

**ORDINANCE #816
CITY OF MOXEE, WASHINGTON**

AN ORDINANCE of the City of Moxee, Washington, granting a franchise to Cascade Natural Gas Corporation to connect, install, operate, maintain and repair a natural gas distribution system, facilities, and appurtenances in, over, along, across and under the Franchise Area for the purpose of providing natural gas service; and to charge and collect fees, rates, and other compensation for such service.

WHEREAS, in order to maintain control over the use of City of Moxee rights-of-way by utilities operating within the City, it is appropriate to enter into franchise agreements with such utilities; and

WHEREAS, Cascade Natural Gas Corporation is such a utility, and has negotiated a franchise agreement with the City acceptable to both parties: and

WHEREAS, the City has determined that it is in the best interests of the public to grant Cascade Natural Gas Corporation a franchise on the terms and conditions set forth in this Ordinance, and

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

Section 1 - DEFINITIONS. Where used in this franchise ("Franchise"), the following definitions shall apply:

- 1.1. "Franchisee" means Cascade Natural Gas Corporation, a Washington corporation, and its representative successors and assigns.
- 1.2. "City" means City of Moxee, a Washington municipal corporation.
- 1.3. "Franchise Area" means all of the public roads, streets, avenues, alleys, highways, grounds and rights-of-way of the City as now laid out, platted, dedicated or improved; and any and all public roads, streets, avenues, alleys, highways, grounds, and rights-of-way that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as the limits of the City may be extended through annexations or otherwise; provided, that the Franchise Area shall not include or convey any right to Franchisee to install facilities on or to otherwise use City owned or leased properties outside the Franchise Area.
- 1.4. "Facilities" means the Franchisee's natural gas distribution system, lines, mains, appurtenances, and all of the necessary or convenient facilities for the purpose of providing natural gas service.
- 1.5. "Ordinance" means this ordinance setting forth the terms and conditions of the franchise granted to the Franchisee.
- 1.6. "Franchise Agreement" as referred to in this Ordinance shall mean the Ordinance.

Section 2 - FRANCHISE TERM. That Franchisee, its successors or assigns, is hereby granted the right and privilege to construct, maintain, use, own and operate a gas works, within the corporate limits of the said City of Moxee, Washington (hereinafter designated as the "City"), as the same now or may hereafter be extended, and to construct, lay, maintain and operate along the streets, avenues, lanes, alleys, highways and other public places in the said City of Moxee, a system of mains, pipes and the necessary attachments and appurtenances for the storage, conveyance, distribution and sale of gas for light, fuel, power, heat and other purposes in the City of Moxee, Washington, and elsewhere, and for the storage, distribution and sale of natural gas. Such right and authority, permission and power are hereby granted for a term of twenty (20) years from and after the date of the final acceptance of this Ordinance by the Franchisee.

Section 3 - RATES. That the rates to be charged for gas for light, power, heat and other purposes by the Franchisee, and character of the service to be rendered by the Franchisee shall be such as shall be prescribed by the Washington Utilities and Transportation Commission, or other agency of said State having jurisdiction over said matters under the laws thereof.

Section 4 - PIPE INSTALLATION. Franchisee to submit request for approval of all proposed installations within public property with sketch showing proposed locations of all facilities to City for approval prior to installation. All gas mains of the Franchisee shall be laid not less than two

and one-half (2 ½) feet below the then existing surface of the alleys and streets of said City and not less than such depth below the then existing bottom of all irrigation and drain ditches and in such a manner as not to interfere with any present or proposed location of public or private irrigation or drain ditches, drains, sewers, water mains, conduits, sidewalks, paving or other public improvements. A lesser depth may be approved by the Public Works Supervisor. If practicable, no main shall be laid closer than three (3) feet to any water main or other pipe or conduit or other utilities.

Section 5 – EXCAVATIONS. Any excavations by the Franchisee in any of the alleys, streets, roads or public grounds within the limits of said City shall be done in accordance with the City's ordinances now enacted or to be enacted by the government of said City, relating to excavations in alleys, streets and public grounds of said City, and under the direction of the Public Works Supervisor.

The Franchisee shall with reasonable promptness restore the surface of said streets, avenues, lanes, alleys, highways and public places in which it shall make excavations to as good condition as they were before the commencement of such work subject to the approval of the Public Works Supervisor, and during the progress of such work, the Franchisee shall be responsible for keeping such streets and other places maintained and guarded and/or barricaded in order to prevent accident to persons or property; and if at any time the City is subjected to liability for injury to persons or property growing out of the actions of the Franchisee, its agents, servants or employees, in connection with the operations of the Franchisee, the Franchisee shall fully indemnify and hold the City harmless from any and all such liability; provided, however, that in case suit be instituted against the City, the City shall promptly notify the Franchisee of such suit, giving it ample and reasonable time to defend the same. Nothing herein shall require the Franchisee to indemnify the City for losses or damages attributable in whole or part to the negligence, default, or misconduct of the City, its employees, contractors, and agents. The City, upon thirty (30) days written notice to the Franchisee, may at any time do, or order to have done any and all work that they consider necessary to restore any such street, alley or other public place left by the Franchisee or its agents in a condition dangerous to life or property, and Franchisee upon demand; shall pay to the City all costs of such work.

