

ORDINANCE NO. 1664

AN ORDINANCE GRANTING TO CASCADE NATURAL GAS CORPORATION, A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND PRIVILEGE TO USE AND OCCUPY THE STREETS, AVENUES, LANES, ALLEYS, HIGHWAYS AND OTHER PUBLIC PLACES OF THE CITY OF SELAH, STATE OF WASHINGTON, FOR THE PURPOSE OF SUPPLYING, DISTRIBUTING AND SELLING GAS TO THE INHABITANTS OF THE CITY, AND ELSEWHERE; AND THE RIGHT AND PRIVILEGE OF CONSTRUCTING, AND THEREAFTER MAINTAINING A GAS WORKS, MAINS, SERVICE PIPES AND OTHER NECESSARY EQUIPMENT IN SAID CITY, FOR THE DISTRIBUTION OF GAS FOR FUEL, POWER, HEAT AND OTHER PURPOSES.

THE CITY COUNCIL OF THE CITY OF SELAH ORDAINS AS FOLLOWS:

Section 1. That Cascade Natural Gas Corporation, its successors and assigns, (hereafter designated as "Grantee"), is hereby granted the right and privilege to construct, maintain, use, own and operate a gas works within the corporate limits of said City of Selah, Washington (hereinafter designated as the "City"), as the same now or may hereafter be extended, and to construct, lay, maintain and operate along the streets, avenues, lanes, alleys, highways and other public places in the said City of Selah, a system of mains, pipes and the necessary attachments and appurtenances for the storage, conveyance, distribution and sale of gas for fuel, power, heat and other purposes in the City of Selah, Washington, and elsewhere, and for the storage, conveyance, distribution and sale of natural gas. Such right and authority, permission and power is hereby granted for a term of twenty (20) years from and after the date of the final acceptance of this Ordinance by the Grantee, herein referred to as the primary term. This franchise will automatically renew for successive periods of five (5) years each unless cancelled at the end of a term by either party by written notice to the other party no less than 180 calendar days prior to the end of the primary term or the then current successive term.

Section 2. That the rates to be charged for gas for fuel, power, heat and other purposes by the Grantee, and character of the service to be tendered by the Grantee shall be such as shall be prescribed by the Washington Utilities and Transportation Commission, or other agency of said state having jurisdiction over said matters under the laws thereof.

Section 3. That the Grantee shall not lay its gas mains, pipes, services, attachments and appurtenances so as to interfere with or obstruct the drainage of said City or the construction of sewers or underground fixtures for the conveyance of water or the necessary and proper use of said streets, avenues, lanes, alleys, highways, and other public places. The Grantee shall with reasonable promptness restore the surface of said streets, avenues, lanes, alleys, highways and public places in which it shall make excavations to as good condition as they were before the commencement of such work subject to the approval of the City Engineer, and during the progress of such work, the Grantee shall be responsible for keeping such streets and other places guarded, in order to prevent accident to persons or property. The City, upon reasonable notice to

the Grantee, may at any time do, or order to have done any and all work that they consider necessary to restore to a safe condition any such street, alley or other public place left by the Grantee or its agents in a condition hazardous to life or property, and Grantee upon demand, shall pay to the City all costs of such work. In case of any future improvement or construction of sewers or underground fixtures for the conveyance of water or of any of the streets, avenues, lanes, alleys, highways and public places where any gas mains, pipes, services, attachments, and appurtenances of the Grantee may be situated, and it is necessary to change the location of the same in connection with said improvement or construction, the Grantee shall, upon reasonable notice by the City and after reasonable evaluation of alternatives by the City in cooperation with the Grantee, at Grantee's own expense, move and change any gas main, pipes, services, attachments or appurtenances to conform to such public improvement. The City will avoid the need for such moving or changing whenever possible. If the City requires the subsequent relocation of the same facility within five (5) years of the initial relocation, City shall bear the expense of the subsequent relocation. If the relocation is required for the benefit of any person or entity other than the City, then City shall require such person or entity, as a condition of such relocation, to make payment to Grantee at a time and upon terms acceptable to Grantee, for any and all costs incurred by Grantee in the relocation of Grantee's facilities. In the event Federal, state or other funds are available in whole or in part for utility relocating purposes, the City shall apply for such funds and the Grantee will be given credit to the extent any such funds are actually obtained. The City shall notify Grantee of any proposed vacation of public rights of way or abandonment of public rights of way. To the best of the City's ability, the City shall preserve and provide retained easements for the benefit of the Grantee if vacation or abandonment of public rights of way occur; provided, however, if the City expressly determines that it is in the best interests of the City to abandon or vacate a public right of way and not to preserve and provide for retained easements to the Grantee, the obligation of the City stated above shall be fulfilled with no liability to Grantee for any expense associated with vacation or abandonment of the public rights of way.

Section 4. That whenever the Grantee shall desire to excavate in any street, alley or other public place for the purpose of laying gas mains, pipes or other appurtenances, including service pipes, it shall apply to said City for a permit to do so and shall give the City at least three (3) working days' notice thereof, and shall not, during the process of the work, unnecessarily obstruct the passage or proper use of such street, alley or other public place, and shall file with the City duplicate maps or prints showing the proposed and final location. Whenever possible, Grantee shall install to the standard locations as specified by the City. The parties acknowledge that from time to time Grantee is required to make emergency excavations without allowing the standard notification to the City in order to maintain safe operation of the natural gas system and respond to third party incidents that may occur. Grantee will notify the City as soon as reasonably possible after the emergency.

Section 5. This franchise is granted upon the express condition that it shall not be deemed or held to be an exclusive franchise and shall not in any manner prohibit the City from granting other and future franchises over, upon and along any of said public streets, avenues, alleys, highways, public or municipally owned places, and failure on the part of Grantee to comply in any respect with any of the provisions of this Ordinance shall be grounds for forfeiture of the grant.

Section 6. The franchise hereby granted shall not be leased, assigned or otherwise alienated by the Grantee to any third party without the express consent of the City by ordinance passed for that purpose, and no rule of estoppel shall ever be invoked against the City in case it shall assert the invalidity of any attempted transfer in violation of this section. Notwithstanding anything to the contrary herein contained, permission is hereby granted to the Grantee to mortgage this franchise, together with the gas utility facilities and properties of the Grantee, within the City to secure any legal bond issue or other bona fide indebtedness of the Grantee, ~~and express consent is hereby given to the mortgaging and assignment for security purposes of said franchise, facilities and properties by the Grantee to The Chase Manhattan Bank, N.A. with no requirement that the Trustee file any acceptance of this franchise and the liabilities and obligations of said Trustees shall in any event be limited to the properties and assets of the Grantee comprising the trust estate.~~

Section 7. And if at any time the City is subjected to liability for injury to persons or property growing out of the actions of the Grantee, its agents, servants or employees, in connection with the operations of the Grantee, the Grantee shall fully indemnify and hold the City harmless from any and all such liability; provided, however, that in case suit be instituted against the City, the City shall promptly notify the Grantee of such suit, giving it ample and reasonable time to defend the same. Grantee agrees that during the life of its franchise and/or renewals thereof, it will maintain in full force and effect, with a carrier or carriers licensed to do business in the State of Washington, certificates of insurance providing for appropriate coverages and limits of liabilities, as required by the City. Grantee will have the City named as additional insured.

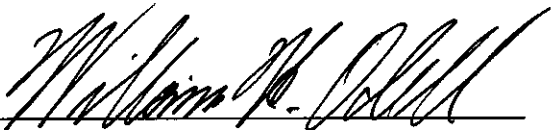
Section 8. The Grantee herein agrees as part of the consideration of this franchise to pay promptly any and all licenses and taxes legally levied by the City.

Section 9. Grantee shall within thirty (30) days of the passage of this Ordinance, file with the City Clerk its written acceptance of all terms and conditions of the Ordinance, and if such acceptance is not filed as herein provided, this Ordinance shall be null and void and of no force or effect.


Section 10. If any section, subsection, sentence, clause or phrases of this ordinance is for any reason held invalid or unconstitutional by the decision of any court or regulatory body of

The terms and conditions of the foregoing Franchise Ordinance No. 1664 are hereby accepted this 20th day of July 2005.

CASCADE NATURAL GAS CORPORATION

By 
WILL ODELL
Chief Operating Officer

ATTEST:


LARRY C. ROSOK,
Corporate Secretary

Above acceptance received by:

City Clerk

Dated _____

The terms and conditions of the foregoing Franchise Ordinance No. 1664 are hereby accepted this 20th day of July 2005.

CASCADE NATURAL GAS CORPORATION

By William H. Odell
WILL ODELL
Chief Operating Officer

ATTEST:

Larry C. Rosok
LARRY C. ROSOK,
Corporate Secretary

Above acceptance received by:

Dee J. Probst
City Clerk

Dated 7-25-05

CITY OF PROSSER, WASHINGTON**ORDINANCE NO. 10-2690**

AN ORDINANCE GRANTING A FRANCHISE TO CASCADE NATURAL GAS TO CONSTRUCT, OPERATE AND MAINTAIN IN, THROUGH, AND ALONG THE PRESENT AND FUTURE STREETS AND ALLEYS OF THE CITY OF PROSSER MAINS, PIPES, BOXES, REDUCING AND REGULATING STATIONS, LATERALS, CONDUITS, AND CONNECTIONS, INCLUDING SERVICE CONNECTIONS, TOGETHER WITH ALL OF THE NECESSARY APPURTENANCES FOR THE PURPOSES OF SUPPLYING GAS FOR HEAT, POWER, LIGHT AND OTHER PURPOSES, FOR A TERM OF 10 YEARS WITH 5 YEAR AUTOMATIC EXTENSIONS UNLESS TERMINATED BY 180 DAYS ADVANCE NOTICE, AND REPEALING ORDINANCE NUMBER 2505 WHICH GRANTED A FRANCHISE TO CASCADE NATURAL GAS. THE ORDINANCE ALSO SETS FORTH THE EFFECTIVE DATE OF THE ORDINANCE AND PROVIDES THAT ITS PROVISIONS ARE SEVERABLE FROM ONE ANOTHER AND PROVIDES FOR PUBLICATION BY SUMMARY.

THE CITY COUNCIL OF THE CITY OF PROSSER, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. GRANT. That Cascade Natural Gas Corporation (Grantee), a Washington Corporation, its successors and assigns, be, and it is hereby granted the right, privilege and franchise to construct, operate and maintain in, through and along the present and future streets of the said City of Prosser (Grantor), now and as it may be in the future, and in, through and along the present and future alleys, parking and other public places of the said City of Prosser, now and as it may be in the future, mains, pipes, boxes, reducing and regulating stations, laterals, conduits and connections, including service connections, together with all of the necessary appurtenances, for the purpose of supplying gas for heat, power, light and other purposes, to the said City of Prosser and the inhabitants thereof, for the full term of this franchise, subject

however, to the limitations herein set forth and provided.

Section 2. TERM. Such right and authority, permission and power is hereby granted for a term of ten (10) years from and after the date of the final acceptance of this Ordinance by the Grantee, herein referred to as the primary term. This franchise will automatically renew for successive periods of five (5) years each unless cancelled at the end of a term by either party by written notice to the other party no less than 180 calendar days prior to the end of the primary term or the then current successive term.

Section 3. NOTICE

Any notice during the term of this ordinance shall be in writing and shall be governed by the following provisions:

A. Notice shall be directed as follows:

To the City: Mayor
City of Prosser
601 7th ST.
Prosser, WA 99350

To Grantee: Vice President Regions
Cascade Natural Gas Corporation
P.O. Box 24464
Seattle, WA 98125-0464

It shall be the responsibility of each party to provide change of address information to the other party and, until such notification is provided in writing, the other shall have the right to rely upon the correctness of the address most recently provided.

B. The notice shall be deemed to have been given on the earlier occurring of the date of the postmark if mailed or personal delivery of the other party. If mailed,

notice shall not be deemed to have been effectuated unless the communication has been posted in the United State Postal Service with proper postage prepaid and properly addressed.

Section 4. ORDINANCE CONSTITUTES CONTRACT. This ordinance shall constitute the contract between the City of Prosser and the Grantee, and the same shall be binding upon and inure to the benefit of the successors and assigns of the Grantee under the limitation herein imposed.

Section 5. PLANT. The Grantee has a distribution plant or system in the said City of Prosser. The Grantee agrees to comply with all existing ordinances and any ordinances hereafter enacted pertaining to the obtaining of permits and permission for the installation of such improvements and additions, and to comply with all building and fire codes and ordinances of the City of Prosser, Washington. Grantee may, from time to time, be required to make emergency excavations and installations without completing the normal permit process in order to maintain distribution system integrity and respond to emergencies caused by third parties. As soon as practical after the emergency operation, Grantee will submit a permit application or other documentation as required by the Public Works Director. Mains of suitable size shall be installed in accordance with permits issued by the Grantor, and shall be so installed as to make the gas service of the Grantee available to the consumers of the said City of Prosser, and this ordinance shall cover natural and made-gas service.

