

## ORDINANCE NO. 1198

### AN ORDINANCE GRANTING TO CASCADE NATURAL GAS CORPORATION, A NON-EXCLUSIVE GAS DISTRIBUTION FRANCHISE

THE PEOPLE OF THE CITY OF PRINEVILLE, OREGON, ORDAIN AS FOLLOWS:

Section 1. Cascade Natural Gas Corporation, a Washington corporation, its successors and assigns (hereafter "Grantee"), is hereby granted the non-exclusive right, privilege and franchise to lay, construct, and extend and to thereafter operate and maintain in, under, across, through, and along the present and future streets, alleys, and other public right-of-ways of the City of Prineville (hereafter "City"), mains, pipes, boxes, reducing and regulating stations, laterals, conduits and connections, including service connections, together with all of the necessary appurtenances for the purpose of supplying gas for heat, power, or other purposes to the City and the inhabitants thereof, for the full term of this franchise, subject however, to the limitations set forth and provided herein.

Section 2. The rights, privileges and franchise hereby granted to and conferred upon the Grantee shall, unless this franchise be sooner terminated, extend for the full term of five (5) years from the effective date of this Ordinance. Grantee shall, within thirty (30) days after the date of the final passage of this ordinance file with the City Recorder its written acceptance of all terms and conditions of this ordinance, and if such acceptance is not filed as herein provided, this ordinance shall be null and void in all respects as if never passed. This franchise will automatically renew for successive periods of five (5) years each unless cancelled at the end of a term by either party by written notice to the other party not less than 180 calendar days prior to the end of the initial five (5) year term or any successive term. All rights and privileges granted and duties imposed by this ordinance upon the Grantee shall extend to and be binding upon its successors, legal representatives or assigns, but this privilege and the rights granted under this ordinance cannot be transferred by the Grantee, either by assignment, sale, merger, consolidation, operation of law, or otherwise, without first obtaining the written consent of the City.

Section 3. This ordinance and the written acceptance thereof by the Grantee shall constitute the contract between the City and the Grantee and the same shall be binding upon and inure to the benefit of the Grantee, its successors and assigns, under the conditions herein imposed.

Section 4. All of the Grantee's gas property and facilities shall be constructed and at all times maintained in good order and condition and in accordance with standard engineering practice and with all lawful governmental regulations. The City shall have the authority at all times, in furtherance of the safety, convenience and welfare of the public, to control by appropriate regulations the location, elevation and manner of construction and maintenance of the Grantee's gas property and facilities in the City streets, alleys, and other public right-of-ways, subject to the provisions of any state and federal laws, rules, or regulations applicable thereto. Such regulations shall be in conformance with generally accepted engineering practices and reasonable from the standpoint of the grantee's operations and facilities. The Grantee agrees to promptly conform with all such regulations.

Section 5.

a) All pipe lines of the Grantee shall be laid in such a manner as not to interfere with any present public or private irrigation ditches, drain ditches, sewers, water mains, conduits, sidewalks, curbs, paving or other improvements and utilities. All repairs thereto or replacements required shall

be accomplished as provided in this Ordinance and state and federal laws, rules, or regulations. In other than emergency situations, no pipe, conduit or related facilities of the Grantee shall be laid closer than two (2) feet to any water main, other pipe, conduit or related facilities of other utilities unless allowed by City permit. In case of any future improvement or construction of sewers, underground fixtures for the conveyance of water, or any other City owned utility facilities, streets, alleys, and other public rights-of-ways where any gas mains, pipes, services, attachments, and appurtenances of the Grantee may be situated, and it is necessary to change the location of the same in connection with said improvement or construction, the Grantee shall, at its own expense upon reasonable notice by the City and after reasonable evaluation of alternatives by the City in cooperation with the Grantee, move and change any Grantee facilities necessary to conform to such public improvement(s). If the City requires the subsequent relocation of the same facility within five (5) years of the initial relocation, City shall bear the expense of the subsequent relocation. If the relocation is required for the benefit of any person or entity other than the City, then City shall require such person or entity, as a condition of such relocation, to make payment to Grantee at a time and upon terms acceptable to Grantee, for any and all costs incurred by Grantee in the relocation of Grantee's facilities. The City will avoid the need for such moving or changing whenever possible. All of the rights herein above stated in this section shall be exclusively for the benefit of and inure solely to the City and are not intended to bestow any third party right to any other utility. 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, if deemed appropriate and expedient to do so, and the Grantee will be reimbursed to the extent any such funds are actually realized and to the extent authorized by the granting authority.

b) The City agrees to protect Grantee's rights by retaining easements for its facilities located within public rights-of ways being vacated by ordinance. If Grantee's facilities must be relocated from a vacated public right-of-way, the petitioner of said vacation will bear the expense of moving said facilities.

