

ORDINANCE NO. 1636

AN ORDINANCE EXTENDING THE GRANT TO 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 LYNDEN.

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

WHEREAS, the current Franchise Agreement with Cascade Natural Gas Corporation (hereinafter "Grantee") adopted by Ordinance No. 1413 on January 3, 2012, had a ten-year term with an option for a ten-year extension;

WHEREAS, the initial ten-year term expires on January 25, 2022; and

WHEREAS, the City of Lynden considers the continuation of the services provided by the Grantee to be in the best interest of the public.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNDEN, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1: Term. The City approves the Franchise Agreement extension with Cascade Natural Gas Corporation, for a term of ten (10) years which will expire on January 25, 2032.

Section 2: Entire Franchise. The Franchise Agreement attached hereto as "Exhibit A" constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings or prior agreements including prior Franchise Agreements written or otherwise shall be binding upon the parties upon execution of this Franchise Agreement.

Section 3: Acceptance. Within thirty 30 days after the passage and approval of this Ordinance this Franchise Agreement must be accepted by Grantee by its filing with the City Clerk an unconditional written acceptance thereof Failure of the Grantee to so accept this Franchise within said period of time shall be deemed a rejection thereof and the Existing Franchise shall be deemed to have expired without renewal and thereafter to be null and void and the rights and privileges herein granted shall after the expiration of the thirty 30 day period absolutely cease and desist unless the time period is extended by ordinance duly passed for that purpose.

Section 4: Effective Date. This Ordinance being an exercise of a power specifically delegated to the City legislative body shall take effect five 5 days after passage and publication of a summary thereof consisting of the Title to this Ordinance.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, ___ IN FAVOR ___
AGAINST, AND SIGNED BY THE MAYOR THIS ___ DAY OF _____,
2021.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A

FRANCHISE AGREEMENT

Between

THE CITY OF LYNDEN, WASHINGTON

And

CASCADE NATURAL GAS CORPORATION

Franchise

This Franchise (hereinafter “the Franchise”) is between the City of Lynden (hereinafter “City”) and Cascade Natural Gas Corporation (hereinafter “Grantee”)

The City, having determined that the financial legal and technical ability of the Grantee is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future Natural Gas needs of the community, desires to enter into the Franchise with the Grantee for the construction, operation, and maintenance of a Natural Gas Transportation and Distribution System on the terms and conditions set forth herein

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Section 1. 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.

- 1.1. **Construct or Construction** shall mean placing, removing, replacing, adding new, and repairing Facilities and may include, but is not limited to, digging and/or excavating for the purposes of placing, removing, replacing, adding new, and repairing Facilities.
- 1.2. **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.
- 1.3. **Facilities** shall mean the Grantee's pipeline system, lines, valves, mains, appurtenances, and all other Facilities necessary for the purpose of transportation and/or distribution of Grantee's product(s).
- 1.4. **Franchise** shall mean this Franchise and any amendments, exhibits, or appendices to this Franchise.
- 1.5. **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.
- 1.6. **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 bi-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.
- 1.7. **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.
- 1.8. **Pipeline Corridor** shall mean the pipeline pathway through the Franchise Area in which the pipeline(s) and or Facilities of the Grantee are located, including any Rights-of-Way, Public Property, and/or easement over and through private property.
- 1.9. **Public Properties** shall mean the present and/or future property owned or leased by City within the present and/or future corporate limits or jurisdictional boundaries of the City.
- 1.10. **Operate or Operations** shall mean the use of Grantee's existing pipeline(s) and/or Facilities for the transportation, distribution and handling of natural gas within and through the Franchise Area.
- 1.11. **Rights-of-Way** shall mean 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.

- 1.12. **Encroachment** shall mean any third party activity within the Pipeline Corridor which is not authorized by Grantee.
- 1.13. **Crossing** shall mean any third party activity within the Pipeline Corridor which is authorized by Grantee, whether or not Grantee's facilities are actually crossed or bisected.

