limited to, the following: (i) physical events such as acts of God, landslides, earthquakes, fires, other natural catastrophes, epidemics, explosions, and breakage or accident or repairs to machinery, equipment, lines of pipe or any component part of the HPGS Facilities necessary for safe, compliant and prudent operation; (ii) weather-related events, such as low temperatures which cause freezing or failure of the HPGS Facilities or lines of pipe, storms, floods, and lightning; (iii) acts of others such as the need to obtain third party easements and/or rights-of-way, strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (iv) governmental actions or litigation, such as necessity for compliance with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction, including the need to obtain pipe line construction or other permits. Nothing contained herein shall be construed to require the settlement of a strike or labor dispute.

10.3 NW Natural will provide notice of Force Majeure impacting the HPGS Facilities to Customer as soon as reasonably practical after the occurrence of the event, cause or upon receipt of knowledge thereof. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably practical. Failure to give notice shall not be deemed a waiver of such Force Majeure. NW Natural shall make reasonable efforts to avoid the adverse impacts of a Force Majeure and to the extent possible, will work to resolve the cause, event, act or omission in order to resume performance under the Agreement.

#### **Article 11. CUSTOMER SALES OF CNG AND ACKNOWLEDGMENTS**

11.1 Sales of CNG. Customer may make CNG sales to the extent such sales are consistent with NW Natural's Tariff and this Agreement.

(a) Customer shall be fully responsible and liable to such third parties and shall hold NW Natural harmless as to any third party claims for damages or lost profits associated with any sales to third parties as a result of any service interruptions at the HPGS Facilities.

(b) Customer is solely responsible for compliance with laws related to operation as a retailer of CNG, including responsibility for payment of any state and federal highway or other taxes associated with or related to the sales of CNG. NW Natural transfers custody of the natural gas to the Customer at its Custody Transfer Point. NW Natural is not responsible for vehicle fueling.

(c) Customer Use of CNG. Customer is solely responsible for compliance with laws related to the use of CNG and operation of a CNG fueling station.

#### **Article 12. LIABILITY AND INDEMNIFICATION**

12.1 Customer shall protect, defend, indemnify and hold NW Natural, its directors, officers, employees, attorneys-in-fact, agents and affiliated companies, free and harmless from and against any and all losses, claims, liens, demands, and causes of action of every kind and character ("**Claims**"), arising out of, in connection with, or incident to this Agreement or any activities contemplated hereunder, including, but not limited to, the amounts of judgments, penalties, interest, court costs, investigation expenses and costs and legal fees (whether incurred at trial, on appeal, in bankruptcy or otherwise), for claims, liens, debts, personal injuries, death or damages to property, and all other claims or demands of every character occurring or incident to, in connection with or arising out of Customer's or its contractors' or subcontractors' negligence or performance of Customer's obligations under this Agreement. This indemnity provision may be limited as necessary by applicable law.

12.2 NW Natural shall protect, defend, indemnify and hold Customer, its directors, officers, employees, attorneys-in-fact and agents, free and harmless from and against any and all Claims, arising out of, in connection with, or incident to NW Natural's or its contractor's or subcontractor's negligence in its performance, or breach of its obligations, under this Agreement, including, but not limited to, the amounts of judgments, penalties, interest, court costs, investigation expenses and costs and legal fees (whether incurred at trial, on appeal, in bankruptcy or otherwise), for claims, liens, debts, personal injuries, death or damages to property, and all other claims or demands of every character. This indemnity provision may be limited as necessary by applicable law. This indemnity shall not include any indemnification that would be prohibited by law, including under ORS 30.285 and ORS 30.287.

12.3 IN NO EVENT WILL EITHER PARTY NOR ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY PUNITIVE, SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL,

CONSEQUENTIAL, LOST PROFITS, OR OTHER SIMILAR DAMAGES TO PERSONS OR PROPERTY, WHETHER SUCH DAMAGES ARE CLAIMED UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING, BUT NOT LIMITED TO, LOSS, DAMAGE, OR EXPENSE TO PERSONS OR PROPERTY, DIRECTLY OR INDIRECTLY, ARISING OUT OF ITS ACTIONS THAT ARE IN ACCORDANCE WITH THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT OR NW NATURAL'S TARIFF, UNLESS SUCH DAMAGES ARE THE RESULT OF A PARTY'S WILLFUL MISCONDUCT.

