

# EXHIBIT D-1

## ORDINANCE NO. 3760

AN ORDINANCE granting Cascade Natural Gas Corporation, a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use facilities in, upon, over, under, along, across and through the rights of way of the City of Mount Vernon to provide for the transmission, distribution and sale of gas and such other services as may be provided by such facilities.

THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON, DO ORDAIN AS FOLLOWS:

### 1. Definitions.

1.1 Where used in this franchise (the "Franchise") the following terms shall mean:

1.1.1 "CNG" means Cascade Natural Gas Corporation, a Washington corporation, and its successors and assigns.

1.1.2 "City" means the City of Mount Vernon, a non-charter code city of the State of Washington, and its successors and assigns.

1.1.3 "Environmental Laws" means any applicable federal, state, or local statute, code, or ordinance or federal or state administrative rule, regulation, ordinance, order, decree, or other governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment.

1.1.4 "Franchise Area" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, lane, public way, drive, circle, pathways, spaces, or other public right of way which, under City ordinances or applicable laws, the City has authority to grant franchises, licenses, or leases for use thereof, or has regulatory authority thereover. Franchise Area does not include land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public.

1.1.5 "Facilities" means, collectively, any and all natural gas distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures and communication systems, all of which are associated with the distribution of natural gas; and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.6 "Force Majeure Event" means fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, fuel or energy shortages, or any other unforeseen and similar circumstance or event not within the control of the affected party.

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1.1.7 “Hazardous Substance” means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant that is specifically designated as such and regulated by any applicable Environmental Law.

1.1.8 “Laws” means any federal, state or municipal code, statute, ordinance, decree, executive order, governmental approvals, guideline, permits, procedures, regulation, regulatory programs, rules, specifications, standards or tariffs, as they exist, are amended, or may be created.

1.1.9 “Mount Vernon Municipal Code” means, collectively, the ordinances, codes, regulations, development and other standards, and laws of the City.

1.1.10 “Parties” means the City and CNG.

### **2. Facilities Within Franchise Area.**

2.1 The City does hereby grant to CNG the non-exclusive right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of gas and other such services (“Services”) as may be provided by such Facilities. Nothing contained within this Franchise shall be construed to grant or convey a franchise to install Facilities in the Franchise Area to provide electricity, telecommunications, backhaul services (i.e. the transmission link between the a cell tower regardless of size and a mobile network operator's core network), fiber optic services, cable television or similar services to the public; provided that, for the avoidance of doubt, the foregoing is not intended to and does not restrict CNG’s right to use its Facilities installed within the Franchise Area to monitor, control or operate its natural gas transmission and distribution systems or for communications reasonably required to conduct its internal natural gas business operations.

2.2 No right to install any facility, infrastructure, or other equipment, on any City property other than a right-of-way, or upon private property without the owner’s consent, or upon any City, public or privately-owned structure is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the rights-of-way of the City to CNG other than for the purpose of providing the Services, or to subordinate the primary use of the right-of-way as a public thoroughfare. If CNG desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If CNG desires to use City owned property, other than right-of-way, it shall enter into a separate lease, site specific agreement or license agreement with the City.

2.3 If at any time the City, by ordinance, vacates all or any portion of the Franchise Area, the City will not be liable for any damages or loss to CNG by reason of such vacation. The City shall notify CNG in writing not less than thirty (30) days before vacating all or any portion of the Franchise Area, if CNG has Facilities within such area planned for vacation. The City may, after thirty (30) days written notice to CNG, terminate this Franchise with respect to any such vacated area. At CNG’s request, the City will, if practicable, reserve an easement for CNG’s existing facilities to continue to use the vacated area. CNG must provide to the City information necessary for the City to reserve such easement within the thirty (30) day period.

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2.4 At all times during the term of this Franchise, CNG shall comply with all terms of the tariff on file with the Washington Utilities and Transportation Commission.

### **3. Operation of Facilities.**

3.1 CNG's Facilities shall be installed, maintained, used and operated, within the Franchise Area (a) so as not to unreasonably interfere with the free passage of traffic and (b) in accordance with the laws of the State of Washington.

3.2 CNG shall exercise its rights within the Franchise Area, and install, operate, maintain, inspect and test its Facilities within the Franchise Area, in accordance with this Franchise and applicable provisions of the Mount Vernon Municipal Code that govern use and occupancy of the Franchise Area and/or that are applicable to the installation, operation, maintenance, inspection, safety and testing of such Facilities; provided, however, in the event of any conflict between such provisions of the Mount Vernon Municipal Code and the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent of such conflict; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded CNG by the Mount Vernon Municipal Code or state or federal law.

3.3 Nothing herein shall be deemed to affect the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the use of the Franchise Area, including any ordinance made in the exercise of its police powers in the interest of public safety and welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation and manner of construction and maintenance of CNG's Facilities in the Franchise Area, and all construction and maintenance by CNG shall promptly conform with all such regulations, unless compliance would cause CNG to violate other requirements of law. The City may require by any such ordinance all necessary inspection provisions required for enforcement.

### **4. Planning and Records of Installation.**

4.1 Upon the request of either Party the Parties will meet to discuss and coordinate regarding future construction activities then being planned by either Party within the Franchise Area, including potential Public Improvement Projects and potential improvements, relocations and conversions to CNG's Facilities within the Franchise Area; provided, however, any such discussions and coordination shall be for informational purposes only and shall not obligate either Party to undertake any specific improvements within the Franchise Area, nor shall such discussions or coordination be construed as a proposal to undertake any specific improvements within the Franchise Area.

4.2 For any public improvement project that either Party has identified as requiring coordination, the City will notify CNG when it commences design work for the public improvement project and identify a City representative to coordinate the public improvement project with CNG. Within twenty (20) calendar days of receiving such notification, CNG shall designate a representative to coordinate the public improvement project with the City. As further described in Section 5.2 for City projects, the project coordinators shall cooperate and share information necessary to efficiently complete the public improvement project. This information

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may include, but is not limited to, project contacts, project details, applicable project schedules, identification of contractors, location of affected existing and planned Facilities, project status, and detailed and dimensioned plan specifications.

4.3 The City may prescribe a date each year of the Franchise by which the City shall have the right to ask CNG for conference, during which CNG will describe its schedule of then-proposed or anticipated construction activities that may affect the rights-of-way and any activities that will entail excavation or tunneling within the rights-of-way. Further, CNG shall meet with the City and other franchise holders and users of the Franchise Area upon written request of the City, to schedule and coordinate construction in the Franchise Area. All construction locations, activities, and schedules shall be coordinated, to the extent reasonably practicable, in a manner that minimizes public inconvenience, disruption or damages.

4.4 CNG shall consider and comply with the City's limitations on pavement disturbances when considering its non-emergency plans to perform work in the Franchise Area. If CNG has non-emergency plans to perform work that will require disturbing pavement or sidewalks in the same areas the City has plans to resurface, overlay, or reconstruct roads or sidewalks, CNG will coordinate with the City to attempt to schedule its work to occur prior to or in conjunction with a public improvement project.

4.5 CNG shall provide the City, upon the City's request, copies of available drawings in use by CNG showing the location of its Facilities at specific locations within the Franchise Area. Further, CNG shall, upon the City's request, discuss and explore ways in which CNG and the City may cooperate and coordinate activities with respect to the development of drawing file layers compatible with the City's geographic information system which show CNG's Facilities at specific locations within the Franchise Area. As to any such drawings or file layers so provided, CNG does not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location.

4.6 Nothing herein is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities. Further, nothing herein is intended (nor shall be construed) to prohibit the City from complying with chapter 42.56 RCW, or any other applicable law or court order requiring the release of public records, and the City shall not be liable to CNG for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by CNG that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, CNG shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

### **5. Relocation of Facilities.**

5.1 The City shall have prior and superior right to the use of the Franchise Area for the installation and maintenance of its utilities and public improvement projects, and should any conflict arise with City facilities, CNG shall, at no cost to the City, conform to the utilities and public improvement projects of the City.

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5.2 If the City determines that the project necessitates relocation of CNG's Facilities, the following process shall apply:

5.2.1 The City shall consult with the CNG in the predesign phase of any Public Improvement Project in order to coordinate the project's design with CNG's Facilities within such project's area.

5.2.2 CNG shall participate in predesign meetings until such time as (i) both parties mutually determine that CNG's Facilities will not be affected by the Public Improvement Project, or (ii) the City provides CNG with written notice regarding relocation as provided in Section 5.2.4 below.

5.2.3 CNG shall, during the predesign phase, evaluate and provide comments to the City related to any alternatives to possible relocations. If CNG determines that it will be unable to perform the relocation work upon the City's schedule due to the inability to obtain resources and materials in a timely manner, it should inform the City during the predesign phase and give the City a reasonable timeline of when it expects to obtain the resources and materials. The City shall consider such anticipated delay when creating its schedule but shall not accept any delay greater than thirty (30) days without director approval and a showing of need. Further, the City agrees to give any alternatives proposed by CNG full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's reasonable discretion provided that such decision provides adequate time to accommodate CNG's anticipated delay.

5.2.4 The City shall provide CNG with its decision and timelines regarding the relocation of CNG's Facilities as soon as reasonably possible, but in no event less than thirty (30) days prior to the commencement of the construction of such Public Improvement Project; provided, however that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.2, the City shall notify CNG during the predesign meetings and the process mandated by the grant funding shall control.

5.2.5 After receipt of such written notice, CNG shall relocate such Facilities to accommodate the Public Improvement Project consistent with the timeline provided by the City.

5.2.6 CNG shall complete relocation of its Facilities at no charge or expense to the City pursuant to the timeline provided by the City.

5.3 CNG shall be solely responsible for the out-of-pocket costs incurred by the City for delays in a Public Improvement Project to the extent the delay is caused by or arises out of CNG's failure to comply with the agreed final schedule for the relocation (other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of the City or third parties that are beyond CNG's reasonable control). Such out-of-pocket costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorneys' fees incurred by the City to the extent directly attributable to such CNG-caused delay in the Public Improvement Project.

5.4 If the Parties agree that elements of relocation work involving CNG's Facilities within the Franchise Area would be most efficiently performed by the City or its contractors as

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part of the City's work on the underlying Public Improvement Project, the Parties may enter into a separate written agreement that details the elements of relocation work to be performed by the City involving CNG's Facilities. Such agreement shall require CNG to be responsible for all direct design and construction costs incurred as a result of its Facilities and may require CNG to be responsible for CNG's pro-rata share of all reasonable indirect costs including, but not limited to, construction management and inspection, traffic control, mobilization, erosion and sedimentation control, trenching, backfill, and restoration. Neither Party will be obligated to enter into any such agreement for the City's performance of relocation work involving CNG's Facilities. In the absence of an agreement by which the City will relocate CNG facilities, CNG remains fully responsible for performing all relocation work itself.

5.5 Whenever any person or entity, other than the City, or a person or entity acting on behalf of the City, requires the relocation of CNG's Facilities to accommodate the work of such person or entity within the Franchise Area; or, the City requires any person or entity to undertake work (other than work undertaken at the City's cost and expense) within the Franchise Area and such work requires the relocation of CNG's Facilities within the Franchise Area, CNG shall have the right as a condition of any such relocation to require such person or entity to make payment to CNG, at a time and upon terms acceptable to CNG, for any and all reasonable costs and expenses incurred by CNG in the relocation of CNG's Facilities.

5.6 Any condition or requirement imposed by the City upon any person or entity, other than CNG, that requires the relocation of CNG's Facilities shall be a required relocation for purposes of Section 5.5 above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

5.7 Any condition or requirement imposed by the City upon any person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of CNG's Facilities within the Franchise Area shall invoke the provisions of Section 5.5 above; provided, however, (a) in the event the City reasonably determines and notifies CNG that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the construction of a Public Improvement Project within a segment of the Franchise Area on the City's behalf and (b) such Public Improvement Project is reflected in the City's Transportation Improvement Plan or Capital Improvement Plan, then only those costs and expenses incurred by CNG in constructing and connecting new Facilities with CNG's other Facilities shall be paid to CNG by such person or entity, and CNG shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Sections 5.1 through 5.3, above.

5.8 The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as CNG continues to own, operate, or maintain Facilities in the Franchise Area.

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### 6. Work in the Franchise Area.

6.1 All work performed by CNG or its contractors on CNG's behalf within the Franchise Area shall be accomplished in a good and workmanlike manner and which minimizes interference with the free passage of traffic and the free use of adjoining property, whether public or private. CNG shall at all times when performing work within the Franchise Area post and maintain proper barricades, flags, flaggers, lights, flares, safety devices and other measures as required to comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. CNG shall, at its own expense, maintain its Facilities in a safe condition, in good repair, and in a manner suitable to the City. Additionally, CNG shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or any interference with City services. The provisions of this Section 6.1 shall survive the expiration of this Franchise during such time as CNG continues to own, operate, or maintain Facilities in the Franchise Area.

6.2 Except in the case of an emergency where immediate action is needed to protect the integrity of CNG's Facilities within the Franchise Area, CNG shall, prior to commencing any work or other substantial activity within the Franchise Area for which a permit is required under the Mount Vernon Municipal Code, apply for a permit from the City in accordance with the Mount Vernon Municipal Code. During the progress of the work, CNG shall not unnecessarily obstruct the passage or proper use of the Franchise Area, and all work by CNG in the Franchise Area shall be performed in accordance with the requirements of the permit and applicable City standards and specifications (in each case to the extent not inconsistent with the terms of this Franchise). In no case shall any work commence within any Public Ways without a permit, except as otherwise provided in this Franchise. Surface restoration work will be warranted for the applicable period specified in the Mount Vernon Municipal Code. In no case shall any work commence within the Franchise Area without a permit, except as otherwise provided in this Franchise.

6.3 The Public Works Director may, in his/her reasonable discretion, defer construction or other activity under any permit, until such time as the Public Works Director deems proper in all cases where the public place on which the work is desired to be done is occupied or about to be occupied by any work by the City, or by some other person having a right to use the same in such manner as to render it seriously inconvenient to the public to permit any further obstruction thereof at such time. In granting such permit, the Public Works Director may so regulate the manner of doing such work in order to cause the least inconvenience to the public in the use of such public place. In all cases, any work of the City or its contractors or employees for municipal purposes shall have precedence over all work of every other kind.

6.4 Except as specifically allowed by the Public Works Director, or in an emergency situation as defined in RCW 19.122.020, CNG shall not repair, construct, or expand its Facilities within the Franchise Area that will cause a cut in a street that has been constructed, reconstructed, resurfaced, overlaid, or paved within the prior five (5) years.

6.5 Prior to doing any work in the Rights-of-Way, CNG shall follow established procedures, including contacting the Utility Notification Center in Washington and shall comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter

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19.122 RCW. Further, upon request from a third party or the City, CNG shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to CNG's Facilities or for interruptions in service to CNG's customers that are a direct result of CNG's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

6.6 If CNG shall at any time plan to make excavations in any area covered by this Franchise and as described in this Section 6.6, CNG shall afford the City, upon receipt of written request to do so, an opportunity to share such excavation, PROVIDED THAT:

6.6.1 Such work can occur in accordance with CNG procedures; and

6.6.2 Such joint use shall not unreasonably delay the work of the party causing the excavation to be made and sufficient space is reasonably available and if not, the City agrees to pay any pro rate share of expanding such excavation; and

6.6.3 Such joint use shall not result in unsafe conditions.

6.7 In the event of an emergency in which CNG's Facilities located within the Franchise Area break or are damaged, or if CNG's Facilities within the Franchise Area are otherwise in a condition as to immediately endanger the property, life, health or safety of any individuals, CNG shall, upon learning of such a dangerous condition, take all reasonable actions to promptly correct such dangerous condition. CNG may take emergency measures to repair its Facilities within the Franchise Area or to cure or remedy any associated dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this Franchise. CNG shall notify the City either verbally or in writing as soon as practicable following the onset of any such emergency. CNG is not relieved from the requirement of obtaining such necessary permits, and CNG shall apply for all such permits within a reasonable period of time following commencement of such repairs.

6.8 If directed by the City, and except in emergency situations, at least forty-eight (48) hours prior to entering private property or Public Ways adjacent to or on such private property to perform new construction or reconstruction involving excavation or tunneling, a notice indicating the nature and location of the work to be performed shall be physically posted, at no expense to the City, upon the affected property by CNG. A door hanger may be used to comply with the notice and posting requirements of this section.

6.9 The City expressly reserves its rights to order the correction of any condition within the Franchise Area that is in violation of, or the discontinuance of any activity within the Franchise Area that is being undertaken contrary to, this Franchise, the Mount Vernon Municipal Code, or any applicable permits issued by the City; provided such order is not in conflict with any federal or state law or regulation.

6.10 In case of any damage caused by CNG, or by CNG's Facilities, to the Franchise Area (including but not limited to all City, franchisee, and licensee owned improvements and structures existing therein) CNG agrees to repair the damage at no cost to the City. CNG shall, upon discovery of any such damage, immediately notify the City. The City will inspect the damage and provide CNG with a reasonable period of time for completion of the repair. If the City



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discovers damage caused by CNG within the Franchise Area, the City will give CNG prompt notice of the damage and provide CNG with a reasonable period of time to repair the damage. In the event CNG does not make the repair as required in this section, the City may repair the damage, to its satisfaction, at CNG's sole expense. Under no circumstances is the City obligated to complete repairs under this subsection and the City's decision to rely on CNG for the repair of damage caused by CNG or CNG's facilities does not limit the City's remedies if such repair is not completed in the time prescribed. Should the necessary repair not be completed within the period of time prescribed by the City, the City may elect to invoke any of the remedies outlined in Section 12.3.

6.11 The City may condition the granting of any permit or other approval that is required under this Franchise, at any time, on any lawful condition or regulation, unless such condition or regulation is in conflict with this Franchise, applicable laws or any federal or state directive, as may be reasonably necessary to the management of the Franchise Area, such conditions may include, 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 right-of-way improvements, private facilities and public safety.

### **7. Restoration After Construction.**

7.1 CNG shall, in connection with any work performed by CNG on its Facilities within the Franchise Area, promptly remove any obstructions from the Franchise Area and restore the surface of the Franchise Area to at least the same condition the Franchise Area was in immediately prior to the commencement of such work, provided CNG shall not be responsible for any changes or damage to the Franchise Area not caused by CNG's work or work performed on CNG's behalf. Further, CNG's restoration shall comply with applicable code the Mount Vernon Municipal Code standards for restoration. The Public Works Director or his/her designee shall have final approval of the condition of the Franchise Area after restoration.

7.2 If conditions (i.e. weather) do not permit the complete restoration required under this Section 7, CNG shall temporarily restore the affected portions of the Franchise Area. Such temporary restoration shall be at CNG's sole cost and expense and CNG shall promptly undertake and complete the required permanent restoration when the conditions no longer prevent such permanent restoration.

7.3 If CNG fails to restore the Franchise Area in accordance with this Section 7, the City shall provide CNG with written notice including a description of actions the City believes necessary to restore the Franchise Area. If CNG fails to restore the Franchise Area in accordance with this Section 7 within ten (10) calendar days of CNG's receipt of the City's notice, the City, or its authorized contractor, may, but is not required to, restore the Franchise Area at CNG's sole and complete expense. Should the necessary repair not be completed within ten (10) calendar days of receipt of notice, the City may elect to invoke any of the remedies outlined in Section 12.3. In the event that the City elects to restore the Franchise Area, CNG will be liable for the actual costs of restoration including all applicable City overhead, legal and administrative expenses. Under no circumstances is the City obligated to complete restoration under this subsection and the City's decision to rely on CNG for the restoration does not limit the City's remedies if such restoration is not completed in the time prescribed.

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7.4 All survey monuments which are disturbed or displaced by CNG in its performance of any work within the Franchise Area shall be referenced and restored by CNG, in accordance with WAC 332-120, as it exists or may be amended, and other applicable Laws.

7.5 The provisions of this Section 7 shall survive the expiration or termination of this Franchise so long as CNG continues to own, operate and maintain Facilities in the Franchise Area and has not completed all restoration consistent with this Franchise.

### **8. Performance and Maintenance Guarantees**

8.1 Before undertaking any work or improvements within the Franchise Area as authorized by this Franchise, and if required by the Public Works Director, or his/her designee, CNG shall furnish a performance bond, in a sum to be reasonably set and approved by the Public Works Director as reasonably sufficient to ensure performance of CNG's obligations under this Franchise with respect to such work. Any such bond shall be conditioned so that CNG shall observe all the covenants, terms and conditions and faithfully perform all the obligations of this Franchise and applicable permit requirements with respect to such work. Further, the bond may be subject to requirements that CNG restore or replace any defective work or materials discovered in the restoration of the Franchise Area within a period of two (2) years from the final City inspection date of any such restoration. After completion of such work covered by the performance bond, CNG may request the release of the performance bond and the replacement with a maintenance bond. In the event that a bond furnished pursuant to this Section 8.1 is canceled by the surety, after proper notice and pursuant to the terms of said bond, CNG shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section 8.1.

8.2 With respect to undertaking any of the work authorized by this Franchise, in the event CNG fails to perform its obligations under this Franchise relating to such work and further fails to cure its deficiency after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by CNG pursuant to Section 8.1 to cure such deficiency. Neither the amount of such bond(s) nor the City's use thereof shall limit the City's full recovery from CNG of costs incurred by the City to cure such deficiency.

8.3 In the event the City makes use of the bond(s) furnished by CNG pursuant to Section 8.2, the City shall promptly provide written notice of the same to CNG. Within thirty (30) days of receipt of such notice, CNG shall replenish or replace such bond(s) in accordance with Section 8.1.

### **9. Work of Contractors and Subcontractors.**

CNG's contractors and subcontractors performing work on behalf of CNG within the Franchise Area shall be licensed and bonded in accordance with applicable State law and City's ordinances, regulations, and requirements. Such work by CNG's contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by CNG. CNG shall be responsible for all such work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by CNG and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

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### 10. Insurance.

