

City of College Place, Washington

ORDINANCE NO. 21-003

AN ORDINANCE OF THE CITY OF COLLEGE PLACE, WASHINGTON GRANTING A NON-EXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CASCADE NATURAL GAS CORPORATION, ITS SUCCESSORS, GRANTEES AND ASSIGNS, TO CONSTRUCT, INSTALL, OPERATE, MAINTAIN, REPAIR, REPLACE AND REMOVE EXISTING PIPELINE FACILITIES TOGETHER WITH EQUIPMENT AND APPURTENANCES THERETO, FOR THE TRANSPORTATION AND DELIVERY OF NATURAL GAS SERVICE WITHIN AND THROUGH THE PUBLIC RIGHT OF WAYS OF THE CITY OF COLLEGE PLACE.

WHEREAS, the City of College Place, (hereinafter “City”), Washington is a non-chartered code city governed by Title 35A Revised Code of Washington;

WHEREAS, Article 11, section 11, of the Washington State Constitution provides that the City of College Place “may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws”;

WHEREAS, the College Place City Council, by section 35A.11.020 of the Revised Code of Washington, through section 35A.13.230 of the Revised Code of Washington, has any authority ever given to any class of municipality or to all municipalities of this state, and all powers possible for a city or town to have under the Constitution of this state, and not specifically denied to code cities by law, which may be exercised in regard to the regulation or use of public ways and property of all kinds and improvements thereto;

WHEREAS, Section 35A.47.040 of the Revised Code of Washington authorizes the City to grant, permit, and regulate non-exclusive franchises for the use of public ways;

WHEREAS, the Comprehensive Plan for the City of College Place includes, without limitation, policies and goals regarding utility facilities and services, including to provide reliable, effective, and efficient utility services at the lowest reasonable cost, consistent with the City’s aims of environmental stewardship, social equity, economic development, and the protection of public health, for example, converting existing overhead systems to underground systems, coordination of utility projects to co-locate distribution facilities and coordinate construction, replacement, and maintenance timing to minimize disruption to the public, and minimization of negative impacts upon the character of the community, and recognition, preservation and protection of College Place’s urban forest;

WHEREAS, Cascade Natural Gas Corporation, (“CNG”) has applied to the City for a non-exclusive Franchise to construct, install, operate, maintain, replace and repair natural gas pipeline facilities,

together with equipment and appurtenances thereto, (hereinafter "Pipeline Facilities") within and through the City;

WHEREAS, CNG, a Washington corporation authorized to transact business within the State of Washington, its successors and assigns, will make natural gas utility service available upon reasonable terms and conditions to all persons and entities without discrimination between classes of users to include rates and charges; and

WHEREAS, the City Council finds that the Franchise terms and conditions contained in this ordinance are in the public interest.

WHEREAS, the College Place City Council adopted Ordinance 17-022 on June 13th, 2017, codified as Title 20 which as passed, and as further amended governs franchises;

NOW, THEREFORE, the City Council of College Place, Washington does ordain as follows:

BE IT ORDAINED BY THE CITY COUNCIL OF COLLEGE PLACE, WASHINGTON

SECTION 1. DEFINITIONS

For the purposes of this Franchise and any and all exhibits attached hereto, the following terms, phrases, words, and their derivations will have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Definitions applicable to franchises are located in College Place Municipal Code CPMC 20.02.020, and as amended. Words not defined shall be given their common and ordinary meaning.

- A. **"At capacity"** means the current placement of existing private and public utilities in areas of City properties, public streets, or public ways is such that any additional placement of private utilities in those areas would adversely affect the ability of the City to replace and maintain existing and planned City utilities and infrastructure according to generally accepted engineering standards.
- B. **"CITY"** means City of College Place, Washington.
- C. **"CPMC"** means College Place Municipal Code as enacted and subsequently modified or recodified.
- D. **"Construct or Construction"** means removing, replacing, and repairing existing pipeline(s) and/or Facilities and may include, but is not limited to, digging and/or excavating for the purposes of removing, replacing, and repairing existing pipeline(s) and/or Facilities.
- E. **"Distribution system, system and lines"** used either in the singular or plural shall mean and include the poles (with or without cross arms), wires, lines, conduit, cables, signal lines, lights, braces, anchors, vaults, feeders, regulators, meters, fixtures, connections, and all attachments, appurtenances, equipment and appliances necessary and

incidental thereto or in any way appertaining to the transmission and distribution of the service or product and which are located within a right-of-way.