### **Article 13. EFFECTIVE DATE/TERM/TERMINATION**

13.1 This Agreement shall be effective as of the Effective Date and will continue through 120 months after the Service Commencement Date defined in Article 5. NW Natural and Customer may agree to extend the term of this Agreement. If the term of this Agreement is extended beyond 120 months, the Parties will revise the Monthly Facility Charge and the Scheduled Maintenance Charge consistent with the HPGS Rider.

13.2 Termination by Customer.

(a) At any time prior to the Commencement of Service pursuant to Article 5, Customer may terminate this Agreement by giving NW Natural written notice and paying any amounts required by Section 13.4. NW Natural shall have no further obligation to continue work on the HPGS Facilities and shall incur no liability for discontinuing such work.

(b) At any time after the Commencement of Service pursuant to Article 5, Customer may terminate this Agreement by giving NW Natural 30 days' written notice and paying any amounts required by Section 13.4.

(c) At any time during the term of this Agreement, in the event Customer determines that Customer is unable to perform any obligation under this agreement due to a Force Majeure, other than make a payment due under this Agreement, Customer shall have the right, at its sole election, to immediately withhold and/or suspend the affected performance and/or to terminate this Agreement, in addition to any and all other remedies available to it. Written notice of this decision will be provided by Customer to NWN as soon as reasonably practical after the decision to withhold or suspend performance, or terminate this Agreement is made.

13.3 Termination by NW Natural.

(a) At any time during the term of this Agreement, in the event that Customer shall: (i) make an assignment or any general arrangement for the benefit of creditors; (ii) file a petition or otherwise commence, authorize, or acquiesce in the commencement of a proceeding or case under any bankruptcy or similar law for the protection of creditors or have such petition filed or proceeding commenced against it; (iii) otherwise become bankrupt or insolvent (however evidenced); (iv) be unable to pay its debts as they fall due; or (v) have a receiver, provisional liquidator, conservator, custodian, trustee or other similar official appointed with respect to it or substantially all of its assets; NW Natural shall have the right, at its sole election, to immediately withhold and/or suspend performance and/or to terminate this Agreement and/or request additional financial assurance, in addition to any and all other remedies available to it. Written notice of this decision will be provided by NW Natural to Customer as soon as reasonably practical after the decision to withhold or suspend performance, or terminate this Agreement is made.

(b) At any time during the term of this Agreement, in the event NW Natural determines that (i) Customer has failed to comply with any material term of this Agreement, including but not limited to making payments to NW Natural as required by this Agreement; (ii) Customer no longer qualifies for service under Rate Schedule 3, Rate Schedule 31, or Rate Schedule 32; (iii) Customer has tampered with or otherwise affected the operation of the HPGS Facilities; (iv) a condition at the Site poses a risk to health or safety that Customer has not mitigated within a reasonable period of time; or (v) NW Natural must discontinue its work due to a Force Majeure, NW Natural shall have the right, at its sole election, to immediately withhold and/or suspend performance (or the affected performance, in the event of a Force Majeure) and/or to terminate this Agreement, in addition to any and all other remedies available to it. Written notice of this decision will be provided by NW Natural to Customer as soon as reasonably practical after the decision to withhold or suspend performance, or terminate this Agreement is made.

#### 13.4 Effect of Termination.

(a) Upon termination of this Agreement for any reason by either Party, Customer is required to pay NW Natural as follows:

- (i) If termination occurs prior to the Commencement of Service pursuant to Article 5, NW Natural shall render to Customer a reasonably detailed listing of the actual costs, including any applicable contract cancellation fees, incurred by NW Natural and shall include an invoice. Cancellation fees shall include, but are not limited to, the Production Unit Cancellation fees set forth in Exhibit D.
- (ii) If termination occurs after the Commencement of Service pursuant to Article 5, Customer shall pay or cause to be paid (1) the total amount of Monthly Facility Charges remaining under this Agreement and (2) and the remaining Monthly Scheduled Maintenance Charges that NW Natural has already incurred, or is contractually obligated to incur.

