

## **ORDINANCE NO. 16-09**

### **AN ORDINANCE OF SOUTH OGDEN CITY, UTAH, GRANTING TO QUESTAR GAS COMPANY A FRANCHISE FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A GAS DISTRIBUTION SYSTEM IN SOUTH OGDEN CITY, WEBER COUNTY, STATE OF UTAH**

#### **SECTION I - RECITALS**

**WHEREAS**, the City Council finds that the City of South Ogden ("City") is a municipal corporation duly organized and existing under the laws of Utah; and,

**WHEREAS**, the City Council finds that in conformance with Utah Code ("UC") §10-3-717, and UC §10-3-701, the governing body of the city may exercise all administrative and legislative powers by resolution or ordinance; and,

**WHEREAS**, the City Council finds that in conformance with Utah Code ("UC") § 10-1-401, et. seq., the governing body of the city may enter into franchise agreements with public utility providers; and,

**WHEREAS**, the City Council finds that Questar Gas Company, a Utah corporation, ("Questar") is a regulated public utility that provides natural gas to the citizens of South Ogden City (the "City") and other surrounding areas;

**WHEREAS**, the City Council finds that providing natural gas requires the installation, operation and maintenance of a gas distribution system and other related facilities to be within the public ways of the City;

**WHEREAS**, the City Council finds that the City, under Utah Code Ann. § 10-8-21 has the authority to regulate gas distribution systems within public ways and to grant to Questar a general utility easement for the use thereof;

**WHEREAS**, the City Council finds that the City desires to set forth the terms and conditions by which Questar shall use the public ways of the City;

**WHEREAS**, the City Council finds it necessary to insure provision of adequate and effective public utility services for city residents; and,

**WHEREAS**, the City Council finds that the public convenience and necessity requires the actions contemplated,

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF SOUTH OGDEN AS FOLLOWS:**

#### **SECTION II – FRANCHISE AGREEMENT AUTHORIZED**

A Gas Distribution System And General Utility Easement Franchise Agreement  
Between Questar Gas Company And South Ogden City, As Set Out Below, And By

This Reference Fully Incorporated Herein, Is Approved And Adopted, Upon Acceptance By Questar As Set Out Below, With The Condition That The City Manager, With The Concurrence Of The City Attorney, Is Authorized To More Fully Negotiate And Resolve Any Remaining Details, Or Changes, Under The Agreement With Questar On Behalf Of The City And The Mayor Is Authorized To Sign, And The City Recorder Is Authorized To Attest, Any And All Documents Necessary To Effect This Authorization And Approval.

If The City Manager Is Unable To Successfully Resolve Any Remaining Details, Or Changes, If Any There Be, This Authorization And Approval Shall Be Void And The City Manager Shall So Notify The Council.

1. **Grant of Franchise.** The City grants to Questar Gas a nonexclusive franchise (Franchise) to construct, maintain, and operate in the present and future roads, streets, alleys, highways, and other public rights-of-way within City limits, including any property annexed or otherwise acquired by the City after the effective date of this Franchise, (collectively, Streets) a distribution system for furnishing natural gas to the City and its inhabitants for heating and other purposes. Questar Gas may erect, construct, equip, and maintain along, over, and under the Streets a system of mains, pipes, laterals, and related equipment (Facilities) as are reasonably necessary for supplying natural gas service under this Franchise.

2. **Consideration.** In consideration of this Franchise, Questar Gas shall pay to City \$50.00 upon acceptance of this Franchise and shall provide gas service under the terms of this Franchise.

3. **Term.** This Franchise is granted for an initial term of thirty (30) years. At the expiration of the initial term, the Franchise shall continue in effect upon the same terms and conditions for up to two additional terms (each of which is a renewal period) of fifteen (15) years each. The City may terminate the Franchise at the end of the initial term, or at the end of any renewal period, by giving Questar Gas written notice of the City's intent to so terminate not less than ninety (90) calendar days before the expiration of the initial term or any renewal period.

4. **Acceptance.** Within sixty (60) days after the passage of this ordinance, Questar Gas shall file with the City an unconditional written acceptance of the Franchise declaring its acceptance of the Franchise and its intention to be bound by the terms and conditions of the Franchise.

