

CITY OF WENDOVER ORDINANCE No.97-03.

SUMMARY: WENDOVER ORDINANCE NO. 97-03, ENTITLED "Gaseous Fuels Franchise"; grants a non-exclusive franchise to Wendover Gas Co., a Nevada corporation, and a wholly-owned subsidiary of Propane of Wendover, Inc. for the furnishing, selling and distributing of natural gas, artificial gas, liquefied natural gas, liquefied petroleum gas, manufactured gas or any mixture thereof to persons and entities in the City of Wendover, Utah; outlines standards for rates and services; outlines standards for use of City public ways; sets the franchise payments to be made to the City; and establishes procedures for termination.

TITLE

AN ORDINANCE, TO BE ENTITLED "GASEOUS FUELS FRANCHISE" WHICH GRANTS A NON-EXCLUSIVE FRANCHISE TO WENDOVER GAS CO., A NEVADA CORPORATION, AND A WHOLLY-OWNED SUBSIDIARY OF PROPANE OF WENDOVER, INC., TO FURNISH, SELL, AND DISTRIBUTE NATURAL GAS, ARTIFICIAL GAS, LIQUIFIED NATURAL GAS, LIQUEFIED PETROLEUM GAS, MANUFACTURED GAS OR ANY MIXTURE THEREOF TO THE CITY AND TO PERSONS, BUSINESSES AND INDUSTRIES WITHIN THE CORPORATE LIMITS OF THE CITY OF WENDOVER, UTAH.

WHEREAS, the supplying of natural gas, artificial gas, liquefied natural gas, liquefied petroleum gas, manufactured gas or any mixture thereof in the City of Wendover, Utah, is of substantial benefit to the health and welfare of the citizens and businesses of the City of Wendover, Utah;

WHEREAS, the City of Wendover believes that it would be in the best interest of the citizens of the City of Wendover, Utah, to grant a non-exclusive franchise to Wendover Gas Co., a Nevada corporation, and a wholly-owned subsidiary of Propane of Wendover, Inc., for the purpose of supplying natural gas, artificial gas, liquefied natural gas, liquefied petroleum gas, manufactured gas or any mixture thereof to the City, its residents and businesses; and

WHEREAS, Utah Code Annotated, Sections 10-1-203 and 10-1-301 et seq. enable the City of Wendover, Utah to grant a non-exclusive franchise for natural gas, artificial gas, liquefied natural gas, liquefied petroleum gas, manufactured gas or any mixture thereof within the limits of the City of Wendover, Utah; and said provisions allow the City to collect a fee or tax, consistent with law, based on the value of the gaseous fuels consumed within the City.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WENDOVER, TOOELE COUNTY, UTAH, ADOPTS AN ORDINANCE TO READ IN ITS ENTIRETY AS FOLLOWS:

GASEOUS FUELS FRANCHISE

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1-101. Title. Ordinance no. 97-03 of the City of Wendover is hereby enacted and may be cited as the "WENDOVER, UTAH GASEOUS FUELS FRANCHISE".

1-102. Definitions. Unless the context otherwise requires, the following terms and their derivatives shall have the meaning herein given (and when not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular, words in the singular number include the plural; and words in the masculine gender include the feminine and neuter):

(a) "City" means the City of Wendover, Utah, or the lawful successor, transferee or assignee thereof.

(b) "Grantee" means Wendover Gas Co., a Nevada corporation, and a wholly-owned subsidiary of Propane of Wendover, Inc., and its successors and assigns as allowed within this chapter.

(c) "Person" means any natural person, company or entity of any kind.

(d) "Franchise Area" means that geographical area within the incorporated City of Wendover, Utah, as now or hereinafter constituted.

(e) "Customer" means any person or entity receiving and paying for Gaseous Fuels services.

(f) "Gaseous Fuels" means natural gas, artificial gas, liquefied natural gas, liquefied petroleum gas, manufactured gas or any mixture thereof used for heating, cooking, cooling, power generation or other purposes.

(g) "Revenues" means all revenues as determined by generally accepted accounting principles consistently applied, derived directly or indirectly from revenues received by the Grantee, arising from or attributable to operation of the franchise within the territorial limits of the City.

(h) "Public Ways" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land, path, alley, court, boulevard, sidewalk, parkway, way, lane, public utility easement, dedicated utility strip or right-of-way dedicated for compatible uses. "Public Ways" also means any Public Way now or hereafter held by the City for purposes of public travel or for utility or public service use dedicated for compatible uses.