Section 2. Grant of Authority.

- 2.1. 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 and future pipeline(s) and/or Facilities necessary for the transportation, distribution and handling of natural gas within the existing and future Pipeline Corridor passing through the Franchise Area.
- 2.2. This Franchise is non-exclusive. The 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 Properties, 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 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 City 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.
- 2.3. 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.
- 2.4. 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. It is not a warranty of title or interest in the City's Rights-of Way or other Public Property. None of the rights granted herein shall affect the City's jurisdiction over its property, streets or Rights-of-Way.

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. Subsequently, City Council will consider renewing this Franchise, at the written request of Grantee, for an additional ten (10) year renewal period at any time within two (2) years before the end of the Franchise's original ten (10) year term, unless either party

expresses its intention in writing and at least two years before the end, to terminate this Franchise at the conclusion of the original ten (10) year 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.
- 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) Any information reasonably required by the City of a franchise applicant, including information about the proposed assignee's or transferee's safety record; and,
 - (c) An application fee which shall be set by the City to recover 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.

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 the City's ordinances, codes, regulations, standards and procedures, this Franchise 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 that requires disturbance of any Public Properties, the Grantee shall first file with the City such detailed plans, specifications and profiles of the intended work as may be required by the City. 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 such Construction and/or Maintenance work and for the remaining term of this Franchise.
- 6.3. All Construction and/or Maintenance work requiring disturbance of any Public Properties shall be performed in conformity with the plans, specifications and profiles filed with the City, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by the Grantee.
- 6.4. 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 from time to time amended.
- 6.5. Except in the event of an emergency, Grantee shall provide City at least thirty (30) calendar days written notice prior to any Construction and/or Maintenance requiring disturbance of any Public Properties by Grantee, its agents, employees or contractors on Grantee's pipeline(s) or Facilities within the Franchise Area.
- 6.6. Unless otherwise approved by the City in writing, any replacement or construction of gas mains under street surfaces that have been constructed or resurfaced within the last five (5) years shall be done using a trenchless technology so as not to disturb or otherwise degrade the recently constructed roadway surface.
- 6.7. Disturbance of any Public Properties 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, the 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; 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.
- 6.8. 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.

- 6.9. Whenever necessary, after constructing or maintaining any of Grantee's pipeline(s) or Facilities within the Public Properties of 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 reference and restore any property corner monuments, survey reference or hubs that were disturbed or destroyed during Grantee's work in the areas covered by this Franchise, per WAC 332-120, as from time to time amended. 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.
- 6.10. 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 within Public Properties under this Franchise and additionally to those owners or other persons in control of property in the Franchise Area when the Maintenance or Construction will affect access or otherwise impact the property.
- 6.11. Markers demarcating a High Pressure Pipeline's location shall be placed on the surface permitting line of sight at any location on the pipeline and in each side of any road or water crossing so as to provide clear warning of the presence of the pipeline but in a manner that does not interfere with trails or other public uses in that area. A "High Pressure Pipeline" as that term is used in this subsection means any pipeline operating above two hundred fifty pounds per square inch gauge. Grantee shall comply with the provisions of WAC 480-93-124 as hereinafter amended with respect to pipeline markers.
- 6.12. Upon acceptance of this Franchise by Grantee, the Grantee shall file and thereafter maintain at all times with the City a survey depicting the location of the Pipeline Corridor within the Franchise Area as well as the approximate location of Grantee's pipeline(s) and Facilities within the Pipeline Corridor along with all other known utilities, landmarks, and physical features. The City shall maintain the confidentiality and prevent disclosure of such pipeline and facility locations to the extent permitted by law.
- 6.13. Upon the City's reasonable request, Grantee shall also provide to the City copies of drawings in use by Grantee showing the location of its Facilities within the franchise area. Grantee shall also provide the same information in a digital file format that can be readily incorporated as an overlay into the City's GIS system maps. The City shall use the "one call" number, 811, for utility locate purposes and not rely on Grantee provided mapping information for locates. The City shall maintain the confidentiality and prevent disclosure of such information the extent permitted by law.
- 6.14. On an annual basis at the city's request, Grantee will provide updated drawings and electronic files of its system which will include any new construction that has taken place within that year. The City shall maintain the confidentiality and prevent disclosure of such information to the extent permitted by law.
- 6.15. Nothing in this Franchise shall be deemed to impose any duty or obligation upon the 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 the City.