5. **Construction and Maintenance of Facilities.** All Facilities shall be constructed and installed to interfere as little as possible with traffic over and public use of the Streets and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the Streets. All Facilities shall be constructed under established gas distribution construction practices and in a manner which protects the Facilities from all traffic loads. All Facilities that are installed during the term of the Franchise shall be sited to be visually unobtrusive and to preserve the natural beauty and neighborhood aesthetics within the City limits. Notwithstanding the foregoing, the City shall not impose siting requirements that are unreasonably costly in relation to the costs of the particular Facility.

Questar Gas shall repair or replace, at its own expense, all rights of way, pavements, sidewalks, street improvements, excavations, other facilities, landscaping, or other improvements, public or private, that it damages in the Franchise operations.

6. **Compliance with Ordinances--Conflict.** Questar Gas shall comply with all City ordinances, regulations, and requirements and shall pay all applicable excavation fees and charges that are or may be prescribed by the City regarding the construction, maintenance and operation of all Facilities. However, these obligations shall apply only if such ordinances, regulations, requirements, or fees are not preempted by or otherwise in conflict with any applicable statutory or constitutional law, rule, or regulation, or the tariffs approved by regulatory bodies having jurisdiction over Questar Gas, including this Franchise and any lawful revisions made and accepted by Questar Gas during the term of the Franchise.

The City may inspect the construction and maintenance of the Facilities to ensure the proper compliance with applicable City ordinances, regulations, and requirements. If Questar Gas should fail to comply with the terms of any City ordinance, regulation, or requirement, the City shall give Questar Gas written notice of such non-compliance and the time for correction provided by ordinance or a reasonable time for correction if there is no time frame provided by the applicable ordinance, regulation, or requirement. Excluding any correction, modification, or change to the Facilities, and after written notice and failure of Questar Gas to make correction, the City may, at its sole risk, make such correction itself and charge the cost to Questar Gas including any minimum cost provided by ordinance. The City shall not make, nor request or allow any party other than Questar Gas to make changes, corrections, or modifications of any kind to Questar Gas's Facilities. Nothing in this Franchise limits Questar Gas's right to oppose any ordinance, whether existing, proposed, or adopted after the effective date of this Franchise.

7. **Information Exchange.** Upon request by either the City or Questar Gas, as reasonably necessary, Questar Gas and the City shall meet to exchange information and documents regarding construction and other similar work within the City limits, with a view towards coordinating their respective activities in those areas where such coordination may prove mutually beneficial. Any information regarding future capital improvements that may involve land acquisition shall be treated with confidentiality upon request if the City may lawfully do so.

8. **Relocation.** Upon written notice to Questar Gas, the City may require the relocation and removal or reinstallation (collectively, Relocation) of any Facilities located in, on, along, over, across, through, or under any of the Streets. After receipt of such written notice, Questar Gas shall diligently begin such Relocation of its Facilities as may be reasonably necessary to meet the City's requirements. The Relocation of Facilities by Questar Gas shall be at no cost to the City if (i) such request is for protecting public health, safety and welfare under lawful authority delegated to the City; (ii) the Facilities have been installed under this or any other Questar Gas franchise and not under a property or other similar right, including, but not limited to, a right-of-way, grant, permit, or license from a state, federal, municipal or private entity; and (iii) the City provides a new location for the Facilities. Otherwise, a Relocation required by the City under such written notice shall be at the City's expense. Following Relocation of any Facilities, Questar Gas may maintain and operate such Facilities in a new location within City limits without additional payment. If a City project is funded by federal or state monies that include an amount allocated to defray the expenses of Relocation of Facilities, then the City shall compensate Questar Gas up to the extent of such amount for any Relocation costs mandated by the project if the City receives or is otherwise authorized to direct or approve payment of such federal or state funds; however, the City shall ensure that receipt of compensation from federal or state sources shall not restrict or otherwise obligate Questar Gas's ownership of the Facilities in any way.

Notwithstanding the preceding paragraph, Questar Gas shall not be responsible for any costs associated with an authorized City project that are not attributable to Questar Gas's Facilities in the Streets. Further, all such costs shall be allocated among all utilities or other

persons whose facilities or property are subject to Relocation due to an authorized City project.

9. **Terms of Service.** Questar Gas shall furnish natural gas service without preference or discrimination among customers of the same service class at reasonable rates, under all applicable tariffs approved by and on file with regulatory bodies having jurisdiction over Questar Gas, including revisions to such tariffs made during the term of the Franchise, and in conformity with all constitutional and statutory requirements. Questar Gas may make and enforce reasonable rules and regulations in the conduct of its business, may require its customers to execute a gas service agreement as a condition to receiving service, and may contract with its customers regarding the installation and operation of its Facilities. To secure safe and reliable service to the customers, and in the public interest, Questar Gas may prescribe the sizes and kinds of pipes and related Facilities to be used and may refuse service to any customer who refuses to comply with Questar Gas's rules and regulations.

