ORDINANCE NO. 010-14

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, GRANTING CASCADE NATURAL GAS CORPORATION, A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA TO PROVIDE FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF NATURAL GAS

WHEREAS, Cascade Natural Gas Corporation has historically provided natural gas services to the City of Port Orchard; and

WHEREAS, the prior franchise agreement between the City and Cascade Natural Gas Corporation expires in July of 2014; and

WHEREAS, in order to continue uninterrupted natural gas service to the City a new franchise agreement must be established and this Ordinance will establish said franchise agreement with Cascade Natural Gas Corporation and will benefit the City; now, therefore,

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions.

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

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

1.1.2 "City" means the City of PORT ORCHARD, a Municipal Corporation within the State of Washington, and its successors and assigns.

1.1.3 “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.

1.1.4 "Facilities" means, collectively, any and all (i) natural gas transmission and distribution systems, including but not limited to, gas pipes, pipelines, mains, laterals, service lines, conduits, feeders, regulators, meters, meter-reading devices, monitoring and communication systems; and (ii) any and all other equipment, appliances,
attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.5 “Franchise” means the grant of rights, privileges, authority, terms, and conditions embodied in this Ordinance.

1.1.6 "Franchise Area" means any, every and all right-of-way for public roads, streets, avenues, alleys, highways and other public ways of the City as now laid out, platted, dedicated or improved; and any, every and all right-of-way for public roads, streets, avenues, alleys, highways and other public ways that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended. For the purpose of this definition, right-of-way includes property owned by the City in fee and used for public roads and other public ways of the City.

1.1.7 “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.

1.1.8 “Operate” or “Operations” means the use of CNG’s Facilities for the transmission, distribution, handling, and sale of product within and through the Franchise Area.

1.1.9 "Ordinance" means Ordinance No. 010-14, which sets forth the terms and conditions of this Franchise.

1.1.10 "Public right of way improvement" is a City-funded capital improvement to the public right of way.

**Section 2. Facilities Within Franchise Area.**

2.1 The City does hereby grant to CNG a Franchise for the period set forth in Section 12 below. 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.

**Section 3. Noninterference of Facilities.**

3.1 CNG's Facilities shall be maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with all applicable federal and state laws, rules and regulations and all applicable local government laws, rules and regulations. CNG shall exercise its rights within the Franchise Area in accordance with applicable City codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded CNG by such City codes and ordinances.

3.2 CNG shall provide the City, upon the City's reasonable request, copies of available 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 location of Facilities are shown, such Facilities are shown in their approximate location. With respect to any excavations within the Franchise Area undertaken by or on behalf of CNG or the City, nothing herein is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

Section 4. Relocation of Facilities.

4.1 Whenever the City causes a public right of way improvement to be undertaken within the Franchise Area, and such public right of way improvement requires the relocation of CNG's then existing Facilities within the Franchise Area (for purposes other than those described in paragraph 4.2 below), the City shall:

4.1.1 Provide CNG, within a reasonable time prior to the commencement of such public right of way improvement, written notice requesting such relocation; and
4.1.2 Provide CNG with reasonable plans and specifications for such public right of way improvement.

After receipt of such notice and such plans and specifications, CNG shall relocate such Facilities within the Franchise Area at no charge to the City. The City will make its best efforts to avoid the need for such moving or changing whenever possible. 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 4.1, the City shall bear the entire cost of such subsequent relocation. In the event the City receives any Federal, state or other funds for gas line relocating purposes, the Grantee will be given credit to the extent any such funds are actually received by the City.

4.2 Whenever (i) any public or private development within the Franchise Area, other than a public right of way improvement, requires the relocation of CNG's Facilities within the Franchise Area to accommodate such development; or (ii) the City requires the relocation of CNG's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then in such event, CNG shall have the right as a condition of such relocation, to require such developer, person or entity to make payment 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.

4.3 Any condition or requirement imposed by the City upon any person or entity, other than CNG, that requires the relocation of CNG's Facilities shall be a required relocation for purposes of paragraph 4.2 above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

4.4 Nothing in this Section 4 "Relocation of Facilities" shall require CNG to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from this Franchise.
Section 5. Indemnification.

5.1 CNG shall indemnify and hold the City harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of CNG, its agents, servants or employees in exercising the rights granted to CNG in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the City, the City shall promptly notify CNG thereto, and CNG shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the City based upon any such claim or demand, the City shall likewise promptly notify CNG thereof, and CNG shall have the right, at its election and its sole cost and expense to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorney of its own election. This provision shall survive the termination of this Franchise.

This indemnity provision shall not be considered a waiver to any defenses to which the City may be entitled in such action or suit defended by CNG including any defenses of sovereign immunity.

