

**ORDINANCE NO. 2021-08-032**

**AN ORDINANCE OF THE CITY OF BELLINGHAM, WASHINGTON, GRANTING CASCADE NATURAL GAS CORPORATION, A WASHINGTON CORPORATION, THE RIGHT, PRIVILEGE AND AUTHORITY AND FRANCHISE TO SET, ERECT, CONSTRUCT, SUPPORT, ATTACH, CONNECT AND STRETCH FACILITIES BETWEEN, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF TRANSMISSION, DISTRIBUTION AND SALE OF NATURAL GAS**

**NOW, THEREFORE, THE CITY OF BELLINGHAM, WASHINGTON, DOES ORDAIN:**

**SECTION 1: DEFINITIONS.**

Where used in this Franchise Ordinance (the "Franchise") the following terms shall have the following meanings:

- 1.1 "City"** means the City of Bellingham, a municipal corporation of the State of Washington, and its respective successors and assigns.
  
- 1.2 "Construct or Construction"** shall mean placing, removing, replacing, adding new, and repairing Facilities and may include, but is not limited to, digging and/or excavating for the purposes of placing, removing, replacing, adding new, and repairing Facilities.
  
- 1.3 "Facilities"** means, collectively, any and all natural gas systems, including but not limited to gas pipes, pipelines, mains, laterals, service lines, conduits, feeders, regulators, valves, meters, meter-reading devices, fixtures, and communication systems 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 for the purpose of transmission, distribution and sale of natural gas, whether the same be located over or under ground.
  
- 1.4 "Franchise"** means the grant of rights, privileges, authority, terms, and conditions embodied in this Ordinance.
  
- 1.5 "Franchise Area"** means and is limited to all rights-of-way for public roads, streets, avenues, alleys, and highways of the City as now laid out, platted, dedicated, acquired or improved; all rights-of-way for public roads, streets, avenues, alleys, and highways that may hereafter be laid out, platted, dedicated, acquired or improved within the present limits of the City and as such limits may be hereafter extended, and; all City owned utility easements dedicated for the placement and location of various utilities provided such easement would permit CNG to fully exercise the rights granted under this Franchise within the area covered

by the easement.

**1.6 "Maintenance or Maintain"** means examining, testing, inspecting, repairing, maintaining and replacing the Facilities or any part thereof as required or as necessary for safe operation.

**1.7 "Operate or Operations"** means the use of CNG's Facilities for the transmission, distribution and handling of product within and through the Franchise Area.

**1.8 "Ordinance"** means this Ordinance, which sets forth the terms and conditions of this Franchise.

**1.9 "Party" or "Parties"** means collectively the City and CNG, and individually either the City or CNG.

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

**1.11 "Public Properties"** means the present and/or future property owned or leased by the City within the present and/or future corporate limits or jurisdictional boundaries of the City.

**1.12 "Public Works Project"** means any City capital improvement or the construction, relocation, expansion, repair, maintenance, or removal of any part of the Franchise Area or City owned facilities located on or in the Franchise Area for (by way of example only and without limitation): parks; roads and/or streets; sidewalks; curbs; pedestrian and/or vehicle traffic; sewers, storm water drains; water facilities, and; City owned fiber optic cable, conduit or network facilities.

**1.13 "Tariff"** means tariff as that term is defined in WAC 480-80-030, or such similar definition describing rate schedules, rules and regulations relating to charges and service as may hereinafter be adopted by the regulatory authority with jurisdiction, under the laws of the State of Washington, over public service companies.

**1.14 "Third Party"** means any person, party or entity other than the City and CNG.

**1.15 "WUTC"** means the Washington Utilities and Transportation Commission or such successor regulatory agency having jurisdiction over public service companies.

**1.16 "911 Reportable Event"** means any ongoing event, incident, or condition related to CNG's Facilities in the Franchise Area which, as reasonably determined by CNG, causes a threat to public safety.

## **SECTION 2: GRANT OF FRANCHISE**

**2.1** Pursuant to the laws of the State of Washington, the City hereby grants to CNG, subject to the terms and conditions as set forth herein, a Franchise for a period of ten (10) years commencing upon the Effective Date. This Franchise grants the right, privilege, and authority to Construct, Operate, and Maintain Facilities necessary for the purpose of transmission, distribution and sale of natural gas. This Franchise is granted upon the express condition that CNG, within thirty (30) days after the adoption of this Ordinance, shall file with the clerk of the City a written acceptance of the same in the form attached hereto as Attachment 1. If CNG fails to do so within the time frame above, this Ordinance and Franchise shall be null and void. This Franchise may be renewed, subject to City Charter Article 11.05 and at the sole discretion of the Bellingham City Council, such request to be submitted not more than two (2) years nor less than one hundred and eighty (180) days prior to the expiration of the initial ten (10) year term.

**2.2** In carrying out any authorized activities under the privileges granted herein, CNG shall meet accepted industry standards and comply with all applicable laws of any governmental entity with jurisdiction over CNG, its operation, or its Facilities. This shall include all applicable laws, rules and regulations existing as of the Effective Date of this Franchise or that may be subsequently enacted by any governmental entity with jurisdiction over CNG or the Facilities. CNG specifically agrees to comply with the provisions of any applicable City codes, ordinances, regulations, standards, procedures, permits or approvals, as from time to time amended (including, but not limited to, Bellingham Municipal Code Title 13); provided, however, that in the event of a direct conflict between any municipal code provision and this Franchise, the express terms and conditions of this Franchise shall govern. The express terms and conditions of the Franchise constitute a valid and enforceable contract between the Parties.

**2.3** Upon the Effective Date of this Franchise (which includes acceptance of such Ordinance and Franchise by CNG), all prior franchises between the City and CNG, or its predecessors in interest, which it has acquired for the transmission, distribution and sale of natural gas shall be deemed repealed.

**2.4** By granting this Franchise, the City is not assuming any risks or liabilities, which shall be solely and separately borne by CNG. CNG agrees and covenants to, at its sole cost and expense, take all necessary and prudent steps to protect, support, and keep safe from harm its Facilities, or any part thereof, when necessary to protect the public health and safety.

**2.5** This Franchise is intended to convey only a limited right and interest. It is not a warranty of title or interest in the City's rights-of way or other property. None of the rights granted herein shall affect the City's jurisdiction over its property, streets, or rights-of-way.

**2.6** This Franchise does not limit the City's legislative authority under applicable law to adopt regulations concerning the use of natural gas by consumers.

**SECTION 3: NON-FRANCHISE AREA CITY PROPERTY**

**3.1** This Franchise shall not convey any right to CNG to install Facilities on or to otherwise use City-owned or leased properties or easements outside the Franchise Area.

**3.2** Existing Facilities installed or maintained by CNG in accordance with prior franchise agreements on public grounds and places within the City (but which are not a part of the Franchise Area as defined by this Franchise) may be maintained, repaired and operated by CNG at the location where such Facilities exist as of the Effective Date of this Franchise for the term of this Franchise; provided, however, that no such Facilities may be enlarged, improved or expanded without the prior review and approval of the City pursuant to the provisions of any applicable City codes, ordinances, regulations, standards, procedures and/or permits, as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise.