- F. **“EOC”** means Walla Walla County Emergency Operations Center.
- G. **“Effective Date”** means five days following passage, approval and legal publication of this Ordinance or legal summary thereof and acceptance by CNG, upon which the rights, duties, and obligations shall come into effect and the date from which the time requirement for any notice extension and/or renewal will be measured.
- H. **“Franchisee” and “Grantee”** mean CNG, its agents, representatives, employees, and contractors and also includes its successors and assigns.
- I. **“Governmental use”** means use by the City, State, or agencies or departments of the United States for the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means both internally and externally within or between their various agencies, departments, and divisions.
- J. **“Hazardous Substance”** means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminate.
- K. **“Maintenance or Maintain”** means examining, testing, inspecting, repairing, maintaining and replacing the existing pipeline(s) and/or Facilities or any part thereof as required and necessary for safe operation.
- L. **“Pipeline Corridor”** shall mean the pipeline pathway through the Franchise Area in which the pipeline(s) and or Facilities of the Grantee are located, including any Rights-of-Way, Public Property, and/or easement over and through private property.
- M. **“Public Properties”** means and includes all 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.
- N. **“Operate or Operations”** means the use of Grantee’s existing pipeline(s) and/or Facilities for the transportation, distribution and handling of petroleum products or byproducts within and through the Franchise Area.
- O. **“Rights-of-Way”** means the surface and the space above and below streets, roadways, highways, avenues, courts, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas located within the Franchise Area.
- P. **“Urban Forest”** means all trees now or hereafter on or in any City properties, public street, or public ways or easement, or street trees on private property.

SECTION 2. FRANCHISE/GRANT OF AUTHORITY

- A. The City grants to Franchisee, subject to the terms and conditions of this franchise, a non-exclusive Franchise to enter, occupy, and use public ways for constructing, installing, operating, maintaining, repairing, replacing and removing facilities necessary to provide natural gas utility services. Except as expressly provided otherwise, Franchisee shall construct, install, operate, maintain, repair, replace and remove its facilities at its expense.

- B. Franchisee must follow terms and conditions in City of College Place Municipal Code Chapter 12.08 (Excavations), Chapter 20.02 (General Provisions), Chapter 20.06 (Franchise), Chapter 20.08 (Franchise Lease), Chapter 20.10 (Conditions of Franchises and Facilities Leases) and the current applicable provisions of the Street Restoration Act (Resolution 890) as subsequently amended by Council.
- C. Any rights, privileges, and authority granted to Franchisee under this Franchise are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public and the environment, and nothing in this Franchise excuses Franchisee from its obligation to comply with all applicable general laws enacted by the City pursuant to such power. Any conflict between the terms or conditions of this Franchise and any other present or future exercise of the City's police powers will be resolved in favor of the exercise of the City's police power.
- D. This Franchise is non-exclusive. Grantor reserves all rights to its property, including, without limitation, the right to grant additional franchises, easements, license and permits to others to use the Rights-of-Way and City/Public Properties, provided that the Grantor shall not grant any other franchise, license, easement or permit that would unreasonably interfere with Franchisee's permitted use under this franchise. This Franchise shall in no manner prohibit the Grantor or limit its power to perform work upon its Rights-of-Way, City/Public Properties or make all necessary changes, relocations, repairs, maintenance, establishment, improvement thereto, or from using any of the Rights-of-Way and City/Public Properties, or any part of them, as the Grantor may deem fit from time to time, including the dedication, establishment, maintenance and improvement of all new Rights-of-Way and City/Public Properties, or any part of them, as the Grantor may deem fit from time to time, including the dedication, establishment, maintenance and improvement of all new Rights-of-Way and other City/Public Properties of every type and description.
- E. Nothing in this Franchise excuses Franchisee of its obligation to identify its facilities and proposed facilities and their location or proposed location in the public ways and to obtain right-of-way permits, use and/or development authorization and permits from the City before entering, occupying, or using public ways to construct, install, operate, maintain, repair, or remove such facilities.
- F. Nothing in this Franchise excuses Franchisee of its obligation to comply with applicable federal, state, and local codes, rules, regulations, and standards subject to verification by the City of such compliance to include the federal American Disability Act, the City of College Place Municipal Code Chapter 12.08 (Excavations), Chapter 20.02 (General Provisions), Chapter 20.06 (Franchise), Chapter 20.08 (Franchise Lease), Chapter 20.10 (Conditions of Franchises and Facilities Leases) and the current applicable provisions of the Street Restoration Act (Resolution 890) as subsequently amended by Council.

