

ORDINANCE NO. _____

AN ORDINANCE GRANTING CASCADE NATURAL GAS CORPORATION A FRANCHISE FOR THE TRANSPORTATION OF NATURAL GAS IN WHATCOM COUNTY

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

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by the County; and

WHEREAS, said application has come on regularly to be heard by the County Council on the ___ day of _____, 2022, and notice of this hearing has been duly published on the _____ day of _____, 2022, and the ____ day of _____, 2022, in the Bellingham Herald, a daily newspaper published in Whatcom County having county-wide circulation; and

WHEREAS, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the County Council now deems it appropriate and in the best interest of the County and its inhabitants that a franchise be granted to Grantee.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that a non-exclusive franchise set forth in the language herein below, Sections 1 through 18, is hereby granted to Cascade Natural Gas Corporation for a period of seven (7) years from the Effective Date.

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 installing, removing, replacing, and repairing new or existing pipeline(s) and/or Facilities and may include, but is not limited to, digging and/or excavating for the purposes of installing, removing, replacing, and repairing new or existing pipeline(s) and/or 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 related to 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 Grantor, including any areas annexed by Grantor during the term of this Franchise, in which case the annexed area shall become subject to the terms of this Franchise.

1.6 **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 Grantee's pipeline system 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 existing or future pipeline system 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 Grantor within the present and/or future corporate limits or jurisdictional boundaries of the Grantor.

1.10 **Operate or Operations** shall mean the use of Grantee's new or 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** means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas located within the Franchise Area.

Section 2. Grant of Authority.

2.1 Grantor hereby grants to Grantee, a corporation organized and existing under and by virtue of the laws of the State of Washington, and which is authorized to transact business within the State of Washington, its successors and assigns (as provided in Section 4), the right, privilege, authority and Franchise to Construct, Operate and Maintain its existing and future pipeline system and/or Facilities related to the transportation, distribution and handling of natural gas within the Franchise Area, including but not limited to Rights-of-Way, public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, rights of way and similar public ways and extensions and additions thereto, including but not limited to rights-of-way dedicated for compatible uses now or hereafter held by the Grantor within its corporate boundaries.

2.2 This Franchise is non-exclusive. Grantor reserves all rights to its property, including, without limitation, the right to grant additional Franchises, easements, licenses and permits to others to use the Rights-of Way and Public Properties, provided that the Grantor shall not grant any other Franchise, license, easement or permit that would unreasonably interfere with Grantee's permitted use under this Franchise. This Franchise shall in no manner prohibit the Grantor or limit its power to perform work upon its Rights-of-Way, Public Properties or make all necessary changes, relocations, repairs, maintenance, establishment, improvement thereto, or from using any of the Rights-of-Way and Public Properties, or any part of them, as the Grantor may deem fit from time to time, including the dedication, establishment, maintenance and improvement of all new Rights-of-Way and other Public Properties of every type and description.

2.3 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 Grantor 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 reasonable and prudent steps to protect, support, and keep safe from harm its pipeline system 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 Grantor's Rights-of-Way or other Public Property. None of the rights granted herein shall affect the Grantor's jurisdiction over its property, streets or Rights-of-Way.

Section 3. Term.

3.1 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 seven (7) years thereafter.

3.2 Prior to the expiration of this Franchise, either party may request renewal of the Franchise. Upon such request, the parties shall enter into good faith negotiations with regard to renewal of the Franchise and the terms and conditions thereof. If such negotiations continue in good faith beyond the expiration date of this Franchise, Grantee's rights and responsibilities under this Franchise shall be controlled by the terms of this Franchise during the period of such negotiations.

Section 4. Assignment and Transfer of Franchise.

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

4.2 Subject to the foregoing, Grantee and any proposed assignee or transferee shall provide and certify the following to the County not less than 120 days prior to the proposed date of transfer: (a) a summary setting forth the identity of the transferee and the nature and type of the proposed assignment or transfer and, (b) Any other information reasonably required and requested by the County, including but not limited to information about the proposed assignee's or transferee's safety record; and, c) An application fee which shall be set by the County, plus any other costs actually and reasonably incurred by the County 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 County 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 Grantor'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 where immediate action is required to protect the integrity of Facilities, the Grantee shall first file with the Grantor such detailed plans, specifications and profiles of the intended work as may be required by the Grantor prior to commencing any Construction and/or Maintenance work in the Franchise Area. Grantor may require such additional information, plans and/or specifications as are in Grantor's opinion necessary to protect the public health and safety during the Construction and/or Maintenance work and for the remaining term of this Franchise.