(b) In the event of termination, NW Natural shall render to Customer an invoice reflecting the total amount of such charges. Customer shall pay or cause to be paid the full amount of such invoice within thirty (30) days of the date of the invoice. If Customer fails to make payment of such invoice within said thirty (30) day period, interest shall accrue on the unpaid portion of the billing(s) determined to be due under this Agreement, at the applicable interest rate set forth in NW Natural's Tariff. Further, Customer shall reimburse NW Natural for any reasonable attorney's fees that may be incurred in connection with any activities concerning collection of any payments due.

(c) Upon termination of this Agreement, Customer shall continue to provide access to the Site as set forth in Article 6 to allow for removal of the HPGS Facilities.

### **Article 14. DISPUTE RESOLUTION**

14.1 If a dispute arises out of or relates to this Agreement, or the breach thereof, the Parties agree to settle the dispute by the process described in this Section.

(a) Either Party may give the other Party written notice of any dispute that is not resolved in the ordinary course of business. The Party receiving the notice of dispute may respond in writing. The written notice and response, if any, shall be first submitted to a higher level of

management than the persons with direct responsibility for administration of this Agreement. If the Parties' higher level management are unable to resolve the dispute within ten (10) days after delivery of the written notice of the dispute, and a statement indicating that higher level management was unable to resolve the dispute, shall be submitted to executives of both Parties having the authority to finally resolve the dispute. Within thirty (30) days of delivery of the notice to the Parties' executives, the designated executives shall meet at a time, place and in a manner that is mutually agreeable, and shall resolve the controversy. All reasonable requests for information made by one Party to the other shall be honored in a timely fashion.

(b) If executives of both Parties are unable to resolve the dispute within sixty (60) days after receipt of the notice to the executives, or if the executives fail to meet within thirty (30) days of delivery of the notice, either Party may give written notice to the other Party of its intention to arbitrate the dispute. The Parties must, however, first attempt in good faith to settle the dispute by mediation. If the dispute is not settled by mediation with forty-five (45) days after delivery of written notice of intention to arbitrate, or longer, if mutually agreeable, the mediation shall terminate, and the dispute shall be settled by arbitration. The American Arbitration Association ("AAA") Commercial Arbitration Rules shall govern these proceedings, unless other rules are mutually agreed upon by the Parties in writing. The decision of the arbitrator(s) shall be binding, and judgment on the arbitrator(s) award may be entered in the state or federal courts of Multnomah County, Oregon.

14.2 Nothing in this Agreement shall prohibit or limit a Party's right to initiate litigation to enforce the arbitrator's award, or to obtain injunctive or equitable relief permitted by the terms of this Agreement, or to preserve a superior position with respect to other creditors.

14.3 To the extent allowed by Oregon Public Records laws, all submissions and negotiations between the Parties conducted pursuant to or in contemplation of this dispute resolution process shall be kept confidential by both Parties and treated by the Parties as compromise and settlement negotiations for purposes of applicable court rules of evidence.

#### **Article 15. MODIFICATION AND ASSIGNMENT**

15.1 This Agreement may not be modified or amended in any respect except by a written instrument executed by the Parties. No waiver or modification of any provision of this Agreement shall occur as a result of any course of performance or course of dealing between NW Natural and Customer, or from any usage of trade. No Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, any reasonable and documented out-of-pocket costs or expenses NW Natural incurs as a result of NW Natural's provision of consent under this Section 15.1 for a modification or assignment shall be borne by Customer. NW Natural shall provide its response within five (5) business days of any request for assignment received from Customer. Any attempted assignment made without such prior written consent shall be void and of no legal effect. This Agreement shall be binding upon and inure to the benefit of any valid successors or assigns to the original Parties to this Agreement, but any assignment of this Agreement shall not relieve either Party of any obligations to the other Party incurred prior to such assignment.