(i) "System" means all pipes, equipment and other property used by the Grantee in its gaseous fuels operations within the territorial boundaries of the City of Wendover, Utah.

1-103. Non-Exclusive Grant of Authority. Upon acceptance as provided in Section 1-104, below, a non-exclusive franchise and right is hereby granted by the City to Grant to locate, build, construct, purchase, maintain, operate and extend into, within and through the City, pipelines and facilities for the purchase, manufacture, storage, transmission and distribution of Gaseous Fuels, as defined herein, for heating, cooking, cooling, power generation, or other purposes, with the right and privilege for the period and upon the terms and conditions hereinafter specified to furnish, sell and distribute said Gaseous Fuels to the City and the inhabitants thereof by means of pipes, mains, or otherwise, over, under, along, across and through any and all such new streets, alleys and public ways and places as may hereafter be laid out, opened, located or constructed within the territory now or hereafter included in the boundaries of the City.

1-104. Term of Franchise. The franchise herein granted shall take effect and be in force from and after the final passage and publication hereof as required by law and upon the filing of written acceptance by the Grantee within twenty (20) days after the effective date of this ordinance, and shall continue in force and effect for a term of twenty-five (25) years from and after such passage, unless otherwise terminated as provided herein; provided, however, (a) should the Grantee fail to file its acceptance within twenty (20) days after the effective date hereof, the City may terminate the franchise; (b) should the Grantee fail to begin to provide Gaseous Fuels service within the City to businesses and residents within two years from and after the date of final passage of this ordinance the City may terminate the franchise; and further, (c) that the City may elect, upon a majority vote of the governing body, to terminate this franchise if the City determines that the Grantee has failed to use reasonable, good faith efforts to substantially complete the Gaseous Fuels distribution system within two (2) years from and after the date of final passage of this ordinance.

1-105. Compliance With Laws and Ordinances. The Grantee shall, at all times during the life of this franchise, be subject to all lawful exercise of police and other powers of the City, and to such other regulations as the City shall hereafter by resolution or ordinance provide. Grantee shall further be responsible for compliance with any applicable state or federal statute, rules or regulations.

Grantee expressly acknowledges that the City has adopted an ordinance relating generally to public franchises granted by the City. Grantee agrees that this Ordinance and the franchise granted hereby, shall be subject to, and governed by, said public franchise ordinance, as the same has been adopted and may be amended from time to time. Grantee further acknowledges and agrees that the City may adopt a municipal energy and sales tax ordinance, consistent with law, and that his Ordinance and the franchise granted hereby shall be subject to said municipal energy and sales tax ordinance, as the same may be adopted and amended from time to time.

1-106. Service Standards. The Grantee shall maintain and operate its system and render efficient service in accordance with the provisions of this Chapter and in accordance with the rules, regulations and orders of the Public Service Commission of the State of Utah as they now exist and as they may hereafter be amended or changed.

1-107. Conditions for Occupancy of Public Ways. All distribution lines, pipes structures and equipment installed or erected by the Grantee pursuant to the terms hereof shall be located so as to cause minimum interference with the proper use of Public Ways and to cause minimum interference with the rights or reasonable convenience of the City, other public utilities, and property owners who adjoin any of the said streets, alleys or other Public Ways and places. All distribution lines, pipes, structures and equipment installed or erected by the Grantee shall be installed, where practicable, parallel with existing underground utility lines and pipes. All

distribution lines, pipes, structures and equipment installed or erected by the Grantee shall be so located in the Public Ways of the City in a manner and at such depths so as not to obstruct or interfere with any pipes, sewers, drains, valves or other structures already installed or presently master planned by the City to be installed. The Grantee shall, when practicable, avoid interfering with the use of any public road where the paving or surface or such public road would be disturbed or would interfere with the grading or maintenance of the Public Ways.

(a) Pipes and Appurtenances. Subject to the conditions herein contained, Grantee shall have the right of installing, maintaining and using any or all of such distribution lines, pipes, structures and equipment from time to time as may be necessary or proper.

(b) Repair of Public Roads. Grantee shall promptly, but in no case later than fifteen (15) days after installing, maintaining, or using said distribution lines, pipes, structures and equipment or any part thereof, at its own cost and expense, place any Public Way in which it may install distribution lines, pipes, structures and equipment, or so much thereof as may have been damaged thereby, in as good order and condition as that in which such Public Ways were found before being disturbed or excavated by Grantee.