10. **Indemnification.** Questar Gas shall indemnify, defend, and hold the City, its officers and employees, harmless against all claims, demands, liens, liabilities, damages, actions, and proceedings arising from the exercise by Questar Gas of its rights under this Franchise, including its operations within City limits, and Questar Gas shall pay the reasonable cost of defense plus the City's reasonable attorney fees. Notwithstanding any provision to the contrary, Questar Gas shall not be obligated to indemnify, defend or hold the City harmless if any underlying claim, demand, lien, liability, damage, action, and proceeding arises out of or for any act or omission of the City or any of its agents, officers or employees.

11. **Assignment.** Questar Gas may assign or transfer its rights and obligations under the Franchise to any parent, affiliate, or subsidiary of Questar Gas, to any entity having fifty percent (50%) or more direct or indirect common ownership with Questar Gas, or to any successor-in-interest or transferee of Questar Gas having all necessary approvals, including those from the Utah Public Service Commission or its successor, to provide utility service within the City limits. Otherwise, Questar Gas shall not transfer, assign, or delegate any of its rights or obligations under the Franchise to another entity without the City's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed. Inclusion of the Franchise as an asset of Questar Gas subject to the liens and mortgages of Questar Gas shall not constitute a transfer or assignment requiring the City's prior written consent.

12. **Insurance.** The Company shall responsibly self-insure or maintain insurance to cover its obligations and liabilities in Section 10, in lieu of any insurance as required in any City ordinances.

13. **Bonding.** If City ordinance requires Questar Gas to post a surety bond, that section of the ordinance is waived.

14. **Effect of Invalidity.** If any portion of this Franchise is held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of any remaining portions of this Franchise.

15. **Amendment.** This Franchise shall not be altered or amended without the prior written consent of both parties.

16. **Effective Date.** This ordinance shall become effective upon the date of acceptance by Questar Gas as established above.

**SECTION III - PRIOR ORDINANCES AND RESOLUTIONS**

The body and substance of all prior Ordinances and Resolutions, together with their provisions, where not otherwise in conflict with this Ordinance, are reaffirmed and readopted.

**SECTION IV - REPEALER OF CONFLICTING ENACTMENTS**

All orders, ordinances and resolutions regarding the changes herein enacted and adopted which have heretofore been adopted by the City, or parts thereof, which conflict with any of this Ordinance Amendment, are, to the extent of such conflict, repealed, except this repeal shall not be construed to revive any act, order or resolution, or part thereof, heretofore repealed.

**SECTION V - SAVINGS CLAUSE**

If any provision of this Ordinance shall be held or deemed to be or shall be invalid, inoperative or unenforceable for any reason, such reason shall not have the effect of rendering any other invalid, inoperative or unenforceable to any extent whatever, this Ordinance being deemed to be the separate independent and severable act of the City Council of South Ogden City.

**SECTION VI - DATE OF EFFECT**

This Ordinance shall be effective on the 19<sup>th</sup> day of April, 2016, and after publication or posting as required by law.

DATED this 19<sup>th</sup> day of April, 2016

SOUTH OGDEN, a municipal corporation

by: \_\_\_\_\_  
James F. Minister, Mayor

Attested and recorded

\_\_\_\_\_  
Leesa Kapetanov, CMC  
City Recorder

**QUESTAR GAS COMPANY**

By: \_\_\_\_\_  
Craig C. Wagstaff  
President

**CITY ACKNOWLEDGMENT**

**STATE OF UTAH**            )  
  :  **SS**  
**COUNTY OF WEBER**        )

On the \_\_\_\_ day of April, 2016, personally appeared before me James F. Minister, who being duly sworn, did say that he is the Mayor of South Ogden City, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Mayor acknowledged to me that the City executed the same.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

Residing at:  
  
\_\_\_\_\_

**QUESTAR GAS ACKNOWLEDGMENT**

**STATE OF UTAH**            )  
  :  **SS**  
**COUNTY OF SALT LAKE**)

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, personally appeared before me Craig C. Wagstaff, who being by me duly sworn did say that he is President of **QUESTAR GAS COMPANY**, a Utah corporation, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors; and he acknowledged to me that said corporation executed the same.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
  
\_\_\_\_\_

Residing at:  
  
\_\_\_\_\_