#### **Article 16. CONFIDENTIALITY AGREEMENT**

16.1 The term "Confidential Information" means any information that a Party has in writing as proprietary or confidential, by writing "CONFIDENTIAL" prominently on the material. Nothing in this section is intended to prevent disclosure of information under Oregon's Public Records Laws.

16.2 The Parties acknowledge that as part of performing under this Agreement, the Parties will exchange Confidential Information regarding their facilities and other forms of proprietary information deemed to be confidential. The Parties agree not to disclose Confidential Information during or after the term of this Agreement except to the extent necessary to perform their obligations under this Agreement during the term hereof. Neither Party shall use or duplicate any such information for any other purpose other than for use under this Agreement. Each Party's standard of care under this Article shall be satisfied if it treats the other Party's Confidential Information as it treats its own information that it does not wish to be publicly disclosed, published, or otherwise disseminated.

16.3 Each Party's Confidential Information shall be made available to the other party's employees, subcontractors or agents only on a "need to know" basis.

16.4 The confidentiality obligations imposed in this Section shall not apply to: (1) information that now or hereafter becomes part of the public domain through lawful means; (2) information already known to or developed by the receiving party as demonstrated by written materials that predate the disclosure; (3) information subsequently and rightfully received from third parties without any obligation of confidentiality; and (4) information required to be produced by a lawful government, regulatory, or court order, provided that Customer will provide NW Natural with prompt written notice sufficient to allow NW Natural to seek a protective order or other appropriate remedy.

16.5 Upon termination of this Agreement, each Party shall immediately cease to use any of the Confidential Information disclosed to it pursuant to this Agreement. Upon such termination or expiration, neither Party may retain any Confidential Information of the other Party and shall immediately return to the other Party all written Confidential Information that has been provided to it as well as any copies of Confidential Information.

16.6 Customer agrees that in the event of a breach or threatened breach of this Section, the remedy at law is inadequate and NW Natural may obtain equitable relief prohibiting the breach, in addition to any other appropriate legal or equitable relief.

## ARTICLE 2. SURVIVING TERMS

16.7 The following provisions of this Agreement shall survive termination as specified in such Section or Article, as follows: Article 12, Liability and Indemnification, and Article 16, Confidentiality Agreement.

## **Article 17. OTHER GENERAL PROVISIONS**

17.1 Complete Agreement. This Agreement sets forth the entire integrated agreement of the Parties with respect to the subject matter herein.

17.2 Supersedes Other Agreements. This Agreement supersedes all other agreements relating to the subject matter herein that the Parties may have previously entered.

17.3 Not Construed Against Either Party. This Agreement has been drafted with the joint participation of each Party, and shall be construed to be neither against nor in favor of any Party, rather this Agreement shall be construed in accordance with the fair meaning of its stated terms.

17.4 Headings. The headings set forth in this Agreement shall not affect the interpretation of this Agreement.

17.5 Severability. Any provision of this Agreement held to be unenforceable in any jurisdiction shall be, as to that jurisdiction only, ineffective only to the extent of such unenforceability, without affecting any other provision of this Agreement.

17.6 Interpretation and Construction. Any term used in the plural shall refer to all members of the relevant class, and any term used in the singular shall refer to any one or more of the members of the relevant class. Any masculine term shall also refer to the feminine. References in this Agreement to sections are to sections to this Agreement. "Including" shall mean "including, but not limited to." "Herein," "hereof," "hereto," and other similar terms, refer to this Agreement as a whole and not merely to the specific section or clause where such terms may appear. "Or" shall not be exclusive.

17.7 Signatures May Be in Counterparts; Facsimile or E-Mail Signature Has Legal Effect. This Agreement may be signed in counterparts. A facsimile version or an e-mailed pdf of the signature page shall have the same legal effect as an original.

17.8 Waiver. No waiver by a Party of any provision of this Agreement shall be deemed to be a waiver of any preceding, concurrent, or succeeding breach of the same or any other provision.

17.9 Rights and Remedies Cumulative. Subject to the terms herein, all rights and remedies granted or referred to in this Agreement are cumulative and resort to one shall not preclude resort to any other available right or remedy.