- G. Nothing in this Franchise shall be construed to limit taxing authority or other lawful authority to impose generally applicable charges or fees, or to excuse Franchisee of any obligation to pay generally applicable lawfully imposed taxes, charges or fees.
- H. Nothing in this Franchise grants authority to Franchisee to impair or damage any City property, public way, other ways or other property, whether publicly or privately owned.
- I. Except as otherwise permitted, nothing in this Franchise shall be construed to give franchisee's facilities priority of use of public ways.
- J. Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for construction, installation, maintenance, repair, replacement, operation, or removal of facilities or to modify public ways to accommodate franchisee's facilities or work associated therewith.
- K. Nothing in this Franchise shall be construed to create, expand, or extend any liability of the City to any third party user of Franchisee's Facilities or to otherwise recognize or create third party beneficiaries to this Franchise. By granting this franchise, the City is not assuming any risks or liabilities therefrom, which shall be solely and separately borne by Franchisee. Franchisee agrees and covenants to, at its sole cost and expense, take all reasonably prudent steps to protect, support, and keep safe from harm its pipeline(s) and/or Facilities, or any part thereof, when necessary to protect the public health and safety and the environment.
- L. Except as specifically granted herein, nothing in this Franchise shall be construed to permit Franchisee to unlawfully enter upon, over or through, or construct or place improvements upon the property or premises of another.
- M. This Franchise is only intended to convey a limited right and interest. It is not a warranty of title or interest in City's Rights-of-Way or other City/Public Property. None of the rights granted herein shall affect the City's jurisdiction over its property, streets or Rights-of-Way.
- N. The limited rights and privileges granted under this Franchise shall not convey any right to Franchisee to install any new pipeline(s) and/or Facilities without the express written consent of the City.

SECTION 3. TERM

A. Each of the provisions of this Franchise shall be for a period of ten (10) years from the effective date of this Franchise as prescribed in CPMC 20.06.070, and as amended. This shall be referred to as the primary term. This Franchise shall automatically renew for successive periods of five (5) years each (successive terms) 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.

B. The effective date shall be as prescribed herein below.

SECTION 4. COMPLIANCE WITH LAWS AND STANDARDS

A. In carrying out any authorized activities under the privileges granted herein, Grantee shall meet generally accepted industry standards and comply with all applicable laws of any governmental entity with jurisdiction over the pipeline and its operation. This shall include all applicable laws, rules and regulations existing at the Effective Date of this Franchise or that may be subsequently enacted by any governmental entity with jurisdiction over Grantee and/or the pipeline(s) and Facilities.

B. In the case of any conflict between the terms of this Franchise and the terms of Grantor's ordinances, codes, regulations, standards and procedures, this Franchise shall govern.

