

ORDINANCE 2014 - 10



AN ORDINANCE of the City of Sunnyside, 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 Pipeline Facilities, Together with Equipment and Appurtenances Thereto, for the Transportation of Natural Gas Within and Through the City of Sunnyside

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 Sunnyside, 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 SUNNYSIDE, 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 2nd day of September, 2014, 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.

1.3 Environmental Laws shall include the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the

Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D RCW all as amended from time to time; or any other valid and applicable federal, state, or local statute, code, or ordinance or valid and applicable federal or state administrative rule, regulation, ordinance, order, decree, or other valid and applicable governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment.

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

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

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

1.7 Hazardous Substance shall mean any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant. The term shall specifically include natural gas, petroleum and petroleum products and their by-products, residue, and remainder in whatever form or state. The term shall also be interpreted to include any substance which, after release into the environment, will or may reasonably be anticipated to cause death, disease, injury, sickness, illness, behavior abnormalities or, genetic abnormalities.

1.8 Maintenance or Maintain shall mean examining, testing, inspecting, repairing, maintaining and replacing the existing pipeline(s) and/or 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 existing or future distribution system and/or 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 its existing pipeline(s) and/or 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 the Grantee for the use or location of its Facilities upon public property of the City other than specifically described above as Rights-of-Way and Public Ways, without prior written agreement identifying the terms and conditions of such use.

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

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

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

Section 4. Assignment and Transfer of Franchise.

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

4.2 Subject to the foregoing, Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than 120 days prior to the proposed date of transfer: (a) Complete information setting forth the nature, terms and conditions of the proposed assignment or transfer; (b) All information reasonably required by the City of a franchise applicant with respect to the proposed assignee or transferee; c) Any other information reasonably required by the City, including information about the proposed assignee's or transferee's safety record; and, d) An application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing and investigating the proposed assignment or transfer.

4.3 No transfer shall be approved unless the assignee or transferee has at least the legal, technical, financial, and other requisite qualifications to carry on the activities of the 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, the 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 pipeline and its 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 pipeline(s) and 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 laws, in which it has been determined that federal law has preemption, the federal 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, the 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. City may require such additional information, plans and/or specifications as are in City's opinion necessary to protect the public health and safety during the Construction and/or Maintenance work and for the remaining term of this Franchise.

6.3 All Construction and/or Maintenance work shall be performed in general conformity with the maps and specifications filed with the City and in conformity with City-issued permits. The City reserves the right to identify the exact location within the right-of-way for the location of Grantee's facilities reserving portions of the right-of-way for the specific location of other future utility lines.

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

6.5 Except in the event of an emergency, Grantee shall provide 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 pipeline(s) or 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 withheld or delayed. However, in the event of an emergency requiring immediate action by Grantee for the protection of the pipeline(s) or 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 pipeline(s) and/or Facilities, or any part thereof; 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 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 pipeline(s) or Facilities within the Franchise Area, the 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.

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

6.10 Markers demarcating the pipeline's location 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.

6.11 Upon request by the City to the Grantee, the Grantee shall within a reasonable period, provide a survey depicting a specific location requested by the City, along with other known utilities, landmarks, and physical features.

6.12 Grantee shall also provide detailed as-built design drawings showing the size, depth and location of all pipes, valves, gauges, other service appurtenances and Facilities within the Franchise Area.

6.13 Within thirty (30) days of completing any Maintenance or Construction, or any other substantial activity within the Franchise Area, the Grantee shall provide updated and

corrected as-built drawings and a survey showing the location, depth and other characteristics of the 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 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, the Grantee may initiate dispute resolutions provided in Section 14 below.

Section 7. Customer Service Line Location Standards.

7.1 All pipelines of Grantee's Facilities shall be laid at industry standard 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. 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 and maintain at its own expense, all service devices, street services, and regulating and measuring devices and service lines, as may be necessary to supply service to customers within the City. Such service line requirement shall extend only to services to the curb line from the main line where the main is in a City street and to the abutting property line where Grantee's main is in an alley. The Grantee shall make all reasonable extensions for supplying service to customers within the City in accordance with Grantee's Tariffs as filed with the Washington Utilities and Transportation Commission.