10.1 CNG shall procure and maintain, for so long as CNG has Facilities in the Franchise Area, insurance and/or self-insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted hereunder to CNG, its agents representatives or employees. CNG shall procure insurance from insurers with a current A.M. Best rating of not less than A -. CNG shall provide a certificate of insurance and/or written confirmation of self-insurance and additional insured endorsement to the City for its inspection at the time of or prior to acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

10.1.1 Automobile Liability insurance with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage;

10.1.2 Commercial General Liability insurance, with limits no less than \$25,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU);

10.1.3 Workers' Compensation coverage to statutory limits as required by the Industrial Insurance laws of the State of Washington and employer's liability with limits not less than \$2,000,000;

10.1.4 Pollution insurance with limits no less than \$5,000,000 per claim and in the aggregate; and

10.2 Further, the parties agree that the coverage limits set forth in this Section 10.1, at the request of the City, may be reviewed and adjusted by the parties on or after the seventh (7th) anniversary of the Effective Date of this Franchise; provided any adjustments made shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the date the parties agree upon the adjustments and for the remainder of the term of this Franchise.

10.3 Any deductibles or self-insured retentions must be declared to and approved by the City. Such approval shall not be unreasonably withheld or delayed. Payment of deductible or self-insured retention shall be the sole responsibility of CNG. Additionally, CNG shall pay all premiums for the insurance on a timely basis. CNG may utilize self-insurance and excess/umbrella liability insurance policies to satisfy the insurance policy limits required in this section, provided any umbrella liability insurance policy provides "follow form" coverage over its primary liability insurance policies and shall specifically include an Additional Insured endorsement consistent with Section 10.4.

10.4 The insurance policies with the exception of Workers' Compensation obtained by CNG shall include the City, its officers, officials, employees, agents, and volunteers ("Additional Insureds"), as an additional insured with regard to activities performed by or on behalf of CNG. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage

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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. CNG shall provide to the City prior to or upon acceptance either (1) a true copy of the additional insured endorsement for each insurance policy required in this Section 10 and providing that such insurance shall apply as primary insurance on behalf of the Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of CNG's obligations to fulfill the requirements. CNG's insurance shall be primary insurance as respects the Additional Insureds, and the endorsement should specifically state that the insurance is the primary insurance. Any insurance maintained by the Additional Insureds shall be in excess of CNG's insurance and shall not contribute with it.

10.5 CNG is hereby obligated to notify the City of any cancellation or intent not to renew any insurance policy required pursuant to this Section 10, thirty (30) days prior to any such cancellation. Within thirty (30) days prior to said cancellation or intent not to renew, CNG shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section 10. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 10 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 12 below. Notwithstanding the cure period described in Section 12, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

10.6 CNG's maintenance of insurance as required by this Section 10 shall not be construed to limit the liability of CNG to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, CNG's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by CNG.

10.7 As of the effective date of this Franchise, CNG is not self-insured. Should CNG wish to become self-insured at the levels outlined in this Franchise at a later date, CNG must provide the City with thirty (30) days advanced written notice of its intent to self-insure. In order to self-insure, CNG shall comply with the following: (i) provide a written attestation that CNG possesses the necessary amount of unencumbered financial assets to support the financial exposure of self-insurance, as evidenced by an outside auditor's review of CNG's financial statements; (ii) the City, upon request, may review CNG's financial statements; (iii) CNG is responsible for all payments within the self-insured retention; and (iv) CNG assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise. These requirements may be modified by written amendment executed by both parties.

## 11. Indemnification.

11.1 CNG shall indemnify, defend and hold harmless the City, its officers, employees, agents and representatives, from any and all third party claims or suits (and any damages, costs, judgments, awards or liability resulting from such claims or suits) to the extent the same are caused by or arise out of (a) for injury or death of any person or damage to property to the extent the same is caused by the actual or alleged negligence or willful misconduct of CNG, its agents, contractors, subcontractors, servants, officers or employees in the performance of this Franchise and any rights granted hereunder, (b) the breach by CNG of any of its obligations under this Franchise, or (c) a

## EXHIBIT D-1

violation of Laws or an improper release of Hazardous Substances to the extent the same is caused by CNG's Facilities or CNG in the exercise of its rights granted under this Franchise. In addition to the indemnity outlined above, CNG shall also be responsible for each of the following to the extent the same is caused by CNG's unlawful release of Hazardous Substances in violation of applicable Environmental Laws: (i) liability for a governmental agency's costs of removal or remedial action for such release by CNG of Hazardous Substances; (ii) damages to natural resources caused by such release by CNG of Hazardous Substances, including the reasonable costs of assessing such damages; (iii) liability for any other person or entity's costs of responding to such release by CNG of Hazardous Substances; and (iv) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any Environmental Laws that are caused by such release by CNG of Hazardous Substances.

11.2 Inspection or acceptance by the City of any work performed by CNG at the time of completion of construction shall not be grounds for avoidance by CNG of any of its obligations under this Section 11.2. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised, with CNG's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

11.3 The City shall promptly notify CNG of any claim or suit for which indemnification is provided under Section 11.1 and request in writing that CNG indemnify the City. The City's failure to so notify and request indemnification shall not relieve CNG of any liability that CNG might have, except to the extent that such failure prejudices CNG's ability to defend such claim or suit. If a conflict of interest exists between the City and counsel engaged by CNG to represent CNG and the City in connection with such claim or suit, CNG's obligations under Section 11.1 will remain in full force and effect and in such case CNG shall be further obligated to remedy the situation by resolving the conflict of interest or engaging (at no cost to the City) different or separate counsel that does not have a conflict of interest with the City. The City may, at its cost and expense, participate in the defense of any such action using counsel of its choice. In the event that CNG refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions 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 CNG, CNG shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision.

11.4 Solely to the extent required to enforce the indemnification provisions of this Section 11.4, CNG waives its immunity under Title 51 RCW, Industrial Insurance; provided, however, the foregoing waiver shall not in any way preclude CNG from raising such immunity as a defense against any claim brought against CNG by any of its employees. This waiver has been mutually negotiated by the parties.

11.5 To the extent a court of competent jurisdiction determines that this Franchise is subject to RCW 4.24.115, as it exists or may be amended, then, 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 CNG, if officers, officials, employees, and volunteers, and or the City, CNG's liability shall be only to the extent of CNG's negligence.

## EXHIBIT D-1

11.6 Notwithstanding any other provisions of this Section 11, CNG assumes the risk of damage to its Facilities located in the Franchise Area from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or intentional misconduct of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. CNG further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or under users of CNG's Facilities as the result of any interruption of service due to damage or destruction of CNG's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or intentional misconduct of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

11.7 The provisions of this Section 11 shall survive the expiration, revocation, or termination of this Franchise.

### **12. Default and Enforcement.**

12.1 In addition to any other remedy provided in this Franchise, the City reserves the right to pursue any remedy available at law or in equity to compel or require CNG and/or its successors and assigns to comply with the terms of this Franchise and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation for breach of the conditions. In addition to any other remedy provided in this Franchise, CNG reserves the right to pursue any remedy available at law or in equity to compel or require the City, its officers, employees, volunteers, contractors and other agents and representatives, to comply with the terms of this Franchise. Further, all rights and remedies provided herein shall be in addition to and cumulative with any and all other rights and remedies available to either the City or CNG. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. Provided, further, that by entering into this Franchise, it is not the intention of the City or CNG to waive any other rights, remedies, or obligations as provided by law, equity or otherwise, and nothing contained in this Franchise shall be deemed or construed to affect any such waiver. The parties reserve the right to seek and obtain injunctive relief with respect to this Franchise to the extent authorized by applicable law and that the execution of this Franchise shall not constitute a waiver or relinquishment of such right.

12.2 If CNG shall fail to comply with the provisions of this Franchise, the City shall provide written notice of such non-compliance. Except in an emergency circumstance, or as otherwise described in this Franchise, CNG shall then have thirty (30) days to cure such violation; provided, however, if any failure to comply with this Franchise by CNG cannot be corrected with due diligence within said thirty (30) day period (CNG's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which CNG may so comply shall be extended for such time as may be reasonably necessary and so long as CNG commences promptly and diligently to effect such compliance.

## **EXHIBIT D-1**

12.3 If following such cure period CNG fails to resolve the non-compliance issue, the City may pursue any available remedy at law or in equity or other remedies including but not limited to denial of pending or future permits until the issue is resolved and the issuance of stop work orders. In addition to the payment of any damages, the City shall have the right to repair any damage or defect in the Franchise Area, including restoration of the affected area, at CNG's sole cost and expense.

12.4 Termination of this Franchise shall not release either party from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release CNG from any obligation to remove or secure its Facilities and restore the Franchise Area pursuant to the terms of this Franchise.

### **13. Nonexclusive Franchise.**

This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with CNG's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

### **14. Franchise Term.**

14.1 This Franchise is hereby granted for a term of ten (10) years from and after the date of the final acceptance of this Ordinance by CNG, herein referred to as the primary term. This franchise will automatically renew for successive periods of one (1) year unless cancelled at the end of a term by either party by written notice to the other party no less than one hundred eighty (180) calendar days prior to the end of the primary term or the then current successive term.

14.2 CNG shall have no rights under this Franchise nor shall CNG be bound by the terms and conditions of this Franchise unless CNG accepts the Franchise pursuant to Section 21.

### **15. Decommissioned Facilities; Post-Service Abandonment.**

15.1 Notification: CNG shall notify the City when it permanently discontinues use of and decommissions any of its Facilities within the Franchise Area. Such notification shall occur within thirty (30) calendar days of the date CNG decommissions the Facilities. This notification shall normally occur via a permit application for the work required within the Franchise Area.

15.2 CNG will normally abandon decommissioned facilities in place. CNG's abandonment procedures are documented in Company Procedures on file with the Washington Utilities and Transportation Commission. CNG will provide the City with a copy of the relevant procedure(s) upon request. The City will notify CNG if it is required that decommissioned facilities be removed from the Franchise Area. Upon notification, CNG will provide a mitigation plan for removing the decommissioned Facilities. The mitigation plan shall address how and when the Facilities will be removed and shall include any mitigation measures CNG proposes to address the impacts of the decommissioned Facilities to the Franchise Area. Unless otherwise approved by the City, removal and mitigation should be accomplished within one hundred and eighty (180) calendar days after the City's removal notification described above is given to CNG.

## EXHIBIT D-1

15.3 Within thirty (30) calendar days of receiving a mitigation plan submitted by CNG pursuant to this section, the City will review the plan and either approve the plan or require changes and resubmittal. The City will not unreasonably withhold approval of CNG's proposed plan, but may require changes if it determines, in its reasonable discretion, that the plan fails to adequately mitigate the impacts of CNG's permanently decommissioned Facilities. Following the City's approval of a mitigation plan, CNG shall promptly and in good faith implement the plan and obtain all required permits for its work in the Franchise Area.

15.4 In addition to any further requirements agreed upon by the City and CNG, (a) CNG shall, at CNG's expense, decommission such Facilities so as to render the Facilities safe in accordance with applicable law, (b) such decommissioned Facilities will continue to be subject to the terms of this Franchise (including but not limited to the relocation provisions in Section 5 and the indemnification provisions in Section 11), and (c) as requested by the City, CNG shall provide the City with maps that show the approximate location of such Facilities. In no case shall CNG be permitted to permanently decommission Facilities that are located above ground or overhead within the Franchise Area. Further, and for the avoidance of doubt, all Facilities permanently decommissioned by CNG within the Franchise Area will be deemed to be operated and maintained by CNG for purposes of this Franchise and continue to be subject to the terms of this Franchise.

15.5 If the Parties fail to agree upon a plan, CNG fails to comply with an approved plan, or circumstances require City action prior to approval of a plan, the City may, but is not required to, take such steps as it deems necessary to remove and/or mitigate for the impacts of the permanently decommissioned Facilities. Any costs incurred by the City as a result of CNG's failure to comply with its obligations under this Section 15 with respect to permanently decommissioned Facilities shall be reimbursed by CNG within thirty (30) calendar days of the City invoicing CNG for such costs.

15.6 Notwithstanding Section 15.1, if CNG becomes aware that removal of any decommissioned Facilities of CNG within the Franchise Area is required to eliminate or prevent an emergency or hazardous condition that endangers the property, life, health or safety of any person or entity, CNG shall promptly, at no cost to the City, remove such decommissioned Facilities.

15.7 If, after the expiration or termination of this Franchise, CNG at any time ceases to provide all natural gas service within the jurisdictional boundaries of the City and ownership of the Facilities of CNG within the Franchise Area is not transferred to a replacement or substitute natural gas service provider (including, without limitation, the City), CNG will continue to be responsible for maintaining such Facilities within the Franchise Area.

15.8 The provisions of this Section 15 shall survive the expiration or termination of this Franchise.

### **16. Assignment.**

16.1 CNG shall not assign this Franchise to any unaffiliated third party without the prior consent of the City, which consent shall not be unreasonably withheld or delayed. Any assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment



## EXHIBIT D-1

with the City together with its written acceptance of all terms and conditions of this Franchise and provide the City the additional insured endorsements as required pursuant to Section 10 and any performance or maintenance guarantees as required by Section 8 (“Assignment Documents”). No assignment by CNG shall be effective prior to the City’s receipt of the Assignment Documents. Notwithstanding the foregoing, CNG shall have the right, without such notice or such written acceptance or other such Assignment Documents, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

16.2 All the provisions, conditions, terms and requirements contained herein shall be binding upon CNG’s successors and assigns and all privileges, as well as all obligations of CNG, shall inure to its successors and assigns equally as if they were specifically mentioned where CNG is named in this Franchise.

16.3 The City’s approval of the assignment of this Franchise consistent with this Section 16 does not relieve CNG of any liabilities arising out of the terms of this Franchise to the extent such liabilities are accrued prior to the effective date of such assignment.

### **17. Recovery of Costs.**

17.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon CNG. However, as provided in RCW 35.21.860, the City may recover from CNG actual administrative expenses incurred by the City that are directly related to: (i) receiving and approving a permit, license or this Franchise, (ii) inspecting plans and construction, or (iii) preparing a detailed statement pursuant to Chapter 43.21C RCW. In accordance with and subject to the foregoing, CNG hereby agrees to pay such actual administrative expenses incurred by the City, including the City’s legal costs incurred that are directly related to receiving and approving this Franchise pursuant to RCW 35.21.860, within thirty (30) days of receipt of an invoice from the City. No permits shall be issued until such time as the City has received payment of this fee.

17.2 The City hereby reserves its right to impose a franchise fee if Franchisee’s operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are removed.

17.3 The City expressly and specifically reserves all rights to recover costs and fees available to the City under applicable provisions of the Mount Vernon Municipal Code to the fullest extent such rights are not in conflict with the terms or conditions of this Franchise or with RCW 35.21.860 or any other federal or state law.

### **18. Notice.**

Any notice or information required or permitted to be given to the parties under this Franchise shall be sent to the following addresses unless otherwise specified by personal delivery, overnight mail by a nationally recognized courier, or by U.S. certified mail, return receipt requested and shall be effective upon receipt or refusal of delivery:

**EXHIBIT D-1**

CITY OF MOUNT VERNON  
Attn: City Clerk  
910 Cleveland Ave.  
P.O. Box 809  
Mount Vernon, WA 98273

CASCADE NATURAL GAS CORPORATION  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copy to

CITY OF MOUNT VERNON  
Attn: City Attorney  
910 Cleveland Ave  
P.O. Box 809  
Mount Vernon, WA 98273

**19. Survival.**

All of the provisions, conditions, and requirements of Section 5, Section 6, Section 7, Section 8, Section 10, Section 15 of this Franchise shall be in addition to any and all other obligations and liabilities CNG may have to the City at common law, by statute, or by contract, and shall survive this Franchise, and any renewals or extensions, to the extent provided for in those sections. All the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the successors, executors, administrators, legal representatives, and assigns of CNG and all privileges, as well as all obligations and liabilities of CNG shall inure to its successors and assigns equally as if they were specifically mentioned where CNG is named.

**20. Miscellaneous.**

20.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

20.2 This Franchise is subject to the provisions of any applicable tariff on file with the Washington Utilities and Transportation Commission (“WUTC”) or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff on file with the UTC as of the effective date of this Franchise, the provisions of such tariff shall control.

20.3 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved by the City Council.

20.4 If, during the term of this Franchise, there becomes effective any change in federal or state law (including, but not limited to, a change in any tariff filed by CNG with the WUTC) and such change:

20.4.1 specifically requires or allows the City to enact a code or ordinance which conflicts with this Franchise; or

## EXHIBIT D-1

20.4.2 results in a CNG tariff that conflicts with this Franchise; then, in such event, either party may, within ninety (90) days of the effective date of such change, notify the other party in writing that such party desires to commence negotiations to amend this Franchise. Such negotiations shall only encompass the specific term or condition affected by such change in federal or state law and neither party shall be obligated to reopen negotiations on any other term or condition of this Franchise. Within thirty (30) days from and after the other party's receipt of written notice to so commence such negotiations, the parties shall, at a mutually agreeable time and place, commence such negotiations. The parties shall thereafter conduct such negotiations at reasonable times, in a reasonable manner, in good faith and with due regard to all pertinent facts and circumstances; provided, however, that (a) in the event the parties are unable, through negotiation, to reach mutual agreement upon terms and conditions of such amendment, then either party may, by written notice to the other, demand that the parties seek to arrive at such agreement through mediation or, if no such demand has previously been submitted, terminate this Franchise upon not less than ninety (90) days prior written notice to the other party; and (b) pending such negotiations, mediation and/or termination, and except as to any portion thereof which is in conflict or inconsistent with such change in federal or state law, the Franchise shall remain in full force and effect. For purposes of this Section, the term "mediation" shall mean mediation at the local offices of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), or, if JAMS shall cease to exist or cease to have a local office, mediation at the local offices of a similar organization. The parties may agree on a jurist from the JAMS panel. If they are unable to agree, JAMS will provide a list of the three available panel members and each party may strike one. The remaining panel member will serve as the mediator.

20.5 This Franchise shall be construed in accordance with the laws of the State of Washington. The United States District Court for the Western District of Washington, and Skagit County Superior Court have proper venue for any dispute related to this Franchise.

20.6 The cost of publication of this Franchise shall be borne by CNG.

20.7 The failure of either party to insist upon or enforce strict performance of any of the provisions of this Franchise or to exercise any rights under this Franchise shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

20.8 This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter within this Franchise and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

20.9 All rights and remedies provided herein shall be in addition to and cumulative with any and all other rights and remedies available to either the City or CNG. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

20.10 If a suit or other action is instituted in connection with any controversy arising out of this Franchise, each party shall pay all its own legal costs and attorney fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award

## **EXHIBIT D-1**

provided by law; provided, however, nothing in this section shall be construed to limit the City's right to indemnification under Section 11 of this Franchise.

20.11 The Franchise between the City and CNG as adopted by Ordinance Number 2487 (the "1992 Franchise") and extended through Ordinances 3716 and 3751 is hereby superseded and replaced by this Franchise as of the Effective Date of this Franchise, and this Franchise, and all exhibits attached hereto shall constitute the entire Franchise between the parties. The grant of this Franchise shall have no effect on the requirements of the 1992 Franchise or either extension related to indemnification or insurance for the City against acts and omissions occurring during the period that the 1992 Franchise and the two extensions were in effect and during any period in which Franchisee's Facilities were in the Franchise Area.

20.12 Nothing in this Franchise shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise shall not confer any right or remedy upon any person other than the City and CNG. No action may be commenced or prosecuted against either the City or CNG by any third party claiming as a third-party beneficiary of this Franchise. This Franchise shall not release or discharge any obligation or liability of any third party to either the City or CNG.

### **21. Acceptance.**

This Franchise may be accepted by CNG by its filing with the City Clerk an unconditional written acceptance within thirty (30) days from the City's final approval and execution of this Franchise, in the form attached as Exhibit B. As part of acceptance of this Franchise, CNG shall file the certificate of insurance and the additional insured endorsements obtained pursuant to Section 10, any performance bonds, if applicable, pursuant to Section 8, and the costs described in Section 17.1. Failure of CNG to so accept this Franchise shall be deemed a rejection by CNG and the rights and privileges granted shall cease.

### **22. Corrections by City Clerk or Code Reviser.**

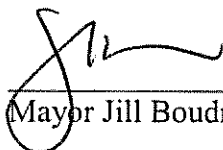
Upon approval by the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.

### **23. Effective Date.**

This ordinance shall take effect and be in force five (5) days from and after its passage and publication as provided by law.

**EXHIBIT D-1**


PASSED BY THE CITY COUNCIL OF THE CITY OF MOUNT VERNON THIS 22<sup>nd</sup> DAY OF AUGUST, 2018; AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 20<sup>th</sup> DAY OF August, 2018.

  
\_\_\_\_\_  
Mayor Jill Boudreau

Attest:   
\_\_\_\_\_

Doug Volesky, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kevin Rogerson, City Attorney

PUBLISHED: October 8, 2018

EFFECTIVE:

**EXHIBIT D-1**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF MOUNT VERNON )

I, Doug Volesky, the duly qualified City Clerk of the City of Mount Vernon, situated in the County of Skagit, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 3760, an ordinance of the City of Mount Vernon, entitled:

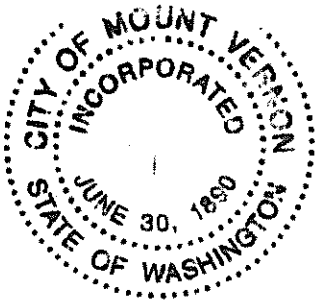
ORDINANCE NO. 3760

AN ORDINANCE granting Cascade Natural Gas Corporation, a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of transmission, distribution and sale of gas and such other services as may be provided by such facilities

I further certify that said Ordinance No. 3760 was: (i) introduced, on the 8<sup>th</sup> day of August, 2018; (ii) submitted to the City Attorney on the 22<sup>nd</sup> day of August, 2018; (iii) published on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, according to law; (iv) approved by a majority of the entire legislative body of the City of Mount Vernon, at a regular meeting thereof on the 22<sup>nd</sup> day of August, 2018; and (v) approved and signed by the Mayor of the City of Mount Vernon on the 30<sup>th</sup> day of August, 2018

WITNESS my hand and official seal of the City of Mount Vernon, this 4 day of October, 2018.