(c) Repair of Damage to Public Ways. If any Public Way, or portion thereof, shall be damaged by reason of defects in any of the pipes and appurtenances maintained or constructed under this grant, or by reason of any other cause arising from the Grantee's operations, or the existence of any pipes and appurtenances constructed or maintained under this grant, said Grantee shall, at its own cost and expense, and in a manner approved by the City, within fifteen (15) days repair any such damage and restore such Public Way, or portion thereof, to as good a condition as existed before such defect or other cause of damage occurred. Grantee shall maintain any repair or restoration in an approved condition for a period of not less than three (3) years.

(d) Relocation. The Grantee shall at its own expense and without expense to the City, relocate, protect, support, temporarily disconnect or remove from a Public Way any distribution lines, pipes, structures and equipment theretofore installed and then maintained or used under this franchise if and when made necessary by any lawful street construction, change of grade, alignment or width of any public road by the City, including the construction of any subway or viaduct, or otherwise necessitated by public safety, traffic conditions, installation or repair of any sewer or water facilities or other public utility facilities, or any other type of structure or improvements by the City. This provision shall cease to be applicable to any public road if and when the City shall cease to have jurisdiction over or shall cease to be obligated to maintain such public road, and nothing herein contained shall be construed as constituting a contractual obligation of the Grantee running to the authority assuming jurisdiction over or the obligation to maintain such public road.

(e) Placement and Inspections. Before the work of installing any pipes and appurtenances is commenced, the Grantee shall file with the City plans showing the location thereof, and the City may give such directions for the location of such pipes and appurtenances as may be reasonably necessary to avoid sewers, water pipes, conduits or other structures lawfully in or under the street, alleys and public roads of the City. All work of installing pipes and appurtenances shall be subject to the inspection of the City, and to the approval of the City, provided, however, that such approval will not be unreasonably withheld.

(f) Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing, the Grantee shall, at its own cost and expense, and in the manner approved by the City, replace and restore all such paving, sidewalk, driveway or surface disturbed, in as good a condition as before said work was commenced. Grantee shall maintain any repair or restoration in an approved condition for a period of not less than three (3) years.

(g) Repair of Water Pipes, Sewers, Drains and Other Structures. The Grantee shall, at its own cost and expense, immediately repair or replace as necessary any and all water pipes, mains, service lines, valves, meters, sewer lines, culverts, conduits, and all other materials and equipment utilized in connection with water service, sewer service and drainage damaged in any way by the Grantee

(h) Membership in "Blue Stakes." Grantee shall, upon approval of this ordinance, immediately initiate steps to become a member of the "Blue Stakes" System, and shall obtain membership in said system prior to commencement of any construction or operations within the City. Grantee shall, throughout the term of the franchise granted hereunder, maintain its membership in good standing in the Blue Stakes System, or any successor system.

(i) Construction Drawings. Upon request, the City shall be furnished complete drawings of any construction performed by Grantee pursuant to the provisions of this ordinance. In the preparation of its final drawings, in the course of construction, Grantee shall note and identify the location of other existing public utility systems located within the Public Ways and elsewhere, including but not limited to sewer and water lines and related facilities. The Grantee shall keep and maintain permanent drawings and records of the locations and character of any underground facilities constructed by Grantee.

(j) Notice of Work. Except as required by emergency maintenance or repairs, the Grantee shall provide the City and all affected property owners and inhabitants seven (7) days advance written notice of work to be performed in any Public Way.

1-108. Safety and Construction Standards.

(a) Construction, installation and maintenance of the franchise system shall be performed in a safe, orderly and workmanlike manner.

(b) Grantee shall install and maintain its distribution lines, pipes, structures and equipment in accordance with applicable safety codes and technical requirements, including but not limited to, the National Plumbing Code, other applicable nationally recognized codes for the installation and maintenance of pipelines and related structures and materials used for the transmission of Gaseous Fuels, Federal and Utah State OSHA requirements, and other applicable Federal and Utah State statutes, rules and regulations, all in such a manner as Grantee will not interfere with any public utility or public service installations or those of any other provider of public utility services.

(c) All distribution lines, pipes, structures and equipment in, over, under, and upon the Public Ways of the City, wherever located, shall be kept and maintained in a safe and suitable condition and in good order and repair.

(d) All installations shall be made in such a manner so as to not impair or disturb the fire integrity of any building. The franchise system shall not endanger nor interfere with the safety of persons or property in the City.

