



## Waynesboro City Council Agenda Briefing

<b>Meeting Date:</b>	October 26, 2020	<b>Staff/Council Member(s):</b> Trafford McRae, Public Works/ Jim Shaw, Deputy City Manager/ Jordan Bowman, City Attorney
<b>Agenda Item #</b>	6	
<b>Resolution#</b>		
<b>Department:</b>	Public Works/City Attorney	
<b>Subject:</b>	Columbia Gas of Virginia Franchise Agreement	

**Background:** The City enters into franchise agreements with private utility companies to allow the installation and maintenance of their assets within City-owned right of ways. Columbia Gas of Virginia (CVA) currently maintains underground mains and services to residences and businesses as well as above ground mechanical devices in Waynesboro. The current Columbia Gas franchise agreement was adopted in December 1991 and is due for renewal by the City Council. In addition, CVA representatives have indicated that their company will continue to pursue significant capital maintenance projects through at least 2028 and the proposed, revised agreement would address issues related to such activities.

The Virginia State Corporation Commission (SCC) regulates certain public utility corporations, including CVA, as to matters of rates and billing, general operation and service standards. Consumer complaints are handled by the SCC. The franchise agreement with City is confined to activities that occur within the public right of way.

The agreement is intended to ensure that work on the part of CVA is conducted safely and in a manner that is coordinated with the City’s own activities and uses in the right of way area. The agreement ensures the protection and/or restoration of City-owned assets and protects the City against claims of damage that may arise due to the action of others. This new agreement is notable for the requirement that a bond is posted to cover CVA construction activities in the right of way. The City is also listed as an “Additional Insured” on CVA’s insurance liability policies.

In addition, this updated agreement is meant to minimize disruption for residents and businesses and ensure the prompt restoration of City owned facilities. Special provisions in this regard apply to the Downtown Enterprise Zone area.

**City Manager’s Recommendation:** The City Council must hold a public hearing, prior to entering into a franchise agreement. The City currently holds franchise agreements with multiple utility providers to ensure the protection of the City’s and the public’s interests. The CVA agreement is due for renewal. Staff recommends approval of this ordinance as proposed.

**Suggested Motion(s):** Following the public hearing, a motion should be made to introduce the attached ordinance granting to Columbia Gas of Virginia, Inc., a franchise to use the streets, alleys, and other public ways of the City of Waynesboro, for distribution and transmission of natural gas within and through the City of Waynesboro, Virginia.

**Attachments:** An ordinance granting to Columbia Gas of Virginia, Inc., a Virginia Corporation, its successors-in-interest, ("Grantee"), upon the express written approval of the City Council of the City of Waynesboro, a franchise to use the streets, alleys, and other public ways of the City of Waynesboro, for the purposes of laying, constructing, extending, repairing, replacing, renewing, and maintaining along and under the same, pipes and such other facilities as may be necessary or desirable for the maintenance, distribution, and transmission of natural gas within and through the City of Waynesboro, Virginia.

## AN ORDINANCE 2020-



Granting to Columbia Gas of Virginia, Inc., a Virginia Corporation, its successors-in-interest, ("Grantee"), upon the express written approval of the City Council of the City of Waynesboro, a franchise to use the streets, alleys, and other public ways of the City of Waynesboro, for the purposes of laying, constructing, extending, repairing, replacing, renewing, and maintaining along and under the same, pipes and such other facilities as may be necessary or desirable for the maintenance, distribution, and transmission of natural gas within and through the City of Waynesboro, Virginia.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WAYNESBORO, VIRGINIA:

### 1. **Section 1. Scope**

- 1.1 **Grant of Franchise.** A franchise (the "Franchise") is hereby granted to Columbia Gas of Virginia, Inc., a corporation organized and existing under the laws of the Commonwealth of Virginia, its successors-in-interest (hereinafter "Grantee"), to use and occupy the streets, alleys, and other public rights-of-ways in the City of Waynesboro, Virginia, (hereinafter "City") as now existing or hereafter extended (including by annexation), for the construction, maintenance, and operation, in, under, along, and through said streets, alleys, and other public rights-of-ways, of a system of pipes, mains, manholes, connections, meters, and other equipment, facilities, and appliances (collectively, the "Facilities") necessary or convenient for the transmission, distribution, and sale of natural gas in, through, or to any agreed upon parts of the City, all subject to the terms stated herein.
- 1.2 **Compliance with City Code.** Nothing in this Franchise shall be construed as precluding Grantee from complying with all other applicable provisions in the City Code, as it may be amended from time to time.
- 1.3 **City's Reserves Rights to Public Rights-of-Ways.** Nothing in this Franchise waives or releases the rights of the City in and to the public rights-of-ways. The City is free to realign, re-grade, otherwise alter, close and/or vacate the public rights-of-ways and require Grantee to alter its Facilities as a result thereof, under the conditions set forth in Section 4 of this Franchise.
- 1.4 **Structures.** This Franchise does not grant to the Grantee use of city-owned structures or City-held interest in property that is not part of the public rights-of-ways. The terms and conditions of the Grantee's use of any City-owned structure or property shall be set forth in a separate ordinance, agreement, lease or other document, as appropriate.
- 1.5 **Non-Exclusivity of Franchise.** Nothing in this ordinance affects the right of the City to grant any other person a franchise to occupy and use the public rights-of-ways to install, construct, maintain, upgrade, repair and remove such person's pipes, mains, manholes, connections, meters and other equipment, facilities and appliances for the purpose of providing natural gas distribution or to engage in any other activity in the public rights-of-ways, provided that the exercise of such right