Doug Volesky  
Doug Volesky, City Clerk  
City of Mount Vernon, State of Washington



**EXHIBIT D-1**

**STATEMENT OF ACCEPTANCE**

Cascade Natural Gas Corporation for itself, its successors and assigns, accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached and incorporated by this reference. Cascade Natural Gas Corporation declares that it has carefully read the terms and conditions of this Franchise and unconditionally accepts all of the terms and conditions of the Franchise and agrees to abide by such terms and conditions. Cascade Natural Gas Corporation has relied upon its own investigation of all relevant facts and it has not been induced to accept this Franchise and it accepts all reasonable risks related to the interpretation of this Franchise.

Cascade Natural Gas Corporation

By: [Signature] Date: 9-6-18

Name: ERIC MARTUSCELLI

Title: VP, FIELD OPERATIONS

**ACKNOWLEDGEMENT**

STATE OF WASHINGTON )  
 )SS.

COUNTY OF Benton

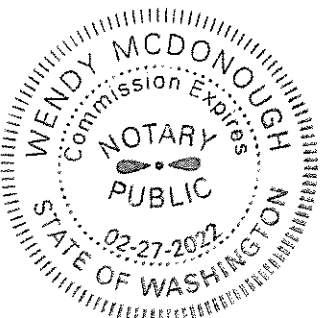
I certify that I know or have satisfactory evidence that Eric Martuscelli is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Statement of Acceptance of Ordinance No. 3760 to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 9/6/18

Notary Seal

[Signature]  
(Signature of Notary)

Wendy McDonough  
(Legibly Print or Stamp Name of Notary)  
Notary Public in and for the State of  
Washington  
My appointment expires: 2-27-2022



**EXHIBIT D-1**



**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
09/11/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA Inc. 333 South 7th Street, Suite 1400 Minneapolis, MN 55402-2400 Attn: MDU.CertRequest@marsh.com		<b>CONTACT NAME:</b> PHONE (A/C No. Ext): FAX (A/C No.): E-MAIL ADDRESS:	
CN102299309-ALLCP-POLLU-18- Cascad		<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Cascade Natural Gas Corporation 8113 W Grandridge Blvd Kennewick, WA 99336		<b>INSURER A :</b> Ironshore Specialty Insurance Company NAIC # 25445 <b>INSURER B :</b> <b>INSURER C :</b> <b>INSURER D :</b> <b>INSURER E :</b> <b>INSURER F :</b>	

**COVERAGES**      **CERTIFICATE NUMBER:** CHI-009087289-35      **REVISION NUMBER:** 2

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	<input type="checkbox"/> N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	Contractors Pollution Liab.			003461100	03/01/2018	01/01/2019	EACH OCCURRENCE 5,000,000 AGGREGATE 5,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 The Certificate Holder is an additional insured under the policy but only to such extent and for such limits of liability (subject always to the terms and limits of liability of the policy) as the named insured has agreed to provide insurance for the Certificate Holder under the following contract: Franchise Ordinance #3760 or its replacement operations related to the transmission and distribution of natural gas.

<b>CERTIFICATE HOLDER</b> City of Mt. Vernon Attn: City Clerk 320 Broadway PO Box 809 Mt. Vernon, WA 98273	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i>
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**EXHIBIT D-1**



**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
09/11/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA Inc. 333 South 7th Street, Suite 1400 Minneapolis, MN 55402-2400	<b>CONTACT NAME:</b> _____		
	<b>PHONE (A/C, No, Ext):</b> _____	<b>FAX (A/C, No):</b> _____	
<b>E-MAIL ADDRESS:</b> _____			
CN102299309-CASCA-GAWX-18- Cascad	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
	<b>INSURER A :</b> Associated Electric & Gas Ins Services Ltd		3190004
	<b>INSURER B :</b> N/A		N/A
	<b>INSURER C :</b> N/A		N/A
	<b>INSURER D :</b>		_____
	<b>INSURER E :</b>		_____
<b>INSURER F :</b>		_____	

**COVERAGES**      **CERTIFICATE NUMBER:** CHI-008512828-35      **REVISION NUMBER:** \_\_\_\_\_

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____		XL5063407P Excess General Liability "\$500,000 Self-Insured Retention"	01/01/2018	01/01/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/OP AGG \$ _____ \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY		XL5063407P Excess Auto Liability "\$500,000 Self-Insured Retention"	01/01/2018	01/01/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ _____ \$
A	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> CLAIMS-MADE DED    RETENTION \$		XL5063407P	01/01/2018	01/01/2019	EACH OCCURRENCE \$ 25,000,000 AGGREGATE \$ 25,000,000 _____ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				PER STATUTE    OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 The Certificate Holder is an additional insured under the policy but only to such extent and for such limits of liability (subject always to the terms and limits of liability of the policy) as the named insured has agreed to provide insurance for the Certificate Holder under the following contract: Franchise Ordinance #3760 or its replacement operations related to the transmission and distribution of natural gas. Excess liability applies to general liability, products and completed operations, automobile liability, and employers liability. Primary and Non-Contributory applies for Excess Liability per coverage form 100-E8432 (11/2011) attached.

<b>CERTIFICATE HOLDER</b>  City of Mt. Vernon Attn: City Clerk 320 Broadway PO Box 809 Mt. Vernon, WA 98273	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc.  Manashi Mukherjee <i>Manashi Mukherjee</i>
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- (3) The DISCOVERY PERIOD shall not reinstate or increase the COMPANY'S Limits of Liability or extend the POLICY PERIOD and shall apply only with respect to OCCURRENCES during the COVERAGE PERIOD.
- (4) The DISCOVERY PERIOD shall not be cancellable by the COMPANY except for non-payment of premium where applicable or for fraud or material misrepresentation.
- (5) The DISCOVERY PERIOD shall not apply to any claim or any part of any claim which is covered by a subsequent insurance policy issued by the COMPANY or by any other insurer or would be covered but for the exhaustion of the applicable limit of liability of such subsequent insurance policy; except, however, that the DISCOVERY PERIOD shall apply to any claim which is covered by a subsequent insurance policy issued by the COMPANY where such DISCOVERY PERIOD arises under section (1) (b) of this Condition (N) because of the imposition of a lower limit of liability under such subsequent insurance policy; provided, however, that the maximum amount payable by the COMPANY under this POLICY for ULTIMATE NET LOSS with respect to any claim covered under such DISCOVERY PERIOD shall be the amount of the difference between the Limit of Liability under this POLICY and the lower limit of liability under the subsequent insurance policy issued by the COMPANY and shall apply excess of the applicable limit of liability of such subsequent insurance policy.

**(O) Currency**

All amounts stated herein are expressed in United States Dollars and all amounts payable hereunder are payable in United States Dollars.

**(P) Sole Agent**

The NAMED INSURED first named in Item 1 of the Declarations shall be deemed the sole agent of each INSURED hereunder for the purpose of issuing instructions for any alteration of this POLICY, making premium payments and adjustments, receiving payments of indemnity or receiving notices, including notice of cancellation from the COMPANY.

**(Q) Cancellation**

This POLICY may be cancelled:

- (1) at any time by the NAMED INSURED by mailing written notice to the COMPANY stating when thereafter cancellation shall be effective; or
- (2) at any time by the COMPANY by mailing written notice to the NAMED INSURED stating when, not less than ninety (90) days from the date notice was mailed, cancellation shall be effective; except, in the event of cancellation for non-payment of premiums, such cancellation shall become effective ten (10) days after the notice was mailed.

Proof of mailing of notice to the respective addresses in Items 7 and 8 of the Declarations shall be sufficient proof of notice and the POLICY PERIOD shall end on the effective date and hour of cancellation stated in the notice. Delivery of such notice either by the NAMED INSURED or the COMPANY shall be equivalent to mailing.

In the event of cancellation by the INSURED, the premium retained by the COMPANY shall be calculated in accordance with the COMPANY'S short rate table which shall be made available to the INSURED upon request. In the event of cancellation by the COMPANY, the premium retained by the COMPANY shall be calculated on a pro-rata basis.

The offer by the COMPANY of renewal on terms or premiums different from those in effect during the POLICY PERIOD shall not constitute cancellation or refusal to renew this POLICY.

**(R) Dispute Resolution and Service of Suit**

Any controversy or dispute arising out of or relating to this POLICY, or the breach, termination or validity thereof, shall be resolved in accordance with the procedures specified in this Section IV.(R), which shall be the sole and exclusive procedures for the resolution of any such controversy or dispute.

- (1) Negotiation. The INSURED and the COMPANY shall attempt in good faith to promptly resolve any controversy or dispute arising out of or relating to this POLICY by negotiations between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days the receiving party

## ASSOCIATED ELECTRIC &amp; GAS INSURANCE SERVICES LIMITED

Endorsement No. 37

Effective date of Endorsement January 1, 2018Attached to and forming part of POLICY No. XL5063407PNAMED INSURED: MDU Resources Group, Inc.

It is understood and agreed that this POLICY is hereby amended as indicated. All other terms and conditions of this POLICY remain unchanged.

**PRIMARY INSURANCE ENDORSEMENT  
(AMENDED CONDITION (H) OTHER INSURANCE)**

Section IV., Conditions, (H) *Other Insurance* is deleted in its entirety and replaced by the following:

**(H) *Other Insurance***

If other valid and collectible insurance with any other insurer, whether such insurance is issued before, concurrent with, or after inception of this POLICY, is available to the INSURED covering a CLAIM also covered by this POLICY, other than insurance that is issued specifically as insurance in excess of the insurance afforded by this POLICY, this POLICY shall be in excess of and shall not contribute with such other insurance.

Provided, however, that if the NAMED INSURED has agreed in writing prior to an OCCURRENCE to provide insurance to any person or organization (and such person or organization otherwise qualifies as an INSURED under Definition (L)) and such writing requires the insurance provided by this POLICY to be primary, then the insurance provided by this POLICY shall be primary for such INSURED up to a limit of \$1,000,000 or up to the amount required by such writing.

Nothing herein shall be construed to make this POLICY subject to the terms of other insurance.

Nothing in this Endorsement shall reinstate, increase or in any way expand the COMPANY'S Limits of Liability as set forth in Section I (B) of the POLICY.



\_\_\_\_\_  
Signature of Authorized Representative

**EXHIBIT D-2**

**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).

## EXHIBIT D-2

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.

## EXHIBIT D-2

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

## **EXHIBIT D-2**

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

## EXHIBIT D-2

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.



## **EXHIBIT D-2**

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.**

## **EXHIBIT D-2**

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

## EXHIBIT D-2

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),

## **EXHIBIT D-2**

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.

## **EXHIBIT D-2**

### **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,

## EXHIBIT D-2

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.

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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

## EXHIBIT D-2

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.



**EXHIBIT D-2**

**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: \_\_\_\_\_

Public Works Department



PO Box 1001  
Prosser, WA 99350  
PHONE (509) 786-5611  
co.benton.wa.us

8/02/2021  
Erie Martuscelli  
Cc: Steven Kessie  
200 N Union St  
Kennewick WA 99336

Dear Mr. Martuscelli,

Please find enclosed your recorded franchise agreements.

If you have any questions, please contact this office.

Sincerely,

Cristina Woods

A handwritten signature in black ink that reads "C. Woods".

Engineering Associate II

**EXHIBIT D-3**

Return to:  
Benton County Public Works  
P. O. Box 1001  
Prosser, WA 99350

COPY

Grantor: Benton County  
Grantee: Cascade Natural Gas Corporation

BEFORE THE BOARD OF COUNTY COMMISSIONERS

BENTON COUNTY, STATE OF WASHINGTON

IN THE MATTER OF THE APPLICATION OF )  
CASCADE NATURAL GAS CORPORATION FOR A )  
NONEXCLUSIVE FRANCHISE TO LOCATE, )  
CONSTRUCT, MAINTAIN, OPERATE, USE, AND IF )  
NECESSARY, REMOVE A NATURAL GAS )  
DISTRIBUTION SYSTEM AND FACILITIES WITHIN )  
THE COUNTY OF BENTON, STATE OF )  
WASHINGTON, UPON, OVER, UNDER, ALONG, )  
AND ACROSS CERTAIN COUNTY ROADS AND )  
PUBLIC HIGHWAYS, OR PARTS THEREOF, NOT )  
WITHIN THE LIMITS OF ANY INCORPORATED )  
CITY OR TOWN.

No. 2021 564

ORDER AND AGREEMENT FOR  
NONEXCLUSIVE FRANCHISE

FINDINGS

NOW, on this 27 day of July 2021 the petition and application of  
CASCADE NATURAL GAS CORPORATION, for the authority and nonexclusive Franchise,  
for a term of ten (10) years, to install, locate, construct, maintain, operate, use, and, if necessary,  
remove A NATURAL GAS DISTRIBUTION SYSTEM AND FACILITIES under, upon, over,  
along and across Benton County roads, highways, streets, alleys, bridges, and rights-of-ways, or  
other County property, hereinafter called County roads or rights-of-ways, described in said  
application by reference to the sections, townships, and ranges in which said County roads or  
rights-of-ways are physically located within the County of Benton, State of Washington, and not

### EXHIBIT D-3

within the corporate limits of any incorporated city or town therein, coming on to be heard before this, the Board of County Commissioners of and from said Benton County, Washington, and this Board having heretofore fixed this time and place for the hearing of said petition, and it appearing that the County Engineer has given notice of the time and place of said hearing by posting in three places in the Benton County Courthouse with written or printed notices of the time and place of this hearing in accordance with the laws of the State of Washington, and also by publishing a like notice two (2) times in the Prosser Record Bulletin newspaper of general circulation published in Benton County, Washington, and it appearing that the notices so posted and published stated the name of the applicant and a description by reference to sections, townships and ranges in which the County roads or rights-of-ways to be included in the Franchise for which application is made are physically located, and also state the time and place fixed for said hearing, and after hearing all persons interested in the matter of said petition, and at which hearing the qualifications of the Grantee were heard, the Board deeming it for the public interest to grant the Franchise and authority so applied for.

#### ORDER

IT IS HEREBY ORDERED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

There is hereby granted to CASCADE NATURAL GAS CORPORATION, hereafter called the Grantee, subject to all provisions, conditions, covenants and requirements of this order and agreement, the right, privilege and nonexclusive Franchise, to install, locate, construct, maintain, operate, use, and, if necessary, remove A NATURAL GAS DISTRIBUTION SYSTEM SYSTEMS AND FACILITIES, and all necessary appurtenances thereto, hereinafter called the distribution system, under, upon, over, along, or across those portions of any and all County roads or rights-of-ways, which lie within those legal subdivisions within the County of Benton, State of Washington, set forth and described in "Exhibit A" attached hereto and by this reference made a part hereof, excluding, however, from such subdivisions any portion thereof which is within the corporate limits of any incorporated city or town, but including all portions of said subdivisions which are within any unincorporated town or community. Benton County Resolution No. 72-220, regarding Policy on Accommodation of Utilities on County Road Rights-of-Way, shall apply in all respects to this Franchise and the distribution system.

## **EXHIBIT D-3**

### AGREEMENT

#### I. APPROVAL BY COUNTY ENGINEER

All locations, construction, installation, maintenance, relocation or removal of the distribution system or any portion thereof within County roads or rights-of-ways outside the corporate limits of any incorporated town shall be subject to the approval and pass inspection of the County Engineer.

#### II. PERMIT REQUIRED – MAP AND SPECIFICATIONS TO BE FILED APPROVAL BY COUNTY ENGINEER – PERFORMANCE BOND

Prior to commencement of any work on or construction of any portion of the distribution system, Grantee shall file with the County Engineer its application for permit to do such work or construction together with plans and specifications in form and number as approved by the County Engineer showing the position, depth, or height, and location of all lines and facilities sought to be constructed, laid, installed or erected at that time, showing their relative position to existing County roads or rights-of-ways, upon plans drawn to scale indicating exact distance hereinafter collectively referred to as the “map of definite location”. Grantee is hereby authorized to extend its facilities throughout the area authorized hereunder.

The distribution system shall be constructed in exact conformity with said map of definite location, except in instances in which deviation may be allowed by the prior written consent of the County Engineer pursuant to application by Grantee. The plans and specifications shall specify, as applicable, the class and type of materials and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts, and road obstructions, and manner and means by which they affect County roads or rights-of-ways, will be restored to a condition as good as that which existed prior to such work or construction. No such work or construction shall be commenced until the Grantee has first secured a written permit from the County Engineer, which shall include approval by the County Engineer endorsed on one set of plans and specifications to be returned to the Grantee. All such work or construction shall require the inspection and approval of the County Engineer. The Grantee shall pay all reasonable costs and

### **EXHIBIT D-3**

expenses incurred in the examination, inspection, and approval of such work or construction by the County Engineer as herein provided.

The County Engineer may require a performance bond in a sum sufficient to guarantee to Benton County that any County roads or rights-of-ways, including the surfaces thereof, affected by any work or construction by the Grantee, shall be restored to a condition as good as that which existed prior to such work or construction, the amount of said bond to be fixed by the County Engineer. The County Engineer, upon notice to the Grantee, may at any time order any and all work that he considers necessary to restore to a safe condition any portion of the County roads or rights-of-ways, the condition of which has been rendered dangerous to the safety of persons or property by reason of any work, construction, of facilities of Grantee, and Grantee, upon demand, shall pay to Benton County all costs of such work, done by order of the County Engineer.

#### III. COUNTY ROADS TO BE RESTORED

In any work which requires breaking of surface of the County roads or rights-of-ways subject to this Franchise for the purpose of locating, constructing, installing, relocating, removing, maintaining and/or repairing the distribution system, and/or making connections between the same to structures and buildings of consumers or making connections to other facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be governed by and strictly conform to the instructions set forth in the permit issued by the County Engineer for such work; and the Grantee, at its own expense and with all reasonable speed, shall complete the work for which the County roads or rights-of-ways, surface has been broken and repair and restore the affected County roads or rights-of-ways, and the surface thereof to a condition as good as that which existing before the work was commenced. Noxious weed control will be required, at the Grantee's expense, and shall meet all requirements of the Benton County Weed Board.

Except in cases of emergency as hereinafter provided, no breaking of surface of any County roads or rights-of-ways, shall be done until Grantee has first obtained a permit therefor issued by the County Engineer as specified in Section II of this Agreement.

PROVIDED, however, that in cases of emergency which occur out of office hours when immediate work may be necessary for the protection or safety of persons or property, the

### **EXHIBIT D-3**

emergency shall be immediately reported to the Benton County Sheriff and the necessary work may be immediately undertaken upon the express condition that an application for a permit for such work, as hereinabove provided, shall be submitted to the County Engineer on or before noon of the business day next following the commencement of the emergency work.

#### IV. INTERFERENCE WITH EXISTING FACILITIES

No location, construction, installation, maintenance, repair, removal or relocation of the distribution system or any portion thereof, performed along or under any County roads or rights-of-ways, shall in any way interfere with the grading or improvement of such County roads or rights-of-ways, or with the construction and maintenance of any existing utility, public or private, drain, drainage ditch or structure, or irrigation ditch or structure, located along or under such county roads, right-of-way or property. In the event that it is necessary to relocate any such county road or right-of-way or alter the grade of any such county road or right-of-way, requiring relocation of any utilities, including rights-of-way, preferences as to positioning of such utilities, shall be given in the order of the original location and installation of such utilities, the utility first having been located and installed being given first preference as to positioning and relocation.

#### V. MINIMUM INTERFERENCE WITH PUBLIC TRAVEL – GRANTEE LIABLE FOR DAMAGE

All work done under this Franchise shall be done in a thorough and workmanlike manner. All construction, installation, maintenance, repair, relocation, or removal of the distribution system, or any portion thereof, shall be conducted in a manner that will interfere as little as possible with public use of and travel upon County roads or rights-of-ways, shall include all due and necessary measures and precautions to prevent danger to persons or property. Specifically, where such construction, installation, maintenance, repair, relocation or removal involves open trenches, ditches, or tunnels which are left open at night, the Grantee shall place sufficient warning lights and barricades about such trenches, ditches or tunnels to give adequate warning of such work. The Grantee shall assume sole liability for any injury to persons or property which occurs by reason of any trenches, ditches, or tunnels dug or maintained by the Grantee.

## **EXHIBIT D-3**

### VI. ALL COUNTY ROAD RIGHTS RESERVED

Benton County expressly reserves any and all rights which it now has or may hereafter acquire with respect to County roads or rights-of-ways, and this Franchise shall not be construed to in any way limit or restrict any authority, power, rights, or privileges which Benton County now has or may hereafter acquire to control and regulate the use of County roads or rights-of-ways covered by this Franchise.

### VII. COUNTY MAY CHANGE AND IMPROVE ROADS WITHOUT LIABILITY

If Benton County shall at any time improve or change any County roads or rights-of-ways, subject to this Franchise by grading, regrading, surfacing , or paving the same, or by changing, altering, repairing, or relocating the grade thereof or by construction of drainage facilities, the Grantee shall, upon written notice from the County Engineer, at Grantee's sole expense, with all reasonable speed, change the location or readjust the elevation of its distribution system and other facilities so that the same shall not interfere with such county work and so such lines and facilities shall conform to such new grades as may be established. Benton County shall in no respect be held liable for any damages, costs, or expenses to said Grantee that may occur by reason of any of the County's improvements, changes or work above enumerated, except insofar as such damages, costs or expenses shall be caused by negligence of the County's employees or agents.