**SECTION 4: NON-EXCLUSIVE FRANCHISE**

**4.1** 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 upon, under and across the Franchise Area which do not interfere with CNG'S rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area and other Public Properties for any lawful purpose or affect the jurisdiction of the City over the same or any part thereof.

**4.2** The City reserves the right to acquire, construct, own, operate and maintain a municipal natural gas utility to serve all or any portion of the City, at any time during the term of this Franchise and to fully exercise such right in accordance with applicable law.

**SECTION 5: ADMINISTRATIVE FEES**

CNG has paid a filing fee in the amount of \$1,500 to reimburse the City for its administrative costs in drafting, reviewing, and processing this Franchise and all work related thereto. CNG shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the law of the City. To the extent not already provided for in this Section 5 or in other sections of this Franchise, CNG shall reimburse the City for all City administrative expenses incurred by the City for which a fee may be charged to a natural gas business under RCW 35.21.860. Such administrative expenses to be reimbursed include, but are not limited to, the expense of any administrative review, inspection, and supervision undertaken through the authority granted to the City in this Franchise or any City ordinances for which a permit fee is not established.

**SECTION 6: CONSTRUCTION, MAINTENANCE, AND NON-INTERFERENCE**

**6.1** All Construction, Maintenance and Operation undertaken by CNG under this Franchise, upon CNG's direction or on CNG's behalf, shall be completed in a competent and efficient manner.

**6.2** Except in the case of an emergency, at least fifteen (15) calendar days prior to commencing any substantial Construction and/or Maintenance work in the Franchise Area, the CNG shall notify the City in writing and file with the City such detailed plans, specifications and profiles of the intended work as may be required by the City. The City may require such additional information, plans and/or specifications as are in City's opinion necessary to protect the public health and safety during the Construction and/or Maintenance work and for the remaining term of this Franchise. This requirement shall not apply to routine inspections and maintenance of CNG's Facilities within the Franchise Area undertaken by CNG, its agents, employees or contractors, except when the work occurs on Public Properties in which case CNG will follow normal City right-of-way permitting requirements.

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

**6.4** Construction or Maintenance work shall only commence upon the issuance of applicable permits by the City, which permits shall not be unreasonably withheld or delayed. However, in the event of an emergency requiring immediate action by CNG for the protection of the Facilities, CNG's property or other persons or property, CNG may proceed without first obtaining the normally required permits. In such event CNG must (1) take all necessary and prudent steps to protect, support, and keep safe from harm its Facilities, or any part thereof; CNG'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.

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

**6.6** Whenever necessary, after Constructing or Maintaining any of CNG's Facilities within the Franchise Area, CNG shall, without delay, and at CNG's sole expense, remove all debris and restore the surface (and all other property affected) as nearly as possible to the same condition; provided, however, that restoration shall be to the standard applicable at the time of restoration. Such restoration shall be done in a manner consistent with applicable

codes and laws, under the supervision of the City and to the City's satisfaction and specifications. The City may require CNG to post an appropriate bond, as determined by the City, to ensure satisfactory restoration of the Franchise Area following the completion of CNG's work therein. In lieu of separate bonds for routine individual projects involving work in the Franchise Area, CNG may satisfy the City's bond requirements by posting a single ongoing performance bond. CNG may satisfy the requirement of this Section 6.6 using a bond posted by CNG (if any) pursuant to City Charter Provision 11.03.

**6.7** All survey monuments which are disturbed or displaced by CNG in its performance of any work under this Franchise shall be referenced and restored by CNG, as per WAC 332-120, as from time to time amended, and all pertinent federal, state and local standards and specifications.

**6.8** CNG shall continuously be a member of the State of Washington 811 one call locator service under RCW 19.122, or an approved equivalent, and shall comply with all such applicable rules and regulations. In addition to the notice to the City required under Section 6.2, CNG shall provide reasonable notice prior to commencing any Maintenance or Construction under this Franchise to those owners or other persons in control of property in the Franchise Area when the Maintenance or Construction will affect & access or otherwise materially impact the property.

**6.9** Markers demarcating a High Pressure Pipeline's location shall be placed on the surface permitting line of sight at any location on the pipeline and in each side of any road or water crossing so as to provide clear warning of the presence of the pipeline but in a manner that does not interfere with trails or other public uses in that area. A "High Pressure Pipeline" as that term is used in this subsection means any pipeline operating above two hundred fifty pounds per square inch gauge. CNG shall comply with the provisions of WAC 480-93:-124 as hereinafter amended with respect to pipeline markers.

**6.10** Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of CNG's plans and designs or to ascertain whether CNG's proposed or actual construction, testing, maintenance, repairs, replacement or removal is adequate or sufficient or in conformance with the plans and specifications reviewed by the City.

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

**6.12** CNG's Facilities shall be located and maintained within the Franchise Area so as not to interfere with the free passage of pedestrian, bicycle, and/or vehicle traffic therein, or with the reasonable ingress or egress to the properties abutting the Franchise Area as they exist at the time of installation of the Facilities. Any relocation of CNG Facilities that may be necessary to accommodate a Third Party shall be subject to Section 8 below.

**6.13** Except as otherwise provided in this Section 6.13, in the event CNG permanently ceases use of any of its Facilities within the Franchise Area, CNG shall, within one hundred and eighty days (180) after such permanent cessation of use, or such additional time as is agreed to between the parties, remove such Facilities at its sole cost and expense; provided that with the express written consent of the City, CNG may leave such Facilities in place subject to the conditions set forth in this Section 6.13. Any such Facilities to be left in place shall be made inert by purging all natural gas from such Facilities (including displacement of natural gas with an appropriate inert gas) and disconnecting and sealing such Facilities, all in compliance with applicable regulations and industry standards. The City's consent shall not relieve CNG of the obligation and/or costs to subsequently remove or alter such Facilities in the event the City reasonably determines that such removal or alteration is appropriate or advisable for the health and safety of the public, in which case CNG shall perform such work at no cost to the City. If CNG is required to remove its Facilities and fails to do so and/or fails to adequately restore property or other mutually agreed upon action(s), the City may, after reasonable notice to CNG, remove the Facilities, restore the property and/or take other action as is reasonably necessary at CNG's expense. This remedy shall not be deemed to be exclusive and shall not prevent the City from seeking a judicial order directing that the Facilities be removed. The obligations contained in this Section 6.13 shall survive the expiration, revocation or termination of this Franchise.

**6.14** All work by CNG pursuant to this Section 6 shall be performed in accord with the permit(s) issued by the City, together with the laws of the State of Washington, the provisions of any applicable City codes, ordinances, regulations, standards and procedures as now exist or as may be hereafter amended or superseded, provided that such provisions are not in conflict or inconsistent with the express terms and conditions of this Franchise.

**6.15** Any replacement or construction of gas linear main(s) (or portions thereof) that require trenching within street pavement that has been resurfaced within the last five (5) years will require a full-width pavement resurfacing by CNG.