(e) Grantee shall be at all times maintain control over each of its subcontractors and their subcontractors to the extent that Grantee can respond to complaints and concerns of the City or other persons.

(f) All permits required for construction of the franchise system shall be issued to Grantee pursuant to applicable City ordinances and regulations.

**1-109. Indemnification and Insurance.**

(a) The City shall not be liable or responsible for any acts or damages that may occur in the construction, operation or maintenance by the Grantee of its distribution lines, pipes, structures and equipment hereunder, including liabilities arising under environmental statutes or regulations, and the acceptance of this franchise shall be deemed an agreement on the part of Grantee, its successors and assigns, to indemnify the City and hold it harmless against any and all liability, loss, cost, damage or expense sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever, resulting from the negligence, default, misconduct or failure to act on the part of the Grantee in the construction, operation or maintenance of its pipes, appurtenances and Gaseous Fuels system hereunder. The City shall notify the Grantee promptly after the presentation of any claim or demand, either by suit or otherwise, made against the City.

(b) Grantee shall promptly compensate the City or other persons for damages caused by any negligence or operator error of the Grantee or its subcontractors in the construction, operation or maintenance of the franchise system, and shall at its own expense reasonably replace all landscaping or other damage as a result of any construction, operation or maintenance of the system. In any event, such replacement shall be completed within forty-five (45) days from the

time the damage was caused, weather permitting. This provision shall not preclude any person damaged by Grantee from exercising any right that person has under law.

(c) Prior to commencement or construction and continuously throughout the duration of this franchise and any extensions or renewals thereof, the Grantee, in addition to complying with the Utah Workers Compensation Act, and the Utah Employment Security Act shall maintain the following types and amounts of insurance, naming the City as an additional insured thereunder:

(i) General liability at least in the amounts of: \$5,000,000.00 for property damage per occurrence; \$20,000,000.00 for property damage aggregate; \$5,000,000.00 for personal bodily injury to any one person; and \$20,000,000.00 for personal bodily injury aggregate; and

(ii) Motor Vehicle liability insurance at least in the amount of: \$1,000,000.00 for bodily injury or death per occurrence; and \$500,000.00 for property damage per occurrence.

In five (5) year intervals, the foregoing amounts of insurance shall be increased if requested by the City to compensate for inflation as measured by the Consumer Price Index, or to meet the advice or suggestions of the City's insurers or the City's insurance consultants. The Grantee shall furnish to the City Clerk certificates of insurance for this coverage prior to commencing its performance under this agreement and annually thereafter.

(d) Deductibles and Self-Insured Retentions. Any deductibles and self-insured retentions shall be declared to the City, and any deductibles above five percent (5%) must be approved by the City, conditioned upon the City's determination that Grantee has sufficient reserves to cover any such deductibles and self-insured retentions. Subject to the foregoing, the retentions as respects the City, its officers, officials, consultants and employees, or the Grantee may be required to provide a bond guaranteeing payment of the City's losses and related investigation, claim distribution and defense expenses.

(e) Notice of Accident or Claim. The Grantee shall immediately disclose to the City all incidents or occurrences of accident, injury or property damage in or relating to the City, in which the City (or its officers, officials, employees, consultants or volunteers) has been named a party, or in which the plaintiff or any other party, or its counsel, has expressed (whether verbally or in writing) an intention to name the City (or its officers, officials, employees, consultants or volunteers) as a party to any litigation.

(f) Insurance Provisions. The policies of insurance to be maintained by Grantee shall contain, or be indorsed to contain, the following provisions:

(i) Any coverage obtained shall not be suspended, voided or canceled by any party, reduced in coverage or in limits, except upon thirty (30) days prior written notice, sent by certified mail, return receipt requested, to the City;

(ii) The City and its officials, officers, employees, consultants and volunteers shall be covered as additional insureds. The coverages shall contain no special limitations on the scope of protection afforded to the City, its officials, officers, employees and volunteers.

(iii) The Grantee's insurance shall be the primary insurance for the City, its officials, officers, employees, consultants and volunteers, but solely as respects the acts or omissions of the Grantee. Any insurance or self-insurance maintained by the City, its officials, officers, employees, consultants and volunteers shall be in excess of the Grantee's insurance and shall not contribute with it.

(iv) Any failure by Grantee to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, officers, employees, consultants and volunteers.