6.3 All Construction and/or Maintenance work shall be performed in conformity with the maps and specifications filed with the Grantor, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by the Grantee.

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

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

6.6 Work shall only commence upon the issuance of applicable permits by the County, 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, Grantor's property or other persons or property, Grantee may proceed without first obtaining the normally required permits. During normal working hours Grantee shall verbally notify the Director for Whatcom County Public Works or the Whatcom County Engineer as soon as possible after the event of the need to perform emergency repairs. In the event Grantee must take emergency action, Grantee shall (1) take all reasonable and prudent steps to protect, support, and keep safe from harm its pipeline(s) and/or Facilities, or any part thereof; Grantor's property; or other persons or property, and to protect the public health and safety; and (2) as soon as possible thereafter, must obtain the required permits and comply with any mitigation requirements or other conditions in the after-the-fact permit.

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

6.8 Whenever necessary, after Constructing or Maintaining any of Grantee's pipeline(s) or Facilities within the Franchise Area, the Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the surface as nearly as possible to as good or better condition as it was in before the work began. Grantee shall replace any property corner

monuments, survey reference or hubs that were disturbed or destroyed during Grantee's work in the areas covered by this Franchise. Such restoration shall be done in a manner consistent with applicable codes and laws, under the supervision of the Grantor and to the Grantor's satisfaction and specifications.

6.9 Grantee shall continuously be a member of the State of Washington one number locator service under RCW 19.122, or an approved equivalent, and shall comply with all such applicable rules and regulations. Grantee shall provide reasonable notice prior to commencing any Maintenance or Construction 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.

6.10 Intentionally omitted.

6.11 The Grantee shall provide upon the request of the Grantor a survey depicting the location of the Pipeline Corridor within the Franchise Area as well as the approximate location of Grantee's pipeline system and Facilities within the Pipeline Corridor along with all other known utilities, landmarks, and physical features.

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

6.13 Per the terms and conditions of the permitting process, the Grantee shall provide updated and corrected as-built drawings and a survey showing the location, depth and other characteristics of the Facilities within the Franchise Area.

6.14 Nothing in this Franchise shall be deemed to impose any duty or obligation upon Grantor 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 Grantor.

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

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, then Grantee and County agree to expeditiously negotiate new franchise provisions that will provide the County with access to detailed information regarding testing and inspection such as would have been routinely submitted to the federal or state regulatory agencies under the regulations in effect at the time of the Effective Date. If Grantor and Grantee fail to agree upon new franchise provisions, the issues shall be resolved through the Dispute Resolution provisions of Section 13.

Section 8. Encroachment Management.

8.1 Upon request of the Grantor, Grantee shall provide a written encroachment management plan that demonstrates how Grantee's pipeline(s) and/or Facilities are and will be protected against possible encroachment. This plan shall include at least the following: (1) education and one-call involvement as defined in Federal Regulations, and (2) an encroachment management processes demonstrating: (a) Grantee's process for monitoring activity in or near the Pipeline Corridor; (b) Grantee's field verification of the location of Facilities within the Pipeline Corridor; (c) Grantee's encroachment tracking system; (d) Grantee's review/coordination process for critical encroachments; (e) control center notification of existing or active encroachments; and f) assertive protection of the pipeline Rights-of-Way.

8.2 Upon notification to Grantee of planned construction by another within ten (10) feet of Grantee's Pipeline Corridor, Grantee shall flag the precise location of its Facilities before the construction commences, 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.

Section 9. Leaks, Ruptures and Emergency 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. The remote monitoring must be able to accurately detect pipeline ruptures.

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

9.3 Upon acceptance of this Franchise, Grantee shall provide, for Grantor's approval and acceptance, a copy of its emergency response plans and procedures, including, but not limited to, emergency rupture response. If the parties disagree as to the adequacy of Grantee's emergency response plan, the parties will submit the plan to independent, third party review. If the review recommends that Grantee make modifications or additions to Grantee's emergency response plan, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow the recommendations, Grantee shall provide a written report to the Grantor explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute

resolution provisions contained herein to resolve any dispute over the whether to follow the recommendations.

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

9.5 The parties agree to meet once every (5) Calendar years, or upon request of the Grantor, to review the emergency plans and procedures. Grantee shall coordinate this meeting with the Grantor.