**6.16** Prior to commencing any clearing or cutting of vegetation on Public Properties, CNG shall provide twenty (20) days advance notice to the City of Bellingham Parks and Recreation Department Director (or designee) of CNG's intent to engage in clearing and identify the area to be cleared. Clearing and cutting of vegetation on Public Properties shall not exceed a twenty (20) foot swath centered over the pipeline. In the event that WUTC safety regulations indicate required clearing in excess of the twenty (20) foot swath, the parties shall meet and negotiate in good faith toward a mutually agreeable solution. Additionally, and separate from the notice to be provided to the Bellingham Parks and Recreation Department and separate from the prohibition on exceeding a twenty (20) foot swath, clearing or cutting activity may only commence within the City of Bellingham upon the issuance of applicable permits by the City under applicable environmental regulations. Said permits shall not be unreasonably withheld or delayed.

## **SECTION 7: OPERATIONS, MAINTENANCE, INSPECTION, AND TESTING**

**7.1** CNG shall Operate, Maintain, inspect and test its Facilities in the Franchise Area in full compliance with the applicable provisions of all federal, state and local laws, regulations and industry standards, as now enacted or hereafter amended, and any other future laws or regulations that are applicable to CNG's Facilities, products, and business operations.

**7.2** If the federal Office of Pipeline Safety or the applicable 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 CNG and the City agree to expeditiously negotiate new franchise provisions that will provide City with access to detailed information regarding testing and inspection such as would have been routinely submitted to the federal or state regulatory agencies under the regulations in effect at the time of the Effective Date of this Franchise. CNG agrees to cover all costs reasonably incurred by the City for expert assistance in interpreting the testing and inspection data. If the City and CNG fail to agree upon new franchise provisions, the issues shall be resolved through the Dispute Resolution provisions of Section 11 and Section 12.

**7.3** CNG shall Construct, Maintain, and Operate its Facilities, using industry standards (including, but not limited to, cathodic protection), in a manner that prevents damage to other utility facilities (including, but not limited to, water mains) in the Franchise Area.

## **SECTION 8: RELOCATION OF FACILITIES**

**8.1** Whenever the City causes the construction of any Public Works Project within the Franchise Area, on Public Properties, or on public grounds and places described in Section 3.2, and such construction necessitates the relocation of CNG's Facilities from their existing location within the Franchise Area or on such public grounds and places, such relocation shall be completed without delay by CNG and at no cost to the City.

**8.2** The City and CNG shall work cooperatively to accomplish any such relocation of CNG's Facilities consistent with good faith and fair dealing. In addition to other remedies provided in this Franchise and general law, the City reserves and has the right to pursue any remedy to compel and force CNG to comply with the terms of this Section 8 and the right to seek reimbursement and indemnification from CNG for project delay claims.

**8.3** In the event an emergency posing a threat to public safety or welfare requires the relocation of CNG's Facilities within the Franchise Area, the City shall give CNG notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City, CNG shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities.



**8.4** Subject to Section 8.5, whenever any Third Party requires the relocation of CNG's Facilities to accommodate work of such Third Party within the Franchise Area or on such public grounds and places described in Section 8.5, then CNG shall have the right as a condition of any such relocation to require payment by the Third Party to CNG, at a time and upon terms acceptable to CNG, for any and all costs and expenses incurred by CNG in the relocation of CNG's Facilities.

**8.5** Any condition or requirement imposed by the City upon any Third Party (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 be a condition or requirement causing relocation of CNG's Facilities to occur subject to the provisions of Section 8.4 above; provided, however in the event the City reasonably determines and notifies CNG that the primary purpose of imposing such condition or requirement upon such Third Party is to cause or facilitate the construction of a Public Works Project to be undertaken within a segment of the Franchise Area on the City's behalf and consistent with the City's Capital Improvement Program or Transportation Improvement Program, then only those costs and expenses incurred by CNG in reconnecting such relocated Facilities with CNG's other Facilities shall be paid to CNG by such Third Party, and CNG shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Section 8.1.

**8.6** As to any relocation of CNG's Facilities whereby the cost and expense thereof is to be borne by CNG in accordance with this Section 8, CNG may, within 20 calendar days after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's timely receipt from CNG of such written alternatives, the City shall evaluate such alternatives and shall advise CNG in writing if one or more of such alternatives are suitable to accommodate the work which would otherwise necessitate relocation of CNG's Facilities. In evaluating such alternatives, the City shall give each alternative proposed by CNG full and fair consideration with due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. In the event the City reasonably determines that such alternatives are not appropriate, CNG shall relocate its Facilities as otherwise provided in Section 8.1 and 8.2.

**8.7** If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to Section 8.1 and Section 8.5 (when such Section 8.5 relocation would be considered Section 8.1 relocation), the City shall bear the entire cost of such subsequent relocation.

**8.8** Nothing in this Section 8 shall require CNG to bear any cost or expense in connection with the relocation of any Facilities existing under benefit of easement (other than City owned utility easements described in Section 1.5) or other rights not arising under this Franchise, nor shall anything in this Section 8 require the City to bear any such cost or expense. Nothing in this Section 8 shall be construed to be a waiver of any right of either

CNG or the City to contest any claim or assertion by the other of responsibility to pay such cost or expense.

**SECTION 9: RECORDS OF INSTALLATION, PLANNING, MAINTENANCE AND INSPECTION**

**9.1** Within thirty (30) days of the Effective Date of this Franchise, and within thirty (30) days of each anniversary of the Effective Date of this Franchise, CNG shall provide the City with a file geodatabase with information showing the approximate location of natural gas pipeline owned by CNG within the city limits of the city of Bellingham, Washington, pursuant to a Data Exchange License Agreement in the form attached hereto as Attachment 2. In addition, CNG shall provide updated file geodatabase mapping when required by the City through the permitting process.

**9.2** Upon the City's reasonable request, CNG shall provide to the City copies of any plans prepared by CNG for potential improvements, relocations and conversions to its Facilities within the Franchise Area; provided, however, any such plans so submitted shall be for informational purposes only and shall not obligate CNG to undertake any specific improvements within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

**9.3** Upon the City's reasonable request, CNG shall provide to the City copies of drawings in use by CNG showing the location of its Facilities at specific locations within the Franchise Area. As to any such drawings so provided, CNG does not warrant the accuracy thereof and, to the extent the locations of Facilities are shown, such Facilities are shown in their approximate location. CNG shall provide to City officials access to hard copy maps or disks of our GIS mapping system for the purpose of being able to identify CNG Facilities, including, but not limited to, transmission lines, mains, and major isolation valves for the purpose of emergency planning.

**9.4** Upon the City's reasonable request, in connection with the design of any Public Works Project, CNG shall verify the location of its underground Facilities within the Franchise Area by excavating (e.g., pot holing) at no expense to the City. In the event CNG performs such excavation, the City shall not require any restoration of the disturbed area in excess of restoration to the same condition as existed immediately prior to the excavation.

**9.5** At no time will the City use CNG's mapping information for locate purposes and will instead use the one call number, 811, for this purpose.