All work performed by the Grantee under this section shall be under the direction, approval, and shall pass the inspection of the County Engineer. The Grantee shall pay all reasonable costs of and expenses incurred in the examination, inspection, and approval of such work.

### VIII. REFERENCE MONUMENTS AND MARKERS

Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operation under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during



### **EXHIBIT D-3**

construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed or disturbed, and the expense of replacement by approved monuments shall be borne by the Grantee.

#### IX. VACATION OF COUNTY ROADS – ALTERNATE ROUTE

If at any time Benton County shall vacate any County road, right-of-way, or other County property which is subject to rights granted by this Franchise the Board of County Commissioners for Benton County may, after granting an alternate route with the consultation of Grantee, by giving thirty (30) days written notice to the Grantee, terminate this Franchise with reference to such County road, right-of-way, or other County property so vacated and said Benton County shall in no respect be liable for any damages, costs, or expenses to the Grantee that may occur by reason of such termination.

#### X. GRANTEE TO INDEMNIFY COUNTY – LIABILITY INSURANCE

The Grantee covenants, agrees and promises that it shall fully indemnify Benton County from any and all liability, loss, injury, damage, costs, charges or expenses of any nature whatever, occurring to any person, association, corporation or property of any kind by reason of any acts, actions, omissions, defaults, or neglect of the Grantee in the construction, operation, or maintenance of the distribution system.

The Grantee further covenants, agrees and promises that, in the event that any claim, suit, or cause of action shall be brought against Benton County by reason of any act, action, omission, defaults, or neglect of the Grantee in the construction, operation, or maintenance of the distribution system, it shall, at its own cost and expense, defend any such claim, suit, or cause of action, and shall pay any and all costs, charges, attorneys' fees, and other expenses therein, and any and all judgments that may be incurred by or obtained against Benton County in any such claim, suit, or cause of action.

The Grantee further covenants, agrees and promises that, in order to secure to the County full and complete performance of the covenants and conditions of this Section "X", it shall, at its own cost and expense, obtain and maintain in effect continually during the term of this Franchise, liability insurance in a company or companies to be approved by the County, such insurance to name the Grantee and Benton County as the insured and to have minimum limits of

### **EXHIBIT D-3**

not less than \$1,000,000.00. Written evidence of such insurance in effect shall be furnished to the County Engineer no later than the date that any work or construction under the terms of this Franchise commences. Such additional written evidence of such insurance shall be furnished to the County Engineer from time to time as the County Engineer shall require; in any event, such additional written evidence shall be provided to the County Engineer at least annually during the term of this Franchise. The Grantee's compliance with the provisions of this paragraph relating to liability insurance shall in no way alter, affect, modify or limit any of the other covenants, conditions, and provisions of this paragraph. Acceptance or approval by the County of any work performed by the Grantee shall not constitute a waiver by the County of any of the provisions of this Section "X", and shall not excuse the Grantee from any of the covenants, provisions, or requirements set forth herein.

#### XI. FRANCHISE NOT EXCLUSIVE

This Franchise shall not be deemed to be an exclusive Franchise. It shall in no manner prohibit Benton County from granting other Franchises of a like nature or Franchises for public or private utilities under, along, across, over, and upon any of the County roads or rights-of-ways, subject to this Franchise and shall in no way restrict, prevent, or prohibit Benton County from constructing, altering, maintaining, or using any of said roads or rights-of-way, drainage structures or facilities, irrigation structures or facilities, or any other County property or affect its jurisdiction over them or any part of them with full power to make all necessary construction, alterations, changes, relocations, repairs, or maintenance, which the County may deem necessary.

#### XII. PROVISIONS HEREOF BIND SUCCESSOR

All provisions, conditions, covenants, and requirements herein contained shall be binding upon any and all successors and assigns of the Grantee, and all privileges, as well as all obligations and liabilities of the Grantee, shall inure to its successors and assigns equally as if they were specifically mentioned herein wherever the Grantee is mentioned, provided, however, that neither this Franchise nor any rights, privileges, or obligations granted in this order and agreement shall be assigned without the prior written approval of the County Engineer, unless such assignments is to a wholly-owned subsidiary of the Grantee or to a parent company owning

### **EXHIBIT D-3**

more than 50% of the Grantee, and unless Benton County is provided with prior written notice of such assignment giving the name and address of the subsidiary or parent company assignee.

#### XIII. REVOCATION FOR NON-COMPLIANCE

In the event that the Grantee substantially violates or fails to comply with any of the material provisions of this Franchise, the Grantee shall forfeit all rights conferred hereunder and this Franchise shall be revocable by the Board of Benton County Commissioners at their discretion, provided, however, the Board of County Commissioners shall provide the Grantee with written notice of its intention to revoke the Franchise, specifying the nature of such violation, failure, or neglect, and giving the Grantee thirty (30) days in which to cure such violation, failure, or neglect. The Grantee shall be entitled to a hearing, within such thirty-day period, before the Board of County Commissioners.

In the event such hearing is held, the Grantee shall be given prior written notice of the time and place for such hearing. Subject to applicable federal and state law, in the event the Board of County Commissioners, after such hearing, determines that Grantee is in default of any provision of the Franchise, the Board of County Commissioners may:

- a. Foreclose on all or any part of any security provided under this Franchise, if any, including, without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default;
- b. Commence an action at law for monetary damage or seek other equitable relief;
- c. In the case of substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or
- d. Seek specific performance of any provision, which reasonably leads itself to such remedy, as an alternative to damages.

#### XIV. CONFORMITY WITH STATE AND COUNTY

Benton County expressly reserves the right at any time, upon ninety (90) days written notice to the Grantee, to change, amend, modify, or amplify any of the provisions or conditions herein enumerated to conform to any state statute, rule or regulation, or county ordinance, rule or regulation, relating to the regulation of highways or the public welfare, health, safety, as may

### **EXHIBIT D-3**

hereafter be enacted, adopted or promulgated, and the County further expressly reserves the right to terminate this Franchise at any time, in accordance with the procedures stated in Section “XIII” above, in the event that the Grantee’s distribution system is not operated or maintained in accordance with such statute, ordinance, rule, or regulation.

#### XV. FEDERAL REGULATION

Any lawful modification required by amendment of Section 76.31 (“Franchise Standards”) of the Rules and Regulations of the Federal Communications Commission shall be incorporated into this Franchise as of the date such modifications become obligatory under FCC regulations, or in the event no obligatory date is established, within one (1) year of adoption or at the time of Franchise renewal, whichever occurs first.

#### XVI. ACTS OF GOD

The Grantee shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts that are solely the result of an Act of God or similar circumstance, power outages, or other events reasonably beyond its ability to control.

#### XVII. SEVERABILITY

If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

#### XVIII. COMPLAINT PROCEDURES

The Grantee agrees to maintain a local business office which subscribers may telephone during regular business hours without incurring added message or toll charges so that service shall be promptly available. The Grantee agrees to notify each subscriber, at the time of initial subscription to the Grantee’s service, of the procedures for reporting and resolving such complaints.

## **EXHIBIT D-3**

### XIX. ACCEPTANCE BY GRANTEE

Written acceptance by the Grantee of the Franchise granted herein and all provisions, conditions, covenants, and requirements contained in this order and agreement shall be indicated by endorsement by the Grantee where indicated herein below, and a copy of this order and agreement so endorsed by the Grantee shall be filed with the Clerk of the Board of County Commissioners of Benton County within thirty (30) days from the date of acceptance by the Board. Such filing of the endorsed order and agreement within the period above specified shall be a condition precedent to this Franchise taking effect, and unless this order and agreement is accepted and filed within such time, it shall be null and void.

### XX. TERM

This nonexclusive Franchise agreement shall be in full force and effect upon execution and shall expire June 30<sup>th</sup>, 2031.

### XXI. GRANTEE'S ADDRESS

Information for the Grantee is:

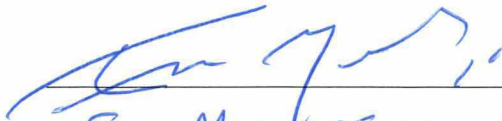
Eric Martuscelli V.P. Field Operations  
200 N Union St.  
Kennewick WA 99336

Phone: (509) 736-5543  
E-mail : Steve.kessie@cngc.com

Any notification required to be given to the Grantee may be given to the address above stated, provided that the Grantee may from time to time notify Benton County in writing of address to which notifications are to be sent.

**EXHIBIT D-3**

FOR GRANTEE:

  
\_\_\_\_\_  
Eric Martiscek


Date July 6, 2021

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Benton County Deputy Prosecuting Attorney

Date 6/10/21

FOR BENTON COUNTY,  
WASHINGTON.

  
\_\_\_\_\_  
Chairman

**SHON SMALL - ABSENT**

\_\_\_\_\_  
Chairman Pro-Tem

  
\_\_\_\_\_  
Member

Constituting the Board of County  
Commissioners, Benton County,  
Washington.

ATTEST:

  
\_\_\_\_\_  
Clerk of the Board

Date 7-27-2021

**EXHIBIT D-3**

EXHIBIT A

All unincorporated areas of Benton County

## EXHIBIT D-4

### ORDINANCE NO. 2019-09

AN ORDINANCE GRANTING CASCADE NATURAL GAS CORPORATION, A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE RIGHTS OF WAY OF THE CITY OF POULSBO TO PROVIDE FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF GAS AND SUCH OTHER SERVICES AS MAY BE PROVIDED BY SUCH FACILITIES, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

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#### THE CITY COUNCIL OF THE CITY OF POULSBO, WASHINGTON, DO ORDAIN AS FOLLOWS:

##### 1. Definitions.

1.1 Where used in this franchise (the "Franchise") the following terms shall mean:

1.1.1 "CNG" means Cascade Natural Gas Corporation, a Washington corporation, and its successors and assigns.

1.1.2 "City" means the City of Poulsbo, a non-charter code city of the State of Washington, and its successors and assigns.

1.1.3 "Environmental Laws" means any applicable federal, state, or local statute, code, or ordinance or federal or state administrative rule, regulation, ordinance, order, decree, or other governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment.

1.1.4 "Franchise Area" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, lane, public way, drive, circle, pathways, spaces, or other public right of way which, under City ordinances or applicable laws, the City has authority to grant franchises, licenses, or leases for use thereof, or has regulatory authority thereover. Franchise Area does not include land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public.

1.1.5 "Facilities" means, collectively, any and all natural gas distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures and communication systems, all of which are associated with the distribution of natural gas; and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.



## EXHIBIT D-4

1.1.6 "Force Majeure Event" means fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, fuel or energy shortages, or any other unforeseen and similar circumstance or event not within the control of the affected party.

1.1.7 "Hazardous Substance" means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant that is specifically designated as such and regulated by any applicable Environmental Law.

1.1.8 "Laws" means any federal, state or municipal code, statute, ordinance, decree, executive order, governmental approvals, guideline, permits, procedures, regulation, regulatory programs, rules, specifications, standards or tariffs, as they exist, are amended, or may be created.

1.1.9 "Poulsbo Municipal Code" means, collectively, the ordinances, codes, regulations, development and other standards, and laws of the City.

1.1.10 "Parties" means the City and CNG.

1.1.11 "Public Improvement Project" means any City right-of-way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is primarily performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third party private entities.

## 2. Facilities Within Franchise Area.

2.1 The City does hereby grant to CNG the non-exclusive right, privilege, authority and franchise to set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area to provide for the transmission, distribution and sale of gas and other such services ("Services") as may be provided by such Facilities. Nothing contained within this Franchise shall be construed to grant or convey a franchise to install Facilities in the Franchise Area to provide electricity, telecommunications, backhaul services (i.e. the transmission link between a cell tower regardless of size and a mobile network operator's core network), fiber optic services, cable television or similar services to the public; provided that, for the avoidance of doubt, the foregoing is not intended to and does not restrict CNG's right to use its Facilities installed within the Franchise Area to monitor, control or operate its natural gas transmission and distribution systems or for communications reasonably required to conduct its internal natural gas business operations.

2.2 No right to install any facility, infrastructure, or other equipment, on any City property other than a right-of-way, or upon private property without the owner's consent, or upon any City, public or privately-owned structure is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the rights-of-way of the City to CNG other than for the purpose of providing the Services, or to subordinate the primary

## EXHIBIT D-4

use of the right-of-way as a public thoroughfare. If CNG desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If CNG desires to use City owned property, other than right-of-way, it shall enter into a separate lease, site specific agreement or license agreement with the City.

2.3 If at any time the City, by ordinance, vacates all or any portion of the Franchise Area, the City will not be liable for any damages or loss to CNG by reason of such vacation. The City shall notify CNG in writing not less than thirty (30) days before vacating all or any portion of the Franchise Area, if CNG has Facilities within such area planned for vacation. The City may, after thirty (30) days written notice to CNG, terminate this Franchise with respect to any such vacated area. At CNG's request, the City will, if practicable, reserve an easement for CNG's existing facilities to continue to use the vacated area. CNG must provide to the City information necessary for the City to reserve such easement within the thirty (30) day period.

2.4 At all times during the term of this Franchise, CNG shall comply with all terms of the tariff on file with the Washington Utilities and Transportation Commission.

### **3. Operation of Facilities.**

3.1 CNG's Facilities shall be installed, maintained, used and operated, within the Franchise Area (a) so as not to unreasonably interfere with the free passage of traffic and (b) in accordance with the laws of the State of Washington.

3.2 CNG shall exercise its rights within the Franchise Area, and install, operate, maintain, inspect and test its Facilities within the Franchise Area, in accordance with this Franchise and applicable provisions of the Poulsbo Municipal Code that govern use and occupancy of the Franchise Area and/or that are applicable to the installation, operation, maintenance, inspection, safety and testing of such Facilities; provided, however, in the event of any conflict between such provisions of the Poulsbo Municipal Code and the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent of such conflict; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded CNG by the Poulsbo Municipal Code or state or federal law.

3.3 Nothing herein shall be deemed to affect the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the use of the Franchise Area, including any ordinance made in the exercise of its police powers in the interest of public safety and welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation and manner of construction and maintenance of CNG's Facilities in the Franchise Area, and all construction and maintenance by CNG shall promptly conform with all such regulations, unless compliance would cause CNG to violate other requirements of law. The City may require by any such ordinance all necessary inspection provisions required for enforcement.

## EXHIBIT D-4

### 4. Planning and Records of Installation.

4.1 Upon the request of either Party the Parties will meet to discuss and coordinate regarding future construction activities then being planned by either Party within the Franchise Area, including potential Public Improvement Projects and potential improvements, relocations and conversions to CNG's Facilities within the Franchise Area; provided, however, any such discussions and coordination shall be for informational purposes only and shall not obligate either Party to undertake any specific improvements within the Franchise Area, nor shall such discussions or coordination be construed as a proposal to undertake any specific improvements within the Franchise Area.

4.2 For any Public Improvement Project that either Party has identified as requiring coordination, the City will notify CNG when it commences design work for the Public Improvement Project and identify a City representative to coordinate the Public Improvement Project with CNG. Within twenty (20) calendar days of receiving such notification, CNG shall designate a representative to coordinate the Public Improvement Project with the City. As further described in Section 5.2 for City projects, the project coordinators shall cooperate and share information necessary to efficiently complete the Public Improvement Project. This information may include, but is not limited to, project contacts, project details, applicable project schedules, identification of contractors, location of affected existing and planned Facilities, project status, and detailed and dimensioned plan specifications.

4.3 The City may prescribe a date each year of the Franchise by which the City shall have the right to ask CNG for conference, during which CNG will describe its schedule of then-proposed or anticipated construction activities that may affect the rights-of-way and any activities that will entail excavation or tunneling within the rights-of-way. Further, CNG shall meet with the City and other franchise holders and users of the Franchise Area upon written request of the City, to schedule and coordinate construction in the Franchise Area. All construction locations, activities, and schedules shall be coordinated, to the extent reasonably practicable, in a manner that minimizes public inconvenience, disruption or damages.

4.4 CNG shall consider and comply with the City's regulations on pavement disturbances and other construction work outlined in PMC 12.08 when considering its non-emergency plans to perform work in the Franchise Area. If CNG has non-emergency plans to perform work that will require disturbing pavement or sidewalks in the same areas the City has plans to resurface, overlay, or reconstruct roads or sidewalks, CNG will coordinate with the City to attempt to schedule its work to occur prior to or in conjunction with a Public Improvement Project.

4.5 CNG shall provide the City, upon the City's request, copies of available drawings in use by CNG showing the location of its Facilities at specific locations within the Franchise Area. Further, CNG shall, upon the City's request, discuss and explore ways in which CNG and the City may cooperate and coordinate activities with respect to the development of drawing file layers compatible with the City's geographic information system which show CNG's Facilities at specific locations within the Franchise Area. As to any such drawings or file layers so provided, CNG does

## EXHIBIT D-4

not warrant the accuracy thereof and, to the extent the location of Facilities are shown, such Facilities are shown in their approximate location.

4.6 Nothing herein is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities. Further, nothing herein is intended (nor shall be construed) to prohibit the City from complying with chapter 42.56 RCW, or any other applicable law or court order requiring the release of public records, and the City shall not be liable to CNG for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by CNG that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, CNG shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

### **5. Relocation of Facilities.**

5.1 The City shall have prior and superior right to the use of the Franchise Area for the installation and maintenance of its utilities and Public Improvement Projects, and should any conflict arise with City facilities, CNG shall, at no cost to the City, conform to the utilities and Public Improvement Projects of the City.

5.2 If the City determines that the project necessitates relocation of CNG's Facilities, the following process shall apply:

5.2.1 The City shall consult with the CNG in the predesign phase of any Public Improvement Project in order to coordinate the project's design with CNG's Facilities within such project's area.

5.2.2 CNG shall participate in predesign meetings until such time as (i) both parties mutually determine that CNG's Facilities will not be affected by the Public Improvement Project, or (ii) the City provides CNG with written notice regarding relocation as provided in Section 5.2.4 below.

5.2.3 CNG shall, during the predesign phase, evaluate and provide comments to the City related to any alternatives to possible relocations. If CNG determines that it will be unable to perform the relocation work upon the City's schedule due to the inability to obtain resources and materials in a timely manner, it should inform the City during the predesign phase and give the City a reasonable timeline of when it expects to obtain the resources and materials. The City shall consider such anticipated delay when creating its schedule but shall not accept any delay greater than thirty (30) days without City Engineer approval and a showing of need. Further, the City agrees to give any alternatives proposed by CNG full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's reasonable discretion provided that such decision provides adequate time to accommodate CNG's anticipated delay.

## EXHIBIT D-4

5.2.4 The City shall provide CNG with its decision and timelines regarding the relocation of CNG's Facilities as soon as reasonably possible, but in no event less than thirty (30) days prior to the commencement of the construction of such Public Improvement Project; provided, however that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.2, the City shall notify CNG during the predesign meetings and the process mandated by the grant funding shall control.

5.2.5 After receipt of such written notice, CNG shall relocate such Facilities to accommodate the Public Improvement Project consistent with the timeline provided by the City.

5.2.6 CNG shall complete relocation of its Facilities at no charge or expense to the City pursuant to the timeline provided by the City.

5.3 CNG shall be solely responsible for the direct out-of-pocket costs incurred by the City for delays in a Public Improvement Project to the extent the delay is directly caused by CNG's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of the City, third parties, or otherwise that are beyond CNG's reasonable control). Such out-of-pocket costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorneys' fees incurred by the City to the extent directly attributable to such CNG-caused delay in the Public Improvement Project.

5.4 If the Parties agree that elements of relocation work involving CNG's Facilities within the Franchise Area would be most efficiently performed by the City or its contractors as part of the City's work on the underlying Public Improvement Project, the Parties may enter into a separate written agreement that details the elements of relocation work to be performed by the City involving CNG's Facilities. Such agreement shall require CNG to be responsible for all direct design and construction costs incurred as a result of its Facilities and may require CNG to be responsible for CNG's pro-rata share of all reasonable indirect costs including, but not limited to, construction management and inspection, traffic control, mobilization, erosion and sedimentation control, trenching, backfill, and restoration. Neither Party will be obligated to enter into any such agreement for the City's performance of relocation work involving CNG's Facilities. In the absence of an agreement by which the City will relocate CNG facilities, CNG remains fully responsible for performing all relocation work itself.

5.5 Whenever any person or entity, other than the City, or a person or entity acting on behalf of the City, requires the relocation of CNG's Facilities to accommodate the work of such person or entity within the Franchise Area; or, the City requires any person or entity to undertake work (other than work undertaken at the City's cost and expense) within the Franchise Area and such work requires the relocation of CNG's Facilities within the Franchise Area, CNG shall have the right as a condition of any such relocation to require such person or entity to make payment to CNG, at a time and upon terms acceptable to CNG, for any and all reasonable costs and expenses incurred by CNG in the relocation of CNG's Facilities.

## EXHIBIT D-4

5.6 Any condition or requirement imposed by the City upon any person or entity, other than CNG, that requires the relocation of CNG's Facilities shall be a required relocation for purposes of Section 5.5 above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

5.7 Any condition or requirement imposed by the City upon any person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of CNG's Facilities within the Franchise Area shall invoke the provisions of Section 5.5 above; provided, however, (a) in the event the City reasonably determines and notifies CNG that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the construction of a Public Improvement Project within a segment of the Franchise Area on the City's behalf and (b) such Public Improvement Project is reflected in the City's Transportation Improvement Plan or Capital Improvement Plan, then only those costs and expenses incurred by CNG in constructing and connecting new Facilities with CNG's other Facilities shall be paid to CNG by such person or entity, and CNG shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Sections 5.1 through 5.3, above.

5.8 The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as CNG continues to own, operate, or maintain Facilities in the Franchise Area.