Section 6. Insurance

6.1 CNG shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to CNG, its agents, representatives or employees that includes

A. Minimum Scope of Insurance

CNG shall obtain insurance of the types described below:

1. **Automobile Liability** insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. **Commercial General Liability** insurance shall be written on ISO occurrence form CG 00 01 or a substitute form providing equivalent liability coverage and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the CNG’s Commercial General Liability insurance policy with respect to the work performed for the City.

3. **Workers’ Compensation** coverage as required by the Industrial Insurance laws of the State of Washington.

B. Minimum Amounts of Insurance

CNG shall maintain the following insurance limits:
1. **Automobile Liability** insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. **Commercial General Liability** insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate.

C. **Other Insurance Provisions**

   The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

   1. CNG’s insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of CNG’s insurance and shall not contribute with it.

   2. CNG’s insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. **Acceptability of Insurers**

   Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

In lieu of the requirements set forth above, CNG may self-insure against such risks in such amounts as are consistent with good utility practice. Upon the City’s request, CNG shall provide the City with reasonable written evidence that CNG is maintaining such insurance.

**Section 7. Vacation or Disposal of Franchise Area.**

7.1 In the event the City vacates or disposes of any portion of the Franchise Area during the term of this Franchise wherein CNG has located Facilities, the City shall provide, or require that those seeking vacation provide, CNG prior notice of same to allow CNG to review and comment on the proposed vacation. If requested by CNG, the City shall, in its vacation or disposal procedure, reserve an easement for utilities suitable for CNG's Facilities. If CNG'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 8. Moving Buildings within the Franchise Area.**

8.1 If any person or entity obtains permission from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to arrange with CNG for the temporary or permanent adjustment of CNG's facilities necessary to accommodate the moving or removal of such building or other object. Such person or entity shall make such arrangements, upon terms and conditions acceptable to CNG, not less than thirty (30) days prior to the moving or removal of such building or other object. In such event, CNG shall, at the sole cost and expense of the person or entity desiring to move or remove such building or other object, adjust any of its facilities which may obstruct the moving or removal of such building or object.
Section 9. Default.

9.1 If CNG willfully violates or fails to comply with any of the provisions of this Franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given CNG by the City under the provisions of this Franchise, then CNG shall, at the election of the City, forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Council after a hearing held upon notice to CNG.

Section 10. Nonexclusive Franchise.

10.1 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 over, upon, and along the Franchise Area that do not interfere with CNG’s rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 11. Franchise Term.

11.1 This Franchise is hereby granted for a term of ten (10) years from and after the date of the final acceptance of this Ordinance by CNG, herein referred to as the primary term. This Franchise will automatically renew for successive periods of five (5) years unless cancelled at the end of a term by either party by written notice to the other party no less than 180 calendar days prior to the end of the primary term or the then current successive term.

CNG shall have no rights under this Franchise nor shall CNG be bound by the terms and conditions of this Franchise unless CNG shall, within sixty (60) days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance.


12.1. The right and privileges hereby granted are upon condition that the CNG, its successors or assigns, shall pay, as compensation and as a consideration for the use of the streets, avenues, alleys, and public grounds of the City, for the purposes herein designated, the full sum and amount of two percent (2%) of its gross earnings from the sale of gas in the City, monthly into the Treasury of the City for the use and benefit of the City. CNG’s payment of the compensation shall be made on or before the last day of each month following the month in which the tax accrued from the granting of this Franchise. And for the purpose of ascertaining the gross earnings upon which payment shall be made, as aforesaid, an accurate account of such earnings shall be kept by CNG, and an abstract and account thereof furnished by it to the City Treasurer of the City on or before the last day of each month following the month in which the tax accrued, the truth of which abstract shall be verified by affidavit of CNG. For the purpose of verification of such statements, the books of CNG shall be at all times opened for the inspection of such officer, person or persons as may be appointed for that purpose by the City. And for the purpose of securing to the City, the payment of the aforesaid per centum, the City shall have a lien for the payment of the said per centum and the same shall be charged against all of the property, estate...
and effects of the said company whatsoever, real, personal or mixed, and may be enforced by the City by civil action. But nothing contained herein shall be held to impair the rights of the City in enforcing the terms and conditions of this Franchise. The City reserves the right, upon adequate notice to CNG, to increase the excise tax CNG pays on its gross earnings from the sale of gas in the City up to the maximum amount allowed by law.

Section 13. Assignment.

13.1 This Franchise may not be assigned or transferred without the written consent of the City. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. CNG shall provide prompt written notice to the City of any such assignment or transfer, and all of the provisions, terms, conditions, and requirements of this Franchise shall be binding upon successors and assigns as if they were specifically mentioned wherever CNG is named herein.


14.1 This Franchise is granted upon the express condition that CNG, within (60) days after the adoption of this Ordinance, shall file with the clerk of the City a written acceptance of the same.

Section 15. Survival.