**9.6** CNG's annual maintenance, safety, and inspection plans and records concerning or related to CNG's natural gas Facilities located in the Franchise Area shall be made available to the WUTC on an annual basis by CNG and will be available on-line to the City as a public

record. The City at its discretion may obtain these records on-line or directly from the WUTC. If such records are not provided on-line or directly from the WUTC, CNG shall supply the records to the City, when reasonably requested by the City to do so.

**9.7** Upon City's reasonable request, CNG will make available for review and inspection by the City or City's representatives, copies of reports or notices filed with WUTC or Federal Offices of Pipeline Safety concerning or related to the integrity or safety of CNG's natural gas Facilities located in the City of Bellingham.

**9.8** Notwithstanding the foregoing, nothing in this Section 9 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.

**9.9** CNG shall notify the City of Bellingham Fire Department Fire Chief, or his written designee, of any event in which the MAOP is exceeded on or in the Facilities by 10% or greater. Such notification shall occur within 72 hours of CNG gaining knowledge of such overpressure. "MAOP" as used in this subsection means the maximum allowable operating pressure as defined and established by state law and/or federal regulation 49 CFR Section 192.3

**9.10** CNG shall notify the City of Bellingham Fire Department Fire Chief, or his written designee, of any formal allegation by WUTC staff regarding safety violations within the Franchise Area. Such notification shall occur within 72 hours of CNG gaining knowledge of such allegation.

**9.11** As to operations within the City of Bellingham, CNG shall implement all final WUTC issued or approved requirements, orders, and remedies which result from investigations or proceedings conducted by the WUTC.

## **SECTION 10: COORDINATION, SHARED EXCAVATIONS**

**10.1** CNG and the City shall each exercise all best reasonable efforts to coordinate any construction work that either may undertake within the Franchise Areas so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. CNG and the City shall further exercise best reasonable efforts to minimize any delay or hindrance to any construction work undertaken by the Parties or other utilities within the Franchise Area.

**10.2** If, at any time or from time to time, either CNG or the City shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties.

## **SECTION 11: DISPUTE RESOLUTION**

**11.1** If there is any dispute or alleged default with respect to performance under this Franchise, the City shall notify CNG in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within seven (7) days of its receipt of such notice, CNG shall provide written response to the City that shall acknowledge receipt of such notice and state CNG's intentions with respect to how CNG shall respond to such notice. CNG shall further have thirty (30) days (the "cure period") from its receipt of such notice to:

- A. Respond to the City, contesting the City's assertion(s) as to the dispute or any alleged default and requesting a meeting in accordance with Section 11.2, or;
- B. Resolve the dispute or cure the default, or;
- C. Notify the City that CNG cannot resolve the dispute or cure the default within thirty (30) days, due to the nature of the dispute or alleged default. Notwithstanding such notice, CNG shall promptly take all reasonable steps to begin to resolve the dispute or cure the default and notify the City in writing and in detail as to the actions that will be taken by CNG and the projected completion date. In such case, the City may set a meeting in accordance with Section 11.2.

**11.2** If any dispute is not resolved or any alleged default is not cured or a meeting is requested or set in accordance with Section 11.2. (this Section), then the City shall promptly schedule a meeting between the City and CNG to discuss the dispute or any alleged default. The City shall notify CNG of the meeting in writing and such meeting shall take place not less than ten (10) days after CNG's receipt of notice of the meeting. Each Party shall appoint a representative who shall attend the meeting and be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. Any dispute (including any dispute concerning the existence of or any corrective action to be taken to cure any alleged default) that is not resolved within ten (10) days following the conclusion of the meeting shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute or any alleged default through other legal means consistent with Section 12 of this Franchise. All negotiations pursuant to these procedures for the resolution of disputes shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

**11.3** If, at the conclusion of the steps provided for in Section 11.1 and 11.2 above, the City and CNG are unable to settle the dispute or agree upon the existence of a default or the corrective action to be taken to cure any alleged default, the City or CNG (as CNG may have authority to do so by the terms of this Franchise) may:

- A. Take any enforcement or corrective action provided for in City code, as from time to time amended; provided such action is not otherwise in conflict with the provisions of this Franchise; and/or
- B. Demand arbitration, pursuant to Section 12 below, for disputes arising out or based on Subsection 2.2, Section 5, Section 6, Section 7, Section 8, and claims for cost reimbursement under Subsection 15.6, and disputes regarding recommendations under Subsection 15.10 of this Franchise (the "Arbitrable Claims"); and/or
- C. By ordinance, and after reasonable notice to CNG and an opportunity to be heard, declare an immediate forfeiture and revocation of this Franchise for a breach of any material, non-arbitrable, obligations under this Franchise; and/or
- D. Take such other action to which it is entitled under this Franchise or any applicable law.

**11.4** Unless otherwise agreed by the City and CNG in writing, the City and CNG shall, as may reasonably be practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute.

## **SECTION 12: ARBITRATION CLAUSE**

**12.1** The Parties agree that any dispute, controversy, or claim arising out of or relating to the Arbitrable Claims, shall be referred for resolution to a binding arbitration proceeding under Chapter 7.04A RCW. The subsections of this Section 12 (Arbitration Clause) and RCW Chapter 7A.04 shall govern the arbitration. In the event of any inconsistencies between this Arbitration Clause, and RCW Chapter 7A.04 the terms of this Arbitration Clause shall take precedence over RCW Chapter 7A.04.

**12.2** The arbitrators shall allow such discovery as is appropriate to the purposes of arbitration in accomplishing a fair, speedy and cost-effective resolution of the dispute(s). The arbitrators shall reference the Washington State Rules of Civil Procedure then in effect in setting the scope and timing of discovery. The arbitrators may enter a default decision against any Party who fails to participate in the arbitration proceedings.

**12.3** The arbitrator shall have the authority to award any and all damages allowed by governing law. Such damages may include, but shall not be limited to: all costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items; all costs and expenses of any staff; all costs and expenses of any labor (including, but not limited

to, labor of any contractors and/or subcontractors); all pre-arbitration costs and expenses of consultants, attorneys, accountants, professional and other services; and all taxes, insurance, interest expenses, overhead and general) administrative costs and expenses, and other costs and expenses of any kind incurred in connection with the dispute. The arbitrator may award equitable relief in those circumstances where monetary damages would be inadequate.

**12.4** Any award by the arbitrators shall be accompanied by a written opinion setting forth the findings of fact and conclusions of law relied upon in reaching the decision. The award rendered by the arbitrators shall be final, binding and appealable only under the provisions of Chapter 7.04A RCW.

**12.5** Except as provided in Section 12.7 below, each Party shall pay the fees of its own attorneys, expenses of witnesses and all other expenses and costs in connection with the presentation of such Party's case including, without limitation, the cost of any records, transcripts or other things used by the Parties for the arbitration, copies of any documents used in evidence, certified copies of any court, property or City documents or records that are placed into evidence by a Party.