9.6 Grantee shall be responsible for all costs incurred in responding to any leak, rupture or other release of natural gas from Grantee's pipeline system and/or Facilities, and all reasonable remediation costs. This provision shall not be interpreted to preclude Grantee from seeking contribution, indemnity and subrogation for such costs from a party liable for the leak, rupture, or other release of natural gas from Grantee's system and/or Facilities.

9.7 If requested by Grantor in writing, Grantee shall provide a written summary concerning any leak or rupture within thirty (30) days of the event, including, but not limited to, the leak or rupture's date, time, amount, location, response, remediation and other agencies Grantee has notified.

9.8 The Grantor may demand that any substantial leak or rupture be investigated by an independent pipeline consultant mutually selected by Grantor and Grantee. Grantee shall be solely responsible for paying all of the consultant's reasonable costs and expenses incurred in investigating the occurrence and reporting the findings. Grantee shall meet and confer with the independent consultant following the consultant's investigation to address whether any modifications or additions to Grantee's pipeline(s) and/or Facilities may be warranted.

9.9 If the consultant recommends that Grantee make modifications or additions to Grantee's pipeline(s) and/or Facilities, Grantee covenants to consider said recommendations in good faith. If Grantee declines to follow the consultant's recommendations, Grantee shall provide a written report to the Grantor explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute resolution provisions contained herein to resolve any dispute over whether to follow the consultant's recommendations.

Section 10. Relocation.

10.1 In the event that Grantor undertakes or approves the construction of or changes to the grade or location of any water, sewer or storm drainage line, street, sidewalk or other County improvement project or any governmental agency or any person or entity acting in a governmental capacity, or on the behalf of, under the authority of, or at the request of the Grantor or any other governmental agency, undertakes any improvement project and the Grantor

determines that the project might reasonably require the relocation of Grantee's Facilities, Grantor shall provide the Grantee at least one hundred and twenty (120) calendar days prior written notice or such additional time as may reasonably be required, of such project requiring relocation of Grantee's pipeline(s) and/or Facilities.

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

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

10.4 If any improvement project under this section is required in the interest of public health, safety, welfare, necessity or convenience, as adjudged in the sole discretion of the Grantor, the Grantee shall make such changes as required herein at Grantee's sole cost, expense and risk

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

10.6 Grantor must act reasonably and in good faith when evaluating, considering, and making all decisions reserved to it referenced in this Section 10.

10.7 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 In the event of Grantee's permanent cessation of use of its Facilities, or any portion thereof, within the Franchise Area, the Grantee shall purge its Facilities pursuant to federal and state requirements and may abandon them in place, subject to the County's ongoing right to require removal and the conditions set forth in this section. Grantee shall use the County's permitting process in the event there is a cessation of use of its Facilities, or any portion thereof. The County shall review the applicable permit application and reasonably endeavor to make an initial determination as to whether the Facilities, or any portion thereof, are appropriate for removal

rather than abandonment. Any such Facilities to be left in place shall be made inert in compliance with applicable regulations and industry standards. The County shall retain the ongoing right to require, at any time and notwithstanding any prior determinations, Grantee to remove or alter such Facilities in the event the County reasonably determines that such removal or alteration is appropriate or advisable for the health and safety of the public, for management of the right-of-way, or for any other proper purpose, in which case Grantee shall perform such work at no cost to the County.

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 County 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 County 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. Coordination of construction activities; Shared excavations

12.1 Grantee and the County shall each exercise reasonable efforts to coordinate any construction work that either may undertake within the Right-of-Way so as to promote the orderly and expeditious performance and completion of such work as a whole. Grantee and the County shall further exercise reasonable efforts to minimize any delay or hindrance to any construction work undertaken by the Parties within the Right-of-Way.

Section 13. Violations, Remedies and Termination.

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

13.2 Intentionally omitted.

13.3 Grantor may also terminate this Franchise if Grantee materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms and conditions of this Franchise, or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within ninety (90) calendar days of Grantor's providing Grantee written notice, which shall be served registered mail upon the Region Director , or, if not reasonably capable of being cured within ninety (90) calendar days, within such other reasonable period of time as the parties may agree.

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

13.5 In the event of termination under this Franchise due to Grantee's material breach, Grantee shall immediately discontinue operation of the Facilities through the Franchise Area. Either party may in such case invoke the dispute resolution provisions. Alternatively, Grantor may elect to seek relief directly in Superior Court, in which case the dispute resolution requirements shall not be applicable in this limited situation. Once the Grantee's rights to Operate in the Franchise Area have terminated, Grantee shall comply with Franchise provisions of Section 11 regarding removal of Facilities.