15.1 All of the provisions, terms, conditions and requirements of Sections 4, Relocation of Facilities; 5, Indemnification; and 6, Insurance; of this Franchise shall be in addition to any and all other obligations and liabilities CNG may have to the City at common law, by statute, or by contract, and shall survive the termination or expiration of this Franchise and any renewals or extensions thereof.

Section 16. Notice.

16.1 Any notice or information required or permitted to be given to the parties under this Franchise agreement may be sent to the following addresses unless otherwise specified:

CITY OF PORT ORCHARD
MAYOR
216 PROSPECT STREET
PORT ORCHARD, WA 98366

CASCADE NATURAL GAS CORP.
DIRECTOR, NW REGION
6313 KITSAP WAY
BREMERTON, WA 98312

Section 17. Severability.

17.1 If any section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such courts' ruling.
Section 18. Miscellaneous.

18.1 The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

18.2 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 5 above) 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 rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

18.2.1 references this Franchise; and

18.2.2 states that it supersedes this Franchise to the extent it contains terms and conditions that change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

18.3 This Franchise is subject to the provisions of any applicable tariff on file with the Washington Utilities and Transportation Commission or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

18.4 This Franchise shall fully supersede and terminate any and all previously executed Franchise agreements and/or amendments thereto, made between the City and CNG.

Section 19. No Third Party Beneficiary

19.1 Nothing in this Franchise shall be construed to create any rights in or duties to any third party, nor any liability to or standard of care with reference to any third party, nor confer any right or remedy upon any person other than the City and CNG. No action may be commenced or prosecuted against either the City or CNG by any other party claiming beneficiary of this Franchise and nothing this Franchise shall release or discharge any obligation or liability of any third party to either the City or CNG.

Section 20. Effective Date.

20.1 This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after its publication.
Section 21. Cost of Publication.

21.1 The cost of the publication of this Ordinance shall be borne by CNG.

Section 22. Attorney’s Fees.

22.1 CNG shall reimburse City, within sixty (60) days of adoption of this Ordinance, City’s reasonable attorney’s fees incurred in reviewing and negotiating this Franchise.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the City Clerk in authentication of such passage this 25th day of June, 2014.

Timothy C. Matthes, Mayor

ATTEST:

Brandy Rinearson, City Clerk

APPROVED AS TO FORM:

Gregory A. Jacoby, City Attorney

Sponsored by:

Robert Putaansuu, Councilmember

APPROVED AS TO FORM:

By:

Chanda Marek, Region Director - NW Region

ERIC MARTUSCELLI, V.P. - OPERATIONS, CASCADE NATURAL GAS CORP.

Date: 6-30-14
HONORABLE MAYOR AND CITY COUNCIL
CITY OF PORT ORCHARD, WASHINGTON

In the matter of the application of Cascade Natural Gas Corporation, a Washington corporation, for a franchise to construct, operate and maintain facilities in, upon, over, under, along, across and through the franchise area of the City of PORT ORCHARD, Washington Franchise Ordinance No. 010-14

ACCEPTANCE

WHEREAS, the City Council of the City of PORT ORCHARD, Washington, has granted a franchise to Cascade Natural Gas Corporation, a Washington corporation, its successors and assigns, by enacting Ordinance No. 010-14 passed by the City Council on the 24th day of June, 2014 and

WHEREAS, a copy of said Ordinance granting said franchise was received by Cascade Natural Gas Corporation on the 30th day of June, 2014, from said City of PORT ORCHARD, Washington.

NOW, THEREFORE, Cascade Natural Gas Corporation, a Washington corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of PORT ORCHARD, Washington.

IN TESTIMONY WHEREOF said Cascade Natural Gas Corporation has caused this written Acceptance to be executed in its name by its undersigned Chanda Marek thereunto duly authorized on this 30th day of June, 2014.

ATTEST: 

CASCADE NATURAL GAS CORP.

By

Copy received for City of PORT ORCHARD on July 3, 2014.

By Brandy Rinearson, CMC City Clerk
NOTICE OF CITY OF PORT ORCHARD
ORDINANCE

The following is a summary of an Ordinance approved by the Port Orchard City Council at their regular Council meeting held June 24, 2014.

ORDINANCE NO. 010-14

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, GRANTING CASCADE NATURAL GAS CORPORATION, A WASHINGTON CORPORATION, ITS SUCCESSORS AND Assigns, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA TO PROVIDE FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF NATURAL GAS

Copies of Ordinance No. 010-14 are available for review at the office of the City Clerk of the City of Port Orchard. Upon written request a statement of the full text of the Ordinance will be mailed to any interested person without charge. Thirty days after publication, copies of Ordinance No. 010-14 will be provided at a nominal charge.

City of Port Orchard

Brandy Rinearson
City Clerk

Publish: Port Orchard Independent
July 4, 2014