Section 8. Operations and Maintenance.

8.1. Grantee shall operate and maintain its pipeline(s) and Facilities in the Franchise Area in full compliance with the applicable provisions of Title 49, Code of Federal Regulations, Part 195, 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 assess leaks or defects to Grantee's Facilities and take appropriate action.

8.2 All excavators working in proximity to Grantee's Facilities are required to notify Grantee at least two (2) business days prior to the start of any work pursuant to the requirements of the State of Washington One-Number Locator Service Law (RCW 19.122). 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 and that the work did not abnormally load the Grantee's Facilities or impair the effectiveness of Grantee's cathodic protection system.

Section 9. Encroachment Management.

9.1 Upon notification to Grantee of planned construction by another utility provider within ten (10) feet of Grantee's Facilities, Grantee shall flag the precise location of its Facilities before the construction commences, provide a representative to inspect the construction when it commences, provide a representative to inspect the construction when it commences, and periodically inspect thereafter to ensure that Grantee's Facilities are not damaged by the construction.

9.2 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 coordinate 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.

10.3. Leaks, spills, ruptures and other emergencies shall be investigated as required by applicable state and federal regulations. Grantee shall notify the City of any uncontained leak, spill or other release from its Facilities within the Franchise Area constituting a safety hazard within one (1) business day of its detection.

Section 11. Required Relocation of Facilities.

11.1 In the event that 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, City 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 pipeline(s) and/or Facilities.

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 the Grantee's Facilities by a third party is to cause or facilitate the construction of an improvement project consistent with the City's Capital Facilities Plan; Transportation Improvement Program; or the Transportation Facilities Program, or other similar plan, then the 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 the Grantee to apply for and obtain any local, state or federal funds that may be available for the relocation of the Grantee's Facilities provided, however, that the Grantee's application for such funds may not delay the City's improvement project.

11.3 City 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 City the exact location of its pipeline(s) and 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 City shall work cooperatively with Grantee in determining and providing a viable and practical route within which Grantee may relocate its Facilities, in order to minimize costs while meeting City's project objectives.

11.6 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 12 Removal, Abandonment in Place.

12.1 In the event of the removal of all or a portion of the pipeline(s) or 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 City's reasonable satisfaction. Grantee shall be responsible for any environmental review required for the removal of any pipeline(s) and/or Facility and the payment of any costs of the environmental review.

12.3 If Grantee is required to remove its pipeline(s) and/or Facilities and fails to do so and/or fails to adequately restore the Franchise Area or other mutually agreed upon action(s), City may, after reasonable notice to Grantee, remove the pipeline(s) and/or Facilities, restore the premises and/or take other action as is reasonably necessary at Grantee's expense. This remedy shall not be deemed to be exclusive and shall not prevent the City from seeking a judicial order directing that the Facilities be removed.

12.4 In the event of Grantee's permanent cessation of use of any pipeline(s) or 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. Upon abandonment, Grantee shall provide notice to the City. In the event an abandoned facility results in service right-of-way surface disturbance 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 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 City may also 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 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, Grantee shall immediately discontinue operating its Facilities in the Franchise Area upon 30 days written notice from the City to disconnect. 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, and Grantee has received written notice to disconnect service.

13.4 City's failure to exercise a particular remedy at any time shall not waive 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 pipeline pursuant to this Franchise and to restore the Franchise Area.

Section 14. Dispute Resolution.

14.1 In the event of a dispute between 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, and the City Manager, on behalf of the City, 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 Yakima County, Washington, before the Yakima 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, the Grantee shall be permitted to continuously operate 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 City in defense thereof, to the extent caused by the Grantee, its agents, contractors or subcontractors, the installation, construction, operation, use, location, testing, repair, maintenance, removal, or abandonment of Grantee's pipeline(s) and/or 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 pipeline and appurtenant 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.