13.6 Notwithstanding the forgoing, the Grantor and Grantee hereby agree that it is not the Grantor's intention to terminate the rights conferred upon Grantee under this Franchise for violations of the Franchise resulting from a good faith error by Grantee or that have resulted in no material adverse impact on the Grantor or its inhabitants.

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

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

Section 14. Dispute Resolution.

14.1 In the event of a dispute between Grantor and Grantee arising by reason of this Franchise, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Grantee to have oversight over the administration of this Franchise. The officers or representatives shall meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute

14.2 If the parties are unable to resolve the dispute under the procedure set forth in this section, the parties hereby agree that the matter shall be referred to mediation. The parties shall mutually agree upon a mediator to assist them in resolving their differences. If the parties are unable to agree upon a mediator, the parties shall jointly obtain a list of seven (7) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a party fails to notify the other party of which mediator it has stricken within two (2) business days, the other party shall have the option of selecting the mediator from those mediators remaining on the list. Any expenses incidental to mediation shall be borne equally by the parties.

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

Section 15. Indemnification.

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

15.2 Environmental Indemnification. Except to the extent caused by the acts or omissions of a party not under the direction and control of Grantee, Grantee shall indemnify, defend and save Grantor harmless from and against any and all liability, loss, damage, expense, actions and claims, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by Grantor in defense thereof, arising directly or indirectly from (a) Grantee's breach of any environmental laws applicable to the Facilities or (b) from any release of a hazardous substance on or from the Facilities or (c) other activity related to this Franchise by Grantee, its agents, contractors or subcontractors. This indemnity includes but is not limited to (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

Section 16. Insurance and Bond Requirements.

16.1 Grantee shall procure and maintain for the duration of the Franchise, insurance against all claims for injuries to persons or damages to property which to the extent arise out of the exercise of the rights, privileges and authority granted, hereunder to Grantee, its agents, representatives or employees. Grantee shall at all times maintain on file with the County a current insurance certificate, together with an endorsement or endorsements naming the County, its officers, elected officials, agents, employees, representatives and engineers, as additional insureds on a

primary and noncontributory basis and with a waiver of subrogation in favor of the County, and such insurance certificate shall evidence the following minimum coverages:

- A. Commercial general liability insurance including coverage for premises-operations, explosions and collapse hazard, underground hazard and products completed hazard, with limits not less than FIFTY MILLION DOLLARS (\$50,000,000) for each occurrence and in the aggregate;
- B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$2,000,000 for each person and \$2,000,000 for each accident;
- C. Worker's compensation within statutory limits and employer's liability insurance (inclusive of any excess policy) with limits of not less than \$2,000,000;
- D. Environmental pollution liability with a limit not less than TEN MILLION DOLLARS (\$10,000,000) for each occurrence, at a minimum covering liability from sudden and/or accidental occurrences.

If coverage is purchased on a "claims made" basis, then GRANTEE shall warrant continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years following the date termination of this Franchise, and/or conversion from a "claims made" form to an "occurrence" coverage form.

Any deductibles or self-insured retentions must be declared to the County. Payment of deductibles and self-insured retentions shall be the sole responsibility of Grantee. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Grantee's insurance shall be primary insurance with respect to the County, its officers, officials, employees, and agents. Any insurance maintained by the County, its officers, officials, employees, consultants, and agents, shall be in excess of Grantee's insurance and shall not contribute with it.

In the event of cancellation or intent not to renew insurance, Grantee shall obtain and furnish to the County evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date. In addition, Grantee shall provide 30-days advance written notice of any potential cancellation.

Section 17. Receivership and Foreclosure.

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

including all or any parts of its business operations, pipeline(s) or Facilities within or affecting the Franchise Area.

17.2 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 Grantor of such fact, and such notification or the occurrence of such terminating events shall be treated as a notification that a change in control of the Grantee has taken place, and the provisions of this Franchise Agreement governing the consent of the Grantor to such change in control of the Grantee shall apply.

17.3 The Grantor shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Grantee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- (a) Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this Franchise Agreement and remedied any existing violations and/or defaults; and
- (b) Within said one hundred twenty (120) days, such receiver or trustee shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise Agreement granted to the Grantee except where expressly prohibited by Washington law.

Section 18. Franchise Fee and Costs.