17.10 Signatories Have Authority. The signatories to this Agreement certify that they have the authority to bind the Party they represent.

17.11 Conflict Between NW Natural's Tariff and this Agreement. To the extent there is a conflict between NW Natural's Tariff and this Agreement, this Agreement governs.

17.12 COVID 19 Policies. NWN must have a written policy in place to comply with all applicable local, state, and federal laws, regulations, and executive orders related to the COVID-19 coronavirus outbreak to ensure the protection of NWN's employees and/or agents, City employees, and the public.

## **Article 18. NOTICES AND COMMUNICATIONS**

18.1 Any notice or communication permitted or required by this Agreement shall be made in writing; and shall be deemed duly delivered if personally delivered or sent to the other Party by registered, certified, or regular mail, postage prepaid, at the appropriate address set forth below:

For contract-related issues:

To: NORTHWEST NATURAL GAS COMPANY  
Attn: Melissa McGoogan  
250 SW Taylor Street

Portland, OR 97204

E-mail: [Melissa.McGoogan@nwnatural.com](mailto:Melissa.McGoogan@nwnatural.com)

Phone: 503-226-4211

To: City Of Wilsonville  
Attn: City Manager, Bryan Cosgrove  
29799 SW Town Center Loop E

Wilsonville, Oregon

E-Mail: [cosgrove@ci.wilsonville.or.us](mailto:cosgrove@ci.wilsonville.or.us)

Phone: 503-570-1504

For operational issues during business hours:

503-226-4211

For after-hours calls:

503-226-4211

18.2 Either Party may change its address for receipt of notices and communications under this Agreement upon the provision of appropriate written notification to the other Party.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the Effective Date.

**NORTHWEST NATURAL GAS COMPANY**

**CITY OF WILSONVILLE**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Counsel for NW Natural

\_\_\_\_\_  
Counsel for the City of Wilsonville

HIGH-PRESSURE NATURAL GAS SERVICE AGREEMENT  
DATED \_\_\_\_\_  
BETWEEN NORTHWEST NATURAL GAS COMPANY  
AND CITY OF WILSONVILLE

Exhibit A: CONSTRUCTION DRAWINGS AND SPECIFICATIONS

See Attached (PDF) Electrical and Mechanical Drawings.

**[PLACEHOLDER]**

HIGH-PRESSURE NATURAL GAS SERVICE AGREEMENT  
DATED \_\_\_\_\_  
BETWEEN NORTHWEST NATURAL GAS COMPANY  
AND CITY OF WILSONVILLE

Exhibit B: HIGH-PRESSURE NATURAL GAS FACILITIES

The High-Pressure Natural Gas Facilities will be located at Customer premises at 28879 SW Boberg Road Wilsonville, Oregon.

The HPGS Facilities will have a designed daily volume of 53 Dth/d (approximately 425 GGE) and a peak hourly flow of 4.7 Dth/hr at a design pressure of no greater than 20 psig.<sup>1</sup> HPGS Facilities are installed beyond the Custody Transfer Point, as defined in NW Natural's General Rules and Regulations contained in NW Natural's currently-effective filed Tariff. Customer is aware that factors such as weather or other issues can affect delivery pressure.

The major items comprising the HPGS Facilities are:

Compression system, without remote monitoring equipment  
Compressor pad  
Trenches  
Compressor skid  
Dryers and filters.  
Existing Storage vessel(s) to be connected to.  
Existing fast fill dispenser (does not include hanging hardware) to be connected to.  
Protective traffic bollards new where required by code.  
Any modifications or additions to the above major components  
5-Slowfill Area Mast Standards with base and retractors.  
ESD circuit wiring.  
All piping and electrical connections.

EXCLUSIONS: All hanging hardware such as break away fittings, fueling hoses and NGV1 filling nozzles are specifically excluded from Schedule H and shall be acquired by Customer. NW Natural will provide assistance in purchasing excluded items as needed.

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<sup>1</sup> Pressure design assumptions set forth in this Agreement are not to be construed as implying a guaranty of any particular level of pressure during service.