Whenever practicable, gas lines shall be bored under streets whenever a street is to be crossed.

Section 6 - VACATION. If at any time the City vacates any City rights-of-way covered by this Franchise, the City will not be held liable for any damages or loss to the Franchisee by reason of such vacation. The City may, after giving one hundred twenty (120) days written notice to the Franchisee terminate this Franchise with respect to any City road or rights-of-way which has been or is to be vacated. In the event of any vacation of right-of-way, the City shall use reasonable efforts to assist Franchisee with relocation of Facilities affected thereby.

Section 7 - MAPS, PLATS, RECORDS, ETC. The Franchisee shall prepare and upon request submit a map or maps showing the location of its distribution system within the City. The maps shall be in such detail to accurately show the location of all facilities. The City agrees that any such maps shall not be used by it or disseminated to the public for use in locating underground facilities.

Section 8 – IMPROVEMENTS. In case of any future improvement or construction of sewers or underground fixtures for the conveyance of water or of any of the streets, avenues, lanes, alleys, highways and public places where any gas mains, pipes, services, attachments, and appurtenances of the Franchisee may be situated, and it is necessary to change the location of the same in connection with said improvement or construction, the Franchisee shall, upon reasonable notice by the City and after reasonable evaluation of alternatives by the City in cooperation with the Franchisee, at its own expense, move and change any gas main, pipes, services, attachments or appurtenances to conform to such public improvement. The City will avoid the need for such moving or changing whenever possible. In the event federal, state or other funds are available in whole or in part for utility relocating purposes, the City shall apply for such funds and the Franchisee will be given credit to the extent any such funds are actually obtained.

Section 9 - REQUIREMENTS OF PERMITS.

9.1. The Franchisee has the right, privilege and authority to enter the City road rights-of-way for the purpose of constructing, installing, operating, maintaining, replacing or repairing its Facilities on the condition that it first obtains all permits required by the City, which shall not be unreasonably withheld or delayed. Said permits shall include necessary paving, resurfacing, grading and any other reasonably necessary repair or restoration to the City road rights-of-way. All work shall be done to the reasonable satisfaction of the City. However, in the event of an emergency requiring immediate action by Franchisee for the protection of the pipeline(s) or Facilities, the City's property or other persons or property, Franchisee may proceed without first obtaining the normally required permits.

9.2. All equipment, lines and appurtenances which are used in the construction, installation, operation, maintenance or repair of the Franchisee's Facilities and which are located within the City road rights-of-way and owned by the Franchisee shall be considered to be part of the Franchisee's system and shall be the responsibility of the Franchisee. All permits for the construction, installation, operation, maintenance or repair of the Franchisee's system shall be applied for and given in the name of the Franchisee, who will be responsible for all work done under the permit. The Franchisee remains responsible whether the work is performed by the Franchisee, its contractors, or by third parties.

Section 10 - REMEDIES TO ENFORCE COMPLIANCE. The City, in addition to its right to forfeit this Ordinance and franchise as provided in Section 13, reserves and has the right to pursue any remedy to compel or enforce the Franchisee, its successors or assigns, to comply with the terms hereof and furnish the service herein called for, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture for any reason herein stated, nor shall the delay of the City in declaring a forfeiture estop it from thereafter doing so, unless the action of the City shall have prevented, caused or contributed materially to the failure to perform or do the act or thing complained of.

Section 11 - REGULATION AND USE OF CONTROL. This Franchise does not deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City road rights-of-way covered by this Franchise. The City reserves the right and power at all times to exercise its police powers with respect to the time, manner and location of the placement of the Franchisee's Facilities in accordance with all valid and applicable laws, rules, and regulations.

Section 12 - TAXES. The Franchisee, its successors and assigns, shall have the right to pass on and charge to customers, each customer's pro rata share of any federal, state or municipal tax which may be levied upon the property, business or occupation of the Franchisee, its successors and assigns, which tax shall not have been taken into account and made a part of the costs of the Franchisee, its successors and assigns, utilized for rate fixing purposes by the appropriate regulatory authorities. The customer's pro rata share of such tax shall be charged to and paid in addition to the charge made to such customer for gas consumed at the approved and applicable rate.

Section 13 - PENALTY FOR VIOLATION OF CONDITIONS. If the Franchisee fails to comply with any material term, conditions or responsibility under this Franchise which materially and substantially affects the City's rights in relation thereto, the City may provide the Franchisee with written notice of the City's intent to revoke the Franchise if the Franchisee's failure is not cured within ninety (90) days of the date of the notice. During the ninety (90) days following the date of notice, the Franchisee shall have the opportunity to remedy the failure to comply. A public hearing shall be scheduled before the Moxee City Council at least ninety (90) days following the notification on the issue of revocation. If at the hearing, the City Council finds that grounds exist to revoke the Franchise under this Paragraph and that the revocation is in the public interest, the City Council may by ordinance revoke the Franchise. The revocation shall be effective ninety (90) days after the public hearing. Provided however, that any such failure, default, or violation shall not constitute ground for forfeiture if due to an act of God, fire, flood, storm, or other element or casualty, theft, war, disaster, pandemic, allocations, rules or regulations, shortages of materials or labor, shipping or transportation shortages, bona fide legal proceedings, or other causes beyond the control of Franchisee, its successors or assigns.