**12.6** Except as provided in Section 12.7 below, the remaining costs of the arbitration, including without limitation, fees of the arbitrators, costs of records or transcripts prepared for the arbitrator's use in the arbitration, costs of producing the arbitrator's decision and administrative fees shall be borne equally by the Parties.

**12.7** Notwithstanding the foregoing Sections 12.5 and 12.6, in the event either Party is found within a period of five (5) years during the term of this Franchise to be the prevailing party in any two (2) arbitration proceedings brought by such Party pursuant to this Section 12 of this Franchise, then such Party shall thereafter be entitled to recover all reasonably incurred costs, fees and expenses, including attorney fees, for any subsequent arbitration brought by it in which it is found to be the prevailing party within five (5) years of the most recent arbitration award.

**12.8** In the event a Party desires to make a copy of the transcript of an arbitration proceeding for its use in writing a post-hearing brief, or a copy of an arbitration decision to append to a lawsuit to reduce the award to judgment, etc., then that Party shall bear the cost thereof, except to the extent such cost might be allowed by a court as court costs.

### **SECTION 13: ADDITIONAL AND ALTERNATIVE REMEDIES**

**13.1** No provision of this Franchise shall be deemed to bar the right of the City or CNG to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder for Non-Arbitrable Claims. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City or CNG to recover monetary damages for such violations by the other Party, or to seek and obtain judicial enforcement of

the other Party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

**13.2** In addition to the remedies set forth elsewhere in this Franchise, the City may terminate this Franchise if CNG fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within thirty (30) calendar days of City's providing CNG written notice thereof and an opportunity to be heard, or, if not reasonably capable of being cured within thirty (30) calendar days, within such other reasonable period of time as the parties may agree upon.

**13.3** In addition to the remedies set forth elsewhere in this Franchise, in the event of termination, forfeiture, or revocation of this Franchise, CNG shall immediately discontinue, cease, and refrain from any expansion, enlargement, or extension of Facilities within the Franchise Area. Either party may in such case invoke the dispute resolution provisions herein. Alternatively, the City or CNG may elect to seek relief directly in Superior Court, in which case the dispute resolution requirements shall not be applicable in this limited situation.

**13.4** The City's failure to assert or exercise a particular remedy at any time shall not waive the City's right to terminate, assess penalties, or assert any other remedy at law or equity for any future breach or default of CNG.

**13.5** Termination, forfeiture, and/or revocation of this Franchise shall not release CNG or the City 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 the Facilities pursuant to this Franchise and to restore the Franchise Area.

**13.6** 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 (or in the case of Arbitrable Claims in an arbitration proceeding) 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: INDEMNIFICATION**

**14.1 General Indemnification.** CNG shall indemnify, defend and hold the City, its agents, officers or employees harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees, made against the City, its agents, officers or employees on account of injury, harm, death or damage to persons or property which is caused by, in whole or in part, and then only to the extent of the actual or alleged negligent acts or omissions of CNG or its

agents, servants, employees, contractors, or subcontractors in the exercise of the rights granted to CNG by this Franchise. Provided, however, such indemnification shall not extend to that portion of any claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees caused by the negligence of the City, its agents, employees, officers, contractors or subcontractors.

**14.1.1** CNG's indemnification obligations pursuant to this Section 14 shall include assuming potential liability for actions brought by CNG's own employees and the employees of CNG's agents, representatives, contractors, and subcontractors even though CNG might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of CNG's exercise of the rights set forth in this Agreement. The obligations of CNG under this section have been mutually negotiated by the Parties hereto, and CNG acknowledges that the City would not enter into this Agreement without CNG's waiver thereof. To the extent required to provide this indemnification and this indemnification only, CNG waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

**14.1.2** In the event any matter (for which the City intends to assert its rights under this Section 14) is presented to or filed with the City, the City shall promptly notify CNG thereof and CNG shall have the right, at its election and at its sole costs and expense, to settle and compromise such matter as it pertains to CNG's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees. In the event any suit or action is started against the City based upon any such matter, the City shall likewise promptly notify CNG thereof, and CNG shall have the right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to CNG's responsibility to indemnify, defend and hold harmless the City, its agents, officers or employees.

**14.2 Environmental Indemnification.** Except to the extent caused by the negligence of the City, its agents, employees, officers, contractors or subcontractors, CNG shall indemnify, defend and save the City harmless from and against any and all liability, loss, damage, expense, actions and claims, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by the City in defense thereof, arising directly or indirectly from (a) CNG's breach of any environmental laws applicable to the Facilities or (b) from any release of a hazardous substance on or from the pipeline or (c) other activity related to this Franchise by CNG, 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.



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

**SECTION 15: LEAKS, PRESSURE, EMERGENCY MANAGEMENT, AND EMERGENCY RESPONSE**

**15.1** CNG shall have in place, at all times during the term of this Franchise, a system for remotely monitoring pressures and flows within the City of Bellingham.

**15.2** During the term of this Franchise, CNG shall have a written pipeline emergency response plan and procedures for locating leaks, and ruptures, for shutting down valves or isolating sections of their system as rapidly as possible, and specifically for ensuring a prompt, effective and coordinated response with the City to any type of emergency involving a Facility.

**15.3** CNG has provided the City with a copy of its pipeline emergency response plans and procedures, including, but not limited to, emergency response for leaks or ruptures. CNG will provide the City an updated copy of its pipeline emergency response plans and procedures, annually within each calendar year.

**15.4** Emergency response plans shall comply with all federal and state regulations governing emergency plans. CNG's pipeline emergency plans and procedures shall designate CNG's responsible local emergency response officials and a direct 24-hour emergency contact number for control center/gas control operator. CNG shall, after being notified of an emergency, cooperate with the City and make every effort to respond as soon as possible to protect the public's health, safety and welfare.

**15.5** Upon prior written request of the City, the City and CNG agree to meet annually to review CNG's pipeline emergency response plans and procedures. If the parties disagree as to the adequacy of CNG's pipeline emergency response plans or procedures, the parties will submit the plans and procedures to independent, third party review. If the review recommends that CNG make modifications or additions to CNG's emergency response plan, CNG shall consider such recommendation in good faith. If CNG declines to follow the recommendations, CNG shall provide a written report to the City explaining the rationale for not following such recommendations. CNG shall pay the cost of the third-party review identified in this subsection.

**15.6** CNG shall be solely responsible for all necessary costs incurred by the City in responding to any rupture or leak from CNG's Facilities, when said incident is due to either a lack of compliance, defective condition, or faulty act or omission by CNG, including, but not limited to, detection and removal of any contaminants from air, earth or water, and all actual remediation costs. Further, CNG shall promptly reimburse the City for any and all costs the City reasonably incurs in responding to any emergency that is caused by: (1) any

faulty act or omission by CNG, (2) lack of compliance, or (3) defective condition. This section shall not limit-CNG's rights or causes of action against any third party or parties who may be responsible for a leak or spill from CNG's Facilities, including such third party's insurers.

**15.7** In addition to the notification requirements in the emergency response plan, CNG shall notify the local 911 emergency call center immediately of any 911 Reportable Event.