(v) The Grantee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(vi) With respect to worker's compensation and employer's liability coverage, the insurer shall waive all rights of subrogation against the City, its officials, officers, employees and volunteers for losses arising from work performed by the Grantee for the City.

(g) Verification of Coverage. The Grantee shall provide the City with certificates of insurance and with original endorsements effecting the coverages required herein not less than thirty (30) days prior to the commencement of construction of the System, when Grantee's insurance company or coverage substantially changes, and at such other times as the City may request. The certificates and endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf.

(h) Acceptability of Insurers. The insurance placed by the Grantee shall be with insurers with a Best's (or equivalent) rating of no less than "A."

(i) Subcontractors. Grantee shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. The general liability and motor vehicle liability coverage for subcontractors shall be not less than the following amounts:

(i) General liability at least in the amounts of: \$2,500,000.00 for property damage per occurrence; \$10,000,000.00 for property damage aggregate; \$2,500,000.00 for personal bodily injury to any one person; and \$10,000,000.00 for personal bodily injury aggregate; and

(ii) Motor Vehicle liability insurance at least in the amounts of: \$1,000,000.00 for bodily injury or death per occurrence; and \$500,000.00 for property damage per occurrence.

1-110 Bond.

(a) Grantee shall, within twenty (20) days after the date of the granting of a franchise, file with the City Clerk and at all times thereafter maintain in full force and effect for the entire term of the franchise, at its expense, a faithful performance bond executed by a surety company, licensed to do business in the State of Utah, and approved by the City and in form satisfactory to the City, in an amount equal to ten percent (10%) of the estimated total construction cost of the system, renewable annually and conditioned on the faithful performance by the Grantee of all the terms, conditions and covenants contained in the franchise. If the Grantee fails to comply with any one or more of the provisions of the franchise, there shall be recoverable jointly and severally from the principal and surety of such bond any damages or losses suffered by the City as a result thereof. For purposes of this section, the term "performance bond" shall mean and include an irrevocable letter of credit from a federally insured financial institution licensed to do business in the State of Utah, and in a form acceptable to the City.

(b) Neither the provisions of any bond accepted by the City pursuant hereto, nor any damages recovered by the City thereunder, shall be construed to excuse faithful performance by Grantee or limit the liability of Grantee under the franchise or for damages or preclude the exercise of any other right or remedy given to the City by law.

1-111. Annexed or Consolidated Areas. This franchise and the provisions of this Chapter shall apply to any area which may hereafter be added to the City by annexation, consolidation or otherwise. Upon any such annexation, consolidation or other procedure whereby the City Limits are expanded or changed the Grantee shall, and by acceptance of this franchise agrees to waive, relinquish or abandon any and all franchise rights, privileges, easements and rights of way held by the Grantee by virtue of a franchise granted by another governmental entity, within the area which hereafter becomes part of the City and such additional area shall become subject to the franchise rights granted herein.

1-112. Assignment.

(a) The Grantee shall not sell, transfer or assign this franchise, or any rights or privileges under this franchise to any person, corporation, partnership or entity without prior City approval, which approval shall not be unreasonably withheld. No sale, transfer or assignment

Shall be effective until the vendee, assignee or lessee has filed in the office of the City Clerk all documents required of other franchise applicants as required by the City's Franchise Ordinance. In addition to the foregoing, the proposed transferee must have the necessary operating authority and certificates of public convenience and necessity as are required by the Utah Public Service Commission or such other governmental department, agency or commission as may then be regulating or controlling the activities or services of the Grantee or the propose transferee.

(b) The Grantee shall provide the City with thirty days advance notice of any proposed change in, or transfer of, or acquisition by any other party of, control of Grantee. As used herein, the word "control" is not limited to major stockholders but includes actual working control, in whatever manner, of Grantee.

(c) The transfer of the franchise shall not constitute a waiver or release of the rights of the City in and to the Public Ways, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this franchise and any franchise ordinance adopted by the City which further regulates or relates to the operation of a system for the sale of Gaseous Fuels within the City.

(d) The Grantee hereby provides to the City, and the City hereby reserves the right, of first refusal to purchase all or any part of the Grantee's franchise system, located within the City, Tooele County, Utah, West Wendover, Nevada and in Elko County, Nevada at the price and on the same terms agreed to by the Grantee. Upon receipt of a bona fide offer for the sale of all or any part of the Grantee's system, the Grantee shall give written notice of the proposed sale or disposition, including the proposed date of the sale or disposition and all of the detailed terms thereof to the City, all not less than 180 days prior to the effective date of the sale. In order to exercise its right of first refusal, the City shall provide Grantee a signed notice of its intent to meet all the terms of the sale not less than sixty days after receipt of the original notice of sale from Grantee. The right of first refusal granted herein shall inure to the benefit of, and be binding upon, the parties' successors and assigns. The failure of the City, in one or more instances, to exercise its right of first refusal shall not affect its right of exercise upon any subsequent sale.