will not require Grantee's Facilities to be unreasonably interfered with or, except as otherwise provided by this ordinance, by other law, or by agreement, relocated. Nothing in this Franchise affects the right of the City to occupy and use the public rights-of-ways to install, construct, maintain, operate, upgrade, repair and remove its water lines, sewer lines, storm water pipes, associated appurtenances, manholes, or to engage in any other activity in the public rights-of-ways, provided that the exercise of such right will not require Grantee's Facilities to be unreasonably interfered with or, except as otherwise provided by this Franchise, by other law, or by agreement, relocated.

## **2 Section 2. Legal Compliance**

- 2.1 The Grantee shall comply with all local laws, rules, regulations, orders, or other directives of the City issued pursuant to this Franchise or with respect to the City's management of its public rights-of-ways or other exercises of its police power. The Grantee shall have the sole responsibility for obtaining all permits, licenses and other forms of approval or authorization necessary to install, maintain, upgrade, repair and remove Facilities within, on, over and under the public rights-of-ways.
- 2.2 This Franchise is granted under the express condition that the Grantee, its successors and assigns, shall maintain its system for the transmission, distribution and sale of natural gas in the City of Waynesboro subject to (i) the rules, regulations, orders and directives of the State Corporation Commission of the Commonwealth of Virginia (the "Commission"), (ii) the rates, and general terms and conditions of service contained in the Grantee's tariff, as modified from time to time, on file with the Commission, and (iii) the rules, regulations and orders of the City Council of the City of Waynesboro and its designee(s), including terms and conditions contained in written approvals given by the City Council for the construction, maintenance and operation of Grantee's Facilities. This Franchise and the rights and privileges hereby granted and conferred are conditioned upon the Grantee maintaining or obtaining from the Commission such certificates of public convenience and necessity as may be requisite for operations hereunder.
- 2.3 In addition, to avoid accidental damage to Grantee's Facilities, Grantee agrees promptly to comply with any request from the City, its agents, employees, or its contractors that Grantee locate the position of specific portion(s) of Grantee's Facilities in accordance with the Virginia Underground Utility Damage Prevention Act (Va. Code § 56-265.14(d)).

## **3. Section 3. Safety**

- 3.1 Materials and Work to Conform to Industry-Accepted Standards. The materials to be used and the manner of construction and repair to be followed under this franchise shall comply with commonly accepted industry usage and accepted engineering practices, and shall conform substantially to the Minimum Federal Safety Standards for the Transportation of Natural and Other Gas by Pipeline, 49 Code of Federal Regulations Part 192.1 *et seq.*, or successor regulations ("Safety Standards").
- 3.2 Compliance with Miss Utility Law and Non-Interference with Utilities. The work to be done under this franchise shall be done in accordance with Virginia Code § 56-265.14 *et seq.* (Virginia Underground Utility Damage Prevention Act, "Miss Utility Requirements") and in such manner as not to damage any other underground construction of any other public service corporation holding a franchise from the City or any construction performed by the City itself, or by the Virginia Department of Transportation (hereinafter "VDOT"), or unnecessarily interfere

with the making of connections by the City or by the citizens thereof with stormwater, traffic, water or sewerage systems which may now or hereafter be laid or constructed by the City or by any other public service corporation holding a franchise from the City. The stormwater, traffic, street, water and sewer systems shall include, but not be limited to, all pipes, manholes, inlets, outlets, stormwater control measures, services, meters, meter boxes, valves, vaults, booster pumps, pump stations, generators, controls, cabinets, junction boxes, conduit, foundations, poles, mast arms, traffic control devices, traffic detection loops, and all other appurtenances required for the complete functioning of these systems.

