

ORDINANCE NO. 1020

AN ORDINANCE GRANTING TO CASCADE NATURAL GAS CORPORATION, A WASHINGTON CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE FRANCHISE AND RIGHT TO CONSTRUCT, OPERATE AND MAINTAIN A NATURAL GAS DISTRIBUTION SYSTEM IN THE CITY OF ATHENA, OREGON.  
THE PEOPLE OF ATHENA DO ORDAIN AS FOLLOWS:

Section 1. That Cascade Natural Gas Corporation (Company), a Washington Corporation, its successors and assigns, be and it is hereby granted the right, privilege and franchise to construct, operate and maintain in, through and along the present and future streets of the City of Athena (City), and in, through and along the present and future alleys, parkways, public and other places of said 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 herein set forth and provided. Provided, further, that this franchise is non-exclusive.

Section 2. Such right and authority, permission and power is hereby granted for a term of ten (10) years from and after the date of the final acceptance of this Ordinance by the Company, herein referred to as the primary term. 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 no less than 180 calendar days prior to the end of the primary term or the then current successive term. Notwithstanding the foregoing, City and Company shall retain the right, upon one hundred eighty (180) days advance written notice to the other party, to reopen and renegotiate any provision of this franchise at any time. All rights and privileges granted, and duties imposed by this ordinance upon the Company 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 Company, either by assignment, sale, merger, consolidation, operation of law or otherwise without first obtaining the written consent of the City thereto, to be expressed by an ordinance. Notwithstanding anything to the contrary herein contained permission is hereby granted to the Company to mortgage this franchise, together with the gas utility facilities and properties of the Company, within the City to secure any legal bond issue or other bona fide indebtedness of the Company, 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 Company comprising the trust estate.

Section 3. This ordinance and the written acceptance thereof by the Company shall constitute the contract between the City and the Company and the same shall be

binding upon and inure to the benefit of the Company, its successors and assigns, under the conditions herein imposed.

Section 4. All of the Company's gas property and facilities shall be constructed and at all times maintained in good order and in accordance with standard engineering practices, and with all lawful government regulations. The City shall have the authority at all times in furtherance of safety, convenience and welfare of the public to control by appropriate regulations, the location, elevation and manner of construction and maintenance of the Company's gas property and facilities on the City streets and public places, subject to the provisions of any State and Federal laws applicable thereto, and such regulations shall be in conformance with standard engineering practice, and reasonable from the standpoint of the Company's operations and facilities. The Company agrees to promptly conform with all such regulations.

Section 5. All pipe lines of the Company shall be laid in such a manner as not to interfere with any present public or private irrigation or drain ditches, sewers, water mains, conduits, sidewalks, paving or other public improvements, and all repairs thereto or replacements required shall be accomplished as provided in Section 7. If practicable, no pipe or conduit shall be laid closer than two (2) feet to any water main or other pipe or conduit of other utilities. In case of 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 Company may be situated, and it is necessary to change the location of the same connection with said improvement or construction, the Company shall, upon reasonable notice by the City and after reasonable evaluation of alternatives by the City in cooperation with the Company, 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 reasonably possible. In the event Federal, State or other funds are available in whole or part for utility relocation purposes, the City shall apply for such funds and the Company will be reimbursed to the extent any such funds are actually obtained.

Section 6. Gas mains shall be laid in utility easements, non-paved portions of City right-of-way, or the alleys whenever possible except when necessary to cross streets, or non-paved portions of the right-of-way are not available due to other utility constraints. Locations shall be determined through the permitting process where applicable.

Section 7. , Company shall protect and save the City harmless for any loss or damages on all earth, material, sidewalks, paving, crossings, or improvements of any kind, disturbed, injured, or removed by the Company. The Company shall further be required to conform to any ordinance of the City with reference to cutting any streets or sidewalks, and the replacement thereof.

Section 8. The Company 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 service to the consumers, such requirement extending to services to the curb line along the line of the main where the main is in the street, and to the abutting property line where the main is in the alley. The Company shall make all reasonable extensions for supplying service to the consumers who are inhabitants 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, and the rates to be charged and the rules and regulations in respect to the conditions, character quality and standards of services to be furnished by the Company, and all such matters shall be that as may lawfully prescribed by the Oregon Public Utilities Commission of the State of Oregon and the rights and privileges herein granted in said streets, alleys and public highways shall be subject at all times to such ordinances and reasonable regulations as are now or shall thereafter be ordained or passed by the City concerning similar uses and excavation in the care of streets, alleys and public highways.