1-113. Franchise Fee: Calculation, Reporting and Remedies.

(a) The Grantee shall, during the term of this franchise, or any renewal or extension hereof, pay to the City for the privilege of operating a Gaseous Fuels distribution system under this franchise the sum computed on the gross revenue taken in or received by the Grantee from all sales of Gaseous Fuels within the City received from the operation of the distribution system as follows:

An amount equivalent to that set forth in the City's Utility Franchise Ordinance, subject, however, to the maximum amount allowed by law as set forth in Utah Code Annotated Section 11-26-1, et seq., or any successor statute.

(b) Payment shall be made to the City in quarterly installments, the first installment payment to be paid within thirty (30) days after the expiration of the first calendar quarter (ending on the last day of the months of March, June, September and December) in which Grantee receives revenue from its operations under this franchise. Each installment shall be based upon the total gross revenue for the proceeding three (3) months period. If such payments are not made within thirty (30) days after the expiration of the calendar quarter, the City may, in addition to any other remedy either at law or as otherwise provided within this agreement assess a late penalty two percent (2%) per month on the delinquent amount.

(c) Each payment shall be accompanied by a report from the Grantee showing the basis for the computation and a written statement signed under penalty of perjury by an officer of the Grantee, which identifies the sources and amounts of Revenues received by the Grantee during the quarter for which payment is made. The receipt and deposit by the City of any payment tendered by Grantee shall not be construed as an accord, waiver or release by the City for payment in full of the true and correct amount due hereunder.

(d) The filing of a false report shall be unlawful. The Grantee, or an officer of the Grantee, is guilty of a Class B misdemeanor if he knowingly files or causes to be filed a false report with the City with a purpose of inducing the City to believe the report is accurate.

(e) The City shall be entitled, upon reasonable request, to review and audit the billing and financial records of the Grantee to ensure its compliance with the requirements hereof. In the event the results of an audit show an underpayment of greater than five percent (5%), the Grantee shall pay all costs associated with the performance of the audit and any review thereof. In the event the results of an audit show an underpayment of greater than ten percent (10%), the Grantee shall pay not only the costs associated with the performance of the audit and any review thereof, but shall also pay a civil penalty of fifty percent (50%) of the total error in addition to any additional amount owed as shown by the audit. Any amount determined due shall be paid by Grantee within thirty (30) days of notice thereof. If the results of the audit show a discrepancy of less than five percent (5%), the City shall pay its own costs associated with the audit. In the event the results of an audit are disputed, the matter shall be resolved by arbitration in Salt Lake County or Tooele County, Utah pursuant to the Commercial Rules of Arbitration of the American Arbitration Association. The costs of arbitration, including attorney's fees, shall be paid by the prevailing party, as determined by the arbitrator(s).

(f) If Grantee initiates any challenge to the City's right to collect the franchise fee provided herein, any relief requested by Grantee and awarded by virtue of such challenge shall be prospective only from and after the earlier of the date of: (a) any payment under protest which has not been resolved by the parties; or (b) the date of the filing of the initial pleading seeking such relief in a court of competent jurisdiction. Grantee shall waive any and all claims or rights to

collect back from the City or obtain credit against future payment obligations, any amounts collected by the City prior to the dates defined in the immediately preceding sentence. In the event Grantee's challenge to any franchise fee payments should result in an initial determination in its favor, Grantee shall continue to make all franchise fee payments to the City pending resolution of an appeal by the City to a court of last resort, provided however, that any such payment shall not constitute a waiver by Grantee of its right to reimbursement of excess payments should Grantee ultimately prevail on appeal.

1-114. Nature of Gas Supplied. The Gaseous Fuels to be supplied hereunder shall contain a monthly average gross heating value of not less than the heating value set forth in the policies filed with or fixed by the Utah Public Service Commission.