Section 6. LAYING PIPE. All gas pipe lines of the Grantee shall be laid at sufficient depth below the surface of the streets and alleys of said City of Prosser and at least such depth below the bottom of all irrigation and drain ditches and in such a manner as not to interfere with

any present public or private irrigation or drain ditches, drains, sewers, water mains, conduits, sidewalks, paving or other public improvements, all repairs thereto or replacements thereof entailed by the construction, operation and maintenance of said gas plant and enlargements thereof shall be as provided in Section 7. The said City of Prosser reserves the right to construct, change or repair any public improvements, and to change the grades of any streets and alleys, written notice of such intention and when such is to be done, where any part or parts of the gas distribution system herein contemplated is involved, to be first given the Grantee, and, if after evaluation of alternatives, including an examination of the availability of grant funds, by the City in cooperation with Grantee and any such changes or repairs are required, the Grantee shall at its own expense lower, change or alter the pipe lines or appurtenances involved accordingly and in accordance with a standard practice or any regulations thereto pertaining, and the Grantee shall not interfere with the conduits, water lines, drains, sewers, sidewalks, pavings or other public improvements of said City of Prosser or the public utilities therein, in accordance with permits issued by Grantor. If the City requires the subsequent relocation of the same facility within five (5) years of the initial relocation, City shall bear the expense of the subsequent relocation. If the relocation is required for the benefit of any person or entity other than the City, then City shall require such person or entity, as a condition of such relocation, to make payment to Grantee at a time and upon terms acceptable to Grantee, for any and all costs incurred by Grantee in the relocation of Grantee's facilities.

The City of Prosser agrees to protect Grantee's rights by retaining easements for its facilities located within public rights of ways being vacated by ordinance. If Grantee's facilities

must be relocated from a vacated public right of way, the petitioner of said vacation will bear the expense of moving said facilities.

Section 7. REPAIRS AND REPLACEMENTS. All earth, materials, sidewalks, paving, crossings or improvements of any kind disturbed, injured or removed by the Grantee shall be fully repaired or replaced promptly by the Grantee, and the Grantee shall protect and save said City of Prosser harmless from any loss or damages thereon. In the event that such repair or replacement is not completed, weather permitting, or is not completed using proper materials or workmanship, after ten (10) business days written notice by the City of Prosser, then the City may complete such repair or replacement, and Grantee shall pay the cost of such repair or replacement plus an administrative fee of five percent (5%) of the cost of such repair or replacement. Grantee shall pay such bill within thirty (30) days from the date of the invoice.

Section 8. EXCAVATIONS TO BE SUPERVISED. Any excavations by the Grantee in any of the streets, roads, alleys or public grounds within the limits of said City of Prosser shall be done in accordance with such reasonable rules, regulations, resolutions and ordinances now enacted or to be enacted by the government of said City of Prosser, relative to excavations in streets, alleys and public grounds of said City of Prosser, and under the direction and supervision of the officials of said City of Prosser who, from time to time, may be invested with the supervision over the streets and alleys of said City of Prosser.

Section 9. GRANTEE TO MAKE EXTENSIONS AND INSTALL SERVICES.
The Grantee shall at all times during the term of this franchise install and maintain, at its own expense, facilities appropriate for supplying service to the consumers of said City of Prosser.

Extension of service will be made in accordance with Grantee's rules and tariffs as revised and approved from time to time by the regulatory body having jurisdiction over such matters.

Section 10. QUALITY AND PRESSURE OF GAS. The gas to be supplied to said City of Prosser and its inhabitants under the terms and conditions hereof shall be merchantable gas and shall be supplied to the consumer's meters at such reasonable pressure as may be prescribed by the regulatory body having jurisdiction over such matters.

Section 11. RATES AND CONDITIONS OF SERVICES. The rates to be charged and exacted, and the rules and regulations in respect of the conditions, character, quality and standards of service to be furnished by the Grantee, and all such matters, shall be under the jurisdiction and control of such regulatory body, state or otherwise, as may from time to time be vested by law with the authority and jurisdiction thereover.

Section 12. MAPS, PLATS, RECORDS, ETC. The Grantee shall at all times keep maps and records showing the locations and sizes of all gas mains laid by it in said City of Prosser, and such maps and records shall be subject to inspection at all reasonable times in said City of Prosser by the proper officials or agents of said City of Prosser. Upon demand by the City of Prosser, a copy of all such maps shall be delivered to the City within ten (10) business days from the date of such demand.

Section 13. METERS. All gas sold and distributed by the Grantee shall be properly metered, on the property of, or at the building of, the consumer served, and the Grantee, its agents, licensees, or employees shall have the right to read and inspect the gas meters at all reasonable times and to go on the premises therefore. The Grantee shall furnish good and

reliable meters for the consumers, and the terms and conditions of furnishing and testing thereof shall be as prescribed by the regulatory body having jurisdiction over such matters.

Section 14. GRANTEE TO MAKE RULES AND REGULATIONS. The Grantee, its successors and assigns may make such reasonable rules and regulations for the protection of its property, for the prevention of loss and waste, for safety purposes, for the conduct of business, and in respect of the sale or distribution of gas, as may be advisable or necessary from time to time, all in accordance herewith and valid, applicable state laws, rules and regulations.

Section 15. FORFEITURE OF FRANCHISE. In case of failure on part of the Grantee, its successors or assigns, to comply with any of the provisions of this ordinance, or if the Grantee, its successors or assigns, does or causes to be done any act or thing prohibited by or in violation of the terms of this ordinance, said Grantee, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights thereunder shall cease, terminate and become null and void; provided that said forfeiture shall not occur to take effect until the City of Prosser shall carry out the following proceedings:

Before said City of Prosser may proceed to forfeit said franchise as is in this Section provided, it shall first serve written notice upon the Grantee, to the party listed in Section 3 above, its successors or assigns, as provided by law for the service of Summons, and upon the trustee or trustees under any mortgage or trust instruments, if any, filed or recorded in Benton County, Washington, and any other representative or representatives of investors, if any, of which there is a filing or record in such county, by mailing by registered mail to said trustee, trustees, representative or representatives, if any, written notice, all such notices to set forth

clearly and in detail the failure or violation complained of, and the Grantee, its successors or assigns shall have ninety days thereafter in which to comply with the conditions of this franchise ordinance. If such failure or neglect shall continue beyond said 90 days the City may bring action in the Superior Court of Benton County, or any other Court of competent jurisdiction to forfeit the said franchise, and if the said Court shall find that the said Grantee, its successors and assigns has failed in any substantial respect to comply with any of the provisions of this ordinance so that the rights of the City are materially or substantially affected thereby, or that the said Grantee, its successors and assigns, has done or caused to be done, any act or thing prohibited by or in violation of the terms of this ordinance so that the rights of said City are materially or substantially affected thereby, then the said City shall have the right to have the said Court enter a judgment declaring this franchise forfeited and assessing the costs of such action against the Grantee, its successors or assigns. Provided, however, that the failure of the said Grantee to comply with any of the provisions of this ordinance, or the doing or causing to be done by said Grantee of anything prohibited by or in violation of the terms of this ordinance, shall not be a ground for the forfeiture thereof, which such act or omission on the part of the said Grantee is due to any cause or delay beyond the control of said Grantee, its successors and assigns, or to bona fide legal proceedings.

Section 16. REMEDIES TO ENFORCE COMPLIANCE. The City of Prosser, in addition to its rights to forfeit this franchise ordinance, as provided in Section 15, reserves and has the right to pursue any remedy to compel or enforce the Grantee, its successors or assigns to comply with the terms hereof and furnish the service herein called for, and the pursuit of any

right or remedy by the City of Prosser shall not prevent the City of Prosser from thereafter declaring a forfeiture for any reason herein stated, nor shall the delay of the City of Prosser in declaring a forfeiture stop it from thereafter doing so, unless the action of the City of Prosser shall have prevented, caused, or contributed materially to the failure to perform or do the act or thing complained of.

Section 17. ASSIGNMENT OF FRANCHISE. This franchise may only be assigned if required by the laws of the State of Washington. Notice of said assignment and a copy of the effective instrument of assignment shall be served upon and filed with the City Clerk.

Section 18. Insurance. Grantee will maintain the following insurance:

Commercial General Liability

General Aggregate	\$ 10,000,000
Each Occurrence Limit	\$ 10,000,000

Automobile Liability

Bodily Injury/Property Damage	\$ 1,000,000 (Each Accident)
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Worker's Compensation

Workers Compensation (Coverage A)	Statutory requirements
Employer's Liability (Coverage B)	\$ 1,000,000

Section 19. Customer Service. Grantee will maintain appropriate resources to respond to customer requests in a timely manner, including a toll-free, 24-hour emergency contact number which will be communicated to the City Administrator.

Section 20. Franchise not exclusive. This franchise is granted upon the express condition that it shall not be deemed or held to be an exclusive franchise and shall not in any

manner prohibit the city from granting other and future franchises over, upon, and along any of said public streets, avenues, alleys, highways, public or municipally owned places.

Section 21. Payment of taxes. The grantee herein agrees as part of the consideration of this franchise to pay promptly any and all registrations and taxes levied by the City.

Section 22. Acceptance of Franchise. Grantee shall within thirty (30) days of the passage of this Ordinance, file with the City Clerk its written acceptance of all the terms and condition of this Ordinance, and if such acceptance is not filed as herein provided, this Ordinance shall be null and void and of no force and effect.

Section 23. Cable or Video Services. No portion of the franchise granted herein shall be used to provide services regulated under the Cable Communication Policy Act of 1984, as amended, 47 U.S.C. §§ 521, et. seq. or to otherwise provide video services.

Section 24. SEVERABILITY. The provisions of this ordinance are hereby declared to be severable. If any section, subsection, sentence, clause, or phrase of this ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional, the remainder of this ordinance shall not as a result of said section, sentence, clause, or phrase be held unconstitutional or invalid.

Section 25. Repeal of prior Ordinance. Ordinance number 2505 is repealed.

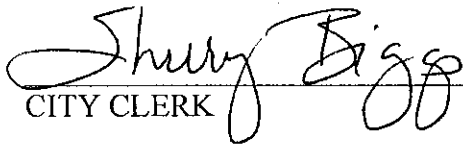
Section 26. This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title or when the Grantee complies with section 22 above, whichever occurs later.

PASSED by the City Council and **APPROVED** by the Mayor, this 27th day of April, 2010.



MAYOR PAUL WARDEN

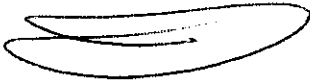
ATTEST:



CITY CLERK



APPROVED AS TO FORM:



CITY ATTORNEY

Publication Date: May 5, 2010

Ordinance No. 10-2690, was passed April 27, 2010 by the City Council of the City of Prosser, Washington, a copy of which Ordinance is attached hereby and incorporated herein by reference.

I, Timothy Clark, am the Vice President-Regions of Cascade Natural Gas Corporation, and am an authorized representative to accept the above referenced City Franchise Ordinance on behalf of Cascade Natural Gas Corporation.

I certify that this franchise and all terms and conditions thereof are accepted without qualification or reservation.

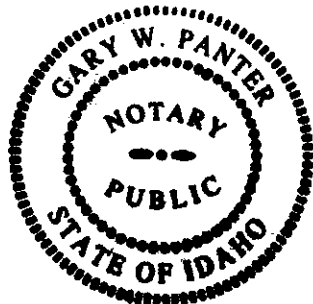
DATED this 11th day of May, 2010.

[Signature]
ACCEPTANCE OF CITY FRANCHISE

STATE OF Idaho)
) ss.
County of ada)

On this 11 day of May, 2010, before me, the undersigned Notary Public in and for said State, personally appeared Timothy CLARK, known to me or proven to me to be the Vice President-Regions for CASCADE NATURAL GAS CORPORTATION, a WASHINGTON corporation, and the person who executed the foregoing instrument on behalf of said corporation and acknowledged to me that said corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set me hand and affixed by official seal the day and year first above written.



[Signature]
Notary Public for Idaho
Residing at Boise Idaho
Commission Expires: July 12, 2012

City of East Wenatchee, Washington

Ordinance No. 2012-10

An Ordinance of the City of East Wenatchee, granting a non-exclusive Franchise to Cascade Natural Gas Corporation to construct, install, operate, maintain, repair, or remove facilities for the distribution of natural gas within the public ways of the City of East Wenatchee.

Franchisee has applied to the City for a non-exclusive franchise to enter, occupy, and use public ways to construct, install, operate, maintain, repair, and remove natural gas distribution facilities to offer and provide natural gas distribution transportation service in the City of East Wenatchee; and

Except as provided herein, a franchise does not include, and is not a substitute for any other permit, agreement, or other authorization required by the City, including without limitation, permits required in connection with construction activities in public ways which must be administratively approved by the City after review of specific plans; and

Franchisee shall be responsible for its actual costs in using, occupying and repairing public ways; and

The City and Franchisee desire to effectuate good coordination of the use of the rights-of-way; and

RCW 35A.11.020 grants the City broad authority to regulate the use of public rights-of-way and RCW 35A.47.040 authorizes the City to grant franchises for the use of its streets, public ways, and properties.

The City Council finds that the franchise terms and conditions contained in this ordinance are in the public interest.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of East Wenatchee as follows:

Section 1. Definitions. For the purposes of this Ordinance, the following terms, phrases, words, and their derivations will have the meanings given herein.