15.2 Environmental Indemnification. Grantee shall indemnify, defend and hold harmless the City, its agents, officers and employees, 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 City in defense thereof, arising directly or indirectly from (a) Grantee's breach of any environmental laws applicable to the pipeline or (b) from any release of a hazardous substance on or from the pipeline or (c) other activity related to this Franchise by Grantee, its agents, contractors or subcontractors. This indemnity includes but is not limited to (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

15.3 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 the Grantee and the City, its officers, officials, employees, and volunteers, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under industrial insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 16. Insurance and Bond Requirements.

16.1 During this Franchise, Grantee shall provide and maintain, at its own cost, liability insurance in the minimum amount of FIVE MILLION UNITED STATES DOLLARS (\$5,000,000.00) for each occurrence, in a form and with a carrier reasonably acceptable to the City, naming City as an additional insured, to cover any and all insurable liability, damage, claims and loss as set forth in Section 15.1 above, and, to the extent such coverage is reasonably available in the commercial marketplace, all liability, damage, claims and loss as set forth in Section 15.2 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. In the event that a deductible applies to the insurance herein, Grantee agrees to pay the amount of that deductible. Grantee shall be able to meet all insurance requirements herein through a combination of self-insurance, insurance, and excess insurance.

16.2 Proof of insurance shall be provided to the City prior. 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. However, if the 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 The indemnity and insurance 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 these indemnity, insurance and bond provisions.

Section 17. Information Sharing.

17.1 In addition to information required in other section of this Franchise, the Grantee shall provide to the City, upon reasonable written request or as required by applicable regulations.

Section 18. Franchise Fee and Costs.

18.1 The Grantee shall collect and pay, as additional consideration for the grant of this Franchise, a natural gas use tax as authorized by RCW 35.21.870 which shall be an amount levied pursuant to the Sunnyside Municipal Code 5.04.040.

Section 19. Legal Relations.

19.1 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.

19.2 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 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 City or the general public. Grantee shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of the pipeline or other activities permitted under this Franchise.

19.3 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 Yakima County, Washington.

Section 20. Miscellaneous.

20.1 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 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.

20.2 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.

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

20.4 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.

20.5 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.

20.6 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.

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

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

Notices shall be directed to the parties as follows:

To the City:

Don Day, City Manager
City of Sunnyside
818 Edison Avenue
Sunnyside WA 98944

To the Grantee:

Cascade Natural Gas Corporation
Attn: Operations Franchise
200 N Union St
Kennewick WA 99336

20.8 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.

20.9 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.

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

PASSED by the City Council of the City of Sunnyside, Washington, and approved as provided by law this 25th day of August, 2014.

First Reading: August 11, 2014

Second Reading: August 25, 2014



JAMES A. RESTUCCI, MAYOR

ATTEST:



DELILAH SAENZ, CMC, CITY CLERK

APPROVED AS TO FORM:



KERR LAW GROUP, PLLC
Attorneys for the City of Sunnyside

Date of Publication: 8-27-14

UNCONDITIONAL ACCEPTANCE BY GRANTEE

I, the undersigned official of CNGC (insert name of Grantee), am authorized to bind CNGC (insert name of Grantee) and to unconditionally accept the terms and conditions of the foregoing Franchise (Ordinance No. 2014-10), which are hereby accepted by CNGC (insert name of Grantee) this 25th day of SEPTEMBER, 2014

Eric Martuscelli
(insert name of Grantee)

By: [Signature]

Name: ERIC MARTUSCELLI

Title: VP-OPERATIONS

Subscribed and sworn to before me this 25th day of September, 2014

TRUDY ALLEN SMITH
Notary Public
State of Washington
My Commission Expires
September 01, 2016

[Signature]
Notary Public in and for the State of Washington
My commission expires 9-1-2016

Received on behalf of the City this 29th day of September, 2014

[Signature]

Name: Delilah Saenz

Title: City Clerk