HIGH-PRESSURE NATURAL GAS SERVICE AGREEMENT  
DATED \_\_\_\_\_  
BETWEEN NORTHWEST NATURAL GAS COMPANY  
AND CITY OF WILSONVILLE

Exhibit C: OPTIONAL EQUIPMENT ORDER

Customer has elected for NW Natural to install the following Optional Equipment:

None.

As set forth in the Agreement, payment for Optional Equipment is due upon execution of this Agreement.

**NORTHWEST NATURAL GAS COMPANY**

**[CUSTOMER]**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date of Signature: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date of Signature: \_\_\_\_\_

HIGH-PRESSURE NATURAL GAS SERVICE AGREEMENT  
 DATED \_\_\_\_\_  
 BETWEEN NORTHWEST NATURAL GAS COMPANY  
 AND CITY OF WILSONVILLE

Exhibit D: ESTIMATED PROJECT COSTS

Projected CAPX	\$ 394,092	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>	<b>Year 6</b>	<b>Year 7</b>	<b>Year 8</b>	<b>Year 9</b>	<b>Year 10</b>	<b>Year 11</b>
Cost Recovery Fac CAPx Recovery		20.8%	19.5%	18.1%	16.9%	15.8%	14.7%	13.6%	12.6%	11.7%	10.8%	0.0%
Schedule H Billing Cost + Admin	\$ 92,058	\$ 86,935	\$ 81,418	\$ 76,689	\$ 72,354	\$ 68,019	\$ 63,684	\$ 59,743	\$ 56,196	\$ 52,649	\$ 10,087	
Schedule H Montly Costs	\$ 7,672	\$ 7,245	\$ 6,785	\$ 6,391	\$ 6,029	\$ 5,668	\$ 5,307	\$ 4,979	\$ 4,683	\$ 4,387	\$ 841	
Estimated Montly Maintenance	\$ -	\$ 375	\$ 525	\$ 525	\$ 538	\$ 538	\$ 561	\$ 561	\$ 583	\$ 583	\$ 700	
<small>(Maintenance charged and trued up at end of year for actual costs.)</small>												

Cancellation Fees applied:

1. Bauer Compressor 15% of total compressor cost if cancellation occurs after design documents from compressor manufacturer have been delivered to NWN or approximately 2-4 weeks after purchase order received. Once manufacturing has begun the full cost of the compressor becomes the cancellation fee. Total current bid proposal for Bauer is \$262,000.
2. There may be individual restock charges for piping, valves and other materials ordered at the time of procurement leading to construction. Cancellation fees vary for different materials and vendors.
3. Charges incurred during the Site Design Phase agreed under the Site Design Agreement.

HIGH-PRESSURE NATURAL GAS SERVICE AGREEMENT  
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Exhibit E: SCHEDULED MAINTENANCE CALCULATION

Scheduled Maintenance costs have been estimated by the equipment manufacturer. Projected costs have been included in the table in Exhibit D. Maintenance costs are estimated, billed and trued up to actual costs.

HIGH-PRESSURE NATURAL GAS SERVICE AGREEMENT  
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Exhibit F: BACK-UP SERVICE CHARGE CALCULATION