**15.8** If requested by the City in writing, CNG shall follow up any 911 Reportable Event or any other event reasonably determined by the City to have caused a threat to public safety, with a written summary of the event, including, but not limited to, the leak, or rupture's date, time, amount, location, response, remediation, cause, and other agencies CNG has notified. Such follow-up summary shall be provided to the City within thirty (30) days of CNG's receipt of the City's written request.

**15.9** Following any event reasonably determined by the City to implicate or to have implicated public safety and where federal or state regulators have not yet investigated, the City may request the WUTC or other applicable regulatory agency to investigate any such event.

**15.10** If the WUTC or other applicable regulatory agency investigates any event that implicates or has implicated public safety and then recommends that CNG make modifications or additions to CNG's Facilities or to CNG's policies or procedures, CNG covenants to consider said recommendations in good faith. If CNG declines to follow such recommendations, CNG shall provide a written report to the City explaining its rationale for not following said recommendations. The parties agree to resolve any dispute over the whether to follow the recommendations under Section 12 (Arbitration Clause).

**15.11** CNG will provide concurrent notice to the City of any application by CNG for waiver of any state or federal gas safety rule applicable to the integrity or safety of CNG's natural gas Facilities located in the City of Bellingham.

#### **SECTION 16: ASSIGNMENT, LEASE, TRANSFER, OR ALIENATION OF FRANCHISE**

**16.1** All of the provisions, conditions and requirements contained in this Franchise shall be binding upon CNG and the City. CNG may not assign, lease, alienate or otherwise transfer its rights, obligations, privileges, authority or Franchise herein conferred without the prior written, express authorization and approval of the City by ordinance. The City hereby authorizes and approves the mortgage by CNG of its rights, privileges, authority and Franchise in and under this Franchise to the trustee for its bondholders.

**16.2** 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 CNG.

**16.2.1** CNG and any proposed assignee or transferee shall provide to the City not less than 120 days prior to the proposed date of transfer (a) information setting forth the nature of the proposed assignment or transfer; and, (b) such reasonable information regarding the proposed assignee or transferee (including that information required of a franchise applicant under Bellingham Municipal Code Chapter 13.15) to enable the City to adequately assess the legal, technical, financial and other relevant qualifications of the assignee or transferee.

**16.2.2** CNG and/or the assignee or transferee will reimburse the City for its actual and reasonably incurred costs for processing and investigating the proposed assignment or transfer.

**16.3** Any transfer or assignment of this Franchise without the prior written consent of the City by ordinance shall be void and result in revocation of the Franchise.

**16.4** If CNG intends to enter into a transaction that would result in a change of the operational control of CNG, CNG will notify the City in writing and provide at least 90 days for the City to provide CNG with written comments and issue of concern the City may have with the proposed transfer of control. CNG agrees to provide a written response to the City's comments within 60 days of receiving the City's comments.

#### **SECTION 17: COMPLIANCE WITH CITY CHARTER**

**17.1** CNG shall at all times comply with the provisions of the City's Charter as now existing or hereafter amended, so long as the same do not conflict with other applicable law. Terms required of franchises include, but are not limited to, the following:

**17.1.1** With due regard to the rights of the Grantee (CNG) and the interest of the public, the City Council, or the populace at large acting by initiative or referendum, retains the right to repeal, amend, or modify this Franchise. In addition, this franchise may be cancelled, forfeited or abrogated if it is not operated in full accordance with its provisions, by ordinance, initiative or referendum.

**17.1.2** The City may at any time to the extent allowed by law acquire all Facilities of Grantee (CNG) subject to this Franchise by purchase or condemnation, at a fair and just value but not including any valuation of this Franchise itself, which terminated thereupon. Such an acquisition may be initiated by ordinance, initiative or referendum.

#### **SECTION 18: SEVERABILITY AND SURVIVAL**

**18.1** In the event that a court or agency of competent jurisdiction declares a material provision of this Franchise 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 of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Franchise, either party may apply to a court of competent jurisdiction to reform or reconstitute the Franchise so as to recapture the original intent of said particular provision(s). All other provisions of the Franchise shall remain in effect at all times during which negotiations or a judicial action remains pending.

**18.2** All provisions, conditions and requirements of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive the termination or expiration of the Franchise. Subject to Section 16 above, the Parties' respective rights, obligations, and interests under this Franchise shall be binding on and inure to the benefit of their respective successors and assigns.

### **SECTION 19: AMENDMENTS TO FRANCHISE**

**19.1** This Franchise and the attachments hereto represent the entire understanding and agreement between the Parties with respect to the subject matter and it supersedes all prior oral negotiations between the Parties. This Franchise may be amended only by mutual agreement thereto, set forth in writing in the form of a City ordinance, signed by both Parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington and the City Charter. Without limiting the generality of the foregoing, this Franchise (including, without limitation the Sections addressing indemnification and insurance) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by CNG of any and all of its rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

- A. References this Franchise; and
- B. States that it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

**19.2** If during the term of this Franchise, there becomes effective any change in federal or state law, including changes approved by the WUTC which:

- A. Affords either party the opportunity to negotiate in good faith a term of condition of this Franchise which term or condition would not have, prior to such change, been consistent with federal or state law; or
- B. Pre-empts or otherwise renders null and void any term or condition of this Franchise which has theretofore been negotiated in good faith;

Then, in such event, either party may, within one hundred and eighty (180) 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 encompass only the specific term or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiations on any other term or condition. Within thirty (30) days from and after the other party's receipt of such written notice, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this Franchise, adoption of such amendment by Ordinance by the City and acceptance of such Ordinance by CNG, and except as to any portion thereof which has been preempted or otherwise rendered null and void by such change in federal or state law, the Franchise shall remain in full force and effect.

## **SECTION 20: NO THIRD PARTY BENEFICIARY**

Nothing in this Franchise shall be construed to create or confer any right or remedy upon any person (s) other than the City and CNG. No action may be commenced or prosecuted against any Party 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 Party.

## **SECTION 21: INSURANCE**

**21.1** CNG 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 CNG, its agents, representatives or employees. CNG shall at all times maintain on file with the City a current insurance certificate, together with an endorsement or endorsements naming the City, 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 City, 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 CNG 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.

**21.2** Any deductibles or self-insured retentions must be declared to the City and shall not be in excess of \$500,000, unless approved by the Office of the City Attorney. Payment of deductibles and self-insured retentions shall be the sole responsibility of CNG. 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.

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

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

## **SECTION 22: NOTICE OF TARIFF CHANGES**

CNG shall, when making application for any changes in tariffs affecting the provisions of the Franchise, notify the City in writing of the application and provide City with an electronic copy of the submitted application within five (5) days of filing with the WUTC. CNG shall further provide the City with an electronic copy of any actual approved tariff(s) affecting the provisions of this Franchise.

## **SECTION 23: FORCE MAJEURE**

In the event that either Party is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God; storm, earthquake or other condition which necessitates the mobilization of the personnel of a Party or its contractors to restore utility service to customers; laws, regulations, rules or orders of any governmental agency; sabotage; strikes or similar labor disputes involving personnel of a Party, its contractors or a Third Party; or any failure or delay in the performance by the other Party, or a Third Party who is not an employee, agent or contractor of the Party claiming a Force Majeure Event, in connection with this Franchise. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation. The

Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure Event.