1-115. Conversion to Natural Gas. Grantee shall convert from liquefied petroleum gas or other form of gaseous fuel to natural gas upon the occurrence of both of the following conditions: (a) a delivered natural gas supply becomes available to Grantee for purchase via pipeline at the geographical boundaries of the City (as presently or hereinafter constituted) and (b) the natural gas supply can be purchased by Grantee at a price, inclusive of all necessary conversion costs (amortized over a period of twenty-five [25] years), below the average price paid by Grantee for liquefied petroleum gas or other gaseous fuel during the immediately preceding twelve (12) month period. The conversion to natural gas required hereunder shall be completed by Grantee within a reasonable period of time after the occurrence of the conditions set forth herein, which period shall not exceed one (1) year.

1-116. Rates. The Grantee shall furnish Gaseous Fuels to the City and its inhabitants for heating, cooking, cooling, power or any other lawful purpose under the policies and the rates as are from time to time filed with or fixed by the Utah Public Service Commission. Unless otherwise prohibited by law, notice of changes in rates and charges shall be filed with the City Clerk at least thirty (30) days in advance of the effective date thereof. Grantee further agrees that, in addition to any other notice required by law, it will advertise any application for an adjustment of rates in a newspaper of regular circulation within the City, including all newspapers in which the City's agendas of public meetings are published, at least two times, and thirty days prior to any hearing on Grantee's application.

1-117. Records and Reports. The City shall have access at all reasonable hours to all of the Grantee's books, records, reports, contracts and bookkeeping and accounting procedures relating to the property and the operations of the Grantee within the area covered by this franchise and all other records required to be kept by the Public Service Commission of the State of Utah or such other governmental department, agency or commission which may hereafter have the control or regulation of the Grantee. The parties agree that the Grantor shall be entitled to notice of any proceeding or documents relating to the rates charged by Grantee and relating to the safe operation

Of the Grantee's system. Accordingly, the following records and reports shall be filed with the City Recorder by the Grantee:

(a) A true and correct conformed copy of the rates, rules, regulations, terms, tariffs and conditions adopted by the Grantee and approved by the Public Service Commission.

(b) A quarterly summary report showing gross revenues received by the Grantee from its operations within the City during the preceding three (3) month period and such other information as the City shall reasonably request with respect to properties and operations relating to the Grantee's service within the City.

(c) A description of all petitions, applications and reports submitted by Grantee to any State or Federal entity relating to the operation of the franchise system. On request, Grantee shall provide, at its own expense, true and correct copies of all such document to the City.

(d) A current map or set of maps, drawn to scale, showing all equipment installed and in place in the system.

1-118. Business License. Grantee shall be required to obtain and maintain a City business license; however, the cost of such license may be deducted from the Franchise Fee required to be paid herein if such deduction is required by law to avoid payments by the Grantee in excess of the maximum franchise fee which may be imposed upon a franchise.

1-119. Remedies. Anything in this ordinance to the contrary notwithstanding, acceptance of this franchise by Grantee shall result in this ordinance becoming a contract between the City and the Grantee and the parties hereby agree that each party shall have all remedies in law and in equity, including injunctive relief, for the enforcement of the provisions of this franchise.

1-120. Violation of Franchise. In the event that the City believes the Grantee, or subject to the restrictions on transfer, its vendees, successor or assigns, has not complied with the terms of this franchise, it shall notify the Grantee in writing of the exact nature of the alleged non-compliance. Grantee shall have thirty (30) days from the date of the notice to respond to the the assertion of noncompliance, or to cure such default, or, in the event that by the nature of default, such default cannot be cured within thirty (30) days, initiate reasonable and substantial steps to remedy such default and notify the City of the steps being taken and the projected date that compliance will be met, In the event that such default is not cured within the thirty (30) day period, or within the projected date of compliance, which date shall be within a reasonable period of time, the City may terminate this agreement. The Grantee shall not be relieved of any of its obligations to comply promptly with any provision of this agreement by reason of any failure to the City to enforce prompt compliance. In addition, the City may elect to make a needed correction itself, and charge the cost thereof (plus an administrative fee equal to twenty percent of the total cost) to the Grantee, which shall promptly pay the same; provided however, that if the cost and administrative fee shall not be paid within thirty days of billing, the City may secure payment from

The proceeds of the Bond identified in paragraph 1-110. In the event the City is required to consult with or retain an attorney, including its City Attorney, relative to the remedy of any violation of this Franchise, the City shall be entitled to recover its costs and expenses associated therewith.