“Affiliate” means any Person who owns or controls, is owned by or controlled by, or is under common ownership or control with Franchisee.

“City Council” means the governing body of the City.

“City Property” means all real property owned by the City and all of the roads, streets, avenues, alleys, highways, rights-of-way and unrestricted utility easements of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys, highways and rights-of-way that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended.

"Costs" means costs, expenses, and other financial obligations of any kind whatsoever.

“Effective Date” means five days following the publication of this Franchise or a summary thereof occurs in an official newspaper of the City as provided by law.

“Facilities” means, collectively, any and all natural gas distribution systems and appurtenances owned by Franchisee, now and in the future, in the Franchise Area, including, but not limited to mains, pipes and the necessary equipment and related appurtenances necessary for the storage, conveyance, distribution and sale of natural gas for fuel, power, heat and other purposes in the City.

“Franchise Area” means the area within the jurisdictional boundaries of the City, including annexed area, to be served by Franchisee as specified in this Franchise.

"Incremental Costs" means the actual and necessary costs incurred which exceed costs which would have otherwise been incurred. Incremental costs shall not include any part, portion, or pro-ration of costs, of any kind whatsoever, including without limitation overhead or labor costs, which would have otherwise been incurred.

“Municipal Code” means the East Wenatchee Municipal Code (as enacted or as amended).

“Person” means any individual, firm, partnership, association, corporation, company or organization of any kind.

"Public Way" or "Right-of-Way" means any highway, street, road, sidewalk, alley or other public right of way or public utility easement under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to such purposes.

“MUTCD” means the latest edition of Manual of Uniform Traffic Control Devices.

“Natural gas distribution Service” means the offering of natural gas for sale or transportation for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

“Natural gas distribution System” or “System” means those facilities reasonable and necessary for Franchisee to provide Natural gas distribution Service.

"Underground Facilities" means facilities located under the surface of the ground, other than underground foundations or supports for overhead facilities.

Section 2. Franchise.

- A. Subject to the terms and conditions of this Franchise, the City grants Franchisee a non-exclusive franchise and master permit to enter, occupy, and use public ways for constructing, installing, operating, maintaining, repairing, and removing natural gas distribution facilities necessary to provide Natural gas distribution Services. Except as expressly provided otherwise in this Franchise, Franchisee shall construct, install, operate, maintain, repair, and remove its facilities at its expense.
- B. Nothing in this Franchise grants authority to Franchisee to enter, occupy, or use City property.
- C. Any rights, privileges, and authority granted to Franchisee under this Franchise are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and nothing in this Franchise excuses Franchisee from its obligation to comply with all applicable general laws enacted by the City pursuant to such power. Any conflict between the terms or conditions of this Franchise and any other present or future exercise of the City's police powers will be resolved in favor of the exercise of the City's police power.
- D. Nothing in this Franchise excuses Franchisee of its obligation to identify its facilities and proposed facilities and their location or proposed location in the public ways and to obtain use and/or development authorization and permits from the City before entering, occupying, or using public ways to construct, install, operate, maintain, repair, or remove such facilities.
- E. Nothing in this Franchise excuses Franchisee of its obligation to comply with applicable codes, rules, regulations, and standards subject to verification by the City of such compliance.
- F. Nothing in this Franchise shall be construed to limit taxing authority or other lawful authority to impose charges or fees, or to excuse Franchisee of any obligation to pay lawfully imposed charges or fees.
- G. Nothing in this Franchise grants authority to Franchisee to impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.

- H. Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction of facilities or to modify public ways to accommodate Franchisee's facilities.
- I. Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third party user of Franchisee's facilities or to otherwise recognize or create third party beneficiaries to this Franchise.
- J. Nothing in this Franchise shall be construed to permit Franchisee to unlawfully enter or construct improvements upon the property or premises of another.

Section 3. Term. The primary term of this Franchise is five years from the effective date of this Franchise. The Franchise will automatically renew for successive periods of five years (successive terms) each unless cancelled at the end of a term by either party by written notice to the other party no less than 180 calendar days prior to the end of the primary term or the then current successive term.

Section 4. Location of Facilities.

- A. Franchisee must place its facilities underground except as otherwise expressly provided herein.
- B. Franchisee's facilities shall not unreasonably interfere with the use of public ways or City property by the City, the general public, or other persons or entities authorized to enter, occupy, or use public ways or City property.
- C. Franchisee shall repair or restore any City property, public way, other ways or other property, whether publicly or privately owned, damaged or impaired by Franchisee in the construction, installation, operation, maintenance, repair and removal of its Natural gas distribution System.
- D. Franchisee shall relocate its facilities at the reasonable request and notice by the City when there is construction, alteration, repair or improvement of a public way. Franchisee shall complete the relocation by the date specified by the City, unless the City, or a reviewing court, establishes a later date for completion, after a showing by Franchisee that the relocation cannot be completed by the dates specified using reasonable efforts and meeting safety and service requirements. Franchisee shall relocate its facilities at its expense except:
 - (1) Where the Franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five years, the Franchisee's share of the cost of relocation will be paid by the City if it requested the subsequent relocation.
 - (2) Where the City requests relocation of underground facilities solely for aesthetic purposes, the cost of relocation shall be paid by the City.
 - (3) Where the construction, alteration, repair or improvement of a public way is primarily for private benefit (be it a developer or otherwise), the Franchisee may

seek reimbursement from the private party or parties for the cost of relocation in the same proportion as their contribution to the costs of the project, taking into account the impact of the project; provided, however, in no event shall the City be considered a private party for purposes of seeking reimbursement under this section.

- E. Franchisee shall relocate its facilities at its expense at the request of the City in the event of an unforeseen emergency that creates an immediate threat to the public safety, health or welfare.
- F. Franchisee shall install its Facilities in alleys rather than streets wherever economically reasonable and technically feasible (unless otherwise authorized by the Public Works Director).
- G. Franchisee shall comply with Municipal Codes and requirements regarding historic districts.

Section 5. Construction and Installation Requirements.

- A. The technical performance of the facilities must meet or exceed all applicable technical standards authorized or required by law, regardless of the transmission technology utilized. The City will have the full authority permitted by applicable law to enforce compliance with these technical standards.
- B. All installations of facilities will be durable and installed in accordance with good engineering, construction, and installation practices.
- C. All facilities shall be constructed and installed in such manner and at such points so as not to inconvenience City or public use of the public ways or to adversely affect the public health, safety or welfare and in conformity with plans approved by the City, except in instances in which deviation may be allowed by the City.
- D. The construction plans and Franchisee's operations shall conform to all federal, state, local, and industry codes, rules, regulations, standards and laws. Franchisee must cease work immediately if the City determines that Franchisee is not in compliance with such codes, rules, regulations, or standards, and may not begin or resume work until the City determines that Franchisee is in compliance. The City shall not be liable for any costs arising out of delays occurring as a result of such work stoppage.
- E. The Natural gas distribution System constructed, maintained and operated by virtue of this Franchise, shall be so constructed, maintained and operated in accordance with all applicable engineering codes adopted or approved by the City, State of Washington, the federal government, and in accordance with any applicable Statutes of the State of Washington, rules and regulations of the applicable Washington regulatory authority, Ordinances of the City or of any other governmental regulatory commission, board or agency having jurisdiction over Franchisee.

- F. Franchisee shall secure the required permits, licenses, or other forms of approval needed to lawfully occupy and use public ways. Franchisee shall have the sole responsibility for obtaining, at its own cost and expense, all permits, licenses, or other forms of approval or authorization necessary to construct, operate, maintain or repair or expand the System, and to construct, maintain and repair any part thereof.
- G. Neither approval of plans by the City nor any action or inaction by the City shall relieve Franchisee of any duty, obligation, or responsibility for the competent design, construction, and installation of its facilities. Franchisee is solely responsible for the supervision, condition, and quality of the work done, whether it is performed by itself or by its contractors, agents, or assigns.
- H. Except as to emergency repairs, Franchisee shall, prior to excavating within any street, alley or other public place, and installing any conduit or equipment therein, file with the Public Works Director plans and specifications thereof showing the work to be done, the location and nature of the installation to be made, repaired or maintained, and a schedule showing the times of beginning and completion and shall secure a permit from the City before proceeding with any such work. The Franchisee shall conform to all requirements of the Municipal Code (as enacted or as amended).
- I. All construction and/or maintenance work as provided herein shall be performed in conformity with the plans and specifications filed with the City and with the permit or permits issued, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by the Franchisee.
- J. Street excavations shall be dealt with through the standard Right-of-Way permitting process (East Wenatchee Municipal Code Chapter 12.04 (as enacted or as amended)). The City shall not unreasonably withhold or delay issuing the applicable permit. Line extensions also require early consultation with the City to look at corridors and where Facilities shall be placed. However, in the event of an emergency requiring immediate action by Franchisee for the protection of the Facilities, City property or other persons or property, Franchisee may proceed without first obtaining the normally required permits. In such event Franchisee must (1) take all necessary and prudent steps to protect, support, and keep safe from harm the Facilities, or any part thereof; City property; or other persons or property, and to protect the public welfare, health and safety; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.
- K. Unless such condition or regulation is in conflict with a federal or state requirement, the City may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the public right-of-way or the City's property including, by way of example and not limitation, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and Rights-of-Way improvements, private facilities and public safety.

- L. Whenever necessary, after construction or maintaining any of Franchisee's Facilities within the Rights-of-Way, the Franchisee shall, without delay, and at Franchisee's sole expense, remove all debris and restore the surface disturbed by Franchisee as nearly as possible to as good or better condition as it was in before the work began. Franchisee shall replace any property corner monuments, survey reference or equipment that were disturbed or destroyed during Franchisee's work in the Rights-of-Way. Such restoration shall be done in a manner consistent with applicable codes and laws and to the City's satisfaction and specifications where applicable.
- M. Within 30 days of the effective date of this Franchise, Franchisee shall provide the City with GIS level maps in Washington State Plane Coordinates showing the size and location of the Facilities within the Franchise Area subject to the City's agreement to maintain the confidentiality of such information to the extent allowed by law. Before February 1 of each year, Franchisee shall provide the City with updated GIS level maps. The City agrees that it will comply with all state and federal laws prohibiting disclosure of Franchisee's maps and information to any third party to the extent allowed by law.
- N. Within 30 days of receiving a written request from the City, Franchisee must provide the City with maps identifying the location of Franchisee's Facilities located within a specific public way in a format adequate for geographic information system and Computer Aided Design (CAD) usage.
- O. Franchisee shall, at all times, keep up-to-date maps and records showing the location and sizes of all Franchisee facilities installed by it in the Franchise Area. Such maps and records shall be kept in Franchisee's district operating office and shall be subject to inspection at all reasonable times by proper officials or agents of said City. Franchisee shall provide at the City's request a copy of facilities maps for the City's use.
- P. Any map or information furnished to the City pursuant to this Franchise shall remain the Franchisee's proprietary information for all purposes to the extent allowed by law.
- Q. Franchisee shall provide locates and field verify its facilities at no cost to the City.
- R. Franchisee shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the Franchise area, including safety of all persons and property during the performance of any work.
- S. All of Franchisee's underground facilities shall be laid in accordance with current City regulations and project permit requirements. Unless otherwise approved by the Public Works Director, underground facilities must maintain (parallel) ten feet of separation from water mains and sewer mains. Franchisee shall restore the public way to pre-construction condition or better. Franchisee shall restore all landscaping as close to preconstruction condition as possible. Franchisee agrees to pay all costs and expenditures required on Rights-of-Way as a result of settling, subsidence, or any other need for repairs or maintenance resulting from excavations made by Franchisee for necessary

trench patch maintenance until the next paving job. Favorable weather conditions permitting, Franchisee agrees to repair Rights-of-Way as a result of settling, subsidence, or other needed repairs or maintenance resulting from excavations made by the Franchisee upon 48 hours notice excluding weekends and holidays. If Franchisee fails to undertake such repairs as herein provided, the City may perform the repairs at Franchisee's expense.

Section 6. Coordination of Construction and Installation Activities and Other Work.

- A. Franchisee shall coordinate its construction and installation activities and other work with the City and other users of the public ways at least annually or as determined by the City.
- B. All construction or installation locations, activities and schedules shall be coordinated, as ordered by the City, to minimize public inconvenience, disruption or damages.
- C. Except in cases of emergency, at least 48 hours prior to entering a public way to perform construction and installation activities or other work, Franchisee shall give notice, at its cost, to owners and occupiers of property adjacent to such public ways indicating the nature and location of the work to be performed. Such notice shall be physically posted by door hanger.
- D. Franchisee shall make available and accept the co-location of property of others within trenches excavated or used by Franchisee in the public ways provided the costs of the work are fairly allocated between the parties.
- E. By February 1 of each year, Franchisee shall provide the City with a schedule of its proposed construction or installation activities and other work in, around, or that may affect the public ways or City property.
- F. By May 1 of each year, the respective representatives of the City, Franchisee, and other utilities and service providers shall meet to share and discuss their multi-year plan for public way construction. The City shall coordinate the meetings and provide notice to Franchisee.
- G. The City shall give reasonable advance notice to Franchisee of plans to open public ways for construction or installation of facilities; provided, however, the City shall not be liable for damages for failure to provide such notice. When such notice has been given, Franchisee shall provide information requested by the City regarding Franchisee's future plans for use of the public way to be opened. Except in cases of emergency or unanticipated construction, Franchisee may only construct or install facilities during that calendar year during such period that the City has opened the public way for construction or installation.