18.1 In consideration for granting this Franchise and for the use of the Public Properties in the Franchise Area, there is hereby established an annual fee equal to Twenty-Five Thousand and 00/100 Dollars (\$25,000.00). The parties agree that the foregoing fee is proportional to the municipal services provided.

18.2 The first annual payment shall be paid at the time Grantee accepts this Franchise and shall cover the next twelve (12) months. Each succeeding installment shall cover the next twelve (12) month period and shall be paid not later than the anniversary date of the Effective Date of this Franchise.

18.3 Interest shall accrue on any late payment at the rate of twelve percent (12%) per annum. The annual fee shall remain constant for the first three (3) years of this Franchise and shall then subsequently increase at a rate of one and a half percent (1 1/2 %) every year thereafter beginning with year four (4) for the Franchise's remaining term.

18.4 Grantee agrees to pay a fee or a charge so that Grantor recovers its actual, reasonable, administrative expenses directly related to preparing and approving this Franchise. Nothing herein shall preclude Grantor from charging administrative fees or recovering administrative costs incurred by Grantor in the approval of permits or in the reasonable supervision, inspection or examination of all work by Grantee in the Franchise Area to ensure compliance with the terms of this Franchise and the applicable permits, as required by the applicable provisions of Grantor's municipal code.

Section 19. Legal Relations.

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

19.2 Grantee accepts any privileges granted by Grantor to the Franchise Area, public Rights-of-Way and other Public Property in an "as is" condition. Grantee agrees that the Grantor 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 County or the general public. Grantee shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of the pipeline or other activities permitted under this Franchise.

19.3 Grantee waives immunity under Title 51 RCW in any cases involving the Grantor and affirms that the Grantor and Grantee have specifically negotiated this provision, to the extent it may apply. This Franchise shall not create any duty of the Grantor or any of its officials, employees or agents and no liability shall arise from any action or failure to act by the County or any of its officials, employees or agents in the exercise of powers reserved to the Grantor. Further, this Ordinance is not intended to acknowledge, create, imply or expand any duty or liability of the Grantor 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 Grantor shall be deemed a duty to the general public and not to any specific party, group or entity.

19.4 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.

Section 20. Miscellaneous.

20.1 In the event that a court or agency of competent jurisdiction declares a material provision of this Franchise Agreement to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to such amendments or modifications as are appropriate actions so as to give effect to the intentions of

the parties as reflected herein. If severance from this Franchise Agreement of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Franchise Agreement, either party may apply to a court of competent jurisdiction to reform or reconstitute the Franchise Agreement so as to recapture the original intent of said particular provision(s). All other provisions of the Franchise shall remain in effect at all times during which negotiations or a judicial action remains pending.

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

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

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

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

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

20.7 Whenever this Franchise calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient at the address set forth in this Section, unless written notice of change of address is provided to the other party. If the date for making any payment or performing any act is a legal holiday, payment may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be directed to the parties as follows:

To the Grantor:

Whatcom County Executive
Whatcom County Courthouse
311 Grand Ave., Suite 108
Bellingham, WA 98225

To Grantee:

Cascade Natural Gas Corporation
Attn: Region Director, NW
1520 S. 2nd Street
Mount Vernon, WA 98273

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

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

20.10 This Franchise, and any rights granted hereunder, shall not become effective for any purpose unless and until Grantee files with the Whatcom County Council the Statement of Acceptance, attached hereto as Exhibit A (the "Franchise Acceptance").

20.11 Should Grantee fail to file the Franchise Acceptance with the County Council within 30 days after the adoption of this ordinance, then the County shall have the right by ordinance to declare Grantee's forfeiture of all rights hereunder and to declare this Franchise terminated and of no further force or effect thereafter. The County shall retain this right to terminate the Franchise until such time as Grantee files the Franchise Acceptance pursuant to the terms herein.

20.12 The Effective Date of this Franchise shall be the ____ day of _____, 20__, after adoption by the Whatcom County Council and legal publication or recording of this ordinance as provided by law, and provided it has been duly accepted by Grantee as herein above provided.

ADOPTED this _____ day of _____ 2022.

ATTEST

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown Davis, Clerk of the Council

Todd Donovan, Council Chair

APPROVED AS TO FORM:

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

Christopher Quinn
Civil Deputy Prosecutor
(approved electronically 6/28/2022)

Satpal Singh Sidhu, County Executive

() Approved () Denied

Date Signed: _____