### **6. Work in the Franchise Area.**

6.1 All work performed by CNG or its contractors on CNG's behalf within the Franchise Area shall be accomplished in a good and workmanlike manner and which minimizes interference with the free passage of traffic and the free use of adjoining property, whether public or private. CNG shall at all times when performing work within the Franchise Area post and maintain proper barricades, flags, flaggers, lights, flares, safety devices and other measures as required to comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. CNG shall, at its own expense, maintain its Facilities in a safe condition, in good repair, and in a manner suitable to the City. Additionally, CNG shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or any interference with City services. The provisions of this Section 6.1 shall survive the expiration of this Franchise during such time as CNG continues to own, operate, or maintain Facilities in the Franchise Area.

6.2 Except in the case of an emergency where immediate action is needed to protect the integrity of CNG's Facilities within the Franchise Area, CNG shall, prior to commencing any work or other substantial activity within the Franchise Area for which a permit is required under the Poulsbo Municipal Code, apply for a permit from the City in accordance with the Poulsbo Municipal Code. During the progress of the work, CNG shall not unnecessarily obstruct the

## EXHIBIT D-4

passage or proper use of the Franchise Area, and all work by CNG in the Franchise Area shall be performed in accordance with the requirements of the permit and applicable City standards and specifications (in each case to the extent not inconsistent with the terms of this Franchise). In no case shall any work commence within any Public Ways without a permit, except as otherwise provided in this Franchise. Surface restoration work will be warranted for the applicable period specified in the Poulsbo Municipal Code. In no case shall any work commence within the Franchise Area without a permit, except as otherwise provided in this Franchise.

6.3 The City Engineer may, in his/her reasonable discretion, defer construction or other activity under any permit, until such time as the City Engineer deems proper in all cases where the public place on which the work is desired to be done is occupied or about to be occupied by any work by the City, or by some other person having a right to use the same in such manner as to render it seriously inconvenient to the public to permit any further obstruction thereof at such time. In granting such permit, the City Engineer may so regulate the manner of doing such work in order to cause the least inconvenience to the public in the use of such public place. In all cases, any work of the City or its contractors or employees for municipal purposes shall have precedence over all work of every other kind.

6.4 Except as specifically allowed by the City Engineer, or in an emergency situation as defined in RCW 19.122.020, CNG shall not repair, construct, or expand its Facilities within the Franchise Area that will cause a cut in a street that has been constructed, reconstructed, resurfaced, overlaid, or paved within the prior five (5) years.

6.5 Prior to doing any work in the Rights-of-Way, CNG shall follow established procedures, including contacting the Utility Notification Center in Washington and shall comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request from a third party or the City, CNG shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to CNG's Facilities or for interruptions in service to CNG's customers that are a direct result of CNG's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

6.6 If CNG shall at any time plan to make excavations in any area covered by this Franchise and as described in this Section 6.6, CNG shall afford the City, upon receipt of written request to do so, an opportunity to share such excavation, PROVIDED THAT:

6.6.1 Such work can occur in accordance with CNG procedures; and

6.6.2 Such joint use shall not unreasonably delay the work of the party causing the excavation to be made and sufficient space is reasonably available and if not, the City agrees to pay any pro rate share of expanding such excavation; and

6.6.3 Such joint use shall not result in unsafe conditions.

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6.7 In the event of an emergency in which CNG's Facilities located within the Franchise Area break or are damaged, or if CNG's Facilities within the Franchise Area are otherwise in a condition as to immediately endanger the property, life, health or safety of any individuals, CNG shall, upon learning of such a dangerous condition, take all reasonable actions to promptly correct such dangerous condition. CNG may take emergency measures to repair its Facilities within the Franchise Area or to cure or remedy any associated dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this Franchise. CNG shall notify the City either verbally or in writing as soon as practicable following the onset of any such emergency. CNG is not relieved from the requirement of obtaining such necessary permits, and CNG shall apply for all such permits within a reasonable period of time following commencement of such repairs.

6.8 If directed by the City, and except in emergency situations, at least forty-eight (48) hours prior to entering private property or Public Ways adjacent to or on such private property to perform new construction or reconstruction involving excavation or tunneling, a notice indicating the nature and location of the work to be performed shall be physically posted, at no expense to the City, upon the affected property by CNG. A door hanger may be used to comply with the notice and posting requirements of this section.

6.9 The City expressly reserves its rights to order the correction of any condition within the Franchise Area that is in violation of, or the discontinuance of any activity within the Franchise Area that is being undertaken contrary to, this Franchise, the Poulsbo Municipal Code, or any applicable permits issued by the City; provided such order is not in conflict with any federal or state law or regulation.

6.10 In case of any damage caused by CNG, or by CNG's Facilities, to the Franchise Area (including but not limited to all City, franchisee, and licensee owned improvements and structures existing therein) CNG agrees to repair the damage at no cost to the City. CNG shall, upon discovery of any such damage, immediately notify the City. The City will inspect the damage and provide CNG with a reasonable period of time for completion of the repair. If the City discovers damage caused by CNG within the Franchise Area, the City will give CNG prompt notice of the damage and provide CNG with a reasonable period of time to repair the damage. In the event CNG does not make the repair as required in this section, the City may repair the damage, to its satisfaction, at CNG's sole expense. Under no circumstances is the City obligated to complete repairs under this subsection and the City's decision to rely on CNG for the repair of damage caused by CNG or CNG's facilities does not limit the City's remedies if such repair is not completed in the time prescribed. Should the necessary repair not be completed within the period of time prescribed by the City, the City may elect to invoke any of the remedies outlined in Section 12.3.

6.11 The City may condition the granting of any permit or other approval that is required under this Franchise, at any time, on any lawful condition or regulation, unless such condition or regulation is in conflict with this Franchise, applicable laws or any federal or state directive, as may be reasonably necessary to the management of the Franchise Area, such conditions may include, by way of example and not limitation, bonding, maintaining proper



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distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and protecting any right-of-way improvements, private facilities and public safety.

### **7. Restoration After Construction.**

7.1 CNG shall, in connection with any work performed by CNG on its Facilities within the Franchise Area, comply with all requirements of PMC 12.08 and promptly remove any obstructions from the Franchise Area and restore the surface of the Franchise Area consistent with municipal code and City construction standards (as such construction standards are posted on the City's website or included as a condition of approval of any required permit, such as a public property construction permit required by PMC 12.08), provided CNG shall not be responsible for any changes or damage to the Franchise Area not caused by CNG's work or work performed on CNG's behalf. Further, CNG's restoration shall comply with applicable Poulsbo Municipal Code and City construction standards (as such construction standards are posted on the City's website or included as a condition of approval of any required permit, such as a public property construction permit required by PMC 12.08) for restoration including but not limited to PMC 12.08. The City Engineer or his/her designee shall have final approval of the condition of the Franchise Area after restoration.

7.2 If conditions (i.e. weather) do not permit the complete restoration required under this Section 7, CNG shall temporarily restore the affected portions of the Franchise Area. Such temporary restoration shall be at CNG's sole cost and expense and CNG shall promptly undertake and complete the required permanent restoration when the conditions no longer prevent such permanent restoration.

7.3 If CNG fails to restore the Franchise Area in accordance with this Section 7, the City shall provide CNG with written notice including a description of actions the City believes necessary to restore the Franchise Area. If CNG fails to restore the Franchise Area in accordance with this Section 7 within ten (10) calendar days of CNG's receipt of the City's notice, the City, or its authorized contractor, may, but is not required to, restore the Franchise Area at CNG's sole and complete expense. Should the necessary repair not be completed within ten (10) calendar days of receipt of notice, the City may elect to invoke any of the remedies outlined in Section 12.3. In the event that the City elects to restore the Franchise Area, CNG will be liable for the actual costs of restoration including all applicable City overhead, legal and administrative expenses. Under no circumstances is the City obligated to complete restoration under this subsection and the City's decision to rely on CNG for the restoration does not limit the City's remedies if such restoration is not completed in the time prescribed.

7.4 All survey monuments which are disturbed or displaced by CNG in its performance of any work within the Franchise Area shall be referenced and restored by CNG, in accordance with WAC 332-120, as it exists or may be amended, and other applicable Laws.

7.5 The provisions of this Section 7 shall survive the expiration or termination of this Franchise so long as CNG continues to own, operate and maintain Facilities in the Franchise Area and has not completed all restoration consistent with this Franchise.

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### 8. Performance and Maintenance Guarantees

8.1 Before undertaking any work or improvements within the Franchise Area as authorized by this Franchise, and if required by the City Engineer, or his/her designee, CNG shall furnish a performance bond, in a sum to be reasonably set and approved by the City Engineer as reasonably sufficient to ensure performance of CNG's obligations under this Franchise with respect to such work. Any such bond shall be conditioned so that CNG shall observe all the covenants, terms and conditions and faithfully perform all the obligations of this Franchise and applicable permit requirements with respect to such work. Further, the bond may be subject to requirements that CNG restore or replace any defective work or materials discovered in the restoration of the Franchise Area within a period of two (2) years from the final City inspection date of any such restoration. After completion of such work covered by the performance bond, CNG may request the release of the performance bond and the replacement with a maintenance bond. In the event that a bond furnished pursuant to this Section 8.1 is canceled by the surety, after proper notice and pursuant to the terms of said bond, CNG shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section 8.1.

8.2 With respect to undertaking any of the work authorized by this Franchise, in the event CNG fails to perform its obligations under this Franchise relating to such work and further fails to cure its deficiency after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by CNG pursuant to Section 8.1 to cure such deficiency. Neither the amount of such bond(s) nor the City's use thereof shall limit the City's full recovery from CNG of costs incurred by the City to cure such deficiency.

8.3 In the event the City makes use of the bond(s) furnished by CNG pursuant to Section 8.2, the City shall promptly provide written notice of the same to CNG. Within thirty (30) days of receipt of such notice, CNG shall replenish or replace such bond(s) in accordance with Section 8.1.

### 9. Work of Contractors and Subcontractors.

CNG's contractors and subcontractors performing work on behalf of CNG within the Franchise Area shall be licensed and bonded in accordance with applicable State law and City's ordinances, regulations, and requirements. Such work by CNG's contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by CNG. CNG shall be responsible for all such work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by CNG and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

### 10. Insurance.

10.1 CNG shall procure and maintain, for so long as CNG has Facilities in the Franchise Area, insurance and/or self-insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted hereunder to CNG, its agents representatives or employees. CNG shall procure insurance

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from insurers with a current A.M. Best rating of not less than A -. CNG shall provide a certificate of insurance and/or written confirmation of self-insurance and additional insured endorsement to the City for its inspection at the time of or prior to acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

10.1.1 Automobile Liability insurance with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage;

10.1.2 Commercial General Liability insurance, with limits no less than \$25,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU);

10.1.3 Workers' Compensation coverage to statutory limits as required by the Industrial Insurance laws of the State of Washington and employer's liability with limits not less than \$2,000,000;

10.1.4 Pollution insurance with limits no less than \$5,000,000 per claim and in the aggregate; and

10.2 Further, the parties agree that the coverage limits set forth in this Section 10.1, at the request of the City, may be reviewed and adjusted by the parties on or after the seventh (7th) anniversary of the Effective Date of this Franchise; provided any adjustments made shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the date the parties agree upon the adjustments and for the remainder of the term of this Franchise.

10.3 Any deductibles or self-insured retentions must be declared to and approved by the City. Such approval shall not be unreasonably withheld or delayed. Payment of deductible or self-insured retention shall be the sole responsibility of CNG. Additionally, CNG shall pay all premiums for the insurance on a timely basis. CNG may utilize self-insurance and excess/umbrella liability insurance policies to satisfy the insurance policy limits required in this section, provided any umbrella liability insurance policy provides "follow form" coverage over its primary liability insurance policies and shall specifically include an Additional Insured endorsement consistent with Section 10.4.

10.4 The insurance policies with the exception of Workers' Compensation obtained by CNG shall include the City, its officers, officials, employees, agents, and volunteers ("Additional Insureds"), as an additional insured with regard to activities performed by or on behalf of CNG. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy 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. CNG shall provide to the City prior to or upon acceptance either (1) a true copy of the additional insured endorsement for each insurance policy

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required in this Section 10 and providing that such insurance shall apply as primary insurance on behalf of the Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of CNG's obligations to fulfill the requirements. CNG's insurance shall be primary insurance as respects the Additional Insureds, and the endorsement should specifically state that the insurance is the primary insurance. Any insurance maintained by the Additional Insureds shall be in excess of CNG's insurance and shall not contribute with it.

10.5 CNG is hereby obligated to notify the City of any cancellation or intent not to renew any insurance policy required pursuant to this Section 10, thirty (30) days prior to any such cancellation. Within thirty (30) days prior to said cancellation or intent not to renew, CNG shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section 10. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 10 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 12 below. Notwithstanding the cure period described in Section 12, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

10.6 CNG's maintenance of insurance as required by this Section 10 shall not be construed to limit the liability of CNG to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, CNG's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by CNG.

10.7 As of the effective date of this Franchise, CNG is not self-insured. Should CNG wish to become self-insured at the levels outlined in this Franchise at a later date, CNG must provide the City with thirty (30) days advanced written notice of its intent to self-insure. In order to self-insure, CNG shall comply with the following: (i) provide a written attestation that CNG possesses the necessary amount of unencumbered financial assets to support the financial exposure of self-insurance, as evidenced by an outside auditor's review of CNG's financial statements; (ii) the City, upon request, may review CNG's financial statements; (iii) CNG is responsible for all payments within the self-insured retention; and (iv) CNG assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise. These requirements may be modified by written amendment executed by both parties.

### **11. Indemnification.**

11.1 CNG shall indemnify, defend and hold harmless the City, its officers, employees, agents and representatives, from any and all third party claims or suits (and any damages, costs, judgments, awards or liability resulting from such claims or suits) to the extent the same are caused by or arise out of (a) for injury or death of any person or damage to property to the extent the same is caused by the actual or alleged negligence or willful misconduct of CNG, its agents, contractors, subcontractors, servants, officers or employees in the performance of this Franchise and any rights granted hereunder, (b) the breach by CNG of any of its obligations under this Franchise, or (c) a violation of Laws or an improper release of Hazardous Substances to the extent

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the same is caused by CNG's Facilities or CNG in the exercise of its rights granted under this Franchise. In addition to the indemnity outlined above, CNG shall also be responsible for each of the following to the extent the same is caused by CNG's unlawful release of Hazardous Substances in violation of applicable Environmental Laws: (i) liability for a governmental agency's costs of removal or remedial action for such release by CNG of Hazardous Substances; (ii) damages to natural resources caused by such release by CNG of Hazardous Substances, including the reasonable costs of assessing such damages; (iii) liability for any other person or entity's costs of responding to such release by CNG of Hazardous Substances; and (iv) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any Environmental Laws that are caused by such release by CNG of Hazardous Substances.

11.2 Inspection or acceptance by the City of any work performed by CNG at the time of completion of construction shall not be grounds for avoidance by CNG of any of its obligations under this Section 11.2. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised, with CNG's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

11.3 The City shall promptly notify CNG of any claim or suit for which indemnification is provided under Section 11.1 and request in writing that CNG indemnify the City. The City's failure to so notify and request indemnification shall not relieve CNG of any liability that CNG might have, except to the extent that such failure prejudices CNG's ability to defend such claim or suit. If a conflict of interest exists between the City and counsel engaged by CNG to represent CNG and the City in connection with such claim or suit, CNG's obligations under Section 11.1 will remain in full force and effect and in such case CNG shall be further obligated to remedy the situation by resolving the conflict of interest or engaging (at no cost to the City) different or separate counsel that does not have a conflict of interest with the City. The City may, at its cost and expense, participate in the defense of any such action using counsel of its choice. In the event that CNG refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions 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 CNG, CNG shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision.

11.4 Solely to the extent required to enforce the indemnification provisions of this Section 11.4, CNG waives its immunity under Title 51 RCW, Industrial Insurance; provided, however, the foregoing waiver shall not in any way preclude CNG from raising such immunity as a defense against any claim brought against CNG by any of its employees. This waiver has been mutually negotiated by the parties.

11.5 To the extent a court of competent jurisdiction determines that this Franchise is subject to RCW 4.24.115, as it exists or may be amended, then, 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 CNG, if officers, officials, employees, and volunteers, and or the City, CNG's liability shall be only to the extent of CNG's negligence.

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11.6 Notwithstanding any other provisions of this Section 11, CNG assumes the risk of damage to its Facilities located in the Franchise Area from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or intentional misconduct of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. In no event shall the City or CNG be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. CNG further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or under users of CNG's Facilities as the result of any interruption of service due to damage or destruction of CNG's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or intentional misconduct of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

11.7 The provisions of this Section 11 shall survive the expiration, revocation, or termination of this Franchise.

### **12. Default and Enforcement.**

12.1 In addition to any other remedy provided in this Franchise, the City reserves the right to pursue any remedy available at law or in equity to compel or require CNG and/or its successors and assigns to comply with the terms of this Franchise and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation for breach of the conditions. In addition to any other remedy provided in this Franchise, CNG reserves the right to pursue any remedy available at law or in equity to compel or require the City, its officers, employees, volunteers, contractors and other agents and representatives, to comply with the terms of this Franchise. Further, all rights and remedies provided herein shall be in addition to and cumulative with any and all other rights and remedies available to either the City or CNG. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. Provided, further, that by entering into this Franchise, it is not the intention of the City or CNG to waive any other rights, remedies, or obligations as provided by law, equity or otherwise, and nothing contained in this Franchise shall be deemed or construed to affect any such waiver. The parties reserve the right to seek and obtain injunctive relief with respect to this Franchise to the extent authorized by applicable law and that the execution of this Franchise shall not constitute a waiver or relinquishment of such right.

12.2 If CNG shall fail to comply with the provisions of this Franchise, the City shall provide written notice of such non-compliance. Except in an emergency circumstance, or as otherwise described in this Franchise, CNG shall then have thirty (30) days to cure such violation; provided, however, if any failure to comply with this Franchise by CNG cannot be corrected with due diligence within said thirty (30) day period (CNG 's obligation to comply and to proceed with

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due diligence being subject to unavoidable delays and events beyond its control), then the time within which CNG may so comply shall be extended for such time as may be reasonably necessary and so long as CNG commences promptly and diligently to effect such compliance.

12.3 If following such cure period CNG fails to resolve the non-compliance issue, the City may pursue any available remedy at law or in equity or other remedies including but not limited to denial of pending or future permits until the issue is resolved and the issuance of stop work orders. In addition to the payment of any damages, the City shall have the right to repair any damage or defect in the Franchise Area, including restoration of the affected area, at CNG's sole cost and expense.

12.4 Termination of this Franchise shall not release either party from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release CNG from any obligation to remove or secure its Facilities and restore the Franchise Area pursuant to the terms of this Franchise.

### **13. Nonexclusive Franchise.**

This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area that do not interfere with CNG's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

### **14. Franchise Term.**

14.1 This Franchise is hereby granted for a term of ten (10) years from and after the date of the final acceptance of this Ordinance by CNG, herein referred to as the primary term. This franchise will automatically renew for successive periods of one (1) year unless cancelled at the end of a term by either party by written notice to the other party no less than one hundred eighty (180) calendar days prior to the end of the primary term or the then current successive term.

14.2 CNG shall have no rights under this Franchise nor shall CNG be bound by the terms and conditions of this Franchise unless CNG accepts the Franchise pursuant to Section 21.

### **15. Decommissioned Facilities; Post-Service Abandonment.**

15.1 Notification: CNG shall notify the City when it permanently discontinues use of and decommissions any of its Facilities within the Franchise Area. Such notification shall occur within thirty (30) calendar days of the date CNG decommissions the Facilities. This notification shall normally occur via a permit application for the work required within the Franchise Area.

15.2 CNG will normally abandon decommissioned facilities in place. CNG's abandonment procedures are documented in Company Procedures on file with the Washington Utilities and Transportation Commission. CNG will provide the City with a copy of the relevant procedure(s) upon request. The City will notify CNG if it is required that decommissioned facilities

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be removed from the Franchise Area. Upon notification, CNG will provide a mitigation plan for removing the decommissioned Facilities. The mitigation plan shall address how and when the Facilities will be removed and shall include any mitigation measures CNG proposes to address the impacts of the decommissioned Facilities to the Franchise Area. Unless otherwise approved by the City, removal and mitigation should be accomplished within one hundred and eighty (180) calendar days after the City's removal notification described above is given to CNG.

15.3 Within thirty (30) calendar days of receiving a mitigation plan submitted by CNG pursuant to this section, the City will review the plan and either approve the plan or require changes and resubmittal. The City will not unreasonably withhold approval of CNG's proposed plan, but may require changes if it determines, in its reasonable discretion, that the plan fails to adequately mitigate the impacts of CNG's permanently decommissioned Facilities. Following the City's approval of a mitigation plan, CNG shall promptly and in good faith implement the plan and obtain all required permits for its work in the Franchise Area.

15.4 In addition to any further requirements agreed upon by the City and CNG, (a) CNG shall, at CNG's expense, decommission such Facilities so as to render the Facilities safe in accordance with applicable law, (b) such decommissioned Facilities will continue to be subject to the terms of this Franchise (including but not limited to the relocation provisions in Section 5 and the indemnification provisions in Section 11), and (c) as requested by the City, CNG shall provide the City with maps that show the approximate location of such Facilities. In no case shall CNG be permitted to permanently decommission Facilities that are located above ground or overhead within the Franchise Area. Further, and for the avoidance of doubt, all Facilities permanently decommissioned by CNG within the Franchise Area will be deemed to be operated and maintained by CNG for purposes of this Franchise and continue to be subject to the terms of this Franchise.

15.5 If the Parties fail to agree upon a plan, CNG fails to comply with an approved plan, or circumstances require City action prior to approval of a plan, the City may, but is not required to, take such steps as it deems necessary to remove and/or mitigate for the impacts of the permanently decommissioned Facilities. Any costs incurred by the City as a result of CNG's failure to comply with its obligations under this Section 15 with respect to permanently decommissioned Facilities shall be reimbursed by CNG within thirty (30) calendar days of the City invoicing CNG for such costs.