Section 7. Temporary Removal, Adjustment or Alteration of Facilities.

- A. Franchisee shall locate the precise horizontal and vertical location of its underground facilities by excavating upon request of the City. If the City's request is in support of a City project, the Franchisee shall complete this service within 14 days at no cost to the City. If the City's request is in support of a third party's project, the Franchisee shall be entitled to recover its cost from the project sponsor.
- B. If any person requests permission from the City to use a public way for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Franchisee for the temporary removal, adjustment or alteration of Franchisee's facilities to accommodate the moving or removal of said building or other object. In such event, Franchisee shall, at the cost of the person desiring to move or remove such building or other object, remove, adjust or alter the position of its facilities which may obstruct the moving or removal of such building or other object, provided that:
- (1) The moving or removal of such building or other object which necessitates the temporary removal, adjustment or alteration of facilities shall be done at a reasonable time and in a reasonable manner so as to not unreasonably interfere with Franchisee's business, consistent with the maintenance of proper service to Franchisee's customers;
 - (2) The person obtaining such permission from the City to move or remove such building or other object may be required to indemnify and save Franchisee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence of the person moving or removing such building or other object or the negligence of the agents or employees of the person moving or removing such building or other object; and
 - (3) Completion of notification requirements by a person who has obtained permission from the City to use a public way for the moving or removal of any building or other object shall be deemed to be notification by the City.
- C. The City may require Franchisee to temporarily remove, adjust or alter the position of Franchisee's facilities as the City may reasonably determine to be necessary at no cost to the City for work deemed needed by the City in the Rights-of-Way. The City shall not be liable to Franchisee or any other party for any direct, indirect, consequential, punitive, special or other damages suffered as a direct or indirect result of the City's actions.

Section 8. Safety and Maintenance Requirements.

- A. All work authorized and required under this Franchise will be performed in a safe, thorough, and workmanlike manner.
- B. Franchisee, in accordance with applicable federal, state, and local safety requirements shall, at all times, employ ordinary care and shall use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to occur. All facilities, wherever situated or located, shall at all times be kept in a good, safe, and suitable condition. If a violation of a safety code or other applicable regulation is found to exist by the City, the City may, after discussions with Franchisee, establish a reasonable time for Franchisee to make necessary repairs.
- C. Franchisee, and any person acting on its behalf, shall provide a traffic control plan that conforms to the MUTCD. Said plan shall use suitable barricades, flags, flagmen, lights, flares, and other measures as required for the safety of all members of the general public during the performance of work, of any kind whatsoever, in public ways to prevent injury or damage to any person, vehicle, or property. Franchisee shall implement and comply with its approved traffic control plan during execution of its work. The traffic control plan shall be developed and kept on site in Franchisee's possession for all work impacting vehicular and pedestrian traffic. Prior approval is not required of traffic control plans. Traffic control plans may be modified as necessary by the Franchisee to achieve effective and safe traffic control. All road closures requested by Franchisee require a detour plan submitted at least 48 hours in advance and prior City approval unless there is an emergency.
- E. The City shall have the right to inspect all construction and installation work performed by Franchisee pursuant to this Franchise to the extent necessary to ensure compliance by Franchisee.
- F. The City reserves the right to lay, and permit to be laid, sewer, electric, phone, gas, water and other pipelines, cables, conduits and related appurtenances and to do, or permit to be done, any underground or overhead work in, across, along, over or under a public way or other public place occupied by Franchisee. The City also reserves the right to construct new streets and public utilities and to alter the design of existing streets and public utilities. In performing such work, the City shall not be liable to Franchisee for any damage, but nothing herein shall relieve any other person or entity from the responsibility for damages to Franchisee's Facilities. The City will use its best efforts to provide Franchisee with reasonable advance notice of plans by other persons to open the public ways.
- G. On notice from the City that any work is being performed contrary to the provisions herein, or in an unsafe or dangerous manner or in violation of the terms of any applicable permit, laws, regulations, ordinances or standards, the City may issue a stop work order and Franchisee shall stop the work immediately. The City shall issue a stop work order in writing, unless given verbally in the case of an emergency, and provide the order to the

individual doing work or post it on the work site. A copy of the order shall be sent to Franchisee, and the order must indicate the nature of the alleged violation or unsafe condition and the conditions under which Franchisee may resume work.

Section 9. Removal of Unauthorized Facilities. Within 30 days following written notice from the City, Franchisee shall, at its expense, remove or abandon in place unauthorized facilities and restore public Rights-of-Way and other property to as good a condition as existed prior to construction or installation of its facilities. Any plan for removal of said facilities must be approved by the City prior to such work. Facilities are unauthorized and subject to removal in the following circumstances:

- A. Upon expiration, termination, or cancellation of this Franchise;
- B. Upon abandonment of the Facilities. Facilities shall be deemed abandoned if they are unused by Franchisee for a period of 90 days;
- C. If the Facilities were constructed, installed, operated, maintained, or repaired without the prior issuance of required use and/or development authorization and permits and the Facilities are not and cannot be made legally compliant with applicable safety codes;
- D. If the Facilities were constructed or installed or are operated, maintained or repaired in violation of the terms or conditions of this Franchise and the Facilities are not and cannot be made legally compliant with applicable safety codes; or
- E. No facilities may be abandoned in place without the express written consent of the City which consent shall not be withheld unless it is shown that abandonment of Facilities in place constitutes a material health or safety risk to the public. Upon consensual abandonment in place of facilities, the Facilities shall become property of the City, and Franchisee shall submit to the City an instrument in writing, to be approved by the City, transferring to the City the ownership of such Facilities. If the City sells or utilizes the Facilities for use to provide Natural gas distribution Service, the City shall compensate Franchisee for the fair value of the Facilities. The failure of Franchisee to submit an instrument shall not prevent, delay, or impair transfer of ownership to the City.

Section 10. Restoration of Public Ways and Other Property.

- A. When Franchisee, or any person acting on its behalf, does any work in or affecting any public way, it shall, at its own expense, promptly remove any obstructions therefrom and restore, at Franchisee's cost, such ways to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.
- B. If weather or other conditions do not permit the complete restoration required by this section, the Franchisee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the Franchisee's cost, and Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

- C. All restoration work is subject to inspection and final approval by the City. If restoration is not made to the satisfaction of the City within the established timeframe, the City may make the restoration itself at the cost of Franchisee or have them made at the cost of Franchisee.

Section 11. Use and/or Development Authorization and Permits. Franchisee shall obtain use, right-of-way construction, and/or development authorization and required permits from the City and all other appropriate regulatory authorities prior to constructing or installing facilities or performing other work in a public way. The City must act on applications for use and/or development authorization or required permits within 30 days of receipt of a completed application, unless Franchisee consents to a different time period.

- A. Franchisee shall provide the following information for all facilities that it proposes to construct or install:
- (1) Engineering plans, specifications and a network map of the proposed facilities and their relation to existing facilities, in a format and media requested by the City in sufficient detail to identify:
 - a. The location and route of the proposed facilities;
 - b. When requested by the City, the location of all overhead and underground public utility, natural gas distribution, cable, water, sewer, drainage and other facilities in the public way along the proposed route;
 - c. When requested by the City, the location(s), if any, for interconnection with the natural gas distribution facilities of others;
 - d. The specific trees, structures, improvements, facilities and obstructions, if any, that Franchisee proposes to temporarily or permanently alter, remove or relocate.
 - (2) If Franchisee is proposing to install underground facilities in existing ducts or conduits within the public ways, information in sufficient detail to identify:
 - a. Evidence of ownership or authorization to use such ducts or conduits;
 - b. Conditions of use imposed by the owner(s) of the ducts or conduits;
 - c. If known to Franchisee or reasonably ascertainable to Franchisee, the total capacity of such ducts or conduits; and
 - d. If known to Franchisee or reasonably ascertainable to Franchisee, the amount of the total capacity within such ducts or conduits which will be occupied by Franchisee's facilities.
 - (3) If Franchisee is proposing to install underground facilities in new ducts or conduits within the public ways:
 - a. The location proposed for new ducts or conduits;
 - b. The total capacity of such ducts or conduits; and
 - c. The initial listing of colocated facilities located within Franchisee constructed or installed ducts or conduits.
 - (4) A preliminary construction schedule and completion date together with a traffic control plan in compliance with the MUTCD for any construction.

- (5) Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities.
 - (6) Such other documentation and information regarding the facilities requested by the City.
- B. Franchisee shall not be granted development authorization or issued permits for construction or installation of new facilities unless Franchisee is in full compliance with the provisions of this Franchise and all of Franchisee's existing facilities have been expressly approved by the City in writing.

Section 12. Hold Harmless and Assumption of Risk.

A. Hold Harmless.

- (1) Franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected officials, officers, employees, agents, and representatives against any and all claims, costs, damages, judgments, awards, attorneys' fees or liability, of any kind whatsoever, to any person, including claims by Franchisee's own employees to which Franchisee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property arising out of the negligent acts or omissions of Franchisee, its officers, employees, agents or representatives.
- (2) Franchisee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its elected officials, officers, employees, agents, and representatives from any and all claims, costs, damages, judgments, awards, attorneys' fees or liability to any person arising out of Franchisee's exercise of the rights, privileges, or authority granted by this Franchise which are made against the City, in whole or in part, due to the City's ownership or control of the public ways or other City property, by virtue of the City permitting the Franchisee's entry, occupancy or use of the public ways, or based upon the City's inspection or lack of inspection of work performed by Franchisee, its officers, employees, agents or representatives.
- (3) These hold harmless covenants include, but are not limited to claims against the City arising as a result of the acts or omissions of Franchisee, its officers, employees, agents or representatives in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public way or other public place in performance of work or services permitted under this Franchise.
- (4) Franchisee further agrees to indemnify, hold harmless and defend the City, its elected officials, officers, employees, agents, and representatives against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the Franchisee's Facilities against the City as the result of any interruption of service due to damage or destruction of the user's facilities caused by or arising out of damage or destruction of Franchisee's facilities, except to the extent any such damage or destruction is caused by or arises from the active sole negligence of the City.

- (5) In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Franchisee and the City, Franchisee's liability hereunder shall be only to the extent of Franchisee's negligence.
- (6) It is further specifically and expressly understood that the hold harmless covenants provided herein constitutes the Franchisee's waiver of immunity under Title 51 RCW. This waiver has been mutually negotiated by the parties.
- (7) Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction or installation shall not be grounds for avoidance of any of these hold harmless covenants. Said hold harmless obligations shall extend to claims which are not reduced to a suit and any claims which may be reasonably compromised prior to the culmination of any litigation or the institution of any litigation.
- (8) In the event that Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the hold harmless covenants contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, then Franchisee shall pay and be responsible for all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this hold harmless clause.

B. Assumption of Risk.

- (1) Franchisee assumes the risk of damage to its facilities located in the City's public ways from activities conducted by the City, its elected officials, officers, employees, agents, or representatives. Franchisee releases and waives any and all claims against the City, its elected officials, officers, employees, agents, and representatives for damage to or destruction of the Franchisee's facilities except to the extent any such damage or destruction is caused by or arises from active sole negligence of the City.
- (2) Franchisee bears sole responsibility to insure its property. Franchisee shall ensure that its insurance contracts waive subrogation claims against the City, its elected officials, officers, employees, agents, and representatives, and Franchisee shall indemnify, defend and hold harmless the City, its elected officials, officers, employees, agents, and representatives against any and all subrogation claims if it fails to do so.

Section 13. Insurance. Franchisee shall obtain and maintain, at its cost, worker's compensation insurance in accordance with State law requirements and the following liability insurance policies insuring both Franchisee and the City, and the City's elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to Franchisee:

- A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:
- (1) \$5,000,000.00 for bodily injury or death to each person;
 - (2) \$5,000,000.00 for property damage resulting from any one accident; and
 - (3) \$5,000,000.00 for umbrella coverage for all other types of liability.
- B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$3,000,000.00 for each person and \$3,000,000 for each accident.
- C. Workers' compensation within statutory limits and employer's liability insurance with limit of not less than \$1,000,000.
- D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limit of not less than \$3,000,000.
- E. The liability insurance policies required by this section shall be maintained by Franchisee throughout the term of this Franchise, such other periods of time during which Franchisee's facilities occupy public ways, and while Franchisee is engaged in the removal of its facilities. Franchisee shall provide an insurance certificate, together with an endorsement naming the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any construction or installation of any facilities pursuant to this Franchise or other work in a public way. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of Franchisee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Franchisee's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, representatives, engineers and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute to it.
- F. In addition to the coverage requirements set forth in this section, each such insurance policy shall contain an endorsement in a form which substantially complies with the following:
- "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the Mayor of intent to cancel or not to renew."
- G. At least 30 days prior to said cancellation or non-renewal, Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section.