Section 10. The Company shall at all times keep maps and records showing the locations and sizes of all gas mains laid by it or owned by it in the City, and such maps and records shall be available to the officials of the City at all reasonable times.

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

Section 12. As compensation for the right, privilege and license herein granted, Franchisee shall pay monthly to City 7% of Franchisee's gross revenues received from customers within the city limits of the City excluding amounts charged and received for separately billed governmental taxes and governmental fees. City may increase the franchise fee rate to an amount not to exceed the maximum permissible franchise fee (presently 8%; the base franchise fee of 3% and the incremental franchise fee of 5% of gross revenues) by providing at least 90 days' written notice of the increase. 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 (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.

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.

Section 13. In case of failure on the part of the Company, its successors or assigns, to comply with any of the provisions of this ordinance, or if the Company, 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 Company, its successors or assigns, shall forfeit all rights and privileges granted by this ordinance, and all rights here shall cease; provided, that such forfeiture shall not occur nor take effect until the City shall carry out the following proceedings:

Before the City may proceed to forfeit this franchise, it shall serve, by registered mail, a written notice upon the district manager and upon the registered agent for receipt of service for the State of Oregon of the Company, its successors or assigns, setting forth clearly and in detail the failure or violation complained of and the Company, its successors and assigns, shall have thirty (30) days thereafter in which to comply with the conditions unless the alleged violation cannot be cured within 30 days or the Company has commenced actions to cure the violation within 30 days to the satisfaction of the City. If such failure or violation continues beyond said (30) days then the City Council of the City, at its sole discretion, shall have the right to forthwith determine that this franchise is forfeited. Said determination shall be made, however, only upon proof established to the satisfaction of the City Council, and such as would be considered competent evidence in any court of record, showing breach of this franchise, and showing that the rights of the City or its inhabitants have been materially and substantially effected thereby. Provided, however, that such failure or default or violation shall not constitute grounds for forfeiting of this franchise if due materially, substantially and reasonably to act of God, fire, flood, storm or other element or casualty, theft, war, disaster, strike, lockout, boycott, prevailing war or war preparation induced conditions, or bona fide legal proceedings, beyond the control of the Company, its successors or assigns.

Section 14. The City Reserves and has the right to pursue any remedy to compel or enforce the Company, 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, and this ordinance shall become effective upon passage and approval by the City and its acceptance in writing by the Cascade Natural Gas Corporation, which acceptance must be filed within thirty (30) days after the passage and approval by the Council of the City, Oregon.

Section 16. The Company shall maintain its structure, apparatus and other equipment as to afford all reasonable protection against injury or damage to persons or property therefrom, and the Company agrees to indemnify, save and hold harmless, and defend the City, its officers, boards and employees from and against any liability for damages and for any liability or claims resulting from property damages or bodily injury including accidental death, which arise out of Company's construction, operation or maintenance of its gas distribution system, including all reasonable expenses necessarily accruing against the City arising out of the exercise by the Company of the rights and privileges hereby granted, provided such liability or damage was not caused by the City. Reasonable expenses include, but is not limited to, reasonable attorney's fees and costs incurred on behalf of the City provided that the City shall give the Company written notice of its obligation to indemnify the City within thirty (30) days of receipt of a claim or action pursuant to this section.

Section 17. Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Company is accepted by the City in lieu of any occupancy tax, license tax, permit charge, inspection fee or similar tax, assessment or excise upon the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its real property, sales and use taxes or any other tax not related to the franchise of the physical operation thereof.

Section 18. Report on Revenues. At the City's request, the Company shall file a report showing Company's revenues for the calendar year and the amount of franchise fees due to the City. Such reports may be requested once per calendar year. The Company shall have an obligation to maintain financial records of its revenues and Company fee payments for audit purposes for a period of three years, and the City shall have the right to audit the Company books at the offices where such books are maintained.