- 6.16. 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.

Section 7. Operations, Maintenance, Inspection, Testing.

- 7.1. 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.
- 7.2. 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, the City agrees 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. Grantee agrees to cover all reasonable costs incurred by City for expert assistance in interpreting the testing and inspection data. If the City and Grantee fail to agree upon new franchise provisions, the issues shall be resolved through the Dispute Resolution and Arbitration provisions of Sections 12 and 13.

Section 8. Encroachment and Crossing Management.

- 8.1. Upon notification to Grantee of planned construction 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 mark the precise location of its Facilities before the construction commences, and upon the City's request 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. In situations where the work in the Pipeline Corridor requires that the depth of the pipeline be accurately known as determined by Grantee, prior to work commencing, Grantee shall pothole or take other action as Grantee deems necessary to ascertain the depth and exact location of the pipeline in the area of the work.
- 8.2. Upon the City's reasonable request, in connection with the design of any City project, Grantee will verify the exact location of its underground Facilities within the Pipeline Corridor by excavating (pot holing) at no expense to the City. In the event Grantee performs such excavation, the City 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, Pressure, Emergency Management and Response.

- 9.1. Grantee shall have in place, at all times during the term of this Franchise, a system for remotely monitoring pressures and flows across the Franchise Area.
- 9.2. During the term of this Franchise, Grantee shall have a written pipeline emergency response plan and procedures for locating leaks, and ruptures, for shutting down valves or isolating sections of their system as rapidly as possible, and specifically for ensuring a prompt, effective and coordinated response with the City to any type of emergency involving a Facility.
- 9.3. Grantee will upon acceptance of this Franchise provide the City with a copy of its pipeline emergency response plans and procedures, including, but not limited to, emergency response for leaks or ruptures. Grantee will provide the City an updated copy of its pipeline emergency response plans and procedures, annually within each calendar year.
- 9.4. Emergency response plans shall comply with all federal and state regulations governing emergency plans. Grantee's pipeline emergency plans and procedures shall designate their responsible local emergency response officials and a direct 24-hour emergency contact number for control center/gas control 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.
- 9.5. Upon prior written request of the City, the City and Grantee agree to meet annually to review Grantee's pipeline emergency response plans and procedures. If the parties disagree as to the adequacy of Grantee's pipeline emergency response plans or procedures, the parties will submit the plans and procedures to independent, third party review. If the review recommends that Grantee make modifications or additions to their emergency response plan, Grantee shall consider such recommendation in good faith. If Grantee declines to follow the recommendations, Grantee shall provide a written report to the City explaining the rationale for not following such recommendations. Grantee shall pay the cost of the third party review identified in this subsection.
- 9.6. Grantee shall be solely responsible for all necessary costs incurred by the City in responding to any rupture or leak from Grantee's Facilities, when said incident is due to either a lack of compliance, defective condition, or faulty act or omission by Grantee, including, but not limited to, detection and removal of any contaminants from air, earth or water, and all actual remediation costs. Further, Grantee shall promptly reimburse the City for any and all costs the City reasonably incurs in responding to any emergency that is caused by: (1) any faulty act or omission by Grantee, (2) lack of compliance, or (3) defective condition. 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 or spill from Grantee's Facilities, including such third party's insurers.
- 9.7. In addition to the notification requirements in the emergency response plan, Grantee shall notify the local 911 emergency call center immediately of any 911 Reportable Event.
- 9.8. If requested by the City in writing, Grantee shall follow up any 911 Reportable Event or any other event reasonably determined by the City to have caused a threat to public safety, with a written summary of the event, including, but not limited to, the leak, or rupture's date, time, amount, location, response, remediation, cause, and other agencies

Grantee has notified. Such follow-up summary shall be provided to the City within thirty (30) days of Grantee's receipt of the City's written request.