Section 14. Performance Bond. Upon the City's request if the City reasonably determines financial security is necessary to assure continued performance for construction and installation of Facilities in accordance with this Franchise or if the Franchisee has repeatedly failed to perform and correct its performance of construction and installation of its Facilities in accordance with this Agreement after reasonable notice from the City, then Franchisee shall file with the City a performance bond in the amount specified by the City at the time the City grants Franchisee a requested construction permit. This bond shall be maintained throughout the period of time that Franchisee is performing work under such applicable construction permit. In the event Franchisee fails to comply with any law, ordinance, or regulation governing the Franchise, or fails to perform, observe, and fulfill each term, condition and covenant of the Franchise, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damage or loss suffered by the City.

Section 15. Taxes, Charges, and Fees.

- A. RCW 35A.21.860 prohibits the City from imposing a franchise fee on a gas distribution business, but it does allow the City to recover its actual administrative costs that are directly related to receiving and approving a permit, license, and franchise, to inspecting plans and construction. Franchisee shall pay the City, annually, for administrative costs in management of the City Rights-of-way and review of Franchisee's applications for work within the City Rights-of-way. Accordingly, the Franchisee agrees to pay the City \$1,500.00 per year to cover the City's administrative expenses. Payment is due and payable by Franchisee not later than 30 calendar days after the effective date and each anniversary date of the Franchise. Franchisee reserves the right to recover payment of such costs from customers receiving Natural gas distribution Service within the City.
- B. Franchisee shall pay fees according to applicable sections of the Municipal Code.
- C. Franchisee shall pay and be responsible for taxes permitted by law.
- D. In addition to penalties and other remedies for which Franchisee may be subjected, the City reserves the right to impose site-specific charges for placement of structures used to provide natural gas distribution services. Unless otherwise agreed by the parties, such charges shall be an amount equal to at least 100 percent of the costs of construction or installation of such structures. Franchisee reserves the right to recover payment of such costs from customers receiving Natural gas distribution Service within the City.
- E. The rates Franchisee charges for gas for fuel, power, heat and other purposes and the character of the services provided by Franchisee are prescribed by the Washington Utilities and Transportation Commission, or other agency having jurisdiction over said matters.

Section 16. Nondiscrimination.

- A. Franchisee shall provide access to its facilities by hire, sale, or resale on a nondiscriminatory basis in accordance with laws of the State of Washington.

Section 17. Acquisition of Facilities. Upon Franchisee's acquisition of any facilities in the public way, or upon any addition or annexation to the City of any area in which Franchisee has facilities, such facilities shall immediately be subject to the terms of this Franchise without further action of the City or Franchisee.

Section 18. One-Call. Franchisee is responsible for complying with the provisions of Washington's One-Call statutes.

Section 19. Vacation of Public Ways. The City reserves the right to vacate any public way which is subject to rights, privileges, and authority granted by this Franchise. If Franchisee has facilities in such public way, the City shall reserve an easement for Franchisee. If Franchisee's facilities must be relocated, the petitioners of said vacation will bear the expense of moving said facilities.

Section 20. Duty to Provide Information. Within 30 days of a written request from the City, Franchisee shall furnish the City with all requested information sufficient to demonstrate:

- A. That Franchisee has complied with all requirements of this Franchise; and
- B. That taxes, fees, charges, or other costs owed or payable by Franchisee have been properly collected and paid.

Franchisee's obligations under this section are in addition to those provided elsewhere in this Franchise.

Section 21. Records.

- A. Franchisee will manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the City. The City will have access to, and the right to inspect, any documents and records of Franchisee and its affiliates that are reasonably necessary for the enforcement of this Franchise or to verify Franchisee's compliance with terms or conditions of this Franchise. Franchisee will not deny the City access to any of Franchisee's records on the basis that Franchisee's documents or records are under the control of any affiliate or a third party.
- B. All documents and records maintained by Franchisee shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this section 21 shall be construed to require Franchisee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.
- C. One copy of documents and records requested by the City will be furnished to the City at the cost of Franchisee. If the requested documents and records are too voluminous or for security reasons cannot be copied or removed, then Franchisee may request, in writing within ten (10) days of the City's request, that the City inspect them at Franchisee's local

office. If any documents or records of Franchisee are not kept in a local office and/or are not made available in copies to the City, and if the City reasonably determines that an examination of such documents or records is necessary or appropriate for the enforcement of this Franchise, or to verify Franchisee's compliance with terms or conditions of this Franchise, then all reasonable travel and related costs incurred in making such examination shall be paid by Franchisee.

Section 22. Assignment or Transfer. Franchisee's rights, privileges, and authority under this Franchise, and ownership or working control of facilities constructed or installed pursuant to this Franchise, may not be transferred, assigned or disposed of by sale, by lease, or by other act of Franchisee, without the prior written consent of the City, which consent shall not be unreasonably withheld or delayed. Any transfer, assignment or disposal of Franchisee's rights, privileges, and authority under this Franchise, or ownership or working control of facilities constructed or installed pursuant to this Franchise, may be subject to reasonable conditions as may be prescribed by the City.

- A. No rights, privileges, or authority under this Franchise shall be assigned, transferred, or disposed of in any manner within twelve (12) months after the effective date of this Franchise.
- B. Absent extraordinary and unforeseeable circumstances, no facility shall be assigned, transferred, or disposed of before construction of the facility has been completed and restoration has been performed to the satisfaction of the City.
- C. Franchisee and the proposed assignee or transferee shall provide and certify the following information to the City not less than one hundred and fifty (150) days prior to the proposed date of assignment, transfer, or disposal:
 - (1) Complete information setting forth the nature, terms and conditions of the proposed assignment, transfer, or disposal;
 - (2) Any other information reasonably required by the City; and
 - (3) A transfer application fee in an amount to be determined by the City to recover actual administrative costs directly related to receiving and approving the proposed assignment, transfer, or disposal.
- D. No assignment, transfer, or disposal may be made or shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to operate, maintain, repair, and remove facilities constructed or installed pursuant to this Franchise and to comply with the terms and conditions of this Franchise.
- E. Any transfer, assignment, or disposal of rights, privileges, and authority under this Franchise or ownership or working control of facilities constructed or installed pursuant to this Franchise, without prior written approval of the City pursuant to this section, shall be void and is cause for termination of this Franchise.

- F. City approval shall not be required for mortgaging purposes or if said transfer is from Franchisee to another person controlled by Franchisee.
- G. All terms and conditions of this Franchise shall be binding upon all permitted successors and assigns of Franchisee and all persons who obtain ownership or working control of any facility constructed or installed pursuant to this Franchise.

Section 23. Violations, Noncompliance, and Other Grounds for Termination or Cancellation.

- A. This Franchise, and any right, privilege or authority of Franchisee to enter, occupy or use public ways may be terminated or cancelled by the City for the following reasons:
 - (1) Violation of or noncompliance with any term or condition of this Franchise by Franchisee;
 - (2) Violation of or noncompliance with the material terms of any use and/or development authorization or required permit by Franchisee;
 - (3) Construction, installation, operation, maintenance, or repair of facilities on, in, under, over, across, or within any public way without Franchisee first obtaining use and/or development authorization and required permits from the City and all other appropriate regulatory authorities;
 - (4) Unauthorized construction, installation, operation, maintenance, or repair of facilities on City property;
 - (5) Misrepresentation or lack of candor by or on behalf of Franchisee in any application or written or oral statement upon which the City relies in making the decision to grant, review or amend any right, privilege or authority to Franchisee;
 - (6) Abandonment of facilities;
 - (7) Failure of Franchisee to pay taxes, fees, charges or costs when and as due; or
 - (8) Insolvency or bankruptcy of Franchisee.
- B. If the City believes that grounds exist for termination or cancellation of this Franchise or any right, privilege or authority of Franchisee to enter, occupy or use public ways, Franchisee shall be given written notice and a reasonable period of time not exceeding 30days to furnish evidence:
 - (1) That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation, noncompliance, or other grounds for termination or cancellation;
 - (2) That rebuts the alleged violation, noncompliance, or other grounds for termination or cancellation; or
 - (3) That it would be in the public interest to impose some penalty or sanction less than termination or cancellation.
- C. In the event that Franchisee fails to provide evidence reasonably satisfactory to the City as provided in subsection (B) of this section, the City shall refer the apparent violation, noncompliance, or other grounds for termination or cancellation to the City Council. The

City Council shall provide the Franchisee with notice and a reasonable opportunity to be heard concerning the matter.

- D. If the City Council determines that the violation, noncompliance, or other grounds above for termination or cancellation exist, then, Franchisee shall, at the election of the City Council, forfeit all rights, privileges and authority conferred under this Franchise or any use and/or development authorization or permit granted by the City, and this Franchise and any such use and/or development authorization or permit may be terminated or cancelled by the City Council. The City Council may elect, in lieu of the foregoing and without any prejudice to any of its other legal rights and remedies, to pursue other remedies, including obtaining an order compelling Franchisee into compliance or to take corrective action, or to recover damages and costs incurred by the City by reason of Franchisee's actions or omissions. The City Council shall utilize the following factors in analyzing the nature, circumstances, extent, and gravity of the actions or omissions of Franchisee:
- (1) Whether the misconduct was egregious;
 - (2) Whether substantial harm resulted;
 - (3) Whether the violation was intentional;
 - (4) Whether there is a history of prior violations of the same or other requirements;
 - (5) Whether there is a history of overall compliance; and
 - (6) Whether the violation was voluntarily disclosed, admitted or cured.
- E. The City Council's choice of remedy shall not excuse Franchisee from compliance with any term or condition of this Franchise or the material terms of any use and/or development authorization or required permit. Franchisee shall have a continuing duty to remedy any violation, noncompliance, or other grounds for termination or cancellation. Further, nothing herein shall be construed as limiting any remedies that the City may have, at law or in equity, for enforcement of this Franchise and any use and/or development authorization or permit granted to Franchisee.

Section 24. Notices.

- A. Any regular notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

The City:	City of East Wenatchee Attn: Mayor 271 9 th St. N.E. East Wenatchee, WA 98802
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Franchisee:	Cascade Natural Gas Corporation Attn: Vice President- Operations 8113 West Grandridge Boulevard Kennewick, WA 99336-7166
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- B. Franchisee shall additionally provide a phone number and designated responsible officials to respond to emergencies. After being notified of an emergency, Franchisee shall cooperate with the City and make its best efforts to immediately respond to minimize damage, protect the welfare, health and safety of the public and repair facilities to restore them to proper working order. Annually, on request of the City, Franchisee will meet with City emergency response personnel to coordinate emergency management operations and, at least once a year, at the request of the City, actively participate in emergency preparations.

Section 25. Non-Waiver. The failure of the City to exercise any rights or remedies under this Franchise or to insist upon compliance with any terms or conditions of this Franchise shall not be a waiver of any such rights, remedies, terms or conditions of this Franchise by the City and shall not prevent the City from demanding compliance with such terms or conditions at any future time or pursuing its rights or remedies.

Section 26. Eminent Domain. This Franchise is subject to the power of eminent domain and the right of the City Council to repeal, to amend, or to modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Section 27. Limitation of Liability. Administration of this Franchise may not be construed to create the basis for any liability on the part of the City, its elected officials, officers, employees, agents, and representatives for any injury or damage; or by reason of any schedule or specification review, inspection, notice and order, permission, or other approval or consent by the City; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the City; or for the accuracy of plans submitted to the City.

Section 28. Damage to Facilities. Unless directly and proximately caused by the active sole negligence of the City, the City shall not be liable for any damage to or loss of any facilities as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on, in, under, over, across, or within a public way done by or on behalf of the City.

Section 29. Competitive Neutrality. In order to maintain a level playing field among all similarly situated franchisees of the City, upon the grant or renewal of another franchise in the Rights-of-Way where material terms or conditions of this Franchise conflict with a change in the Municipal Code, or the provisions of this Franchise provide a material competitive advantage over another similarly situated provider (such that it negatively impacts the City's ability to effectively manage the Rights-of-Way), then the City may elect to renegotiate with the Franchisee in good faith to modify the terms and provisions of this Franchise to obtain material terms and conditions that, as a whole, are competitively neutral between franchisees.

Section 30. Governing Law and Venue. This Franchise and use of the applicable public ways will be governed by federal law, the laws of the State of Washington and local law. Franchisee agrees to be subject to the jurisdiction of the courts of the State of Washington. Any action relating to this Franchise must be brought in the Superior Court of Washington for Chelan

County, or in the case of a federal action, the United States District Court for the Eastern District of Washington, unless an administrative agency has primary jurisdiction.

Section 31. Severability. If any section, sentence, clause or phrase of this Franchise or its application to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality will not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise or its application to any other person or entity.

Section 32. Miscellaneous.