Section 19. Maximum Legal Compensation for Franchise Fee. The parties acknowledge that present applicable law limits the City to collect a maximum permissible franchise fee of 8% (the base franchise fee of 3% and the incremental franchise fee of 5%) of gross revenues. At any time during the duration of this franchise, the City may at its discretion increase the franchise fee in an amount equal to the maximum permissible franchise fee and require Company to pay the maximum legal

compensation for franchise fee to be effective 90 days after written notice has been received by Company from the City.

Section 20. City's Right to Conduct Audits of Company. The City has the authority, at City's expense, to conduct an audit of the Company at any time during the duration of this franchise to determine compliance of the Company under this agreement. The audit shall be conducted in such a way as not to disrupt Company's business operations. All pertinent records of the Company are subject to an audit conducted by the City. The City may determine the scope of audit in each audit conducted. This audit shall not be required more than once in a single 12 month period.

Section 21. Reimbursement for Audit Findings. The Company shall pay to the City within 45 days' written notice any amounts which are due to the City as determined by any audit of the Company. Reimbursement for underpayment as result of audit findings shall be identified as late payments and are subject to late payment interest of 18%. Also, if the Company has underpaid the City by 5% or more of amounts due, Company will reimburse the City for reasonable and full costs of the audit.

Section 22. Tariffs on File. The Company shall keep on file in its office in Athena, Oregon, or other location in the vicinity, copies off its tariffs currently in effect and on file with the Oregon Public Utilities Commission. Said tariffs shall be available for inspection by the public.

Section 23. Compliance with PUC Regulations. The Company shall comply with all rules and regulations adopted by the Oregon Public Utilities Commission.

Section 24. Compliance with Company Tariffs. The Company shall furnish natural and/or artificial gas distribution system within the City to the City and to all persons, businesses, and industries within the town at the rates and under the terms and conditions set forth in its tariffs on file with the Oregon Public Utilities Commission.

Section 25. Applicability of Company Tariffs. The City and Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the Oregon Public Utilities Commission are controlling over any inconsistent provision in this franchise dealing with the same subject matter.

Section 26. Excavation and Construction. All construction, excavation, maintenance and repair work done by the Company shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable codes of the State of Oregon and the United States of

America. All public and private property whose use conforms to restrictions in easements disturbed by Company construction or excavation activities shall be restored as soon as practicable by the Company at its expense to substantially its former condition. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to private property adjacent lots, streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The City reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time after notice from the City.

Section 27. Relocation of Company Facilities. If at any time the City requests the Company to relocate any distribution line service connection, or other facility installed or maintained in streets or other public places in order to permit the City to change street grades, pavements, sewers, water mains or other City works, such relocation shall be made by the Company at its expense. The Company is not obligated to hereunder to relocate any facilities at its expense which were installed in private easements obtained by the Company, the underlying fee of which was, at some point subsequent to installation, transferred to the City. Following relocation, all property shall be restored to substantially its former condition by the Company at its expense. The City will reasonably exhaust alternatives not requiring relocation in all cases.

Section 28. Subsequent Relocation. 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 the Company at a time and upon terms acceptable to the Company, for any and all costs incurred by the Company in the relocation of the Company's facilities.

Section 29. Vacations. The City agrees to protect Company's rights by retaining easements for its facilities located within public rights of ways being vacated by ordinance. If Company'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 30. Restoration of Service. In the event the Company's gas distribution system, or any part hereof, is partially or wholly destroyed, or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

Section 31. \_Emergency Excavations. The parties acknowledge that from time to time Company 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. Company will notify the City as soon as reasonably possible after the emergency.

Section 32. Safety Regulations by the City. The City reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety and welfare of the public, provided that such regulations are not destructive of the rights granted herein and not in violation of any state or federal laws. The Company agrees to comply with all such regulations, now existing or duly adopted, in the construction, maintenance and operation of its facilities and in the provisions of gas distribution services within the boundaries of the City.

Section 33. Continuous Service. The Company shall furnish adequate and safe service for the distribution of gas heat in City. Company shall use due diligence to maintain continuous 24-hour service which shall at all times conform at least to the standards common in the business and the standards adopted by State authorities and City. Under no circumstances shall Company be liable for an interruption or failure of service cause by an act of God, unavoidable accident, or other circumstance beyond the control of the Company.