- 9.9. Following any event reasonably determined by the City to implicate or to have implicated public safety and where federal or state regulators have not yet investigated, the City may request the WUTC or other applicable regulatory agency to investigate any such event.
- 9.10. If the WUTC or other applicable regulatory agency investigates any event that implicates or has implicated public safety and then recommends that Grantee make modifications or additions to Grantee's Facilities or to Grantee's policies or procedures, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow such recommendations, Grantee shall provide a written report to the City explaining its rationale for not following said recommendations. The parties agree to resolve any dispute over whether to follow the recommendations under Section 13 (Arbitration Clause).
- 9.11. Grantee will provide concurrent notice to the City of any application by Grantee for waiver of any state or federal gas safety rule applicable to the integrity or safety of Grantee's natural gas Facilities located in the City of Lynden.

Section 10. Relocation.

- 10.1. In the event that the City undertakes or approves the construction of or changes to the grade or location of any water, electric, 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 City or any other governmental agency, undertakes any improvement project and the City determines that the project might reasonably require the relocation of Grantee's Facilities, the 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.
- 10.2. The 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 the City the exact location of its pipeline(s) and Facilities potentially affected by the improvement project.
- 10.3. 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.
- 10.4. If any improvement project under this Section 10 is required in the interest of public health, safety, welfare, necessity or convenience, as adjudged in the sole discretion of the City, the Grantee shall make such changes as required herein at Grantee's sole cost, expense and risk.

- 10.5. 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.
- 10.6. 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 11. Removal, Abandonment in Place.

- 11.1. Except as otherwise provided in this Section, in the event the Grantee permanently ceases use of any of its Facilities within the Franchise Area, Grantee shall, within one hundred and eighty days (180) after such permanent cessation of use, or such additional time as is agreed to between the parties, remove such Facilities at its sole cost and expense; provided that with the express written consent of the City, Grantee may leave such Facilities in place subject to the conditions set forth in this Section. Any such Facilities to be left in place shall be made inert by purging all natural gas from such Facilities (including displacement of natural gas with an appropriate inert gas) and disconnecting and sealing such Facilities, all in compliance with applicable regulations and industry standards. The City's consent shall not relieve Grantee of the obligation and/or costs to subsequently remove or alter such Facilities in the event the City reasonably determines that such removal or alteration is appropriate or advisable for the health and safety of the public, in which case Grantee shall perform such work at no cost to the City.
- 11.2. If Grantee is required to remove its Facilities and fails to do so and/or fails to adequately restore property or other mutually agreed upon action(s), the City may, after reasonable notice to Grantee, remove the Facilities, restore the property 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.
- 11.3. The parties expressly agree that the provisions of this section shall survive the expiration, revocation or termination of this Franchise.

Section 12. Dispute Resolution.

- 12.1 If there is any dispute or alleged default with respect to performance under this Franchise, the City shall notify Grantee in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within seven (7) days of its receipt of such notice, Grantee shall provide written response to the City that shall acknowledge receipt of such notice and state Grantee's intentions with respect to how Grantee shall respond to such notice. Grantee shall further have thirty (30) days (the "cure period") from its receipt of such notice to:
 - (a) Respond to the City, contesting the City's assertion(s) as to the dispute or any alleged default and requesting a meeting in accordance with Section 12.2; or
 - (b) Resolve the dispute or cure the default; or
 - (c) Notify the City that Grantee cannot resolve the dispute or cure the default within thirty (30) days, due to the nature of the dispute or alleged default. Notwithstanding such notice, Grantee shall promptly take all reasonable steps to begin to resolve the

dispute or cure the default and notify the City in writing and in detail as to the actions that will be taken by Grantee and the projected completion date. In such case, the City may set a meeting in accordance with Section 12.2.