3.3 Compliance with Right-of-Way Program. All pipeline construction, maintenance, or operation undertaken by Grantee, at Grantee's direction, or on Grantee's behalf, shall be completed in a neat and workmanlike manner. All work done under this franchise shall comply with the requirements of the City's Right-of-Way program established as set forth in Article III of Chapter 70 of the City Code, as amended. All work shall be done in such a manner as to not needlessly interfere with or impede free and proper use of the public rights-of-ways by the public, or access to public buildings or private businesses, or obstruct the travel thereof except with the advance, express permission by the City in accordance with the City's Right of Way program.

3.4 Traffic. The Grantee shall be responsible for direction of traffic within all rights-of-ways affected by the Grantee's work through this Franchise. The Grantee shall, at its own cost and expense, undertake to prevent accidents at its work sites in, at or on the public rights-of-ways, including the placing and maintenance of proper guards, fences, barricades, flagmen and suitable and sufficient lighting, in accordance with federal, state and City laws. No excavations will be allowed to remain open, unless protected by steel plates or secured in another manner approved in advance by the city.

3.5 Restoration Standards and Warranty Requirements. When the agreed-upon public rights-of-ways are used for any underground construction, the surface thereof shall be restored within such time after completion of the work as stated in Section 5 hereof. All restoration shall comply with any and all City standards, provided that in the event that any of the City's restoration standards are different than VDOT restoration standards, the City will notify Grantee and provide a copy of such different restoration standards during the permitting process. All repair work will be done so as to have a two-year warranty on workmanship and materials. If workmanship and/or materials fail, corrective work will be accomplished within ten business days of first report, unless otherwise agreed upon. For purposes of this paragraph 3.5, requests for extensions by the Grantee for more than ten business days to complete work and restoration will not be unreasonably denied by the City.

#### 4. Section 4. Relocation and Coordination of Construction Work

4.1 Whenever any of Grantee's Facilities shall unnecessarily interfere with proposed public street improvements (which include but are not limited to City-owned water systems, sanitary sewer systems, stormwater systems, traffic signal devices and associated detection devices, and road signs) or sidewalks proposed or actually constructed in the City, whether such improvements be new or in the nature of changing any location of or repairing existing streets, sidewalks, alleys, water systems, sanitary sewer systems, storm water systems, traffic signal devices and associated detection devices, and road signs or public grounds in the City, the City will convene a utility meeting and provide site plans/exhibits to identify all conflicts at least one hundred twenty days prior to the proposed construction start date. In the event that conflicts remain when the proposed

construction start date is within thirty days, the City will provide thirty days' notice, requiring the Grantee, at Grantee's cost, to move so much of its Facilities as may unreasonably interfere with the progress of such improvements. In the event that Grantee does not timely relocate its Facilities according to this paragraph, the City may, in addition to any other remedies available to the City under this Franchise, relocate the Facilities at Grantee's cost, and the City shall have no liability to Grantee for damages to any Facilities; provided the City's relocation is performed in accordance with the applicable Safety Standards.

4.2 Meetings. Quarterly, the City and Grantee shall meet to discuss the timing of current and future projects requiring coordination of construction work.

4.3 Downtown Enterprise Zone. Any proposed work on the Grantee's Facilities within the area shown as "2014 Downtown Enterprise Zone" on Exhibit A hereto that requires excavation and surface restoration shall first include submittal of a site plan with details on all types of surfaces to be restored, maintenance of traffic, and procedures to minimize impacts to businesses. Requests for waivers of this provision by the Grantee for routine maintenance work at a limited number of physical addresses permitted through the City's Right-of-Way Program will not be unreasonably denied by the City.

4.4 Emergency Repairs. In the event that emergency repairs are required for City infrastructure including but not limited to water, sewer, and stormwater systems, Grantee shall provide all practicable assistance necessary to assist the City in locating Grantee's Facilities, and shall secure or repair its Facilities.

5. **Section 5. Restoration of Rights-of-Ways.**

5.1 Restoration to Occur Within Certain Timeframes. Grantee shall be liable, at its own cost and expense, to reasonably replace or repair, within a reasonable time not to exceed the same day for passable portions of the public rights-of-ways (unless otherwise agreed to by the City) and not to exceed thirty working/business days for all other replacements or repairs, except in the area shown as "2014 Downtown Enterprise Zone" on Exhibit A hereto where it shall be twenty days, and complete restoration of the site to the condition that existed prior to the commencement of Grantee's activities, any right-of-way surface or structure thereon or thereunder that may become disturbed or damaged as a direct result of the Grantee's activities (unless otherwise agreed to by the Director of Public Works, or designee). Restoration of hard surface rights-of-ways shall require a hard surface comparable to that existing prior to any disturbance by Grantee. All provisions of Article III of Chapter 70 of the City Code, as amended, shall apply to all new and restoration work.