**SECTION 24: LEGAL RELATIONS**

**24.1** 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 liable for its own duties, obligations, and liabilities under this Franchise.

**24.2** CNG accepts any privileges granted by the City to the Franchise Area, public rights-of-way and other Public Property in an "as is" condition. CNG agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of CNG's location of Facilities or the Facilities themselves on Public Property or rights-of-way or possible hazards or dangers arising from other uses of the public rights-of-way or other Public Property by the City or the general public. CNG 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.

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

**24.4** 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 (for both judicial relief and arbitration) shall lie exclusively in Whatcom County, Washington.

**SECTION 25: EFFECTIVE DATE**

The Effective Date of this Franchise shall be the date of final acceptance by CNG; after having first been submitted to the City Attorney; having been introduced to the City Council after publication under City Charter Article XI; and having been passed as an ordinance at a regular meeting of the City Council by an approving vote of at least a majority thereof.

**SECTION 26: MISCELLANEOUS**

**26.1** 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.

**26.2** 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.

**26.3** Except as provided in Subsection 26.4, whenever this Franchise calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient at the address set forth in this Section, unless written notice of change of address is provided to the other party. If the date for making any payment or performing any act is a legal holiday, payment may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be directed to the parties as follows:

To the City:                   Public Works Director  
  City of Bellingham  
  2221 Pacific Street  
  Bellingham, WA 98229

w/copy to:                   City Attorney's Office  
  City of Bellingham  
  210 Lottie Street  
  Bellingham, WA 98225

To CNG:                        Region Director  
  Cascade Natural Gas Corporation  
  1910 Racine Street  
  Bellingham, WA 98229

**26.4** Whenever this Franchise calls for notice to or notification to the City (separately and in addition to 911 notification) regarding emergency events; leaks or ruptures; emergency management or emergency response; safety matters; or pressure fluctuations; such notice shall be directed to:

City of Bellingham Office of Emergency Management  
1800 Broadway  
Bellingham, WA 98225  
360-778-8400

**PASSED** by the Council this 30<sup>th</sup> day of August, 2021.




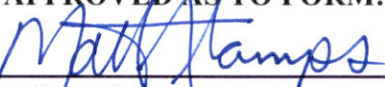
Hannah Stone, Council President



APPROVED by me this 10 day of September, 2021.

  
\_\_\_\_\_  
Seth Fleetwood, Mayor

ATTEST:   
\_\_\_\_\_  
Andy Asbjornsen, Finance Director

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Office of the City Attorney

September 3, 2021  
\_\_\_\_\_

Published:



## Attachment 2

### **Data Exchange License Agreement**

THIS LICENSE AGREEMENT (hereinafter referred to as the "AGREEMENT") is made by and between CASCADE NATURAL GAS CORPORATION. (hereinafter referred to as "CNGC"), a Washington corporation, with offices at 8113 W Grandridge Blvd., Kennewick, WA 99336 and the City of Bellingham, Washington, a municipal corporation and first-class city of the state of Washington with offices at 210 Lottie Street, Bellingham Washington 98225(hereinafter referred to as "Recipient"). Each or both may also hereinafter be referred to as the "Party" or "Parties" respectively.

WHEREAS, CNGC possesses certain technical, digital, documentary, land base, facility, photographic, or other information or data which CNGC considers proprietary to it and relates to its Geographic Information System (GIS) data base (hereinafter referred to as "PROPRIETARY INFORMATION").

WHEREAS, it is recognized that in anticipation of any current or future need to share information or coordinate projects between the Parties, it may be both necessary and desirable that CNGC provide to Recipient the above-described PROPRIETARY INFORMATION.

WHEREAS, Recipient desires to use portions of CNGC's PROPRIETARY INFORMATION for the purposes of city planning, on the condition that the information be retained in confidence and dealt with according to the provisions of this Agreement.

WHEREAS, the City intends to use the PROPRIETARY INFORMATION to create a secure, password protected mapping layer in the City's GIS mapping systems showing CNGC's pipeline infrastructure in Bellingham, accessible only to authorized City employees.

NOW, THEREFORE, in consideration of these promises, and of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

1. CNGC shall provide to Recipient certain PROPRIETARY INFORMATION designated in Exhibit A attached hereto for the LIMITED USE ONLY as set forth in Section 3 of this Agreement, including requested facility location data. The PROPRIETARY INFORMATION to be disclosed by CNGC may be contained in documents, electronic media (ArcGIS Geodatabase, ArcGIS Shapefile, DXF, DWG, JPEG, PDF and/or .TIF format only), and other materials.
2. The Parties hereto agree that CNGC retains all right, title, and interest in and to the disclosed PROPRIETARY INFORMATION and that Recipient is not hereby granted any right, license or interest in the PROPRIETARY INFORMATION, except as specifically provided in this Agreement. Recipient shall not distribute, sell, license, or reproduce the PROPRIETARY INFORMATION, except as specifically set forth herein. CNGC shall be under no obligation as a result of this Agreement to disclose any PROPRIETARY INFORMATION other than the PROPRIETARY INFORMATION listed in Exhibit A, attached hereto.
3. CNGC may grant Recipient the right to make limited public disclosure of the PROPRIETARY INFORMATION obtained from CNGC upon receipt of advance written authorization from CNGC and in accordance with this section. This disclosure may include producing and distributing paper or Mylar documents using the data (e.g. construction drawings, plan sets, maps), publishing articles relying on or citing the data, or such other

types of disclosure as CNGC may authorize in advance in writing. Any disclosure or release of data obtained from CNGC shall attribute the data to CNGC; such attribution shall take the form of text incorporated into example maps and drawings and summary data tables as well as all project reports, papers, and articles presented or published for public disclosure. Such authorized disclosure of information shall in no way operate to modify Recipient's obligation to protect the proprietary nature of other PROPRIETARY INFORMATION in accordance with the terms of this AGREEMENT. Limited disclosure of PROPRIETARY INFORMATION as permitted pursuant to this AGREEMENT shall not change the proprietary character of the PROPRIETARY INFORMATION, but CNGC shall have no proprietary interest in the example maps, drawings, summary data tables, or other forms in which the PROPRIETARY INFORMATION is disclosed and the information as contained in example maps, drawings, summary data tables, and other authorized forms shall not be deemed Proprietary Information.