- 12.2** If any dispute is not resolved or any alleged default is not cured or a meeting is requested or set in accordance with this Section, then the City shall promptly schedule a meeting between the City and Grantee to discuss the dispute or any alleged default. The City shall notify Grantee of the meeting in writing and such meeting shall take place not less than ten (10) days after Grantee's receipt of notice of the meeting. Each Party shall appoint a representative who shall attend the meeting and be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. Any dispute (including any dispute concerning the existence of or any corrective action to be taken to cure any alleged default) that is not resolved within ten (10) days following the conclusion of the meeting shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute or any alleged default through other legal means consistent with Section 12 of this Franchise. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.
- 12.3** If, at the conclusion of the steps provided for in Section 12.1 and 12.2 above, the City and Grantee are unable to settle the dispute or agree upon the existence of a default or the corrective action to be taken to cure any alleged default, the City or Grantee (as Grantee may have authority to do so by the terms of this Franchise) may:
- (a) Take any enforcement or corrective action provided for in City code, as from time to time amended; provided such action is not otherwise in conflict with the provisions of this Franchise; and/or
 - (b) Demand arbitration, pursuant to Section 13 below, for disputes arising out or based on Subsection 2.2, Section 5, Section 6, Section 7, Section 10.
 - (c) By ordinance, and after reasonable notice to Grantee and an opportunity to be heard, declare an immediate forfeiture and revocation of this Franchise for a breach of any material, non-arbitrable, obligations under this Franchise; and/or
 - (d) Take such other action to which it is entitled under this Franchise or any applicable law.
- 12.4** Unless otherwise agreed by the City and Grantee in writing, the City and Grantee shall, as may reasonably be practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute.

Section 13. Arbitration.

- 13.1** The Parties agree that any dispute, controversy, or claim arising out of or relating to the Arbitrable Claims, shall be referred for resolution to a binding arbitration proceeding under Chapter 7.04A RCW. The subsections of this Section 13 (Arbitration Clause) and Chapter 7.04A RCW shall govern the arbitration. In the event of any inconsistencies

between this Arbitration Clause, and Chapter 7.04A RCW the terms of this Arbitration Clause shall take precedence over Chapter 7.04A RCW.

- 13.2** The arbitrators shall allow such discovery as is appropriate to the purposes of arbitration in accomplishing a fair, speedy and cost-effective resolution of the dispute(s). The arbitrators shall reference the Washington State Rules of Civil Procedure then in effect in setting the scope and timing of discovery. The arbitrators may enter a default decision against any Party who fails to participate in the arbitration proceedings.
- 13.3** The arbitrator shall have the authority to award any and all damages allowed by governing law. Such damages may include, but shall not be limited to: all costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items; all costs and expenses of any staff; all costs and expenses of any labor (including, but not limited to, labor of any contractors and/or subcontractors); all pre-arbitration costs and expenses of consultants, attorneys, accountants, professional and other services; and all taxes, insurance, interest expenses, overhead and general administrative costs and expenses, and other costs and expenses of any kind incurred in connection with the dispute. The arbitrator may award equitable relief in those circumstances where monetary damages would be inadequate.
- 13.4** Any award by the arbitrators shall be accompanied by a written opinion setting forth the findings of fact and conclusions of law relied upon in reaching the decision. The award rendered by the arbitrators shall be final, binding and appealable only under the provisions of Chapter 7.04A RCW.
- 13.5** Except as provided in Section 13.7 below, each Party shall pay the fees of its own attorneys, expenses of witnesses and all other expenses and costs in connection with the presentation of such Party's case including, without limitation, the cost of any records, transcripts or other things used by the Parties for the arbitration, copies of any documents used in evidence, certified copies of any court, property or City documents or records that are placed into evidence by a Party.
- 13.6** Except as provided in Section 13.7 below, the remaining costs of the arbitration, including without limitation, fees of the arbitrators, costs of records or transcripts prepared for the arbitrator's use in the arbitration, costs of producing the arbitrator's decision and administrative fees shall be borne equally by the Parties.
- 13.7** Notwithstanding the foregoing Sections 13.5 and 13.6, in the event either Party is found within a period of five (5) years during the term of this Franchise to be the prevailing party in any two (2) arbitration proceedings brought by such Party pursuant to this Section 13 of this Franchise, then such Party shall thereafter be entitled to recover all reasonably incurred costs, fees and expenses, including attorney fees, for any subsequent arbitration brought by it in which it is found to be the prevailing party within five (5) years of the most recent arbitration award.
- 13.8** In the event a Party desires to make a copy of the transcript of an arbitration proceeding for its use in writing a post-hearing brief, or a copy of an arbitration decision to append to a lawsuit to reduce the award to judgment, etc., then that Party shall bear the cost thereof, except to the extent such cost might be allowed by a court as court costs.