5.2 Remedies if Restoration Does Not Occur. If Grantee does not commence such restoration, replacement, or repair within such reasonable time period as aforementioned or otherwise agreed to by the parties and after notice by the City to the Grantee, the City may, in addition to any other remedy available to the City under this Franchise, make such replacement or repair, and the Grantee shall pay the reasonable cost of the same. No acceptance of any payment by the City shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall such acceptance of any payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of this ordinance.

5.3 In the event that any damage is done by the Grantee to any pavement, sidewalk, or pipe, to include water, sanitary sewer or storm sewer pipes, of the City, the Grantee shall immediately notify the Director of Public Works or his designee and promptly repair or replace the same at its own cost

and expense in accordance with the provisions of the Waynesboro City Code and applicable engineering standards of the City.

6. **Section 6. Reserved.**

7. **Section 7. Indemnity and Insurance**

7.1 By accepting this ordinance and Franchise, the Grantee hereby agrees to indemnify and hold harmless the City from any and all claims, damages, losses, costs, expenses, or judgments which may be awarded in any legal action, and to pay all expenses including, but not limited to, reasonable attorney fees, reasonable investigative costs and court costs, due to personal injuries, property damage, or property right acquisition directly arising from the construction, operation, or maintenance of the works herein authorized, the exercise of any right or privilege granted by this Franchise, or the performance of any duty hereby imposed; **PROVIDED**, Grantee has received actual notice of such claim or loss, or received lawful service of process in any legal action or proceeding for which Grantee may be required to reimburse the City under the terms of this provision, and provided further that the Grantee has control of the defense of any such claim or suit. However, no provision of this ordinance shall be construed to render the Grantee liable for a force majeure event or the negligence or willful misconduct of the City, its agents or employees, its contractors, or any other persons or entities. This indemnification provision shall survive the expiration or termination of this Franchise.

7.2 The Grantee shall obtain and keep in full force and effect during the life of this franchise a policy or policies of liability insurance including the City as an Additional Insured, in an adequate amount that meets or exceeds the following amounts (the "Base Coverage"):

Employers Liability: \$500,000

Commercial General Liability: \$1,000,000 per occurrence and \$2,000,000 aggregate

Automobile Liability: \$1,000,000

In the event that the City provides notice to Grantee that the minimum insurance requirements set forth in the Commonwealth of Virginia Department of General Services' Agency Procurement and Surplus Property Manual (the "APSPM"), or any successor purchasing manual published by the Commonwealth of Virginia that serves the same material purpose as the APSPM, have been increased such that the APSPM minimum coverages exceed the Base Coverage, the Grantee agrees to within one year from receipt of such notice increase the amount of its insurance policies to meet or exceed the minimum amounts set forth in the APSPM. The insurance requirements set forth in this Franchise may be met through a combination of primary and excess policies. Grantee shall file certificate(s) thereof with the Purchasing Office in the City Finance Department. In the event any policy is written on a claims-made basis, the retroactive date of said policy shall be at least 12 months prior to the effective date of this Franchise.

8. **Section 8. Right to Impose Taxes and Fees Not Abridged**

8.1 The right of the City to impose any lawful franchise, license, property, or other tax upon Grantee, and upon properties constructed or installed by the Grantee hereunder, shall not be deemed to be waived, abridged, or in any way affected by this Franchise.

9. **Section 9. City to Accept Bids; Expenses**

9.1 Any person, firm, or corporation bidding for this Franchise, including Grantee, shall deposit with the bid a check in the sum of \$1,000.00, payable to the Treasurer of the City, which check, on the part of the Grantee awarded this Franchise, shall be security to the City that said Grantee will accept the Franchise within thirty days after the adoption of the ordinance granting the same. Such acceptance shall be in writing, signed by a duly-authorized officer of the Grantee. Upon the failure of the Grantee to accept this Franchise pursuant to the provisions of this section, such Grantee shall forfeit to the City the said sum of \$1,000.00 required to be deposited with the bid. The checks of all other bidders shall be returned upon the award of this Franchise to the Grantee. Grantee shall assume the City's costs of publication, as well as the City's review and negotiation fees for this Franchise, as such costs shall be presented to Grantee by the City Treasurer. Such costs shall be due and payable to the City, up to \$5,000.00, upon Grantee's filing of acceptance. The \$1,000.00 deposit shall be credited to such costs.