SECTION 5. CONSTRUCTION AND MAINTENANCE

- A. All pipeline Construction, Maintenance or Operation undertaken by Grantee, upon Grantee's direction or on Grantee's behalf shall be completed in a professional (workmanlike) manner.
- B. Except in the case of emergency, prior to commencing any Construction or Maintenance work in the Franchise Area, the Grantee shall first file with the Grantor such detailed plans, specifications and profiles of the intended work as may be required by the Grantor. Grantor may require such additional information, plans and/or specifications are in Grantor'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.
- C. All Construction and/or Maintenance work shall be performed in conformity with the maps, plans, and specifications filed with the Grantor, except in instances in which deviation may be allowed thereafter in writing pursuant to an application by Grantee
- D. Except in the event of an emergency, Grantee shall provide Grantor at least ten (10) calendar days' written notice prior to any Construction, Maintenance, and/or Removal, or other substantial activity, other than routine inspections and maintenance, by

Grantee, its agents, employees or contractors on grantee's pipeline(s) or Facilities covered by this Franchise.

- E. Work shall only commence upon the issuance of applicable permits by the City. However, in the event of an emergency requiring immediate action by Grantee for the protection of the pipeline(s) or Facilities, Grantor's property or other persons or property, Grantee may proceed without first obtaining the normally required permits. In such event Grantee must (1) take all necessary and prudent steps to protect, support, and keep safe from harm its pipeline(s) and/or Facilities, or any part thereof; Grantor'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.
- F. Unless such condition or regulation is in conflict with a federal or state requirements, the City may condition the granting of any permit or other required approval, in any manner reasonably necessary for the safe use and management of the 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, private facilities and public safety.
- G. Whenever necessary, after Constructing or Maintaining any of Grantee's pipeline(s) or Facilities within the Franchise Area, the Grantee shall, without delay, and at Grantee's sole expense, remove all debris and restore the surface as nearly as possible to as good or better condition as it was in before the work began. Grantee shall replace any property corner monuments, survey reference, or hubs that were disturbed or destroyed during Grantee's work in the areas covered by this Franchise. Such restoration shall be done in a manner consistent with applicable codes and laws, under the supervision of the Grantor and to the Grantor's reasonable satisfaction and specifications.
- H. Franchisee shall continuously be a member of the State of Washington one number locator service under RCW 19.122, and as amended, or an approved equivalent and shall comply with all such applicable rules and regulations. Franchisee shall provide reasonable notice to the City prior to commencing any Maintenance, Removal or Construction under this Franchise and additionally to those owners or other persons in control of property when the acts will affect access or use or otherwise impact the property.

- I. Markers demarcating the pipeline's location shall be placed on the surface in compliance with federal and state law requirements.
- J. Grantee shall at all times keep up-to date maps and records showing the location of all gas mains, lines, and service connections laid by it in said City. Such maps and records shall be kept in Grantee's district operating office and shall be subject to inspection at all reasonable times by proper officials or agents of said City, and be made available within 48 hrs. Grantee shall provide at the City's request a copy of facilities maps for the city's use.
- K. Nothing in this Franchise shall be deemed to impose any duty or obligation upon City to determine the adequacy or sufficiency of Franchisee's plans, specifications, and designs, or to ascertain whether Franchisee's proposed or actual construction, testing, maintenance, removal, repairs, or replacement is adequate or sufficient or in conformance with the plans, specifications and designs reviewed by the City.
- L. Franchisee shall be solely and completely responsible for workplace safety and safe working practices on its job sites within the City, including safety of all persons and property during any activity performed pursuant to this Franchise.

SECTION 6. INDEMNITY

- A. General Indemnification. Grantee shall at all times indemnify and hold the City harmless as is in accordance with CPMC 20.10.230 – General Indemnification.
- B. Environmental Indemnification. Grantee shall indemnify, defend and save Grantor 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, to the extent arising directly or indirectly from (a) Franchisee's breach of any environmental laws applicable to the pipeline or (b) from any release of a Hazardous Substances on or from the pipeline. To the extent that Hazardous Substances are released by Grantee pursuant to this Franchise, this indemnity includes: (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. Nothing in this section shall require Grantee to indemnify, defend,

or save Grantor or otherwise be liable for any loss, damage, expense, action, or claim relating to Hazardous Substances that are pre-existing or otherwise not released or otherwise caused Grantee.