Section 14. Indemnification.

- 14.1. General Indemnification. Grantee shall indemnify, defend, and hold the City, its agents, officers, or employees harmless from and against any and all claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever including all costs and attorneys' fees, made against the City, its agents, officers, or employees, on account of injury, harm, death, or damage, to persons or property caused in whole or in part by the Construction, Operation, Maintenance, repair, or alteration of Grantee's Facilities. Provided, however, such indemnification shall not extend to that portion of any claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever including all costs and attorneys' fees caused by the negligence of the City, its agents, employees, officers, contractors, or subcontractors.
- (a) Grantee's indemnification obligations pursuant to this Section shall include assuming potential liability for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of Grantee's exercise of the rights set forth in this Agreement. The obligations of Grantee under this section have been mutually negotiated by the Parties hereto, and Grantee acknowledges that the City would not enter into this Agreement without Grantee's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Grantee waives its immunity under Title 51 RCW as provided in RCW 4.24.115.
- (b) In the event any matter for which the City intends to assert its rights under this Section is presented to or filed with the City, the City shall promptly notify Grantee thereof and Grantee shall have the right, at its election and at its sole costs and expense, to settle and compromise such matter as it pertains to Grantee's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees. In the event any suit or action is started against the City based upon any such matter, the City shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to Grantee's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees.
- 14.2. Environmental Indemnification. Grantee shall indemnify, defend and save the City 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 the City in defense thereof, arising directly or indirectly from (a) Grantee's breach of any environmental laws applicable to the pipeline; (b) 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 resulting in environmental damage. 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.

- 14.3. The obligations contained in this Section regarding indemnification shall survive the expiration, revocation or termination of this Franchise.

Section 15. Insurance and Bond Requirements.

- 15.1. During this Franchise, Grantee shall provide and maintain, at its own cost, insurance in the minimum amount of Ten Million dollars (\$10,000,000.00), in a form and with a carrier reasonably acceptable to the City, naming the City as an additional insured and solely to the extent of Grantee's indemnity obligations hereunder, to cover any and all insurable liability, damage, claims and loss to the extent such coverage is reasonably available in the commercial marketplace, excepting at all times liability for fines and penalties for violation of environmental laws and punitive damages. Insurance coverage shall include, but is not limited to, 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 as is reasonably available in the commercial marketplace.
- 15.2. Proof of insurance shall be provided to the City prior to the beginning of any substantial work, testing or construction or reconstruction on the Pipeline. 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, except if such cancellation is due to failure to pay premiums in which case at least 10 days' prior written notice of cancellation is given to the City.
- 15.3. The indemnity, insurance 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 16. Receivership and Foreclosure.

- 16.1. Grantee shall immediately notify the City 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.
- 16.2. Upon the foreclosure or other judicial sale of all or a substantial part of Grantee's business operations, pipeline(s) or Facilities within or affecting the Franchise Area, or upon the termination of any lease covering all or a substantial part of the pipeline(s) or 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 pipeline(s) or Facilities within or affecting the Franchise Area, Grantee shall notify the City 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 City to such change in control of the Grantee shall apply.