10. **Section 10. Bonding and Effective Date**

10.1 The rights and privileges hereby conferred by this Franchise shall not become effective unless and until the Grantee shall file with the City Manager of the City its written acceptance hereof in form satisfactory to the City, and enter into a bond in the sum of \$1,000,000.00, with good and sufficient security and which shall be in such form as may be satisfactory to the City Attorney, with the condition that the Grantee will construct the works provided herein, which may be reasonably necessary for the exercise of the rights and privileges granted by this Franchise, will maintain the same in good order throughout the term of this grant, and will comply in all respects with the terms, provisions, and conditions of this ordinance. Said bond shall not in any way be considered as the limit of Grantee's obligations or possible liabilities hereunder. The City or the Grantee may, from time to time, require, by providing thirty days written notice to the other party, that the amount of the bond be increased or decreased based on the percentage increase or decrease in Grantee's estimated restoration costs for the then-current calendar year as compared to (i) Grantee's estimated restoration costs calendar year 2021 or (ii) Grantee's estimated restoration costs for the calendar year when the surety bond was last increased, or decreased as applicable. Whenever the City draws upon the bond, Grantee shall replenish the bond within thirty days thereafter. Such acceptance and the said bond shall be filed within thirty days from the passage of this ordinance.

11. **Section 11. Map of Grantee's Facilities**

11.1 Grantee shall provide the City with a digital version of Grantee's publicly available map of Grantee's infrastructure at the time of the granting of this Franchise, and shall provide the City with annual updates of the digital map. The publicly available map of Grantee's infrastructure shall show the location of Grantee's infrastructure and the location of ongoing projects. Grantee shall, upon the City's request, meet with City employees and show to the City employees a non-publicly available map of Grantee's infrastructure, which map may be viewed but not retained by the City or City employees. The non-publicly available map of Grantee's infrastructure shall show the content of the publicly available map with additional information such as the size and type of piping, the location of valves, and other technical specifications.



**12. Section 12. Term**

12.1 The privileges hereby granted shall continue for a period of twenty-five years from the date of the approval of this ordinance unless earlier terminated. If the City does not avail itself of its rights under Section 13, below, and if the Grantee continues to use Facilities after the term, then the Grantee shall continue to comply with all applicable provisions of this Franchise, and other City laws and ordinances, throughout the period of such continued use.

**13. Section 13. Expiration**

13.1 At the expiration of the term of this Franchise, the City of Waynesboro shall have the right, at its option, to purchase at a fair valuation, to be determined in the manner hereinafter provided, all the Facilities of Grantee, its successor and assigns, lying and being within the corporate limits of the City. Should the City desire to avail itself of the privilege herein reserved, then the City shall give notice to Grantee of such intent within thirty days of the expiration of this Franchise Agreement. The value of said property of Grantee shall then be ascertained and arrived at between the City and Grantee, its successors or assigns, by agreement if possible; but in the event that the value thereof cannot be agreed upon, then the City of Waynesboro shall select an appraiser, Grantee, its successors or assigns, shall select an appraiser, and the two persons so selected shall select a third appraiser, and the three persons so selected, or a majority of them, shall fix the value of Grantee's mains, pipes, conduits and other appurtenances lying and being within the corporate limits of the said City, which shall be accepted by the City of Waynesboro, and Grantee, its successors or assigns, as the correct value thereof, and if the City of Waynesboro then desires to purchase the property aforesaid at said valuation, it shall have the right to acquire the same at the price so fixed, and pay for the same at such time and in such manner and upon such terms and conditions as the City and Grantee, its successors or assigns, may agree upon.

13.2 If the City decides not to invoke its rights under Section 13.1 above, then the City may provide notice to Grantee, which notice shall specify (i) that the City is not exercising the City's rights under Section 13.1 and (ii) that Grantee shall remove or abandon in place all of Grantee's Facilities from the property of the City. Within a reasonable period of time not to exceed one hundred eighty days after the City gives such notice to Grantee, Grantee shall (i) remove all above-ground Facilities from property of the City and (ii) remove or abandon in place all of its other Facilities from property of the City.

**14. Section 14. Termination**

14.1 If Grantee materially fails to comply with the terms of this Franchise, the City shall give Grantee written notice that the failure must be remedied within sixty days, unless otherwise agreed upon. If Grantee does not remedy the failure within sixty days, the City shall have the right to terminate this Franchise, provided a decision by the City to terminate the Franchise shall be subject Commission review. Upon such termination, the rights of the parties shall be as provided in Section 13 hereof.

15. **Section 15.** This ordinance shall be in force from its passage.

Passed by the City Council of the City of Waynesboro, Virginia, on the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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**City Manager**