Section 6. Gas mains shall be laid in utility easements, non-paved portions of City right-of-way, or in the alleys wherever possible rather than public streets except when necessary to cross streets and no deviation therefrom shall be made without the written consent of the City. Locations of new gas mains shall be determined through the permitting process where applicable. The parties acknowledge that from time to time Grantee is required to make emergency excavations without allowing the standard notification to the City in order to maintain safe operation of the natural gas system and respond to third party incidents that may occur. Grantee will notify the City as soon as reasonably possible after the emergency.

Section 7. All earth, materials, sidewalks, paving, crossings, or improvements of any kind, disturbed, injured, or removed by the Grantee in the construction, maintenance, repair or replacement of its facilities shall be fully repaired or replaced promptly by the Grantee, to as good or better condition, and the Grantee shall defend, indemnify and hold the City harmless for any claims, loss, or damage incidental thereto. The Grantee shall further be required to conform to all applicable ordinances of the City.

Section 8. The Grantee shall, at all times during the term of this franchise, install and maintain at its own expense such service devices, street services, and regulating and measuring devices, exclusive of meters, as may be necessary for supplying gas service to the consumer, such requirement to include extending services to the abutting property line where the main is in the street or alley. The Grantee shall make all reasonable extensions for supplying gas service to the

consumers who are inhabitants of said City. The same shall be made, supplied, and furnished under such reasonable rules and regulations as may be prescribed by the Oregon Public Utilities Commission.

Section 9. The gas to be supplied to the City or its inhabitants shall be merchantable gas and shall be supplied to the consumers' meters at such reasonable pressure as may be prescribed by the Oregon Public Utilities Commission. The rates to be charged, the rules and regulations in respect to the conditions, character, quality and standards of services to be furnished by the Grantee and all such matters shall be that as may be lawfully prescribed by the Oregon Public Utilities Commission.

Section 10. The Grantee shall at all times keep maps and records showing the locations and sizes of all gas mains and all appurtenant facilities laid by it or owned by it in the City and surrounding urban growth boundary as defined in the City's Comprehensive Plan, and such maps and records shall be available to the officials of the City at all reasonable times.

Section 11. The Grantee, its successors and assigns, may make such reasonable rules and regulations for the protection of its property, for providing the service and making charges to its customers, for the prevention of loss and waste, for safety purposes, and for the conduct and operation of its business in respect to the sale or distribution of gas as may be advisable or necessary from time to time, so long as they are all in accordance herewith and are in conformity with all laws and regulations.

Section 12.

a) As compensation for the right and franchise herein granted, Grantee shall pay to the City a franchise fee or charge equal to five percent (5%) of Grantee's gross revenues for the term of this Ordinance. Gross revenues shall have the same definition as that used in the Oregon Public Utility Commissioner Administrative Rules. Currently, gross revenue is defined in Oregon Administrative Rules 860-022-0040. Gross revenues shall be computed by deducting from the total billings of the Grantee the total of all uncollectible items. Such compensation shall be due for each calendar month, or fraction thereof, within thirty (30) days from and after the close of such calendar month or fraction thereof. Within thirty (30) days after the termination of this privilege, compensation shall be paid for the period elapsing since the close of the last calendar month for which compensation has been paid. On or before the first day of March of each year during the term of this franchise, the Grantee shall file with the City a sworn statement showing the amount of gross revenue of the Grantee within the City for the calendar year immediately preceding the year in which the statement is filed and will permit the inspection of its books at reasonable hours upon request.

b) Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this privilege occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting the balance due thereon. It is understood by the City that the portion of the gross revenue tax above three percent (3%) will be itemized on invoices to customers within the City as a City tax.

c) Grantee and the City will conduct an annual reconciliation of data used to record the franchise fees subject to the terms of this agreement. The Grantee and the City will mutually exchange the data necessary to perform the annual reconciliation. Any discrepancies in the reconciliation shall be resolved between the parties and become conclusive and binding. The Grantee and the City will each pay its own expense related to performing the annual reconciliation.

d) The City shall have the right to have an audit made of Grantee's books and records used to determine Grantee's gross revenues. If the franchise due for the period of the audit is found to be incorrect to an extent of more than five percent (5%) over the franchise fee paid by Grantee to City, Grantee shall pay for the audit; otherwise, City shall pay for the audit. Grantee shall promptly pay to City any deficiency and City shall immediately issue a credit to Grantee for any over payment, as the case may be, which is established by the audit. Any credit issued to Grantee shall be applied toward the next franchise fee payment payable by Grantee to City. If there are no further franchise fee payments owed by Grantee to City, City shall promptly pay Grantee the amount of the over fee.

e) The franchise fee shall not be in addition to any other license, occupation, franchise, or excise taxes or charges which might otherwise be levied or collected by the City from Grantee with respect to Grantee's gas distribution business or the exercise of this franchise within the corporate limits of the City and the amount due the City under any such other license, occupation, franchise, or excise taxes or other charges for corresponding periods shall be reduced by deducting therefrom the amount of said franchise fee paid hereunder.