- A. **Equal Employment and Nondiscrimination.** Throughout the term of this Franchise, Franchisee will fully comply with all equal employment and nondiscrimination provisions and requirements of federal, state, and local laws applicable to Franchisee.
- B. **Local Employment Efforts.** Franchisee will use reasonable efforts to utilize qualified and competitive local contractors, including minority business enterprises and woman business enterprises, whenever the Franchisee employs contractors to perform work under this Franchise.
- C. **Descriptive Headings.** The headings and titles of the sections and subsections of this Franchise are for reference purposes only and do not affect the meaning or interpretation of the text herein.
- D. **Force Majeure.** Franchisee shall not be required to perform any covenant or obligation in this Franchise, or be liable in damages to the City, so long as the performance or non-performance of the covenant or obligation is delayed, caused or prevented by an act of God or force majeure. An "act of God" or "force majeure" is defined for purposes of this Franchise as strikes, lockouts, sit-downs, material or labor restrictions by any governmental authority, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and/or any other cause not reasonably within the control of Franchisee.
- E. **Costs and Attorneys' Fees.** If any action or suit arises in connection with this Franchise, the substantially prevailing party will be entitled to recover all of its costs and attorneys' fees, as well as costs and attorneys' fees on appeal, in addition to such other relief as the court may deem proper.
- F. **No Joint Venture.** Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties. Neither party is authorized to, nor shall either party act towards third persons or the public in any manner that would indicate any such relationship with the other.

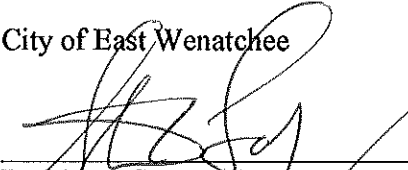
- G. **Actions of the City or Franchisee.** In performing their respective obligations under this Franchise, the City and Franchisee will act in a reasonable, expeditious, and timely manner.
- H. **Counterparts.** This Franchise may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Franchise shall be deemed to possess the full force and effect of the original.
- I. **Entire Agreement.** This Franchise represents the entire understanding and agreement between the parties with respect to the subject matter and supersedes all prior oral and written negotiations between the parties.
- J. **Modification.** The parties may alter, amend or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.
- K. **Non-exclusivity.** This Franchise does not confer any exclusive right, privilege, or authority to enter, occupy or use public ways for delivery of natural gas distribution services or any other purposes. This Franchise is granted upon the express condition that it will not in any manner prevent the City from granting other or further franchises in, on, across, over, along, under or through any public way.
- L. **Rights Granted.** This Franchise does not convey any right, title or interest in public ways, but shall be deemed only as authorization to enter, occupy, or use public ways for the limited purposes and terms stated in this Franchise. Further, this Franchise shall not be construed as any warranty of title.
- M. **Contractors and Subcontractors.** Franchisee's contractors and subcontractors must be licensed and bonded in accordance with the City's ordinances, rules, and regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee.

Section 33. Publication. The City Clerk is authorized and directed to publish a summary hereof.

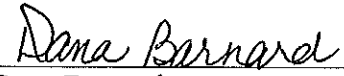
Section 34. Repeal. The City Council repeals Ordinance 2-85.

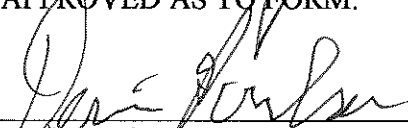
Section 35. Effective Date. This ordinance shall be in full force and effect five days from and after its passage, approval and publication as required by law, but if, and only if, the Franchisee has endorsed this ordinance and accepted its terms and conditions within 30 days of its passage.

PASSED by the City Council of the City of East Wenatchee, at a regular meeting on the 10th day of July, 2012.

City of East Wenatchee

By Mayor Steven C. Lacy

ATTEST:



Dana Barnard
City Clerk

APPROVED AS TO FORM:

Devin Poulson
City Attorney

Filed with the City Clerk: 7/3/12
Passed by the City Council: 7/10/12
Published: 7/13/12
Effective Date: 7/18/12

ACCEPTANCE:

Cascade Natural Gas Company

By: 
Printed Name: MIKE CLAPP
Title: REGIONAL MANAGER

Summary of Ordinance No. 2012-10
Of the City of East Wenatchee, Washington

On the 10th day of July, 2012, the City Council of the City of East Wenatchee, Washington approved Ordinance No. 2012-~~10~~^{DB}, the main point of which may be summarized by its title as follows:

An Ordinance of the City of East Wenatchee, granting a non-exclusive Franchise to Cascade Natural Gas Corporation to construct, install, operate, maintain, repair, or remove facilities for the distribution of natural gas within the public ways of the City of East Wenatchee.

Upon request, the City will mail a full text of this Ordinance.

Dated this 10th day of July, 2012.

Dana Barnard
CITY CLERK, DANA BARNARD

CITY OF KENNEWICK
ORDINANCE NO. 5075

AN ORDINANCE GRANTING TO CASCADE NATURAL GAS CORPORATION, A WASHINGTON CORPORATION, A NONEXCLUSIVE RIGHT AND FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE IN, OVER, UPON AND UNDER THE PRESENT AND FUTURE STREETS, ALLEYS, BRIDGES, HIGHWAYS, AND OTHER PUBLIC PLACES OF THE CITY OF KENNEWICK, WASHINGTON, A GAS DISTRIBUTION SYSTEM AND APPURTENANCES, SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED IN THIS ORDINANCE

THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The City of Kennewick, Benton County, Washington, hereinafter referred to as "the City," hereby grants to Cascade Natural Gas Corporation, a Washington Corporation, hereinafter referred to as "Grantee", a right and franchise to construct, maintain and operate in, over, upon and under the present and future streets, alleys, bridges, highways, and other public places (all hereinafter referred to as "streets") within the present or future limits of the City, natural gas distribution mains, laterals and services, and all necessary or desirable appurtenances thereto, for the purpose of supplying natural gas for heating, lighting, and other purposes.

Section 2. The right and franchise hereby granted shall not be exclusive and the City expressly reserves the right, at any time during the term of the right of franchise hereby granted, to grant rights or franchises for such purpose to other persons or corporations, as well as the right in its own name as a municipality, to use said streets for such purposes.

Section 3. The locations and methods of installation and maintenance of all pipes, boxes, laterals, conduits and connections, and all appurtenances thereof (hereinafter referred to as "facilities") shall be subject all times to reasonable regulation by the City Council or by such committee of the Council or such official of the City as may be designated by the Council, and all such facilities shall be so constructed and maintained so as to interfere as little as practicable with street and/or City utilities or other traffic. All of such facilities shall be installed and at all times maintained by Grantee in safe order and condition and in accordance with the specifications and requirements of the American Gas Association, the National Board of Fire Underwriters and/or the current applicable industry standards, and Grantee, at its own cost and expense, shall promptly repair all streets in any way disturbed by Grantee, and shall restore the same to as good condition as the same were prior to the doing of any work thereon or therein by Grantee. Grantee shall comply with all existing and future lawful ordinances, rules, or regulations of the City relating to the use or improvement of said streets, including but not limited to, moratoriums on newly constructed and newly reconstructed streets. Grantee may, from time-to-time, be required to make emergency excavations within the franchise area for the purpose of responding to emergencies and protecting public safety. As soon as practical after such incidents, Grantee will

file such permit requests or plans required by the City to properly review and inspect said excavation and repair.

Section 4. The Grantee herein agrees to establish, keep, maintain, and conduct in the City of Kennewick a location where customer bills may be paid, as long as such service is reasonably, commercially available. Grantee will also maintain a non-toll customer service telephone number and sufficient operations personnel to respond to customer and system emergencies.

Section 5. Grantee hereby agrees and covenants to indemnify and save harmless the City and the officers thereof against and from any and all claims, and all damages, cost and expense to which it or they may be subjected by reason of any negligent act or omissions of Grantee, or its agents, or servants, in any manner arising out of the construction, reconstruction, maintenance, or operation of any property of Grantee in, over, upon, or under any of said streets.

Section 6. Nothing in this ordinance shall be deemed or construed to limit the power of the proper authorities of the City to construct or maintain public improvements and whenever in the prosecution or maintenance of such improvements it becomes necessary or convenient to require the removal, readjustment, or relocation of any Grantee's facilities located in, over, upon, or under any of said streets, after reasonable written notice of such relocation and after receipt of reasonable plans and specifications of the planned public facility improvement, the same shall be done by and at the sole expense of Grantee. If the City requires the subsequent relocation of any facilities within five (5) years from the date of the initial relocation, the City shall bear the entire cost of such subsequent relocation. If the relocation is required for the benefit of any person or entity other than the City, Grantee shall have the right, as a condition of such relocation, to require such developer, person, or entity to make payment to Grantee at a time and upon such terms acceptable to Grantee, for any and all costs incurred by Grantee in the relocation of Grantee's facilities. If the imposition of relocation costs related to Grantee's facilities on a person, entity, or developer results in an administrative appeal, claim for monetary damages, or any legal cause of action, the Grantee shall defend and indemnify the City for reasonable costs associated with the administrative or legal proceeding including, but not limited to, damages and attorneys fees. In defending such a challenge, the City may, in its discretion, defend the matter in-house or retain the services of a private law firm as chosen by the City.

Section 7. If Grantee shall fail to perform or comply with any of the obligations and requirements imposed by this ordinance, after the receipt of written notice from the City specifying the respect in which Grantee is deemed to be in default hereunder and demanding that such default be remedied within a reasonable time to be fixed in such notice, the right and franchise granted herein may be terminated and annulled by the City Council, after reasonable opportunity for Grantee to be heard and appropriate determination is made with respect to such alleged default.

Section 8. Upon the effective date hereof, but not otherwise, Ordinance No. 811 of the City of Kennewick, passed February 1, 1955, is hereby repealed.

Section 9. That as consideration for granting said franchise, the Grantee will be liable for business and occupational tax, or utility tax, as provided from time-to-time in the City Business and Occupational Tax Ordinance, and Utility Tax Ordinance, or other City ordinance.

Section 10. The complete cost of legal publication incident to the granting of this franchise is to be assumed by the Grantee.


Section 11. Said franchise may not be assigned without written consent of the Grantor, but if such consent is given and the franchise is assigned, it shall be binding upon the successors, assigns, and independent contractors of the Grantee.

Section 12. This ordinance shall be effective upon the expiration of Ordinance No. 811 and after its acceptance by the Grantee for a period of twenty (20) years, referred to as the primary term. The franchise will automatically renew for successive period of five (5) years each unless canceled at the end of a term by either party by written notice to the other given no less than 180 calendar days prior to the end of the primary term or the then successive current term.

PASSED BY THE CITY COUNCIL OF THE CITY OF KENNEWICK, WASHINGTON, this 15th day of February, 2005, and signed in authentication of its passage this 15th day of February, 2005.

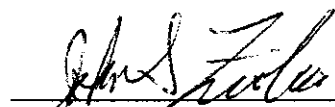

JAMES R. BEAVER, Mayor

Attest:


VALERIE J. LOFFLER, City Clerk

ORDINANCE NO. 5075 filed and recorded in the office of the City Clerk of the City of Kennewick, Washington this 16th day of February, 2005.

Approved as to Form:


JOHN ZIOBRO, City Attorney



VALERIE J. LOFFLER, City Clerk

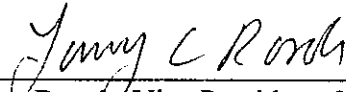
DATE OF PUBLICATION 2-19-05

We, Will Odell and Larry Rosok, of Cascade Natural Gas Corporation and on behalf of the said corporation do hereby accept the same and agree to abide by the terms and conditions set down therein, and we further state that we are authorized by said corporation to accept the said franchise.

DATED this 16th day of MARCH, 2005.

CASCADE NATURAL GAS CORPORATION

BY 
Will Odell, Chief Operating Officer

BY 
Larry Rosok, Vice President & Corporate Secretary

ORDINANCE NO. _____

AN ORDINANCE of the City of Pasco, Washington, Granting Cascade Natural Gas Corporation, a Washington Corporation, its Successors, Grantees and Assigns the Nonexclusive Right, Privilege, Authority and Franchise to Construct, Operate, Maintain, Remove, Replace, and Repair Existing and Future Pipeline Facilities, Together with Equipment and Appurtenances Thereto, for the Transportation and Distribution of Natural Gas Within and Through the City of Pasco

WHEREAS, Cascade Natural Gas Corporation, a Washington Corporation (hereinafter "Grantee") has applied for renewal of a nonexclusive Franchise to operate and maintain a natural gas distribution system, together with all required and necessary appurtenances for the purpose of supplying gas for heat, power, light and other purposes to customers within and through the City of Pasco, a Washington Municipal Corporation (hereinafter the "City"); and,

WHEREAS, the State statutes and City ordinances authorize the City to grant nonexclusive Franchises; **NOW THEREFORE**,

THE CITY COUNCIL OF THE CITY OF PASCO, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions.

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning.

1.1 Construct or Construction shall mean excavating, installing, assembling new Facilities and removing, altering, replacing and repairing existing pipeline(s) and/or facilities.

1.2 Effective Date shall mean the 1st day of January, 2006, or such date after approval, passage, and legal publication of this Ordinance and acceptance by the Grantee occurs and upon which the rights, duties and obligations shall come in effect and the date from which the time requirements for any notice, extension and/or renewal will be measured.