1-121. Procedure Upon Termination. Upon expiration of the franchise, or upon termination as otherwise provided herein, if the Grantee shall not have perfected a renewal thereof, it may have, and it is hereby granted, the right to enter upon the streets or other property of the City for purposes of removing there from any or all of its property. In so removing said property, Grantee shall refill, at its expense, any excavation that it shall make, and shall leave said streets or other property in as good condition as that prevailing prior to the Grantee's removal of its property. Grantee may, in lieu of removal of such property, transfer its interest in such property to a third party provided such third party is approved by the City as a franchise.

1-122. Notices. All notices required hereunder, or otherwise required by law, shall be in writing and shall be deemed served: (a) when hand delivered to the other, or (b) when deposited in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the City or the Grantee as identified herein, or at such other address specified in writing by the parties.

All notices from Grantee to the City shall be delivered or sent to:

City of Wendover  
P.O. Box 430  
100 South Ninth Street  
Wendover, Utah 84083

and also to the Wendover City Attorney, at the business address of file with the office of the City Recorder.

All notices from the City to the Grantee shall be delivered or sent to:

if by mail:

Wendover Gas Co.  
P.O. 274  
Wendover, Utah 84083

or by hand delivery:

Wendover Gas Co.  
460 South Mesa Street  
West Wendover, Nevada 89883

1-123. Miscellaneous Provisions.

(a) Compliance with Laws. Grantee shall comply with all Federal, State and local laws, rules, regulations and ordinances applicable to the operation of a public utility.

(b) Force Majeure. Grantee shall not be held in default for noncompliance with the provisions hereof, nor suffer and enforcement or penalty relating hereto, where such noncompliance is caused by acts of God or other events beyond Grantee's control.

(c) Periodic Review. This subsection is adopted to improve communications between the City and the Grantee

(i) The City may require review sessions with the Grantee upon thirty (30) days written notice.

(ii) All review sessions shall be open to the public, except as allowed by the law of the State of Utah.

(iii) Topics which may be discussed at review sessions include, but are not limited to, legislation affecting the parties, rates, Grantee's financial statements, filings with the Utah Public Service Commission, customer service and support, expansion of the system, and potential purchase of the system.

(iv) During review sessions, Grantee shall fully participate and cooperate with the City and shall provide without cost information and documents which the City reasonably requests to perform its review.

(v) As a result of a review session, the parties may agree to modify or otherwise review the franchise.

(f) Severability. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall in no way affect the validity and enforceability of the remaining provisions of this ordinance. In the event that any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, this ordinance shall be construed and enforced in a manner which will be in compliance with the requirements of all applicable laws, statutes, regulations and ordinances.

(g) Repeal. Except as may be provided in the City's public franchise ordinance, and as the same may be amended from time to time, all ordinances, parts of ordinances or chapters, sections, subsections or paragraphs or resolutions previously adopted by the City, which are in conflict with this ordinance, are hereby repealed.

(h) Applicable Law. This franchise ordinance shall be governed by the substantive and procedural laws of the State of Utah.

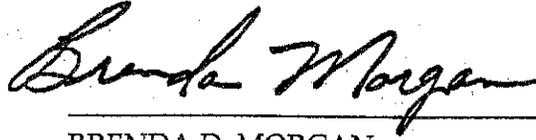
(i) Forum Selection. To the extent that a dispute is outside the exclusive jurisdiction of the Utah Public Service Commission, and except as expressly provided herein for arbitration of limited issues, any legal action to resolve a dispute under this agreement shall be filed in the Third District Court in and for Tooele County, Utah.

1-124. Publication Costs. The Grantee shall assume the costs of publication of this ordinance as such publication is required by law. A bill for publication costs shall be presented to the Grantee by the Clerk upon the Grantee's filing of acceptance of this franchise and such costs shall be paid at that time.

1-125. Adoption and Publication. Upon adoption, the City Clerk of the City is hereby directed to have notice of this ordinance published as required by law and to post notice of this ordinance as required by law. This ordinance becomes effective twenty (20) days after its publication or thirty (30) days after passage, whichever is earlier.

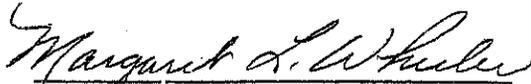
PASSED AND ADOPTED this 14<sup>th</sup> day of May, 1997, by the Wendover, Utah City Council:

CITY OF WENDOVER, UTAH



BRENDA D. MORGAN  
MAYOR

ATTEST:



MARGARET WHEELER  
CITY RECORDER

Wendover/ordinances/gaseous fuels-draft 7