- C. The indemnity provisions contained herein shall survive the termination of this Franchise and shall continue for as long as the Franchisee's pipeline(s) and Facilities shall remain within or upon the City limits or until the parties execute a new Franchise Agreement which modifies or terminates these insurance and bond provisions.

SECTION 7. INSURANCE AND BOND REQUIREMENTS.

- A. Franchisee shall comply with:

CPMC 20.10.220 - Insurance

CPMC 20.10.240 – Performance and Construction Surety

CPMC 20.10.250 – Security Options

CPMC 20.10.260 – Performance Bond

- B. All other insurance and bond requirements as directed by the City, including but not limited to providing the City with proof of insurance and a copy of applicable insurance policy(ies), including, but not limited to, coverage terms and claims procedures, shall be provided to the City prior to beginning of any substantial work, testing or construction or reconstruction or removal of the pipeline(s) or facilities.
- C. The insurance and bond provisions contained herein shall survive the termination of this Franchise and shall continue for as long as the Franchisee's pipeline(s) and Facilities shall remain within or upon the City limits or until the parties execute a new Franchise Agreement which modifies or terminates these insurance and bond provisions.

SECTION 8. INSTALLATION, RELOCATION, REPLACEMENT, ABANDONMENT, RELOCATION, AND REMOVAL OF NATURAL GAS INFRASTRUCTURE

Natural gas infrastructure installation, maintenance, abandonment, and removal activities shall be governed by the following municipal codes, now in effect or as further amended or recodified in CPMC 20.10

In addition to the applicable requirements listed herein, if the federal Office of Pipeline Safety or the 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 Grantor and City agree to expeditiously negotiate new franchise provisions that will provide the 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. If the City and Franchisee fail to agree upon new franchise provisions, the issue shall be resolved through the Dispute Resolution provisions of Section 13.

SECTION 9. EXCAVATIONS

Street Cut permits must be obtained prior to any excavation in the public rights of way. Inspections of work performed by Franchisee are required and timely advance notice for inspection shall be given. The “CITY Standard Specifications” and any amendments thereto shall be the standard of quality and practice. Work should follow College Place Street Restoration Act (Resolution 890).

SECTION 10. GRANTEE TO MAKE EXTENSIONS AND INSTALL SERVICE DEVICES

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 service to Grantee’s customers, such requirement extending only 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 Franchisee shall make all reasonable extensions for supplying service to natural gas customers who are inhabitants of the City. The same shall be made, supplied, and furnished under such reasonable rules and regulations as may be prescribed by Washington Utilities and Transportation Commission, or its subsequent organization in accordance with the provisions hereof.

SECTION 11. QUALITIES AND PRESSURE OF GAS

The gas to be supplied to said City and its inhabitants under the terms and conditions hereof shall be merchantable gas and shall be supplied to the consumer’s meters at such reasonable pressure as may be prescribed by the regulatory body having jurisdiction over such matters.

SECTION 12. RATES AND CONDITIONS OF SERVICE.

The rates to be charged and exacted, and the rules and regulations in respect of the conditions, character, quality, and standards of service to be furnished by the Franchisee, and all such similar matters, shall be under the jurisdiction and control of Washington Utilities and Transportation Commission, or its subsequent organization.

SECTION 13. MAPS, PLATS, AND RECORDS

Maps, plats, and records shall be kept and available within CPMC 20.10.190 – Facilities Maps and CPMC 20.10.200 – Duty to provide information.

SECTION 14. METERS

All gas sold and distributed by the Franchisee shall be by meter measurement, on the property of, or in the building of, the consumer served, and the Franchisee, its agents, licensees, or

employees shall have the right to read and inspect the gas meters at all reasonable times and to go on the premises therefore. The Franchisee shall furnish good and reliable meters for the consumers, and the terms and conditions of furnishing and testing thereof shall be as prescribed by the Washington Utilities and Transportation Commission, or its subsequent organization.