15.6 Notwithstanding Section 15.1, if CNG becomes aware that removal of any decommissioned Facilities of CNG within the Franchise Area is required to eliminate or prevent an emergency or hazardous condition that endangers the property, life, health or safety of any person or entity, CNG shall promptly, at no cost to the City, remove such decommissioned Facilities.

15.7 If, after the expiration or termination of this Franchise, CNG at any time ceases to provide all natural gas service within the jurisdictional boundaries of the City and ownership of the Facilities of CNG within the Franchise Area is not transferred to a replacement or substitute



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natural gas service provider (including, without limitation, the City), CNG will continue to be responsible for maintaining such Facilities within the Franchise Area.

15.8 The provisions of this Section 15 shall survive the expiration or termination of this Franchise.

### **16. Assignment.**

16.1 CNG shall not assign this Franchise to any unaffiliated third party without the prior consent of the City, which consent shall not be unreasonably withheld or delayed. Any assignee shall, within forty five (45) days of the date of any assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise and provide the City the additional insured endorsements as required pursuant to Section 10 and any performance or maintenance guarantees as required by Section 8 ("Assignment Documents"). No assignment by CNG shall be effective prior to the City's receipt of the Assignment Documents. Notwithstanding the foregoing, CNG shall have the right, without such notice or such written acceptance or other such Assignment Documents, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

16.2 All the provisions, conditions, terms and requirements contained herein shall be binding upon CNG's successors and assigns and all privileges, as well as all obligations of CNG, shall inure to its successors and assigns equally as if they were specifically mentioned where CNG is named in this Franchise.

16.3 The City's approval of the assignment of this Franchise consistent with this Section 16 does not relieve CNG of any liabilities arising out of the terms of this Franchise to the extent such liabilities are accrued prior to the effective date of such assignment.

### **17. Recovery of Costs.**

17.1 As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon CNG. However, as provided in RCW 35.21.860, the City may recover from CNG actual administrative expenses incurred by the City that are directly related to: (i) receiving and approving a permit, license or this Franchise, (ii) inspecting plans and construction, or (iii) preparing a detailed statement pursuant to Chapter 43.21C RCW. In accordance with and subject to the foregoing, CNG hereby agrees to pay such actual administrative expenses incurred by the City, including the City's legal costs incurred that are directly related to receiving and approving this Franchise pursuant to RCW 35.21.860, within thirty (30) days of receipt of an invoice from the City. No permits shall be issued until such time as the City has received payment of this fee.

17.2 The City hereby reserves its right to impose a franchise fee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or if statutory prohibitions on the imposition of such fees are removed.

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17.3 The City expressly and specifically reserves all rights to recover costs and fees available to the City under applicable provisions of the Poulsbo Municipal Code to the fullest extent such rights are not in conflict with the terms or conditions of this Franchise or with RCW 35.21.860 or any other federal or state law.

### 18. Notice.

Any notice or information required or permitted to be given to the parties under this Franchise shall be sent to the following addresses unless otherwise specified by personal delivery, overnight mail by a nationally recognized courier, or by U.S. certified mail, return receipt requested and shall be effective upon receipt or refusal of delivery:

CITY OF POULSBO  
Attn: City Clerk  
200 NE Moe Street  
Poulsbo, WA 98370

CASCADE NATURAL GAS CORPORATION  
Attn: Region Director  
1520 S. 2nd St.  
Mount Vernon, WA 98273

With copy to

CITY OF POULSBO  
Attn: City Attorney  
200 NE Moe Street  
Poulsbo, WA 98370

### 19. Survival.

All of the provisions, conditions, and requirements of Section 5, Section 6, Section 7, Section 8, Section 10, Section 15 of this Franchise shall be in addition to any and all other obligations and liabilities CNG may have to the City at common law, by statute, or by contract, and shall survive this Franchise, and any renewals or extensions, to the extent provided for in those sections. All the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the successors, executors, administrators, legal representatives, and assigns of CNG and all privileges, as well as all obligations and liabilities of CNG shall inure to its successors and assigns equally as if they were specifically mentioned where CNG is named.

### 20. Miscellaneous.

20.1 If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise which shall continue in full force and effect. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

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20.2 This Franchise is subject to the provisions of any applicable tariff on file with the Washington Utilities and Transportation Commission ("WUTC") or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff on file with the UTC as of the effective date of this Franchise, the provisions of such tariff shall control.

20.3 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved by the City Council.

20.4 If, during the term of this Franchise, there becomes effective any change in federal or state law (including, but not limited to, a change in any tariff filed by CNG with the WUTC) and such change:

20.4.1 specifically requires or allows the City to enact a code or ordinance which conflicts with this Franchise; or

20.4.2 results in a CNG tariff that conflicts with this Franchise; then, in such event, either party may, within ninety (90) days of the effective date of such change, notify the other party in writing that such party desires to commence negotiations to amend this Franchise. Such negotiations shall only encompass the specific term or condition affected by such change in federal or state law and neither party shall be obligated to reopen negotiations on any other term or condition of this Franchise. Within thirty (30) days from and after the other party's receipt of written notice to so commence such negotiations, the parties shall, at a mutually agreeable time and place, commence such negotiations. The parties shall thereafter conduct such negotiations at reasonable times, in a reasonable manner, in good faith and with due regard to all pertinent facts and circumstances; provided, however, that (a) in the event the parties are unable, through negotiation, to reach mutual agreement upon terms and conditions of such amendment, then either party may, by written notice to the other, demand that the parties seek to arrive at such agreement through mediation or, if no such demand has previously been submitted, terminate this Franchise upon not less than ninety (90) days prior written notice to the other party; and (b) pending such negotiations, mediation and/or termination, and except as to any portion thereof which is in conflict or inconsistent with such change in federal or state law, the Franchise shall remain in full force and effect. For purposes of this Section, the term "mediation" shall mean mediation at the local offices of Judicial Arbitration and Mediation Services, Inc. ("JAMS"), or, if JAMS shall cease to exist or cease to have a local office, mediation at the local offices of a similar organization. The parties may agree on a jurist from the JAMS panel. If they are unable to agree, JAMS will provide a list of the three available panel members and each party may strike one. The remaining panel member will serve as the mediator.

20.5 This Franchise shall be construed in accordance with the laws of the State of Washington. The United States District Court for the Western District of Washington, and Kitsap County Superior Court have proper venue for any dispute related to this Franchise.

20.6 The cost of publication of this Franchise shall be borne by CNG.

## EXHIBIT D-4

20.7 The failure of either party to insist upon or enforce strict performance of any of the provisions of this Franchise or to exercise any rights under this Franchise shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

20.8 This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter within this Franchise and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

20.9 All rights and remedies provided herein shall be in addition to and cumulative with any and all other rights and remedies available to either the City or CNG. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

20.10 If a suit or other action is instituted in connection with any controversy arising out of this Franchise, each party shall pay all its own legal costs and attorney fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; provided, however, nothing in this section shall be construed to limit the City's right to indemnification under Section 11 of this Franchise.

20.11 The Franchise between the City and CNG adopted on September 19th, 1990 through Ordinance No. 90-33 ("1990 Franchise") and accepted by CNG on October 4th, 1990 is hereby superseded and replaced by this Franchise as of the Effective Date of this Franchise, and this Franchise, and all exhibits attached hereto shall constitute the entire Franchise between the parties. The grant of this Franchise shall have no effect on the requirements of the 1990 Franchise related to indemnification or insurance for the City against acts and omissions occurring during the period that the 1990 Franchise was in effect and during any period in which Franchisee's Facilities were in the Franchise Area.

20.12 Nothing in this Franchise shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party. This Franchise shall not confer any right or remedy upon any person other than the City and CNG. No action may be commenced or prosecuted against either the City or CNG by any third party claiming as a third-party beneficiary of this Franchise. This Franchise shall not release or discharge any obligation or liability of any third party to either the City or CNG.

### **21. Acceptance.**

This Franchise may be accepted by CNG by its filing with the City Clerk an unconditional written acceptance within thirty (30) days from the City's final approval and execution of this Franchise, in the form attached as Exhibit B. As part of acceptance of this Franchise, CNG shall file the certificate of insurance and the additional insured endorsements obtained pursuant to Section 10, any performance bonds, if applicable, pursuant to Section 8, and the costs described in Section 17.1. Failure of CNG to so accept this Franchise shall be deemed a rejection by CNG and the rights and privileges granted shall cease.

**EXHIBIT D-4**

**22. Corrections by City Clerk or Code Reviser.**

Upon approval by the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section or subsection numbering; or references to other local, state or federal laws, codes, rules, or regulations.

**23. Effective Date.**

This ordinance shall take effect and be in force five (5) days from and after its passage and publication as provided by law.

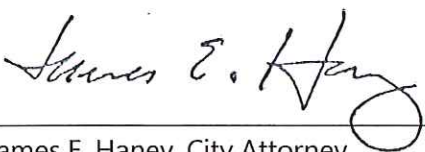
PASSED BY THE CITY COUNCIL OF THE CITY OF POULSBO THIS 8th DAY OF MAY, 2019; AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 8th DAY OF MAY, 2019.

  
\_\_\_\_\_  
Mayor Becky Erickson

Attest:  \_\_\_\_\_

Rhiannon Fernandez, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
James E. Haney, City Attorney

PUBLISHED: 05/17/19

EFFECTIVE: 05/22/19

## **EXHIBIT D-4**

### **SUMMARY OF ORDINANCE NO. 2019-09**

of the City of Poulsbo, Washington

On the 8th day of May, 2019, the City Council of the City of Poulsbo, passed Ordinance No. 2019-09. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE GRANTING CASCADE NATURAL GAS CORPORATION, A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE RIGHTS OF WAYS OF THE CITY OF POULSBO TO PROVIDE FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF GAS AND SUCH OTHER SERVICES AS MAY BE PROVIDED BY SUCH FACILITIES, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

DATED this 8th day of May, 2019.

  
\_\_\_\_\_  
CITY CLERK RHIANNON K. FERNANDEZ

**EXHIBIT D-4**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF POULSBO )

I, Rhiannon Fernandez, the duly qualified City Clerk of the City of Poulsbo, situated in the County of Kitsap, State of Washington, do hereby certify that the foregoing is a full, true and correct copy of Ordinance No. 2019-09, an ordinance of the City of Poulsbo, entitled:

ORDINANCE NO. 2019-09

AN ORDINANCE granting Cascade Natural Gas Corporation, a Washington corporation, its successors and assigns, the right, privilege, authority and franchise to set, erect, construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of transmission, distribution and sale of gas and such other services as may be provided by such facilities

I further certify that said Ordinance No. 2019-09 was: (i) introduced on the 1<sup>st</sup> day of May, 2019; (ii) submitted to the City Attorney on the 24 day of April, 2019; (iii) published on the 17 day of May, 2019 according to law; (iv) approved by a majority of the entire legislative body of the City of Poulsbo, at a regular meeting thereof on the 8 day of May, 2019; and (v) approved and signed by the Mayor of the City of Poulsbo on the 8 day of May, 2019.

WITNESS my hand and official seal of the City of Poulsbo, this 9 day of May, 2019.

 City Clerk  
City of Poulsbo, State of Washington

**EXHIBIT D-4**

STATEMENT OF ACCEPTANCE

Cascade Natural Gas Corporation for itself, its successors and assigns, accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached and incorporated by this reference. Cascade Natural Gas Corporation declares that it has carefully read the terms and conditions of this Franchise and unconditionally accepts all of the terms and conditions of the Franchise and agrees to abide by such terms and conditions. Cascade Natural Gas Corporation has relied upon its own investigation of all relevant facts and it has not been induced to accept this Franchise and it accepts all reasonable risks related to the interpretation of this Franchise.

Cascade Natural Gas Corporation

By: [Signature] Date: 5-9-19

Name: ERIC MARUSCELLI

Title: VP - FIELD OPERATIONS

**ACKNOWLEDGEMENT**

STATE OF WASHINGTON )  
 )SS.

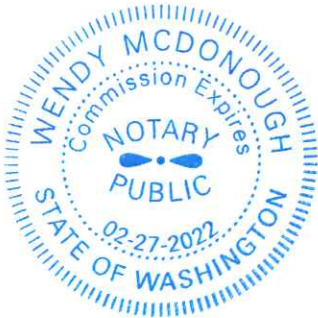
COUNTY OF Benton )

I certify that I know or have satisfactory evidence that Eric Maruscelli is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the Franchise Agreement, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 5/9/19

Notary Seal

[Signature]  
(Signature of Notary)



Wendy McDonough  
(Legibly Print or Stamp Name of Notary)  
Notary Public in and for the State of Washington  
My appointment expires: 2/27/22



*Wendy Corsi*  
1/12/11

ORDINANCE NO. 02-11

An Ordinance 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 pipeline facilities, together with equipment and appurtenances thereto, for the transportation, distribution and sale of natural gas within and through the City of Richland.

WHEREAS, Cascade Natural Gas Corporation (hereinafter "Grantee") has applied for a nonexclusive Franchise to operate and maintain a natural gas pipeline distribution system within and through the City of Richland (hereinafter the "City" or "Grantor"); and,

WHEREAS, the state statutes and City ordinances authorize the City to grant nonexclusive Franchises;

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

**Section I. Definitions**

For the purposes of this Franchise and all exhibits attached hereto, 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.

1.01 Construct or Construction shall mean installing, removing, replacing, and repairing Facilities and may include, but is not limited to, digging and/or excavating for the purposes of installing, removing, replacing, and repairing Facilities.

1.02 Effective Date shall mean the date designated herein, after passage, approval and legal publication of this Ordinance and acceptance by Grantee, upon which the rights, duties and obligations shall come in effect and the date from which the time requirement for any notice, extension and/or renewal will be measured.

1.03 Emergency shall mean a situation that requires immediate or prompt action by the Grantee to prevent or remediate a condition which causes or may cause a loss of natural gas service, leaking or blowing natural gas, damage to Facilities, property damage, or bodily injury.

1.04 Facilities shall mean the Grantee's natural gas pipeline system, lines, valves, mains, and other appurtenances used to transport or distribute natural gas.

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

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

1.07 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.

1.08 Pipeline Corridor shall mean the pipeline pathway through the Franchise Area in which the Facilities are located, including any Rights-of-Way, Public Property, and/or easement over and through private property.

## EXHIBIT D-5

1.09 Public Properties shall mean the present and/or future property owned or leased by Grantor within the present and/or future corporate limits or jurisdictional boundaries of the Grantor.

1.10 Operate or Operations shall mean the use of the Facilities for the transportation, distribution, handling and sale 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 property and areas located within the Franchise Area.

### Section 2. Grant of Authority

2.01 Grantor 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 the Facilities within the Franchise Area and to Construct, Operate, and Maintain within the Rights-of-Way.

2.02 This Franchise is non-exclusive. Grantor reserves all rights to its property, including, without limitation, the right to grant additional Franchises, easements, licenses and permits to others, provided that the Grantor 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 Grantor or limit its power to perform work upon its Rights-of-Way, Public Properties or make all necessary changes, relocations, repairs, maintenance, establishment, improvement thereto, or from using any of the Rights-of-Way and Public Properties, or any part of them, as the Grantor may deem fit from time to time, including the dedication, establishment, maintenance and improvement of all new Rights-of-Way and other Public Properties of every type and description.

2.03 This Franchise 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 the Grantee.

2.04 By granting this Franchise, the Grantor is not assuming any risks or liabilities, which shall be solely and separately borne by Grantee. Grantee agrees and covenants to, at its sole cost and expense, meet all reasonable and prudent industry standards to protect, support, and keep safe from harm the Facilities, or any part thereof, when necessary to protect the public health and safety.

2.05 This Franchise is intended to convey only a limited right and interest. It is not a warranty of title or interest in Grantor's Rights-of-Way or other Public Property. None of the rights granted herein shall affect the Grantor's jurisdiction over its property, streets or Rights-of-Way.

2.06 This franchise does not and shall not convey any right to Grantee to Construct the Facilities on, under, over, across, or to otherwise use Public Properties other than Rights-of-Way.

### Section 3. Term

3.01 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. This shall be referred to as the primary term. The franchise will automatically renew for successive periods of five (5) 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.

## EXHIBIT D-5

### Section 4. Assignment and Transfer of Franchise

4.01 This franchise shall not be leased, assigned or otherwise alienated without the express consent of the Grantor by ordinance, which approval shall not be unreasonably withheld.

4.02 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 the Grantee.

4.03 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.

### Section 5. Compliance with Laws and Standards

5.01 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 and their operation. 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 the Facilities.

5.02 In the case of any conflict between the terms of this Franchise and the terms of Grantor's ordinances, codes, regulations, standards and procedures, this Franchise shall govern.

5.03 That the rates to be charged for sale or transportation of natural gas for light, power, heat and other purposes by the Grantee, and character of the service to be rendered 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 6. Construction and Maintenance

6.01 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.

6.02 Except as to emergency repairs, grantee shall, prior to excavating within any street, alley or other public place, and installing any pipe, main, conduit or service line therein, file with the City Engineer 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 Grantor before proceeding with any such work. The Grantee shall conform to all requirements of Chapter 12.08 – Right of Way construction of the City code, as it currently exists or as it may be amended, except the bonding requirements shall be waived.

6.03 All Construction and/or Maintenance work as provided under Section 6.02 shall be performed in conformity with the plans and specifications filed with the Grantor, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by the Grantee.

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

6.05 Excavation work requiring a permit from the Grantor shall only commence upon the issuance of applicable permits by the Grantor, which permits shall not be unreasonably withheld or delayed. However, in the event of an emergency requiring immediate action by Grantee for the protection of the Facilities, Grantor'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

## EXHIBIT D-5

protect, support, and keep safe from harm the Facilities, or any part thereof; Grantor'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.

6.06 Unless such condition or regulation is in conflict with a federal or state requirement, the Grantor 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 Grantor'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 protecting any Rights-of-Way improvements, private facilities and public safety.

6.07 Whenever necessary, after constructing or maintaining any of Grantee's Facilities within the Rights-of-Way, the Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the surface disturbed by Grantee 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 Rights-of-Way. Such restoration shall be done in a manner consistent with applicable codes and laws and to the Grantor's satisfaction and specifications where applicable.

6.08 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.

6.09 Except for emergency repairs, Grantee shall provide written or verbal notice to property owners/occupants adjacent to the impacted right-of-way a minimum of 24 hours prior to work commencing. Efforts to provide said notice will be documented.

6.10 Grantee shall provide the Grantor maps showing the size, and location of the Facilities within the Franchise Area subject to the Grantor's agreement to maintain the confidentiality of such information. It is understood that the location of the Facilities shall be verified by excavating if exact alignment is required. Grantor agrees that it will comply with all state and federal laws prohibiting disclosure of Grantee's maps and information to any third party. Any map or information furnished to the Grantor pursuant to this Franchise shall remain the Grantee's proprietary information for all purposes. Grantee shall provide locates and field verify its facilities at no cost to the Grantor.

6.11 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.

6.12 Grantee shall at all times keep up-to date maps and records showing the location and sizes of all gas mains, lines, and service connections laid by it in the Franchised Area. Such maps and records shall be kept in Grantee's district operating office and shall be subject to inspection at all reasonable times by proper officials or agents of said City. Grantee shall provide at the City's request a copy of facilities maps for the City's use.

6.13 All mains and other lines of the Grantee shall be laid in accordance with current City public works regulations and project permit requirements. Unless otherwise approved by a representative of the Grantor, pipelines must maintain (parallel) five (5) feet separation from City water and sewer mains. Grantee 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 Grantee for a period of five (5) years after the excavation. Favorable weather conditions permitting, Grantee agrees to repair Rights-of-Way as a result of settling, subsidence, or other needed repairs or maintenance resulting from excavations made by Grantee within the prior five (5) years upon forty-eight (48) hours

## EXHIBIT D-5

notice excluding weekends and holidays. If Grantee fails to undertake such repairs as herein provided, the Grantor may perform at the repairs at Grantee's expense.

### Section 7. Operations, Maintenance, Inspection, Testing

7.01 Grantee shall operate, maintain, inspect and test its pipeline(s) and Facilities in the Franchise Area in full compliance with the applicable provisions of all federal, state and local laws, regulations and standards, as now enacted or hereafter amended, and any other future laws or regulations that are applicable to Grantee's pipeline(s) and Facilities, products and business operations.

7.02 If the federal Office of Pipeline Safety or the state regulatory agency significantly decrease their staffs, or if any congressional or legislative study indicates that federal or state regulatory oversight has significantly decreased in effectiveness during the term of this Franchise, then Grantor and Grantee agree to expeditiously negotiate new franchise provisions that will provide the City with access to detailed information regarding testing and inspection such as would have been routinely submitted to the federal or state regulatory agencies under the regulations in effect at the time of the Effective Date. If Grantor and Grantee fail to agree upon new franchise provisions, the issues shall be resolved through the Dispute Resolution provisions of Section 13.

### Section 8. Encroachment Management

8.01 Upon notification to Grantee of planned construction involving excavation or any activity that could abnormally load the pipeline, by either the City or any third party, within fifty (50) feet of Grantee's Pipeline Corridor, Grantee shall flag the precise location of its Facilities before the construction or activity commences and if requested by the City or third party contractor, provide a representative to inspect the construction when it commences, and periodically inspect thereafter to ensure that Grantee's Pipeline is not damaged by the construction or activity.

8.02 Upon the Grantor's reasonable request, in connection with the design of any Grantor's public works project, Grantee will verify the exact location of its underground Facilities within the Pipeline Corridor, including by excavating (pot holing) if reasonably necessary, at no expense to the Grantor. In the event Grantee performs such excavation, the Grantor shall not require any restoration of the disturbed area in excess of restoration to the same condition as existed immediately prior to the excavation.