1.4 Facilities shall mean the Grantee's existing and future distribution system, lines, valves, mains, appurtenances, and all other facilities necessary for the purpose of transportation and/or distribution of Grantee's product(s).

1.5 Franchise shall mean this franchise and any amendments, exhibits, or appendices to this franchise.

1.6 Franchise Area means the area within the jurisdictional boundaries of the City, including any areas annexed by City during the term of this Franchise, in which case the annexed area shall become subject to the terms of this Franchise.

1.8 Maintenance or Maintain shall mean examining, testing, inspecting, repairing, maintaining and replacing the Facilities or any part thereof as required and necessary for safe operation.

1.9 Public Ways shall mean any highway, street, alley, utility easement (unless their use is otherwise restricted), or other public Rights-of-way as encompassed by RCW 47.24.020 and RCW 47.52.090 under the jurisdiction and control of the City.

1.10 Operate or Operations shall mean Grantee's use of the Facilities for the delivery, distribution and handling of natural gas within and through the Franchise Area.

1.11 Rights-of-Way means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-way and similar public ways located within the Franchise Area.

Section 2. Grant of Authority.

2.1 Pursuant to RCW 35A.47.040, the City hereby grants to Grantee, a corporation organized and existing under and by virtue of the laws of the State of Washington, and which is authorized to transact business within the State of Washington, its successors and assigns (as provided in Section 4), the right, privilege, authority and Franchise to Construct, Operate and Maintain all Facilities necessary for the transportation, distribution and handling of natural gas within the Franchise Area.

2.2 This Franchise is non-exclusive. City reserves all rights to its property, including, without limitation, the right to grant additional franchises, easements, licenses and permits to others to use the Rights-of Way and Public Ways, provided that the City shall not grant any other franchise, license, easement or permit that would unreasonably interfere with Grantee's permitted use under this Franchise. This Franchise shall in no manner prohibit the City or limit its power to perform work upon its Rights-of-Way, Public Ways or make all necessary changes, relocations, repairs, maintenance, establishment, improvement thereto, or from using any of the Rights-of Way and Public Ways, or any part of them, as the City may deem fit from time to time, including the dedication, establishment, maintenance and improvement of all new Rights-of-Way and other Public Ways of every type and description. This Franchise shall not grant any rights to Grantee for the use or location of its Facilities upon public property of the City other than specifically described above as Rights-of-Way and Public Ways, without prior written agreement identifying the terms and conditions of such use.

2.3 This Franchise is granted subject to the police powers, land use authority and franchise authority of the City and is conditioned upon the terms and conditions contained herein and Grantee's compliance with all applicable federal, state or other regulatory programs that currently exist or may hereafter be enacted by any regulatory agencies with jurisdiction over Grantee.

2.4 By granting this Franchise, the City is not assuming any risks or liabilities therefrom, which shall be solely and separately borne by Grantee. Grantee agrees and covenants to, at its sole cost and expense, take all necessary and prudent steps to protect, support, and keep safe from harm its Facilities, or any part thereof, as necessary to protect the public health and safety.

2.5 This Franchise is only intended to convey a limited right and interest. None of the rights granted herein shall affect the City's jurisdiction over its property, streets or Rights-of-Way.

2.6 The limited rights and privileges granted under this Franchise shall not convey any right to Grantee to install any new Facilities without required permitting by the City, which permitting shall not be unreasonably conditioned, delayed or withheld.

2.7 Grantee acknowledges and warrants by acceptance of the rights and privileges granted herein, that it is fully aware of the terms and conditions of this Franchise and is willing to and does accept all reasonable risks assumed herein.

Section 3. Term. Each of the provisions of this Franchise shall become effective upon the Effective Date, subject to Grantee's acceptance of the terms and conditions of this Franchise and shall remain in effect for ten (10) years thereafter, herein referred to as the primary term. This Franchise will automatically renew for successive periods of five (5) years each unless cancelled at the end of a term by either party by written notice to the other party no less than 180 calendar days prior to the end of the primary term or the then current successive term.

Section 4. Assignment and Transfer of Franchise.

4.1 This Franchise shall not be leased, assigned or otherwise alienated without the express consent of the City by ordinance, which approval shall not be unreasonably withheld, except for the expressed purpose of mortgaging this franchise along with the gas utility facilities and other property of the Grantee to secure any legal bond issue or other bona fide indebtedness of the Grantee, however, such mortgage shall provide notice to the City of any default thereon prior to realization on the property by the mortgagee.

4.2 Subject to the foregoing, Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than 120 days prior to the proposed date of transfer: (a) Complete information setting forth the nature, terms and conditions of the proposed assignment or transfer; (b) All information reasonably required by the City of a franchise applicant with respect to the proposed assignee or transferee; c) Any other information

reasonably required by the City, including information about the proposed assignee's or transferee's safety record; and, d) An application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing and investigating the proposed assignment or transfer.

4.3 No transfer shall be approved unless the assignee or transferee has at least the legal, technical, financial, and other requisite qualifications to carry on the activities of Grantee.

4.4 Any transfer or assignment of this Franchise without the prior written consent of the City shall be void and result in revocation of the Franchise.

4.5 If such consent is given by the City, Grantee shall, within thirty (30) days, file with the City a written statement evidencing such sale, assignment or transfer of ownership, whereby the assignees/transferees shall agree to accept and be bound by all of the provisions of this Franchise.

Section 5. Compliance with Laws and Standards.

5.1 In carrying out any authorized activities under the privileges granted herein, Grantee shall meet accepted industry standards and comply with all applicable laws of any governmental entity with jurisdiction over the Facilities. This shall include all applicable laws, rules and regulations existing at the Effective Date of this Franchise or that may be subsequently enacted by any governmental entity with jurisdiction over Grantee and/or Facilities.

5.2 In the case of any conflict between the terms of this Franchise and the terms of City's ordinances, codes, regulations, standards and procedures, this Franchise shall govern. In the event of a conflict between City regulations and federal or state laws, in which it has been determined that federal law has preemption, the federal or state law shall govern.

Section 6. Construction and Maintenance.

6.1 All pipeline Construction, Maintenance or Operation undertaken by Grantee, upon Grantee's direction or on Grantee's behalf shall be completed in a workmanlike manner.

6.2 Except in the case of an emergency, prior to commencing any Construction and/or Maintenance work in the Franchise Area, Grantee shall first file with the City such detailed plans and specifications of the intended work as may be required by the City public works requirements in effect at the time of filing. The City may require such additional information, plans and/or specifications as are in the City's opinion necessary to protect the public health and safety during the Construction and/or Maintenance work and for the remaining term of this Franchise.

6.3 All Construction and/or Maintenance work shall be performed in general conformity with the maps and specifications filed with the City and in conformity with City-issued permits. The City reserves the right to identify the exact location within the right-of-way

for the location of Grantee's Facilities reserving portions of the right-of-way for the specific location of other future utility lines.

6.4 All pipe and other components of any Facilities used in Construction and/or Maintenance activities within the Franchise Area will shall comply with applicable federal regulations, as from time to time amended

6.5 Except in the event of an emergency, Grantee shall provide the City at least ten (10) calendar days written notice prior to any Construction and/or Maintenance, or other substantial activity, other than routine inspections and maintenance, by Grantee, its agents, employees or contractors on Grantee's Facilities within the Franchise Area.

6.6 Work shall only commence upon the issuance of applicable permits by the City, which permits shall not be unreasonably conditioned, withheld or delayed. However, in the event of an emergency requiring immediate action by Grantee for the protection of the Facilities, City's property or other persons or property, Grantee may proceed without first obtaining the normally required permits. In such event Grantee must (1) take all necessary and prudent steps to protect, support, and keep safe from harm its Facilities, or any part thereof; the City's property; or other persons or property, and to protect the public health and safety; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.

6.7 Unless such condition or regulation is in conflict with a federal or state requirement, the City may condition the granting of any permit or other approval that is required under this Franchise, in any manner reasonably necessary for the safe use and management of the public right-of-way or the City's property including, by way of example and not limitation, bonding, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and protecting any Rights-of-Way improvements, private facilities and public safety.

6.8 Whenever necessary, after Constructing or Maintaining any of Grantee's Facilities within the Franchise Area, Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the surface as nearly as possible to as good or better condition as it was in before the work began. Grantee shall replace any property corner monuments, survey reference or hubs that were disturbed or destroyed during Grantee's work in the areas covered by this Franchise. Such restoration shall be done in a manner consistent with applicable codes and laws, under the supervision of the City and to the City's satisfaction and specifications. The restoration shall be done under a bond in an amount appropriate to guarantee adequate restoration.

6.9 Grantee shall continuously be a member of the State of Washington "One - Number Locator Service" under RCW 19.122, or an approved equivalent, and shall comply with all such applicable rules and regulations. Grantee shall provide reasonable notice to the City prior to commencing any Maintenance or Construction requiring City approval under this Franchise. Grantee shall provide a design locate upon request and One-Call notification prior to the initiation of any construction within the City right-of-way or public ways.

6.10 Markers demarcating certain Facilities shall be placed in accordance with applicable pipeline safety regulations, but in a manner that does not interfere with trails or other public uses in that area.

6.12 Upon written request from the City, Grantee shall also provide detailed as-built design drawings showing the size, depth and location of specific Facilities within the Franchise Area.

6.14 Nothing in this Franchise shall be deemed to impose any duty or obligation upon City to determine the adequacy or sufficiency of Grantee's plans and designs or to ascertain whether Grantee's proposed or actual construction, testing, maintenance, repairs, replacement or removal is adequate or sufficient or in conformance with the plans and specifications reviewed by City.

6.15 Grantee shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the Franchise area, including safety of all persons and property during the performance of any work.

6.16 Grantee agrees to provide the City with a performance bond in the amount of fifteen thousand dollars (\$15,000.00). The City reserves the right to require such other or additional construction and/or Right-of-Way bonds, in amounts necessary to meet all costs of restoration and for a period that the City, in its sole discretion, reasonably deems necessary and prudent based on its consideration of the nature of the activity, public safety, potential damage, potential liability and/or potential expenses to the City. If the City requires additional bonding which the Grantee considers unreasonable, Grantee may initiate dispute resolution provided in Section 14 below.

Section 7. Customer Service Line Location Standards.

7.1 All pipelines of Grantee's Facilities shall be laid at least 15 inches below the surface of any City right-of-way or public way, and at least 15 inches below the bottom of any other buried City utility in such a manner as to not interfere with the present and future delivery of such utility services. Such pipelines shall be laid no closer than four feet laterally from any other pipe or conduit of other utilities. All above ground Facilities shall be located in such a place and manner as not to present a hazard to vehicle and pedestrian traffic in accordance with the standards adopted by the City. To the extent reasonable, Grantee shall utilize common trenching practices with other utilities when such other utilities are cooperative with such practices and with surface locators and facilities located near other utility outlets.

7.2 Grantee shall install, maintain and extend Facilities to service customers within the Franchise Area in response to all reasonable requests for service and in accordance with its rules and tariffs, as approved by the Washington Utilities and Transportation Commission.

Section 8. Operations and Maintenance.

8.1. Grantee shall operate and maintain its pipeline(s) and Facilities in the Franchise Area in full compliance with the applicable provisions of Title 49, Code of Federal Regulations, Part 192, as now enacted or hereinafter amended, and any other current or future laws or regulations that are applicable to Grantee's Facilities, enacted by any governmental entity with jurisdiction over the Grantee or its Facilities. Grantee shall, upon detection, notice from the City, or Grantee's customer, promptly investigate all damages, leaks or defects to Grantee's Facilities and complete appropriate repairs in accordance with pipeline safety regulations and City permit approval.

8.2 If Grantee becomes aware that a third party conducts any excavation of other significant work that may affect the Facilities, Grantee shall conduct such inspections and/or testing as is necessary to determine that no direct or indirect damage was done to the Facilities.

Section 9. Encroachment Management.

9.1 Grantee and the City shall comply with current applicable federal, state and local requirements regarding encroachment management including participation in the "One-Call Number Services" system (RCW 19.122).

Section 10. Leaks, Ruptures, Spills and Emergency Response.

10.1 Grantee warrants that during the term of this Franchise, it will maintain an Emergency Response Plan that is in compliance with the applicable requirements of local, state and federal agencies with jurisdiction. Within ninety (90) days of entering into this Franchise, and on an annual basis thereafter, Grantee shall meet with City emergency management personnel.

10.2 Grantee's Emergency Response Plan and procedures shall designate Grantee's responsible local emergency response officials and a direct 24-hour emergency contact number for the control center operator. Grantee shall, after being notified of an emergency, cooperate with the City and make every effort to respond as soon as possible to protect the public's health, safety and welfare, and to comply with all state and federal emergency response requirements.

Section 11. Required Relocation of Facilities.

11.1 In the event that the City undertakes or approves the construction of or changes to the grade or location of any water, sewer or storm drainage line, street, sidewalk or other City improvement project, and the City determines that the project might reasonably require changes to or the relocation of Grantee's Facilities, the City shall provide Grantee at least one hundred and twenty (120) calendar days prior written notice. Grantee may request additional time based on good cause which the City shall not unreasonably deny.