Section 14 - FRANCHISE NON-EXCLUSIVE. This franchise is granted upon the express condition that it shall not be deemed or held to be an exclusive franchise and shall not in any manner prohibit from City from granting other and future franchises over, upon and along any of said public streets, avenues, alleys, highways, public or municipally owned places, and failure on the part of Franchisee to comply in any respect with any of the material provisions of this Ordinance shall be grounds for forfeiture of the grant.

Section 15 - ASSIGNMENT. The franchise hereby granted shall not be leased, assigned or otherwise alienated by the Franchisee to any third party without the express consent of the City by Ordinance passed for that purpose, and no rule of estoppel shall ever be invoked against the City in case it shall assert the invalidity of any attempted transfer in violation of this section. Notwithstanding anything to the contrary herein contained, permission is hereby granted to the Franchisee to mortgage this franchise, together with the gas utility facilities and properties of the Franchisee, within the City to secure any legal bond issue or other bona fide indebtedness of the Franchisee, with no requirement that the Trustees file any acceptance of this franchise and the liabilities and obligations of said Trustees shall in any event be limited to the properties and assets of the Franchisee comprising the trust estate.

Section 16 - INSURANCE.

16.1. The Franchisee shall purchase a commercial general liability insurance policy meeting the requirements set forth in this Franchise. The Franchisee shall file with the City a certificate of insurance evidencing such policies to be in force. The certificate shall be accompanied by such policy

endorsements as are necessary. Failure to comply with the requirements regarding insurance will be considered a material breach of this Franchise.

16.2. Such insurance shall name the City as an additional insured and shall provide coverage to the City and its elected and appointed officials, employees, agents and professional consultants, including its consulting engineers and attorney. The coverage so provided shall protect against claims from bodily injuries, including accidental death, as well as claims for property damage which may arise from any negligent act or omissions of the Franchisee, its subcontractors, agents or employees, to the extent of Franchisee's indemnity obligations included herein.

16.3. The insurance shall be maintained in full force and effect at the Franchisee's sole expense throughout the term of the Franchise.

16.4. The City shall be given at least forty-five (45) days written notice of cancellation or nonrenewal of such coverage.

16.5. The coverages provided by the Franchisee's insurance policies shall be primary to any insurance maintained by City except as to losses or damages attributable in whole or part to the negligence, default, or misconduct of the City, its employees, contractors, and agents. Except as provided above, any insurance maintained by City that might relate to this franchise shall be in excess to the Franchisee's insurance and as shall not contribute with or to it, as such liability shall be allocated between Franchisee and City under this agreement.

16.6. The contractual coverage of the Franchisee's insurance policies shall be broad enough to insure the provisions of the hold harmless clause of the Franchise subject to the terms and conditions of the insurance policies.

16.7. The following types and limits of insurance are required:

16.7.1. Commercial General Liability

\$2,000,000 combined Single Limit Bodily Injury and Property Damage
Employees and Volunteers as Additional Insured Premise and operations
Broad from property damage including underground, explosion and collapse
hazard (XCU) Products completed operations (through guaranty period)
Blanket Contractual Subcontractors Personal Injury with EE exclusion deleted
Employers liability (Stop gap)

16.7.2. Automobile Liability

\$1,000,000 per accident bodily injury and property damages liability, covering
any owned automobile, hired automobiles, non-owned automobile

16.7.3. Umbrella Liability

\$2,000,000 per occurrence.
\$2,000,000 aggregate

Section 17. The Franchisee herein agrees as part of the consideration of this franchise to pay promptly any and all licenses and taxes legally levied by the City.

Section 18. Franchisee shall within thirty (30) days of the passage of this Ordinance, file with the City Clerk its written acceptance of all terms and conditions of the Ordinance, and if such acceptance is not filed as herein provided, this Ordinance shall be null and void and of no force or effect.

Section 19. That this Ordinance shall be in full force and effect from and after five (5) days after its passage and legal publication provided by it be duly accepted as hereinafter specified.

PASSED AND APPROVED this 14 day of July, 2022

DeRoy Lensegn
Mayor

Attest:

Quynh O. Conner
City Clerk Treasurer

The terms and conditions of the foregoing Franchise Ordinance No. 816 are hereby accepted this 14th day of July, 2022

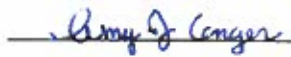
CASCADE NATURAL GAS CORPORATION

By 
ERIC MARTUSCELLI
VP-FIELD OPERATIONS

Attest:


Steven Kersch

Above acceptance received by:



Dated: August 2, 2022

City Clerk-Treasurer