### Section 13.

a) In case of failure on the part of the Grantee, its successors or assigns, to comply with any of the provisions of this ordinance, or if the Grantee, its successors or assigns, do or cause to be done, any act or thing prohibited by or in violation of the terms of this ordinance, the Grantee, its successors or assigns, shall forfeit all rights and privileges granted by this ordinance, and all rights herein shall cease; provided, that such forfeiture shall not occur nor take effect until the City shall carry out the following proceedings:

b) Before the City may proceed to forfeit this franchise, it shall serve, by registered mail, a written notice upon Grantee's local manager and upon the registered agent for receipt of service for the State of Oregon of the Grantee, its successors or assigns, setting forth clearly and in detail the failure or violation complained of and the Grantee, its successors or assigns, shall have ninety (90) days thereafter in which to comply with the conditions of this franchise. If such failure or violation continues beyond said ninety (90) days, then the City Council of the City of Prineville, at its sole discretion, may resort to any lawful or legal remedies, as provide by Oregon Law, for the enforcements thereof. These remedies shall also include the right to decreeing a forfeiture of this franchise.

Section 14. The City reserves and has the right to pursue any remedy to compel or enforce the Grantee, its successors or assigns, to comply with the terms hereof, and furnish the service herein called for, and the pursuance 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 stop 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 15. In the event that any sentence, clause, paragraph or section of this ordinance be held void by any Court, it shall not affect the balance hereof.

Section 16. This ordinance shall become effective on July 1, 2013, only if accepted in writing by the Cascade Natural Gas Corporation, which acceptance must be filed within thirty (30) days after the passage and approval of this Ordinance by the Council of the City of Prineville, Oregon.

Section 17.

a) The Grantee, by its acceptance of this Ordinance and franchise rights, privileges, and authority hereby granted, for itself, its successors, and/or assigns, covenants and agrees to and with the City at all times to protect and save harmless the City from all claims, actions, suits, liability, loss, cost, expense, or damage of every kind and description which may accrue and/or be suffered by any person or persons arising out of the neglect or acts of the Grantee in the erection, construction, reconstruction, relocation, replacement, readjustment, maintenance, operation, extension, repair, or the use of the conduits, pipes, and other facilities and appliances operated by Grantee, its successors or assigns; and further, to at all times maintain any streets, alleys, pavement, walks, or other public rights-of-way, including street curbs, and to take any and all measures reasonably necessary and prudent to protect the public or any member thereof from harm and danger, where the same have been disturbed in any manner by reason of any construction work or repairs by Grantee herein.

b) Grantee shall maintain an automobile, comprehensive general liability and property damage insurance or a program of self insurance that protects Grantee and the City, as well as the City's officers, agents, and employees, from the claims referred to in Section 17 a). The insurance shall provide coverage as follows: combined single limit of not less than one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) annual aggregate. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insured the City and its officers, agents, and employees.

c) The insurance policy shall provide the insurance shall not be cancelled or materially altered without thirty (30) days prior written notice being first given to the City. If the insurance is cancelled or materially altered within the terms of this franchise, Grantee shall provide a replacement policy with the same terms. Grantee shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this franchise and so require Grantee's insurance carrier to provide proof of such insurance to City.

d) If Grantee has a program of self insurance that provides the coverage set out in Section 17 b), Grantee shall provide a certificate or written documentation acceptable to City that Grantee has sufficient assets set aside to provide the protection described in Section 17 b) above.

Section 18. City Ordinance Numbers 1132 and 1179 are hereby repealed, subject to formal acceptance by Grantee as required in Section 2 and Section 16.

Dated: May \_\_\_\_, 2013.

\_\_\_\_\_  
Betty J. Roppe, Mayor

ATTEST:

\_\_\_\_\_  
Lisa Morgan, City Recorder

The terms and conditions of this Ordinance No. 1198 are hereby accepted by Cascade Natural Gas Corporation this \_\_\_\_ day of \_\_\_\_\_, 2013.

Cascade Natural Gas Corporation

By: \_\_\_\_\_  
Eric Martuscelli, VP Operations

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