11.2 Grantee shall not be required to relocate its Facilities at its expense for the benefit of private owners or developers. However, if the City reasonably determines and notifies the Grantee that the primary purpose for requiring such changes to or relocation of Grantee's

Facilities by a third party is to cause or facilitate the construction of an improvement project consistent with the City's Capital Facilities Plan, Transportation Improvement Program, or the Transportation Facilities Program, or other similar plan, then Grantee shall change or otherwise relocate its Facilities at Grantee's sole cost, expense and risk. The City shall take all reasonable steps to cooperate with Grantee on any effort by Grantee to apply for and obtain any local, state or federal funds that may be available for the relocation of Grantee's Facilities provided, however, that Grantee's application for such funds may not delay the City's improvement project.

11.3 The City shall provide Grantee with copies of pertinent portions of the plans and specifications for any improvement project that will potentially affect Grantee's Facilities. Upon request, Grantee shall, at its cost and expense, determine and identify for the City the exact location of its Facilities potentially affected by the improvement project.

11.4 Grantee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to the relocation within forty five (45) calendar days of receiving the plans and specifications. The City shall evaluate the alternatives and advise Grantee in writing if one or more of the alternatives is suitable to accommodate the work that would otherwise necessitate relocation of the Facilities. If requested by the City, Grantee shall submit additional information to assist the City in making the evaluation. The City shall give each alternative proposed by Grantee full and fair consideration but retains full discretion to decide for itself whether to utilize its original plan or an alternative proposed by Grantee. In the event the City ultimately determines that there is no other reasonable alternative, Grantee shall relocate its Facilities as proposed by the City.

11.5 The City shall work cooperatively with Grantee in determining a viable and practical route within which Grantee may relocate its Facilities, in order to minimize costs while meeting the City's project objectives.

11.6 Provided that Grantee has received timely advance notice as required by this section, Grantee shall complete relocation of its Facilities so as to accommodate a City improvement project at least ten (10) calendar days prior to commencement of the improvement project or such other time as the parties may agree in writing.

Section 12 Removal, Abandonment in Place.

12.1 In the event of the removal of all or a portion of the Facilities, Grantee shall restore the Franchise Area to as good or better condition as it was in before the work began.

12.2 Removal and restoration work shall be done at Grantee's sole cost and expense and to the City's reasonable satisfaction. Grantee shall be responsible for any environmental review required for the removal of any Facility and the payment of any costs of the environmental review.

12.3 If Grantee is required to remove its pipeline(s) and/or Facilities and fails to do so and/or fails to adequately restore the Franchise Area or other mutually agreed upon action(s),

City may, after reasonable notice to Grantee, remove the pipeline(s) and/or Facilities, restore the premises and/or take other action as is reasonably necessary at Grantee's expense. This remedy shall not be deemed to be exclusive and shall not prevent the City from seeking a judicial order directing that the Facilities be removed.

12.4 In the event of Grantee's permanent cessation of use of any Facilities, or any portion thereof within the Franchise Area, damage, destruction, or removal of such abandoned portions shall be permitted by the Grantee without any obligation for repair or restoration of such Facilities. Upon abandonment, Grantee shall provide notice to the City. In the event an abandoned facility directly causes disturbance to the surface of a City right-of-way as a result of settling, collapse, or other causes as a direct result of the Facility, Grantee, upon notice from the City, shall remove or remediate the abandoned Facility and restore the right-of-way surface.

Section 13. Violations, Remedies and Termination.

13.1 In addition to any rights set out elsewhere in this Franchise, or other rights it may possess at law or equity, the City reserves the right to apply any of the following remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise. The remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the City at law or equity.

13.2 The City may terminate this Franchise if Grantee materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms and conditions of this Franchise, or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within thirty (30) calendar days of the City's providing Grantee written notice thereof, or, if not reasonably capable of being cured within thirty (30) calendar days, within such other reasonable period of time as the parties may agree.

13.3 In the event of termination under this franchise, either party may in such case invoke the dispute resolution provisions. Once the Grantee's rights to operate in the Franchise Area have terminated, Grantee shall comply with Franchise provision regarding removal and/or abandonment of Facilities.

13.4 The City's failure to exercise a particular remedy at any time shall not waive the City's right to terminate, assess penalties, or assert that or any other remedy at law or equity for any future breach or default of Grantee.

13.5 Termination of this Franchise shall not release Grantee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release Grantee from any obligation to remove or secure the Facilities pursuant to this Franchise and to restore the Franchise Area.

13.6: The City may cure any default upon Grantee's failure to do so within the default period and the reasonable costs of such cure shall be borne by the Grantee.

Section 14. Dispute Resolution.

14.1 In the event of a dispute between the City and Grantee arising by reason of this Franchise, the dispute shall first be referred to the Chief Operational Officer on behalf of the Grantee, or the City Manager, or their designees. These parties shall meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute

14.2 If the parties are unable to resolve the dispute under the procedure set forth in this section, the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the parties.

14.3 If the parties are unable to select a mediator or fail to achieve a resolution through mediation, either party may then pursue any judicial remedies. Venue shall be placed in Franklin County, Washington, before the Franklin County Superior Court or the United States District Court of the Eastern District of Washington, and the substantially prevailing party shall be awarded, as additional judgment against the other, its reasonable attorney fees and costs incurred in the judicial action.

14.4 Subject to state and federal regulation, Grantee shall be permitted to continuously operate and maintain its Facilities during dispute resolution.

Section 15. Indemnification.

15.1 General Indemnification. Grantee shall indemnify, defend and hold harmless the City, its agents, officers or employees, from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by the City in defense thereof, arising out of or related to, directly or indirectly, the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of Grantee's Facilities, or from the existence of Grantee's Facilities, and the products contained in, transferred through, released or escaped from said Facilities, including the reasonable costs of assessing such damages and any liability for costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws. If any action or proceeding is brought against the City by reason of the Facilities, Grantee shall defend the City at the Grantee's complete expense, provided that, for uninsured actions or proceedings, defense attorneys shall be approved by the City, which approval shall not be unreasonably withheld.

Section 16. Insurance and Bond Requirements.

16.1 During this Franchise, Grantee shall provide and maintain, at its own cost, insurance in the minimum amount of FIVE MILLION UNITED STATES DOLLARS (\$5,000,000.00) for each occurrence, in a form and with a carrier reasonably acceptable to the City, naming City as an additional insured, to cover any and all insurable liability, damage,

claims and loss as set forth in Section 15.1 above. In the event that a deductible applies to the insurance herein, Grantee agrees to pay the amount of that deductible.

16.2 Proof of insurance shall be provided to the City. Said insurance shall contain a provision that it shall not be canceled without a minimum of thirty (30) days prior written notice to the City.

16.3 Grantee shall retain the right to self-insure any insurance requirement contained in this Agreement. If Grantee elects to self-insure, Grantee shall provide the City a letter of self-insurance in lieu of a certificate of insurance. However, if Grantee elects to self-insure, the City retains the right to require such other surety from Grantee as it determines is reasonable and necessary in lieu of being named an additional insured.

16.4. On or before the Effective Date of this Franchise, Grantee shall furnish a bond executed by Grantee and a corporate surety authorized to do surety business in the State of Washington, with an AM Best rating of A XII in a sum to be set and approved by the City as sufficient to insure performance of Grantee's obligations and performance under this Franchise, such bond to be conditioned that Grantee shall well and truly keep and observe all of the covenants, terms and conditions and faithfully perform all of Grantee's obligations under this Franchise. If Grantee determines that the sum requested by the City is unreasonable, Grantee may initiate dispute resolution provided in Section 14 above.

Section 17. Taxes.

17.1 Grantee shall collect and pay any taxes such as a utility tax as authorized by RCW 35.21.865 which shall be an amount levied pursuant to PMC 5.32.040.

Section 18. Legal Relations.

18.1 Nothing contained in this Franchise shall be construed to create an association, trust, partnership, agency relationship, or joint venture or to impose a trust, partnership, or agency duty, obligation or liability on or with regard to any party. Each party shall be individually and severally liable for its own duties, obligations, and liabilities under this Franchise.

18.2 Grantee accepts any privileges granted by City to the Franchise Area, public Rights-of-Way and other Public Ways in an "as is" condition. Grantee agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of Grantee's Facilities or location in public property or rights of way or possible hazards or dangers arising from other uses of the public rights of way or other public property by the City or the general public. Grantee shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of the Facilities or other activities permitted under this Franchise.

18.3 This Franchise shall be governed by, and construed in accordance with, the laws of the State of Washington and the parties agree that in any action, except actions based on federal questions, venue shall lie exclusively in Franklin County, Washington.

Section 19. Miscellaneous.

19.1 In the event that a court or agency of competent jurisdiction declares a material provision of this Franchise Agreement to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to such amendments or modifications as are appropriate so as to give effect to the intentions of the parties as reflected herein. If severance from this Franchise Agreement of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Franchise, either party may apply to a court of competent jurisdiction to reform or reconstitute this Franchise so as to recapture the original intent of said particular provision(s). All other provisions of the Franchise shall remain in effect at all times during which negotiations or a judicial action remains pending.

19.2 Whenever this Franchise sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of this Franchise.

19.3 In the event that Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason(s) beyond the reasonable control of Grantee, then Grantee's performance shall be excused during the force majeure occurrence. Upon removal or termination of the force majeure occurrence the Grantee shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation or performance that is satisfactory to the City. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

19.4 The section headings in this Franchise are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the Section to which they pertain.

19.5 By entering into this Franchise, the parties expressly do not intend to create any obligation or liability, or promise any performance to, any third party, nor have the parties created for any third party any right to enforce this Franchise.

19.6 This Franchise and all of the terms and provisions shall be binding upon and inure to the benefit of the respective successors and assignees of the parties.

19.7 Whenever this Franchise calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient at the address set forth in this Section, unless written notice of change of address is provided to the other party. If the date for making any payment or performing any act is a legal holiday, payment

may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be directed to the parties as follows:

To the City:

Gary Crutchfield, City Manager
City of Pasco
525 North 3rd
Pasco, Washington 99301

To the Grantee:

Cascade Natural Gas Corporation
Attn: Operations / Franchise
PO Box 24464
Seattle, Washington 98124-0464

19.8 The parties each represent and warrant that they have full authority to enter into and to perform this Franchise, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Franchise, except such as may be routinely required and obtained in the ordinary course of business.

19.9 This Franchise and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the parties. This Franchise can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to the Franchise or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought. All previous franchise agreements between the parties pertaining to Grantee's Operation of its Facilities are hereby superseded.

19.10 Grantee shall, within thirty (30) days after passage of this Ordinance, file with the City Clerk, its unconditional written acceptance of all the terms and conditions of this Franchise. If Grantee shall fail to so file its written acceptance within such period, then the rights and privileges granted hereunder shall be deemed forfeited.

PASSED by the City Council of the City of Pasco, Washington, and approved as provided by law this _____ day of _____, 2006.

Michael L. Garrison, Mayor

Attest:

Approved as to Form:

Webster U. Jackson, City Clerk

Leland B. Kerr, City Attorney

Date of Publication: _____

UNCONDITIONAL ACCEPTANCE BY GRANTEE

I, the undersigned official of Cascade Natural Gas Corporation, am authorized to bind Cascade Natural Gas Corporation and to unconditionally accept the terms and conditions of the foregoing Franchise (Ordinance No. _____), which are hereby accepted by Cascade Natural Gas Corporation this _____ day of _____, 20__.

Cascade Natural Gas Corporation

By: _____

Name: Daniel E. Meredith

Title: Sr. Director, Safety & Engineering

Subscribed and sworn to before me this _____ day of _____, 2006

Notary Public in and for the State of Washington
My commission expires _____

Received on behalf of the City this _____ day of _____, 2006

Name: _____

Title: _____

July 24, 2006

Gary Crutchfield
City Manager
City of Pasco
525 North 3rd
Pasco, WA 99301

Re: Acceptance of Franchise Agreement

Dear Mr. Crutchfield:

Enclosed is the executed original of Ordinance 3784 Franchise Agreement with Cascade Natural Corporation.

Thanks again to you and city staff for completing this agreement.

We look forward to continued service to the Pasco community.

Sincerely,

Daniel E. Meredith, P.E.
Sr. Director, Safety & Engineering

Cc: Teresa Esparza
Jon Mulvenon



CITY MANAGER (509) 545-3404 / Fax (509) 545-3403
P.O. Box 293 (525 North 3rd Avenue) Pasco, Washington 99301

July 19, 2006

Daniel E. Meredith
Senior Director, Safety & Engineering
Cascade Natural Gas Corporation
P. O. Box 24464
Seattle, WA 98124-0464

RE: Franchise Agreement

Dear Mr. Meredith:

Enclosed you will find Ordinance No. 3784, granting Cascade Natural Gas Corporation a franchise agreement within the City of Pasco. The City Council formally accepted the Ordinance (franchise agreement) on Monday, July 17, 2006. Please sign and have notarized as indicated and return the original document to me for final processing. A copy of Ordinance No. 3784 will be forwarded to you upon completion.

We would like to extend our appreciation to you and your staff for the time and effort required to complete this matter.

Sincerely,



Gary Crutchfield
City Manager

GC/tlz
enclosure