### Section 9. Leaks, Spills, Ruptures and Emergency Response

9.01 During the term of this Franchise, Grantee shall have a written emergency response plan and procedure for locating leaks and ruptures and for shutting down valves as rapidly as possible.

9.02 Grantee's emergency plans and procedures shall designate Grantee's responsible local emergency response officials and a direct 24-hour emergency contact number for control center operator. Grantee shall, after being notified of an emergency, cooperate with the Grantor and make every effort to respond as soon as possible to protect the public's health, safety and welfare.

9.03 Upon the request of the Grantor, the parties agree to meet annually to review the emergency plans and procedures. Grantee shall coordinate this meeting with the Grantor.

9.04 Grantee shall be solely responsible for all necessary costs incurred by City, county, special district or state agencies in responding to any rupture or leak from Grantee's Facilities. This section shall not limit Grantee's rights or causes of action against any third party or parties who may be responsible for a leak other release from Grantees Facilities, including such third parties' insurers.

## EXHIBIT D-5

### Section 10. Relocation

10.01 In the event that Grantor 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 or any governmental agency or any person or entity acting in a governmental capacity, or on the behalf of, under the authority of, or at the request of the Grantor or any other governmental agency, undertakes any improvement project and the Grantor determines that the project might reasonably require the relocation of Grantee's Facilities, Grantor shall provide the Grantee at least one hundred and twenty (120) calendar days prior written notice or such additional time as may reasonably be required, of such project requiring relocation of Grantee's Facilities.

10.02 Grantor shall provide Grantee with copies of pertinent portions of the plans and specifications for the improvement project. Upon request, Grantee shall, at its cost and expense, determine and identify for Grantor the exact location of its pipeline(s) and Facilities potentially affected by the improvement project.

10.03 Grantee may, after receipt of written notice requesting a relocation of its Facilities, submit to the Grantor written alternatives to the relocation within forty five (45) calendar days of receiving the plans and specifications. The Grantor 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 Grantor, Grantee shall submit additional information to assist the Grantor in making the evaluation. The Grantor 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 Grantor ultimately determines that there is no other reasonable alternative, Grantee shall relocate its Facilities as proposed by the Grantor.

10.04 If any improvement project under section 10.01 is required in the interest of public health, safety, welfare, necessity or convenience, as adjudged in the sole discretion of the Grantor, the Grantee shall make such changes as required herein at Grantee's sole cost, expense and risk except to the extent such relocation may be eligible for reimbursement through funding from the United States of America or the State of Washington.

10.05 Grantor 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 Grantor's project objectives.

10.06 Grantee shall complete relocation of its Facilities so as to accommodate the 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 11. Removal, Abandonment in Place

11.01 With the express written consent of the Grantor, the Grantee may purge its pipeline(s) and Facilities, as directed by Grantor, and abandon them in place. Grantee shall be responsible for any environmental review required for the abandonment of any pipeline(s) and/or Facilities and the payment of any costs of such environmental review. Grantor's consent to the abandonment of Facilities in place shall not relieve the Grantee of the obligation and/or costs to remove or to alter such Facilities in the future in the event it is reasonably determined that removal or alterations is necessary or advisable for the health and safety of the public, in which case the Grantee shall perform such work at no cost to the Grantor. This provision shall survive the expiration, revocation or termination of this Franchise.

## EXHIBIT D-5

### Section 12. Violations, Remedies and Termination

12.01 In addition to any rights set out elsewhere in this Franchise, or other rights it may possess at law or equity, the Grantor 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 Grantor at law or equity.

12.02 Grantor 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 for operation of the Facilities, and fails to cure such breach or default within thirty (30) calendar days of Grantor'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 upon.

12.03 This Franchise shall not be terminated except upon a majority vote of the full membership of the City Council, after reasonable notice to Grantee and an opportunity to be heard.

12.04 In the event of termination under this franchise, Grantee shall immediately discontinue operation of the Facilities through the Franchise Area. Either party may in such case invoke the dispute resolution provisions herein. Alternatively, Grantor or Grantee may elect to seek relief directly in Superior Court, in which case the dispute resolution requirements shall not be applicable in this limited situation.

12.05 Grantor's failure to exercise a particular remedy at any time shall not waive Grantor'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.

12.06 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 pipeline pursuant to this Franchise and to restore the Franchise Area.

12.07 The parties acknowledge that the covenants set forth herein are essential to this Franchise, and, but for the mutual agreements of the parties to comply with such covenants, the parties would not have entered into this Franchise. The parties further acknowledge that they may not have an adequate remedy at law if the other party violates such covenant. Therefore, the parties shall have the right, in addition to any other rights they may have, to obtain in any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach, termination or threatened termination, or otherwise to specifically enforce any of the covenants contained herein should the other party fail to perform them.

### Section 13. Dispute Resolution

13.01 In the event of a dispute between Grantor and Grantee arising by reason of this Franchise, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Grantee to have oversight over the administration of this Franchise. The officers or representatives 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 attempt to achieve a resolution of the dispute

13.02 In the event that the parties are unable to resolve the dispute under the procedure set forth in this section, then 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. If the parties are unable to agree upon a mediator, the parties shall jointly obtain a list of seven (7) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a party fails to notify the other party of which mediator it

## EXHIBIT D-5

has stricken within two (2) business days, the other party shall have the option of selecting the mediator from those mediators remaining on the list. Any expenses incidental to mediation shall be borne equally by the parties.

13.03 If the parties fail to achieve a resolution of the dispute through mediation, either party may then pursue any available judicial remedies, provided that if the party seeking judicial redress does not substantially prevail in the judicial action, it shall pay the other party's reasonable legal fees and costs incurred in the judicial action.

### Section 14. Indemnification

14.01 General Indemnification. Grantee shall indemnify, defend and hold harmless Grantor from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by Grantor 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 pipeline and other appurtenant 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 Grantor by reason of the Facilities, Grantee shall defend the Grantor at the Grantee's complete expense, provided that, for uninsured actions or proceedings, defense attorneys shall be approved by Grantor, which approval shall not be unreasonably withheld.

14.02 Environmental Indemnification. Grantee shall indemnify, defend and save Grantor harmless from and against any and all liability, loss, damage, expense, actions and claims, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by Grantor in defense thereof, arising directly or indirectly from (a) Grantee's breach of any environmental laws applicable to the Facilities or (b) from any release of natural gas or other substance from the Facilities. This indemnity includes but is not limited to (a) liability for a governmental agency's costs of removal or remedial action; (b) damages to natural resources caused by the released substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to released substances; and (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws.

### Section 15. Insurance and Bond Requirements

15.01 During this Franchise, Grantee shall provide and maintain, at its own cost, insurance in the minimum amount of TEN MILLION UNITED STATES DOLLARS (\$10,000,000.00) for each occurrence, in a form and with a carrier reasonably acceptable to the Grantor, naming Grantor as an additional insured, to cover any and all insurable liability, damage, claims and loss as set forth in Section 14.01 above, and, to the extent such coverage is reasonably available in the commercial marketplace, all liability, damage, claims and loss as set forth in Section 14.02 above, except for liability for fines and penalties for violation of environmental laws as otherwise provided below. Insurance coverage shall include, but is not limited to, all defense costs. Such insurance shall include, but is not limited to, pollution liability coverage, at a minimum covering liability from sudden and accidental occurrences, subject to time element reporting requirements, and such other applicable pollution coverage as is reasonably available in the commercial marketplace. The insurance requirements of this section may be met through any combination of self insurance, primary or excess insurance coverage.

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



## EXHIBIT D-5

15.03 The indemnity provisions contained herein shall survive the termination of this Franchise and shall continue for as long as the Grantee's Facilities shall remain in or on the Franchised Areas or until the parties execute a new Franchise Agreement which modifies or terminates the indemnity provisions.

### Section 16. Receivership and Foreclosure

16.01 Grantee shall immediately notify the Grantor in writing if it: files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors; files an answer admitting the jurisdiction of the Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver or trustee of all or any part of its property including all or any parts of its business operations, pipeline(s) or Facilities within or affecting the Franchise Area.

16.02 Upon the foreclosure or other judicial sale of all or a substantial part of Grantee's business operations, or Facilities within or affecting the Franchise Area, or upon the termination of any lease covering all or a substantial part of the Facilities within or affecting the Franchise Area, or upon the occasion of additional events which effectively cause termination of Grantee's rights or ability to operate the Facilities within or affecting the Franchise Area, Grantee shall notify the Grantor of such fact, and such notification or the occurrence of such terminating events shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Franchise Agreement governing the consent of the Grantor to such change in control of the Grantee shall apply.

16.03 The Grantor shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless: a) Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this Franchise Agreement and remedied any existing violations and/or defaults; and b) Within said one hundred twenty (120) days, such receiver or trustee shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise Agreement granted to the Grantee except where expressly prohibited by Washington law or bankruptcy law.

### Section 17. Legal Relations

17.01 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.

17.02 Grantee accepts any privileges granted by Grantor to the Franchise Area, public Rights-of-Way and other Public Property 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 location of Facilities or the Facilities themselves 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 Grantor 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.

17.03 Grantee waives immunity under Title 51 RCW in any cases involving the Grantor and affirms that the Grantor and Grantee have specifically negotiated this provision, to the extent it may apply.

## EXHIBIT D-5

17.04 This Franchise shall not create any duty of the Grantor or any of its officials, employees or agents and no liability shall arise from any action or failure to act by the Grantor or any of its officials, employees or agents in the exercise of powers reserved to the Grantor.

17.05 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 Benton County, Washington.

### Section 18: Miscellaneous

18.01 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 actions 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 Agreement, either party may apply to a court of competent jurisdiction to reform or reconstitute the Franchise Agreement 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.

18.02 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.

18.03 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 Grantor. Grantee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

18.04 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.

18.05 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.

18.06 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.

18.07 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.

**EXHIBIT D-5**

Notices shall be directed to the parties as follows:

To the Grantor:

To Grantee:

City of Richland

Cascade Natural Gas

ATTN: Public Works Director

\_\_\_\_\_

840 Northgate Drive

\_\_\_\_\_

Richland, WA 99352

\_\_\_\_\_

19.08 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.

19.09 This Franchise Agreement 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 Agreement can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to the Franchise Agreement 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 pipeline(s) and/or Facilities are hereby superseded.

19.08 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.

19.09 The Effective Date of this Franchise shall be the 10 day of Jan, 2011, after passage, approval and legal publication of this Ordinance as provided by law, and provided it has been duly accepted by Grantee as herein above provided.

PASSED by the City Council of the City of Richland, at a regular meeting on the 4th day of January, 2011.

  
JOHN FOX  
Mayor

ATTEST:

  
DEBRA C. BARHAM, CMC  
Chief Deputy City Clerk

APPROVED AS TO FORM:

  
THOMAS O. LAMPSON  
City Attorney

Date of Publication: 1/9/11

**EXHIBIT D-5**

UNCONDITIONAL ACCEPTANCE BY GRANTEE:

I, the undersigned official of Cascade Natural Gas (insert name of Grantee), am authorized to bind Cascade Natural Gas (insert name of Grantee) and to unconditionally accept the terms and conditions of the foregoing Franchise (Ordinance No. 02-11), which are hereby accepted by Cascade Natural Gas (insert name of Grantee) this 21<sup>st</sup> day of December, 2010.

(insert name of Grantee)

By: [Signature]

Name: Tim Clark

Title: Vice President - Operations

Subscribed and sworn to before me this 21 day of DECEMBER, 2010

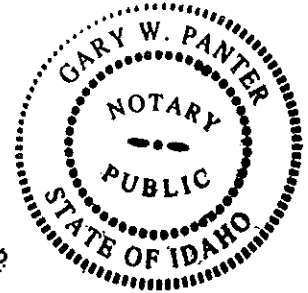
[Signature]

Notary Public in and for the

State of ~~Washington~~ Idaho

My commission expires July 20, 2012

Received on behalf of the City this 21 day of December, 2010



**EXHIBIT D-6**

ORDINANCE NO. 1638-09

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 SEDRO-WOOLLEY, 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 SEDRO-WOOLLEY DO ORDAIN AS FOLLOWS:

Section 1. That Cascade Natural Gas Corporation, its successors or 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 Sedro-Woolley, 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 Sedro-Woolley, 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 Sedro-Woolley, Washington, and elsewhere, and for the storage, distribution and sale of natural gas. 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

## EXHIBIT D-6

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 rendered by the Grantee shall be such as shall be prescribed by the Washington Utilities and Transportation Commission, 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 as near as practicable 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 30 days' notice to the Grantee,

## EXHIBIT D-6

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 dangerous to life or property, and Grantee upon demand, shall pay to the City all costs of such work, provided, that in the event of an emergency, the City is not required to provide any notice before conducting the 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, 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 its 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. In the event Federal, state or other funds are available in whole or in part for utility relocating purposes, the City should apply for such funds and the Grantee will be given credit to the extent any such funds are actually obtained subject to a

## EXHIBIT D-6

reasonable administrative fee for the City's costs in securing and administering the grant including any resulting audit fees of the grant program. The City 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 petitioners of said vacation will bear the expense of moving said facilities.

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 secure such permit prior to initiating work in accordance with current city public works requirements. 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; said emergency does not relieve Grantee from compliance with the city standards.

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,



## EXHIBIT D-6

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 Company to mortgage this franchise, together with the gas utility facilities and properties of the Company, within the City to secure any legal bond issue or other bonafide indebtedness of the Company, and express consent is hereby given to the mortgaging and assignment for security purposes of said franchise, facilities and properties by the Company to the Chase Manhattan Bank, N.A, with no requirement that the Trustees 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 Company 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

## EXHIBIT D-6

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 coverage and limits of liabilities, as required by the City.

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 the 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 competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any

## EXHIBIT D-6

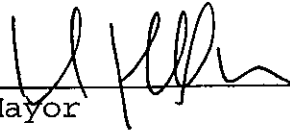
consideration or other obligation required of the Grantee. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 11. That this Ordinance shall be in full force and effect upon the passage thereof by the City Council and approved by the Mayor.

Introduced and read at the Sedro-Woolley City Council meeting held March 25, 2009.

**EXHIBIT D-6**


Passed by the City Council this 8th day of April, 2009.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
City Clerk

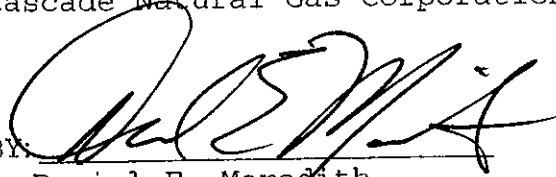
Approved as to form:

  
\_\_\_\_\_  
City Attorney

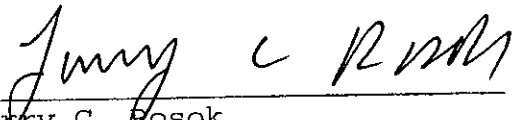
**EXHIBIT D-6**

The terms and conditions of the foregoing Franchise Ordinance Number 1638-09 are hereby accepted this 8th day of April, 2009.

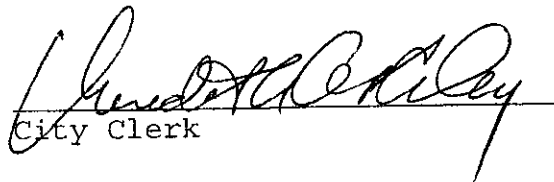
Cascade Natural Gas Corporation

BY:   
Daniel E. Meredith  
Designated Engineer

Attest:

  
Larry C. Rosok  
Assistant Corporate Secretary

Above acceptance received by:

  
City Clerk

Dated: May 1, 2009

**EXHIBIT D-7**

Walla Walla County Public Works  
P.O. Box 813  
990 Navion Lane  
Walla Walla, WA 99362

**FRANCHISE NO. 418**

**IN THE MATTER OF THE APPLICATION OF  
CASCADE NATURAL GAS CORPORATION  
FOR A FRANCHISE TO CONSTRUCT,  
OPERATE, AND MAINTAIN A UTILITY SYSTEM  
WITHIN THE COUNTY ROAD RIGHTS OF  
WAY, IN WALLA WALLA COUNTY, WASH-  
INGTON**

The application of Cascade Natural Gas Corporation., 200 N. Union, Kennewick, WA 99336, 509-736-5543, for a franchise to construct, operate, and maintain its natural gas utility system, and any new facilities Cascade Natural Gas may request, within the following County Road Rights of Way, hereinafter referred to as County road(s) as the same may now exist or hereafter be established in Walla Walla County, Washington, and more particularly described in Exhibit A:

Having come for a hearing before the Board of County Commissioners of Walla Walla County, Washington, on the 20th day of July, 2015, at the hour of 10:30 A.M., under the provisions of Chapter 36.55, RCW, and it appearing to the Board that notice of said hearing has been duly given as required by law, and that it is in the public interest to grant said franchise; now therefore,

**BE IT HEREBY RESOLVED**, by this Board of Walla Walla County Commissioners, that a franchise be granted to **Cascade Natural Gas Corporation**, its successors and assigns, hereinafter referred to as the Grantee, for a period of twenty (20) years from and after the date of this Resolution to construct, operate, and maintain said utility system within the permitted County road(s).



## EXHIBIT D-7

FRANCHISE NO. 418

This franchise is granted upon the following express terms and conditions, to wit:

I

### GRANTEE GIVEN FRANCHISE

That said Grantee, shall have the right and authority to enter upon the described County road rights of way for the purpose of repairing, operating, relocating, replacing, and maintaining said utility system (hereinafter referred to collectively as the "System").

II

### CONSTRUCTION TO BE PERMITTED AND APPROVED BY COUNTY ENGINEER

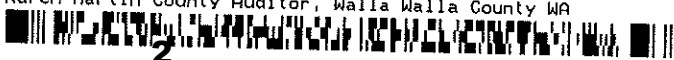
Any work which requires breaking of the surface of the County road(s), subject to this franchise, which includes but is not limited to the laying, relaying, connecting, disconnecting and/or repairing said system, and/or making connections to other facilities of the Grantee's, now in existence or hereafter constructed shall be governed by and conform to the general rules adopted by the officers charged with the supervision and care of such County road(s). All construction and installation work shall be subject to the approval and pass the inspection of the Walla Walla County Engineer or his designee. Prior to the commencement of construction of any portion of said system, the Grantee shall submit a completed "**Right of Way Permit**" together with plans and specifications, in duplicate, showing the depth and location of all lines and facilities sought to be installed. The plans and specifications shall specify, but not be limited to the following: (1) the class and type of material to be used; (2) the manner of excavation, construction, installation, and backfill; (3) the erection of temporary structures; (4) the erection of permanent structures; (5) traffic control; and (6) road obstructions or restrictions, all of which shall conform, as a minimum, to the Washington State Department of Transportation's **STANDARD SPECIFICATIONS FOR ROAD, BRIDGE AND MUNICIPAL CONSTRUCTION**. Said plans and specifications are hereinafter collectively referred to as the "**map of definite location**".

No work shall commence without first securing a written permit from the County Engineer. A copy of said permit, with all applicable conditions, shall be on the job site at all times.

The system shall be laid in substantial conformity with said map of definite location, except in instances in which deviation may be allowed thereafter in writing by the County Engineer. In order to obtain permission for the change the Grantee shall submit a written request to the County Engineer for his approval. Written confirmation of any approved change will be forwarded to the Grantee.

Any above ground installations within County Road Right(s) of Way shall conform with generally accepted clear zone policy unless approved otherwise by the County Engineer.

The Grantee, at its own expense and with all convenient speed, shall complete the work for which the surface has been broken and forthwith replace the County road(s) according to current Walla Walla County Road Standards; **PROVIDED**, however, that no such breaking of



## EXHIBIT D-7

### FRANCHISE NO. 418

the surface of the County road(s) shall be done prior to obtaining a written permit issued by the County Engineer.

In cases of emergency arising out of office hours when an immediate excavation may be necessary for protection of private or public property, the same shall be reported to the County Sheriff and the necessary excavation may be made upon the express condition that an application be made, in the manner herein provided on or before noon of the following working day.

The Grantee shall pay all reasonable costs and expenses incurred in the examination, inspection and approval of such restoration if required by the County Engineer.

### III

#### PERFORMANCE BOND

The County Engineer may require a performance bond in an amount sufficient to guarantee to Walla Walla County that such County road(s) shall be restored to current County Road Standards based on the plans and specifications described in Section II above. The amount of said bond will be fixed by the County Engineer.

### IV

#### INTERFERENCE WITH EXISTING FACILITIES AND NOTICE OF EXCAVATION

All construction or installation of such lines and facilities, service, repair, or relocation of the same, performed in, along, or under the County road(s), subject to this franchise, shall be done in such a manner as not to interfere with the construction and maintenance of other public or private utilities, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvement of such County road(s). The owners of all utilities, public or private, installed in such County road(s) prior in time to the lines and facilities of Grantee shall have preference as to the position and location of such utilities; such preference shall continue in the event of the necessity of relocating or changing the grade of any such County road(s).

Grantee shall comply with RCW 19.122.030 which requires all owners of underground facilities within a one-number locator service area to subscribe to the service. Subscription information may be obtained by contacting the one number utility locating service provider for this area.

### V

#### MINIMUM INTERFERENCE WITH TRAVELING PUBLIC LIABILITY FOR DAMAGE

All work done under this franchise shall be done in a thorough and workman like manner. In the laying of utility lines, the construction of other facilities, the opening of trenches, and/or the tunneling under County road(s) the Grantee shall leave such trenches, ditches, and tunnels in such a way as to interfere as little as possible with public travel and/or public





**EXHIBIT D-7**

FRANCHISE NO. 418

safety. Provisions shall be made to maintain through traffic whenever practicable. Permission to close any County road shall have prior approval of the County Engineer. The Grantee shall assume full responsibility for all traffic control which includes but is not limited to, barricading, signing, and flagging. All traffic control shall be in compliance with the **Manual on Uniform Traffic Control Devices (MUTCD)**. The Grantee shall take all due and necessary precautions to guard said work so that damage or other injury shall not occur or arise by reason of such work; and where any of such trenches, ditches, or tunnels have to be left open at night, the Grantee shall place warning lights and barricades in compliance with the **Manual On Uniform Traffic Control Devices** and at such a position as to give adequate warning to such work. The Grantee shall assume all liability and save the County harmless of any liability for any injury to person or persons or damage to property sustained through its carelessness or neglect, or through any failure or neglect to properly guard or give warning of any trenches, ditches, or tunnels excavated or maintained by the Grantee.