4. CNGC is not providing, nor is Recipient obtaining, the right to make copies of the PROPRIETARY INFORMATION furnished pursuant to this AGREEMENT, except that Recipient may make backup copies for its own use. Recipient shall also not obtain as a result of this Agreement the right to make CNGC's PROPRIETARY INFORMATION available to or distribute to third parties in either computer or non-computer readable form, except as set forth in Paragraph 3, or the right to use CNGC's PROPRIETARY INFORMATION for purposes of design, analysis, or any information gathering for third parties. CNGC reserves the exclusive right to reproduce and make available to others, on such terms and conditions as CNGC may determine, CNGC's PROPRIETARY INFORMATION in either computer or non-computer readable form.
5. The points of contact for the parties with respect to the provision of PROPRIETARY INFORMATION are as follows:

CASCADE NATURAL GAS CORPORATION

Jessica Upham  
Manager, Enterprise GIS System  
400 North Fourth Street  
Bismarck, ND 58501  
(701)222-7668  
[Jessica.Upham@mdu.com](mailto:Jessica.Upham@mdu.com)

CITY OF BELLINGHAM

Don Burdick  
GIS Projects & Services Administrator  
City of Bellingham, Information Technology Department  
Phone: (360)778-7835  
[dburdick@cob.org](mailto:dburdick@cob.org)

6. Recipient shall restrict disclosure of CNGC's PROPRIETARY INFORMATION to only those employees who have a job-related need for the PROPRIETARY INFORMATION. Upon discovery by Recipient of any unauthorized use or disclosure, Recipient shall immediately notify CNGC and shall endeavor to prevent further unauthorized use or disclosure.
7. In the event of any breach of this AGREEMENT by Recipient, Recipient agrees that injunctive relief will be essential for CNGC's protection. Accordingly, CNGC and

Recipient agree and consent that in the event of any breach or threatened breach of this AGREEMENT, CNGC may obtain such injunctive relief as its exclusive remedy in order to prevent any threatened or continued violation of the terms of this AGREEMENT. In the event that CNGC, based on this AGREEMENT, seeks injunctive relief, Recipient agrees to waive any requirement that CNGC post a bond or other security for the requested injunctive relief.

8. Any PROPRIETARY INFORMATION delivered by CNGC to Recipient pursuant to this AGREEMENT shall be for use solely as specified in this Agreement. No other use of PROPRIETARY INFORMATION may be made without the prior written consent of CNGC.
9. Recipient's obligations with respect to disclosing and using PROPRIETARY INFORMATION, as set forth in this AGREEMENT, are not applicable to any such information or data if same is:
  - a. In the public domain at the time of receipt or comes into the public domain thereafter through no act of Recipient in breach of the AGREEMENT, or
  - b. Is in Recipient's possession prior to disclosure by CNGC, or
  - c. Disclosed with the prior written approval of CNGC, or
  - d. Independently developed, without aid from CNGC's PROPRIETARY INFORMATION, by Recipient, or
  - e. Lawfully disclosed to Recipient by a third party under conditions permitting such disclosure.
  - f. CNGC's PROPRIETARY INFORMATION is not intended to be used for "line location" activities by Recipient in lieu of contacting an authorized "One-Call" Center.
10. The term of this AGREEMENT shall be for as long as the information is in possession of Recipient, or until terminated by either Party. Either Party shall have the right to terminate the AGREEMENT upon 30 days written notice to the other.
11. Upon expiration or termination of this AGREEMENT, in accordance with its terms, Recipient will, within a reasonable period of time thereafter, return all PROPRIETARY INFORMATION received from CNGC under this AGREEMENT along with all copies thereof, or certify in writing that all such PROPRIETARY INFORMATION has been destroyed. Upon receipt of replacement or updated PROPRIETARY INFORMATION from CNGC, Recipient will, within a reasonable period of time thereafter, return the prior versions of such PROPRIETARY INFORMATION received from CNGC under this agreement along with copies thereof, or certify in writing that all such PROPRIETARY INFORMATION has been destroyed.
12. PROPRIETARY INFORMATION transmitted to Recipient pursuant to this AGREEMENT shall not constitute any representation, warranty, assurance, guarantee or inducement by CNGC to Recipient that any patent or other proprietary intellectual property rights owned or controlled by any third party have not been infringed, and nothing in this AGREEMENT shall be construed as a warranty or representation of any kind with respect to the content or accuracy of data, documents and information transmitted by CNGC under this AGREEMENT.
13. Recipient agrees to indemnify and hold harmless CNGC against any and all claims, causes of action or damages, liabilities, including attorneys' fees and expenses, brought as a result of or arising from Recipient's use of the PROPRIETARY INFORMATION.

14. The Parties hereto agree that any suits or claims arising from this AGREEMENT shall be brought in the County of Whatcom, State of Washington.
15. This AGREEMENT shall be governed by and interpreted in accordance with the laws of the State of Washington.
16. This AGREEMENT contains the entire understanding between the Parties relative to the protection of the PROPRIETARY INFORMATION and supersedes all prior and collateral communications, reports, and understandings between the Parties with respect thereto. No change to, modification of, alteration of, or addition to any provision hereof shall be binding unless in writing and signed by authorized representatives of both Parties.
17. This AGREEMENT shall apply in lieu of and notwithstanding any specific legend or statement associated with the PROPRIETARY INFORMATION, and the duties of the Parties shall be determined exclusively by the aforementioned terms and conditions.
18. If Recipient is a public entity subject to the disclosure requirements of the Washington open records law, the federal Freedom of Information Act, or any other state or federal legislation which would require public disclosure of the PROPRIETARY INFORMATION upon request, Recipient shall notify CNGC immediately of any and all public records requests regarding the PROPRIETARY INFORMATION and shall provide CNGC with twenty (20) business days to obtain a restraining order or injunction from a court of competent jurisdiction prohibiting disclosure of the requested PROPRIETARY INFORMATION. In the event such an order or injunction is NOT obtained, Recipient may disclose the requested PROPRIETARY INFORMATION to the requesting party and said disclosure shall not be deemed a breach of this AGREEMENT.

[SIGNATURE PAGE TO FOLLOW]

The duly authorized officers of the Parties have executed this AGREEMENT on the date first set forth above.

**CASCADE NATURAL GAS CORPORATION**

\_\_\_\_\_  
Signature

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Print Title: \_\_\_\_\_

**EXECUTED** this \_\_\_\_ day of \_\_\_\_\_, 2021 for the **CITY OF BELLINGHAM** by:

**Departmental Approval:**

\_\_\_\_\_  
Seth Fleetwood, Mayor

\_\_\_\_\_  
Eric Johnston, Public Works Director

**Attest:**

**Approved as to Form:**

\_\_\_\_\_  
Andy Asbjornsen, Finance Director

\_\_\_\_\_  
Office of the City Attorney

**EXHIBIT "A"**  
**TO DATA EXCHANGE LICENSE AGREEMENT**

CASCADE NATURAL GAS CORPORATION

This document is an attachment to the Data Exchange License Agreement dated \_\_\_\_\_, between CASCADE NATURAL GAS CORPORATION (CNGC) and the CITY OF BELLINGHAM, WASHINGTON (Recipient).

**DESCRIPTION OF PROPRIETARY INFORMATION:**

A file geodatabase with metadata and information showing the approximate location of natural gas pipeline owned by CNGC within the city limits of the city of Bellingham, Washington, containing currently known attributes including pipe size, installation date, and pipe material. Pipeline location shall be shown with the same level of precision as is shown on CNGC's internal GIS maps.