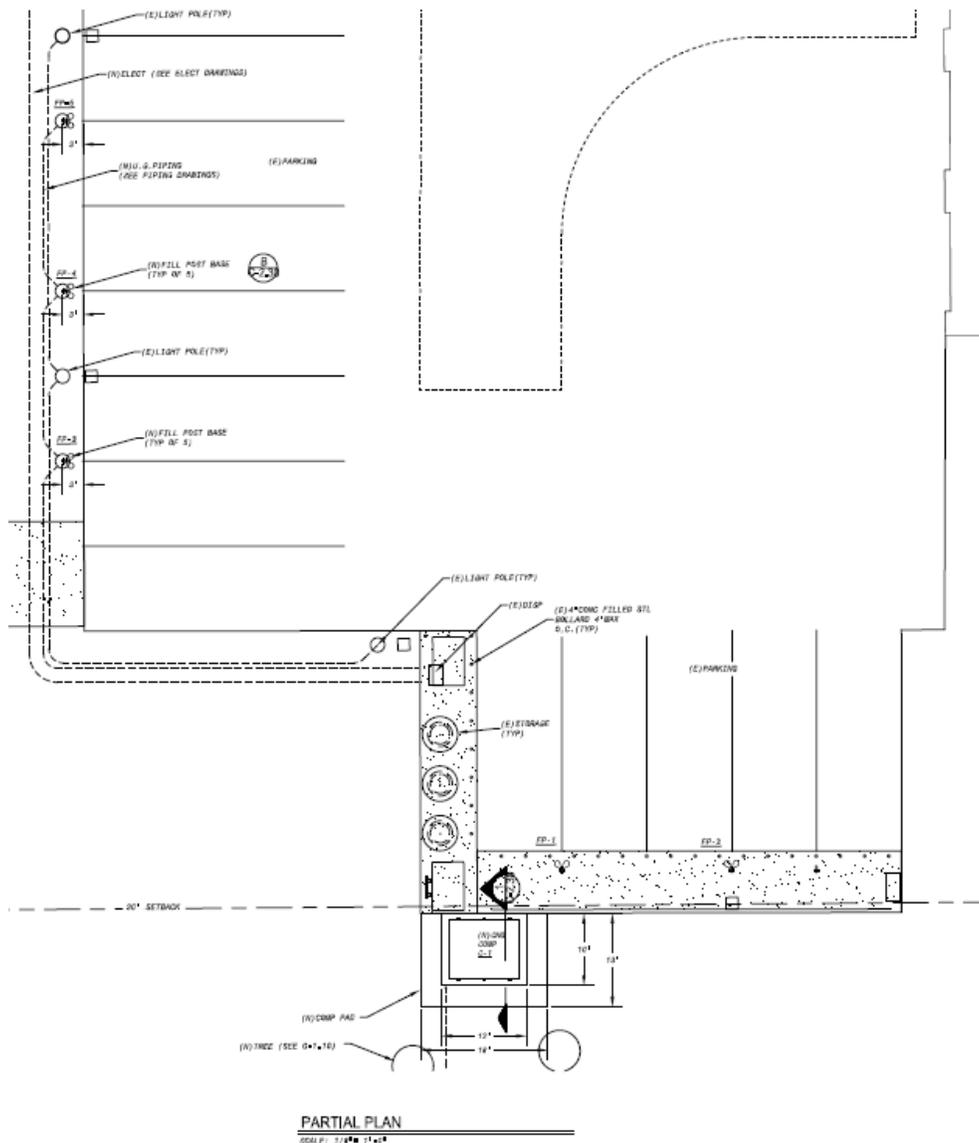
Back up charge for Tube Trailers will be at cost plus RS 32 (or customer site applicable rate schedule).  
Facilities at Sherwood will be at RS 32 (or customer site applicable rate schedule).

HIGH-PRESSURE NATURAL GAS SERVICE AGREEMENT  
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Exhibit G: DESCRIPTION OF LEASED SITE

The leased site is where the equipment (compressor) is installed per the mechanical and electrical drawings (attached to this contract and depicted below) of the Real property located in the Northeast Quarter Section of Section 14, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon recorded as Deed No. 2008-070972 on October 14, 2008 in Clackamas County, Oregon and being more particularly described as follows:

LOTS 11, 15 & 16, SUBDIVISION BOBERG, TL 1600, in the City of Wilsonville, County of Clackamas and State of Oregon.



HIGH-PRESSURE NATURAL GAS SERVICE AGREEMENT  
DATED \_\_\_\_\_  
BETWEEN NORTHWEST NATURAL GAS COMPANY  
AND CITY OF WILSONVILLE

Exhibit H: ACCESS AUTHORIZATION AND RESTRICTIONS

Customer shall provide reasonable access to NW Natural personnel or its agent to perform their duties. NW Natural may access the site during The City of Wilsonville's normal business hours of M-F 4:00 AM to 10:30 PM. Access outside these times can be arranged on an as needed basis.