Section 34. Anti-Discrimination Clause. Company shall render the service authorized to be supplied upon equal terms without unjust discrimination of undue preference to any users within the boundaries of City and in accordance with the rules and regulations adopted by the Oregon Public Utilities Commission.

Section 35. Outages and Service Calls. Excluding conditions beyond its control, the Company will begin working on service interruptions, as defined herein, promptly and in no event later than 24 hours after the interruption becomes known. The Company will begin actions to correct other service problems the next business day after notification of the service problem. For purposes of this Article a "service interruption" is defined as loss of gas for supplying heat or power.

Section 36. Indemnification and Insurance. Company shall indemnify, defend and hold harmless the City, its officers, boards, commissions, agents or employees from any and all claims, and any and all loss and liability, cost, expense, arising out of or in connection with actions by Company, its officers, employees, agents, contractors and/or subcontractors in the construction, maintenance, operation, or repair of its property or any use thereof pursuant to this franchise.

Company shall, as a condition of this grant, secure and maintain the following liability insurance policies insuring both the Company and City, and elected and appointed officers, officials, agents and employees as co-insureds:

- (a) (i) Comprehensive general liability insurance with limits not less than one million dollars (\$1,000,000) for bodily injury or death to each person or in such amounts as provided for City liability in the Oregon Tort Claims Act, ORS



30.260 et. seq., as it exists today or hereafter amended, whichever is greater:

(ii) One million dollars (\$1,000,000) for property damage resulting from any one accident or in such amounts as provided for City liability in the Oregon Tort Claims Act, 30.260 et. seq., as it exists today or hereafter amended, whichever is greater; and

(iii) One million dollars (\$1,000,000) for all other types of liability;

(b) Automobile liability insurance for owned, non-owned, and hired vehicles with a limit of five hundred thousand dollars (\$500,000) for each person and (\$1,000,000) for each accident or in such amounts as provided for City liability in the Oregon Tort Claims Act, ORS 30.260 et. seq., as it exists today or hereafter amended, whichever is greater; and

(c) Worker's compensation within statutory limits and employer's liability insurance limits of not less than one million dollars (\$1,000,000).

All insurance policies called for herein shall be a form satisfactory to the City and shall require 30 days written notice of any cancellation to both the City and the Company. The Company shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the City, written evidence of the issuance of replacement policies within 30 days following receipt by the City or the Company of any notice of cancellation. In recognition of the foregoing each party agrees to cause their respective insurance carriers to waive any rights of subrogation.

Section 37. Notice of Transfer or Assignment. The Company may transfer or assign its franchise to another entity upon 30 days' notice to the City. The Company shall provide to the City a reasonable showing that the proposed assignee or transferee possesses the technical and financial qualifications to operate the gas distribution system properly. The proposed transferee or assignee shall provide the City with a written statement that it agrees to comply with all material terms of the franchise to be transferred. The City shall not unreasonably delay or deny the assignment or transfer of a franchise. The reasonableness of the City's actions shall be subject to judicial review by a court of appropriate jurisdiction. The proposed transfer or assignment shall be deemed approved if no action is taken by the City within 60 days of the written request for transfer by the Company.

Section 38. Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this franchise agreement to be served upon the City or Company shall be in writing, and shall be deemed to have been duly given to the required party 5 business days after having been posted in a properly sealed and correctly addressed envelope, when hand delivered or sent by certified or registered mail, postage prepaid.

The notice or responses to the City shall be addressed as follows:

City of Athena  
Attn: City Manager  
302 East Curreant Street  
Athena, OR 97813

The notice or responses to the Company shall be addressed as follows:

Cascade Natural Gas Corporation  
Attn: Region Director  
64500 OB Riley Rd. Suite #2  
Bend, OR 97703

Section 39. Amendments. This franchise agreement may be amended in writing signed by both parties.

Passed by the City Council of the City of Athena, Oregon, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Approved by the Mayor of the City of Athena, Oregon, this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

By:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Recorder

Approved as to form:

  
\_\_\_\_\_  
City Attorney *Samuel I. Tucker*

APPROVED:

Cascade Natural Gas Corporation

By: \_\_\_\_\_

Print Name: Eric Martuscelli

Title: VP, Operations