

POULSBO DISTRIBUTION SCHEDULE

ORDINANCE NO. 2019-09

SUBJECT: Cascade Natural Gas Franchise Agreement

CONFORM AS TO DATES & SIGNATURES

- Filed with the City Clerk: 04/25/19
- Passed by the City Council: 05/08/19
- Signature of Mayor
- Signature of City Clerk
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- NK Herald: 05/09/19
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Rhiannon Fernandez
City Clerk

05/09/19
Date

ORDINANCE NO. 2019-09

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

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

1. Definitions.

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

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

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

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

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

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

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

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

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

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

1.1.10 "Parties" means the City and CNG.

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

2. Facilities Within Franchise Area.

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

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

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

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

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

3. Operation of Facilities.

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

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

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

4. Planning and Records of Installation.

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

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

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

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

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

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

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

5. Relocation of Facilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Work in the Franchise Area.

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

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

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

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

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

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

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

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

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

6.6.3 Such joint use shall not result in unsafe conditions.

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

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

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

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

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

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

7. Restoration After Construction.

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

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

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

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

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

8. Performance and Maintenance Guarantees

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

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

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

9. Work of Contractors and Subcontractors.

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

10. Insurance.

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

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

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

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

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

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

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

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

10.4 The insurance policies with the exception of Workers' Compensation obtained by CNG shall include the City, its officers, officials, employees, agents, and volunteers ("Additional Insureds"), as an additional insured with regard to activities performed by or on behalf of CNG. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability. CNG shall provide to the City prior to or upon acceptance either (1) a true copy of the additional insured endorsement for each insurance policy

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

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

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

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

11. Indemnification.

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

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

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

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

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

11.5 To the extent a court of competent jurisdiction determines that this Franchise is subject to RCW 4.24.115, as it exists or may be amended, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of CNG, if officers, officials, employees, and volunteers, and or the City, CNG's liability shall be only to the extent of CNG's negligence.

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

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

12. Default and Enforcement.

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

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

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

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

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

13. Nonexclusive Franchise.

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

14. Franchise Term.

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

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

15. Decommissioned Facilities; Post-Service Abandonment.

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

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

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

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

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

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

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

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

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

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

16. Assignment.

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

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

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

17. Recovery of Costs.

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

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

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

18. Notice.

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

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

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

With copy to

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

19. Survival.

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

20. Miscellaneous.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. Acceptance.

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

22. Corrections by City Clerk or Code Reviser.

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

23. Effective Date.

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

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

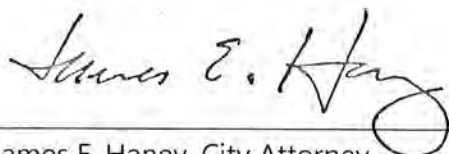


Mayor Becky Erickson

Attest:  _____

Rhiannon Fernandez, City Clerk

APPROVED AS TO FORM:



James E. Haney, City Attorney

PUBLISHED: 05/17/19

EFFECTIVE: 05/22/19

SUMMARY OF ORDINANCE NO. 2019-09

of the City of Poulsbo, Washington

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

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

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

DATED this 8th day of May, 2019.


CITY CLERK RHIANNON K. FERNANDEZ

STATE OF WASHINGTON)
) ss.
COUNTY OF POULSBO)

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

ORDINANCE NO. 2019-09

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

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

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

 City Clerk
City of Poulsbo, State of Washington

STATEMENT OF ACCEPTANCE

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

Cascade Natural Gas Corporation

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

Name: ERIC MARASCULLI

Title: VP - FIELD OPERATIONS

ACKNOWLEDGEMENT

STATE OF WASHINGTON)
)SS.

COUNTY OF Benton

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

DATED: 5/9/19

Notary Seal

[Signature]
(Signature of Notary)



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