- 16.3. The City 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.

Section 17. Fees.

- 17.1. Current state law (RCW 35.21.860) does not allow the City to charge a franchise fee for these services unlike other franchises that use the right-of-way. Should the state law be changed during the term of this agreement, the City reserves the right to charge franchise fees to the Grantee to the extent provided by that revised statute.

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 the City 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 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.
- 18.3. This Franchise shall not create any duty of the City or any of its officials, employees or agents and no liability shall arise from any action or failure to act by the City or any of its officials, employees or agents in the exercise of powers reserved to the City. Further, this ordinance is not intended to acknowledge, create, imply or expand any duty or liability of the City with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in the City shall be deemed a duty to the general public and not to any specific party, group or entity.

- 18.4. 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 Whatcom County, Washington.
- 18.5. 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. 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.
- 18.6. Force Majeure. In the event that either Party is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a Third Party; or any failure or delay in the performance by the other Party, or a Third Party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with this Franchise. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.
- 18.7. 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.
- 18.8. 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.
- 18.9. 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.
- 18.10. 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: Public Works Director
 City of Lynden
 300 4th Street
 Lynden, WA 98264

To Grantee: Cascade Natural Gas
 8113 W. Grandridge Blvd
 Kennewick, WA 99336-7166

- 18.11. 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.
- 18.12. 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.
- 18.13. 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.
- 18.14. This Franchise Agreement, once signed by the City and Grantee, is to be recorded in the office of the Whatcom County Auditor, by the Grantee and at his expense, and a copy of the recorded document is to be provided to the City Clerk for the City files.

Section 19. Service Obligations.

- 19.1. General Service Obligation. Grantee's general service obligations will be governed by their tariffs filed with the Washington Utilities and Transportation Commission (WUTC). These tariffs can be found on Grantees's web site under Residential Service / rate information / rates and tariffs, rule 3, rule 8, rule 9.
- 19.2. Notice of Tariff Changes. Grantee shall, when making application for any changes in tariffs affecting the provisions of the Franchise, notify the City in writing of the application and provide City with an electronic copy of the submitted application within five (5) days of filing with the WUTC. Grantee shall further provide the City with an electronic copy of any actual approved tariff(s) affecting the provisions of this Franchise.
- 19.3. New Developments. The City shall provide the Grantee with written notice of the issuance of formal approvals for new subdivisions and/or planned developments within

the Franchise Area. The City agrees to require the developer, as a condition of issuing land use and building permits, to give the Grantee access during construction to all open trenches for deployment of natural gas facilities throughout the development and at least ten (10) business days written notice of the date of availability of open trenches. Developer shall be responsible for the digging and backfilling of all trenches. The Grantee shall be responsible for engineering and deployment of labor applicable to its installation of natural gas facilities within the development.

Section 20. Customer Service.

- 20.1. Customer Bills. Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers and in a way that a) is not misleading and b) does not omit material information.
- 20.2. Privacy Protection. The Grantee shall comply with all applicable federal and state privacy laws.
- 20.3. Upon request Grantee will provide the City with information from its annual customer satisfaction survey which has been conducted historically in the Spring of the year.

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. 11-2792), which are hereby accepted by ~~Tim Clark~~ this 25th day of JANUARY, 2011. 2012
ERIC MARTUSCELLI

Cascade Natural Gas Corporation

By: [Signature]
Name: ~~Tim Clark~~ ERIC MARTUSCELLI
Title: Vice President Operations Western Region
Intermountain Gas Corp., A Subsidiary of MDU Resource Group, Inc.

State of Washington

County of Pierce



Subscribed and sworn to before me this 25 day of January, 20112

[Signature]
Notary Public
My commission expires Dec 10, 2014

Received on behalf of the City this _____ day of _____, 2011.

By: [Signature]
Name: Bill Verwolf
Title: City Administrator