The County Commissioners, upon oral or written notice to the Grantee, may at any time do, order, or have done any and all work that they consider necessary to restore, to a satisfactory condition, any such County road(s) left by the Grantee or its agents in a condition that excessively restricts or impedes traffic or creates a condition of potential liability to the County. The Grantee, upon demand, shall pay to the County all costs of such work within 30 calendar days of their receipt of the billing. Failure of the Grantee to make timely payment shall result in the County proceeding with appropriate action.

**VI**

**ALL COUNTY ROAD RIGHTS RESERVED**

Walla Walla County, in granting this franchise, does not waive any rights which it now has or may hereafter acquire with respect to County road(s) and this franchise shall not be construed to deprive the County of any powers, rights, or privileges which it now has or may hereafter acquire for the use and control of the County road(s) covered by this franchise.

**VII**

**COUNTY MAY CHANGE AND IMPROVE ROADS WITHOUT LIABILITY**

If at any time Walla Walla County improves or changes any County road(s) subject to this franchise by grading or regrading, planking, or paving the same, changing the grade, altering, changing, repairing, or relocating the same or by construction of drainage facilities the Grantee upon written notice from the County Engineer shall, at its sole expense and within the time specified by the County Engineer, change the location or readjust the elevation of the system so that the same shall not interfere with such County work and so that such system shall conform to such new grades or routes as may be established. Walla Walla County will in no way be held liable for any damages to said Grantee that may occur by reason of any of the County's improvements, changes, or work above enumerated, except for damage caused by negligence of the County's employees or agents.

In the event Federal, State, or other financial assistance funds are available for utility displacement or relocating expenses, Walla Walla County will apply for such assistance funding on behalf of the Grantee. If any such Federal, State, or other utility displacement or



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relocation assistance funds are actually obtained by Walla Walla County the Grantee will be reimbursed in the amount of the funds received.

All work performed by the Grantee under this section shall be under the direction, approval, and pass the inspection of the County Engineer. The Grantee shall pay all costs incurred in the examination, inspection, and approval of such work done by the Grantee if required by the County Engineer.

### VIII

#### REFERENCE MONUMENTS AND MARKERS

Before any work is performed under this franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, and all other surveys the Grantee shall reference all such monuments and markers. The reference points shall be located so that they will not be disturbed during the Grantees' operations under this franchise. The method of referencing these monuments or other points shall be approved by the County Engineer. The cost of monuments or other markers lost, destroyed, or disturbed and the expense of replacement with approved monuments shall be borne by the Grantee. All monuments or markers affected by the Grantees' operation shall be replaced within 30 calendar days of the completion of said operation by a Licensed Professional Land Surveyor licensed in the State of Washington. The estimated cost of monument replacement may be included in the bond required in Section III above.

### IX

#### VACATION OF COUNTY ROADS - ALTERNATE ROUTE

If at any time Walla Walla County should vacate or dispose of any County road(s) which are subject to rights granted by this franchise and said vacation or disposal should be for the purpose of acquiring the fee or other property interest in said County road(s) for the use of Walla Walla County, in either its proprietary or governmental capacity, the Board of Walla Walla County Commissioners will retain an easement and the right to exercise and grant easements in respect to the vacated land for the construction, repair, and maintenance of public utilities and services and to the greatest extent possible deny applications for the placement of permanent structures over and above said public utilities and services.

### X

#### GRANTEE TO INDEMNIFY COUNTY - LIABILITY INSURANCE

The Grantee does hereby agree to protect and save harmless Walla Walla County from all claims, actions, or damages of every kind and description which may be asserted against such County by reason of the Grantees' acts in connection with the construction, operation, and maintenance of the system. In case suit or action is brought against Walla Walla County for damages arising out of or by reason of the above mentioned causes the Grantee shall, upon written notice to the Grantee of the commencement of said action, defend the same at its sole cost and expense. In case a final judgment shall be rendered against Walla Walla County in such suit or action the Grantee shall fully satisfy said judgment within 90 days after said suit or action shall have finally been determined by trial court or appellate

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court(s), if appeal be taken, if determined adversely to Walla Walla County. Upon the Grantee's failure to satisfy said final judgment within the 90 day period, the Board of Walla Walla County Commissioners may upon due notice terminate this franchise.

For the purpose of securing to the County full and complete performance of the covenants in this contract the Grantee shall, at its own expense, procure and keep in force during the life of this franchise liability insurance with a limit of not less than \$1,000,000. The Grantee agrees that provisions will be included naming the County, the County Commissioners, and the County's employees as an additionally insured party. The minimum liability limit may be raised upon written notice to the Grantee to maintain coverage commensurate with inflation. Said liability insurance shall be with a company or companies licensed to do business in the State of Washington. A Certificate of Insurance naming Walla Walla County as an additional insured shall be furnished to the County on an annual basis, as required in writing by the County Engineer. Such insurance to provide that the policy shall not be canceled without 30 days prior written notice to the County.

Acceptance by the County of any work performed by Grantee shall not waive this covenant.

**XI**

**FRANCHISE NOT EXCLUSIVE**

This franchise shall not be deemed to be an exclusive franchise. It shall in no manner prohibit said Walla Walla County from granting other franchises of a like nature or franchises for other public or private utilities under, along, across, over, and upon any of the County road(s) subject to this franchise and shall in no way prevent or prohibit Walla Walla County from constructing, altering, maintaining, or using any of said County road(s) or its jurisdiction over them or any part of them with full power to make all necessary changes, relocations, repairs, and maintenance as the County may deem appropriate.

**XII**

**PROVISIONS HEREOF BIND SUCCESSOR**

All provisions, conditions, regulations, and requirements herein contained shall be binding upon the successors and assigns of the Grantee and all privileges, obligations, and liabilities of the Grantee shall inure to its successors and assigns as if they were specifically mentioned wherever the Grantee is mentioned.

**XIII**

**COUNTY ROADS ANNEXED BY MUNICIPALITIES**

Whenever any of the County road(s) designated in this franchise are subsequently incorporated by any city or town this franchise shall terminate in respect to said County road(s) so included in said city or town limits. However, this franchise shall continue in full force and effect as to all designated County road(s) not included in said city or town limits. The Grantee shall be responsible for notifying said city or town of its incorporation of the Grantees' system and shall satisfy said city or town requirements for franchises.

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**XIV**

**REVOCAION FOR NON-COMPLIANCE**

If the Grantee shall violate or fail to comply with any of the provisions of this franchise or fail to heed or comply with any notice given the Grantee under the provisions of this franchise the Grantee shall forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the County Commissioners; **PROVIDED**, however, the Board of County Commissioners shall give 30 days written notice of its intention to revoke or annul the franchise during which period the Grantee shall have the right to rectify such violation or failure to comply.

**XV**

**TERMS OF FRANCHISE SHALL RUN WITH LAND**

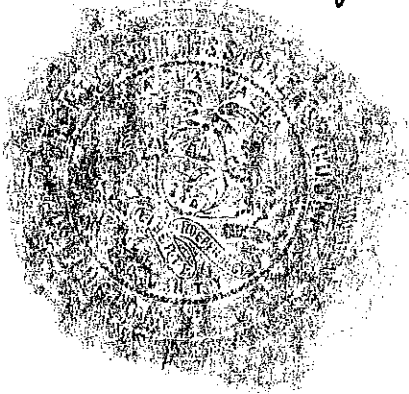
The terms of this franchise shall constitute a covenant running with the land described on Exhibit A, or any other lands serviced by the franchise, and it shall be binding on any successors or assigns of such land, unless this Franchise is modified by the Board of County Commissioners.

**XVI**

**GRANTEE TO FILE ACCEPTANCE**

The full acceptance of this franchise and all its terms and conditions shall be filed in writing with the Clerk of the Board of Walla Walla County Commissioners before the hearing date and shall be a condition precedent to its taking effect and unless the franchise is accepted by the Grantee, as hereinafter stated, this grant shall be null and void.

Dated this <sup>7<sup>th</sup></sup> 20 day of July, 2015.



Board of Walla Walla County Commissioners

Perry L. Dozier  
Perry L. Dozier, Chairman, District 2

James K. Johnson  
James K. Johnson, Commissioner, District 1

James L. Duncan  
James L. Duncan, Commissioner, District 3

ATTEST:

Connie R. Vinti

Clerk of the Board of Walla Walla  
County Commissioners

Franchise No. 418 – Cascade Natural Gas Corporation



EXHIBIT D-7

FRANCHISE NO. 418

ACCEPTANCE

The undersigned Grantee, **Cascade Natural Gas Corporation**, hereby accepts all the terms and conditions of this franchise, for itself and for its heirs, executors, administrators, successors, and assigns, being Franchise No. 418, dated MAY 28<sup>th</sup>, 2015.

Dated this 1<sup>ST</sup> day of JUNE, 2015.

[Handwritten Signature]  
Authorized Signature

ERIC MARCUSCELLI VP-OPERATIONS  
Typed or Printed Name and Title of Authorized Signatory

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Typed or Printed Name and Title of Authorized Signatory

STATE OF WASHINGTON )

) ss.

COUNTY OF WALLA WALLA )

On this day personally appeared before me Eric Marcuscelli, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he/she signed the same as his/her free and voluntary act and covenant, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal the day and year last above written.

(SEAL)

WENDY MCDONOUGH  
Notary Public  
State of Washington  
My Commission Expires  
December 06, 2017

[Handwritten Signature]  
Notary Signature

Wendy McDonough  
Notary Printed Name

Notary Public in and for the State of Washington.

residing at Kennewick, WA.  
City

12/6/17  
My appointment expires



**EXHIBIT D-7**

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**Exhibit A**

All that part of County Road rights of way in Township 6 and 7 North, Ranges 35 and 36 East, W.M. in Walla Walla County, Washington, excepting the area that is currently within the City of Walla Walla or the City of College Place city limits or may be annexed during the term of this franchise.

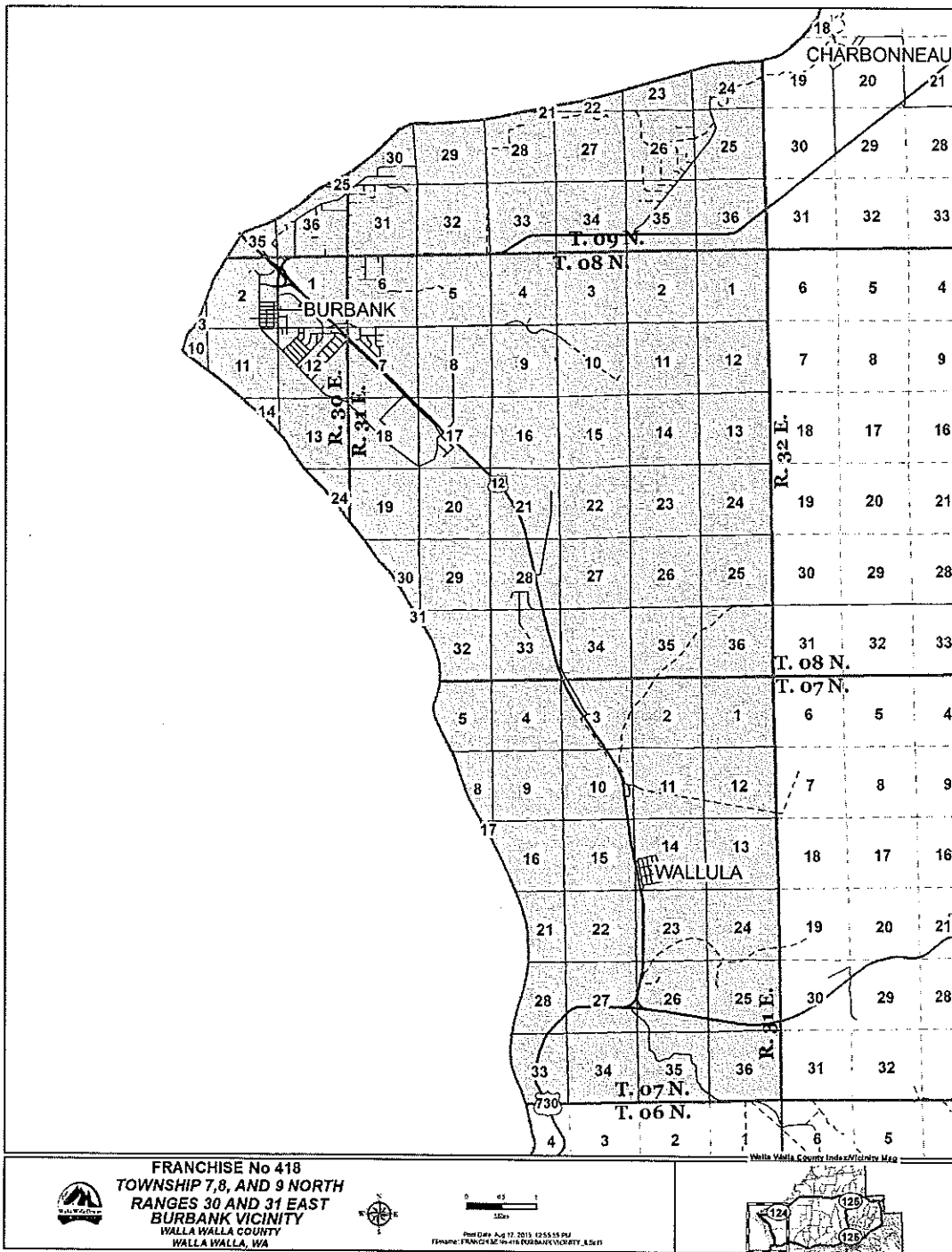
All that part of County Road rights of way in Township 7, 8, and 9 North, Ranges 30 and 31 East, W.M. in Walla Walla County, Washington.



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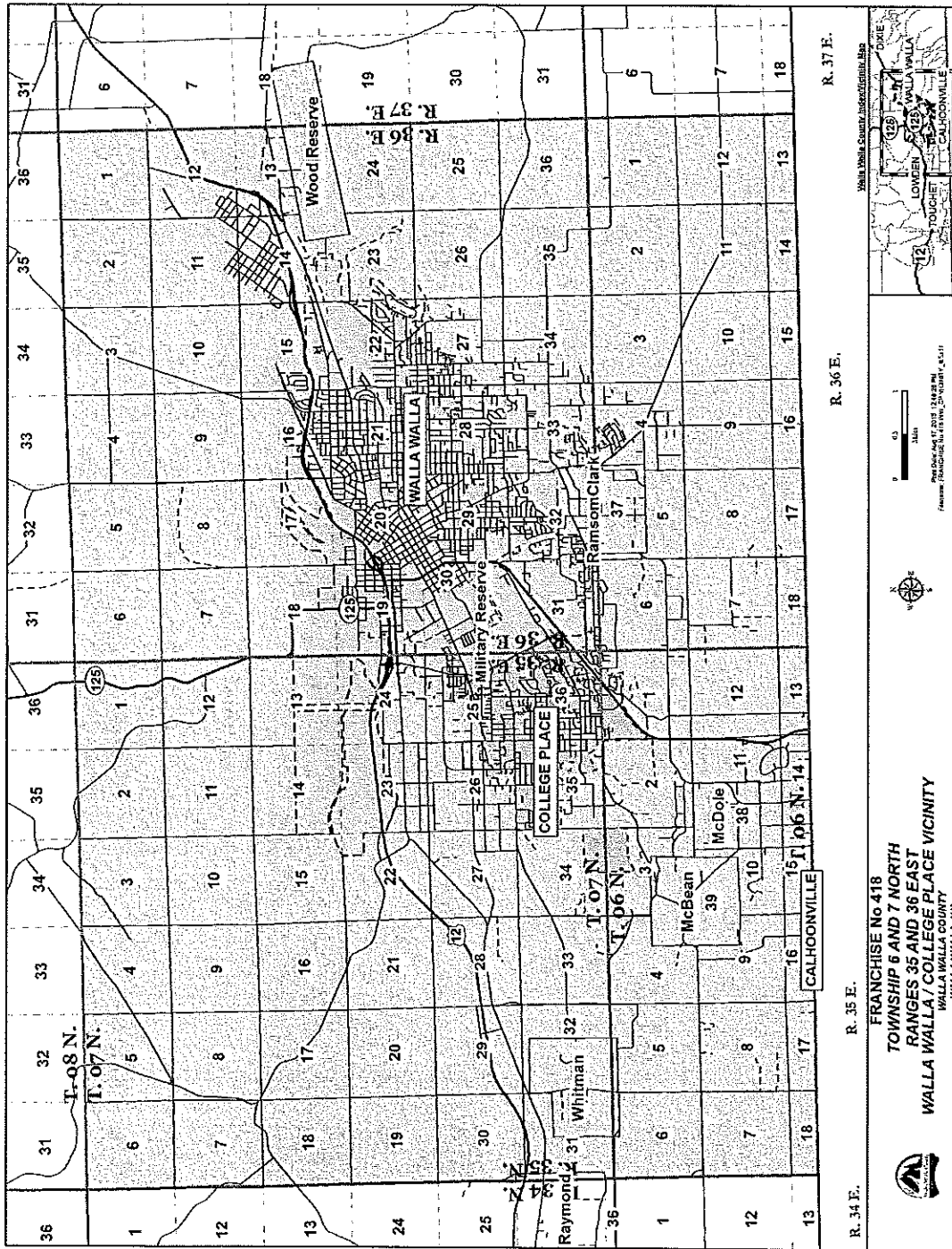
**Map of System  
Burbank**



**EXHIBIT D-7**

FRANCHISE NO. 418

**Map of System  
Walla Walla and College Place**



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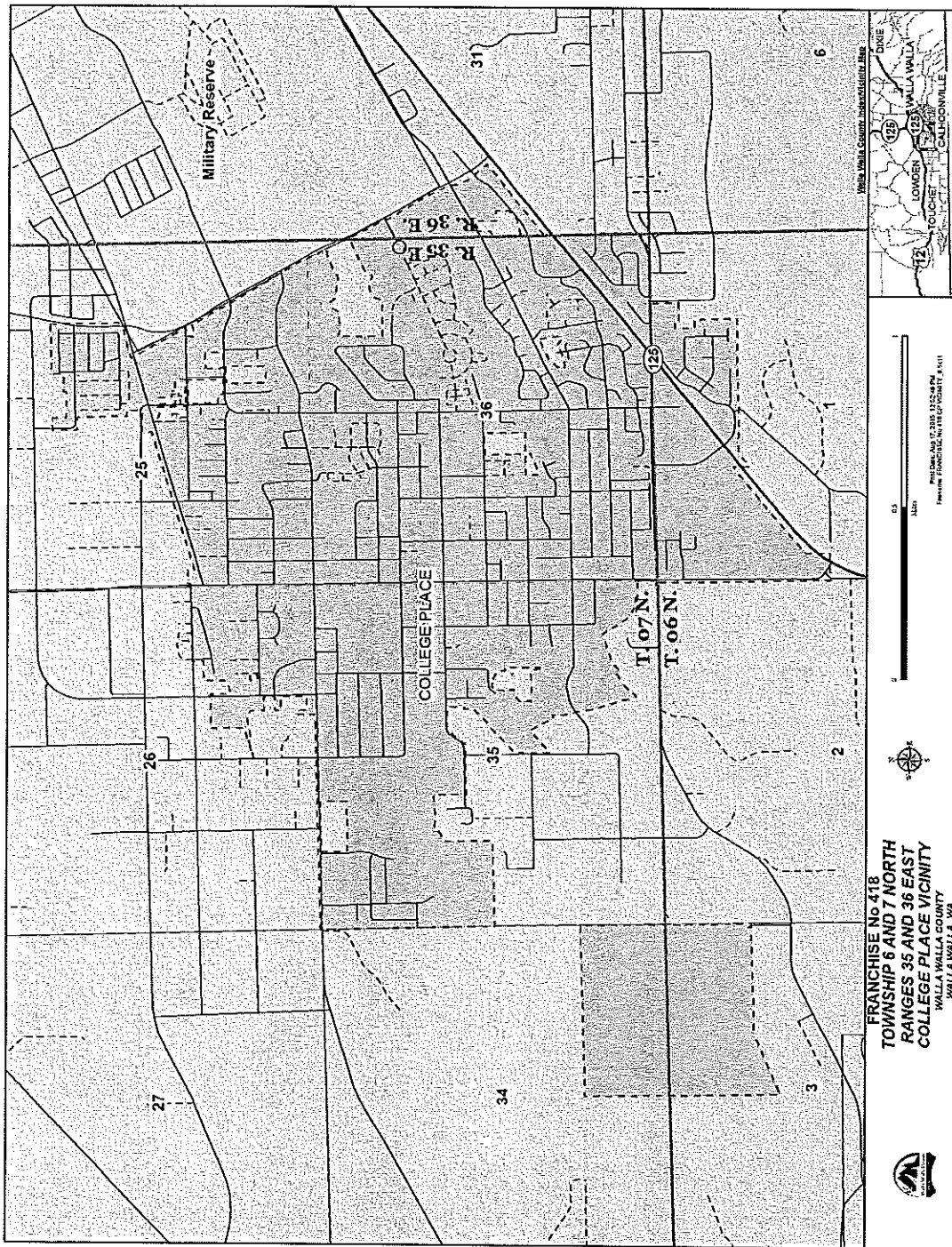




**EXHIBIT D-7**

FRANCHISE NO. 418

**Map of College Place**



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