SECTION 15. FRANCHISEE TO MAKE RULES AND REGULATIONS

The Franchisee, its successors, and assigns, may make such reasonable rules and regulations for the protection of its property, for the prevention of loss and waste, for safety purposes, for the conduct of business, and in respect of the sale of distribution of gas, as may be advisable or necessary from time to time, all in accordance herewith and in accordance with valid, applicable State and Federal laws, rules, and regulations.

SECTION 16. FRANCHISE FEE

- A. As compensation to the City for the rights and franchise hereby granted, the Franchisee shall pay to the City an amount each month equivalent to four percent (4%) of the Franchisee's gross revenue from sales of gas within the corporate limits of the City for the preceding month less revenue from such sales to the United States or any agency or corporation thereof, and less any amounts paid by the Franchisee to the United States, the State of Washington, and the CITY, as license, occupation, privilege, or excise taxes levied or imposed upon such sales within the corporate limits of the City, and less any uncollectable amounts. The City Council may modify franchise fees during the term of this ordinance. Notice of such action is to be made 30 days prior to scheduling any such change for Franchisee's ability to be represented before the Washington Utilities and Transportation Commission, or its subsequent organization. Such payments shall be made monthly and within twenty (20) days from the first of the month for the amount due on account of the preceding month, and the officers of the Franchisee, its successors or assigns, shall make and furnish to the City within said period a sworn statement as to the amount of such gross revenue from the sale of gas, and the City Administrator, Finance Director, or designee shall be permitted to examine the books of the Franchisee, its successors or assigns to determine or verify such amounts.

- B. Interest shall accrue on any late amounts due at the rate of twelve percent (12%) per annum, or the maximum percentage rate permitted by law, whichever is lower.

SECTION 17. EMERGENCY NOTICE AND COOPERATION

CNG will notify the City through the Emergency Communications Center of any outages that may affect a significant or substantial portion of the City's consumers as promptly as possible after the outage occurs. CNG shall provide an individual with the authority and the knowledge to release information to the City and be liaison for CNG in the incident command system at

Walla Walla County Emergency Operations Center (EOC) located at Second and Rose Streets in Walla Walla, Washington or other location deemed appropriate by the EOC in the event that a large scale outage occurs or other disasters that would affect service such as an earthquake, flood, and other catastrophe or accidents. This person will report to the EOC anytime that CNG deems necessary to activate a large-scale emergency operation or when the City or the EOC deems it necessary within thirty (30) minutes of the activation of the EOC.

CNG personnel on the scene at a hazardous leak where people and/or property is in danger within the City limits agree to notify the EOC of the leak using 911. These same personnel agree that if emergency response personnel respond that they will utilize the incident command system and that they will report to the incident commander and make themselves known on the scene of such an emergency. The incident commander may utilize them as part of a unified command.

SECTION 18. FORFEITURE, RENOVATION, OR TERMINATION AND REMEDIES

- A. Forfeiture, renovation, or termination of Franchise shall be done in accordance with the following municipal codes:
 - CPMC 20.10.300 – Revocation or termination of franchises, or leases.
 - CPMC 20.10.310 – Notice and duty to cure.
 - CPMC 20.10.320 – Public hearing.
 - CPMC 20.10.330 – Standards for revocation or lesser sanctions
 - CPMC 20.10.340 – Civil penalties.
 - CPMC 20.10.350 – Enforcement
 - CPMC 20.10.360 – Other remedies.
 - CPMC 20.10.370 – Venue of any court action.

- B. The remedies provided for in this Franchise Agreement are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another, or any rights of the City at law or equity.

- C. If Franchisee fails or refuses to comply with this Franchise, or any of its terms or conditions, the damages suffered by the City as a result may include, without limitation, increased costs of administration and other damages difficult to measure. Damages as set by CPMC 20.10.340 represent both parties’ bests estimate of the damages resulting from the specified injury.

- D. In addition to those reasons listed in CPMC 20.10.300, the City may also terminate this Franchise if Franchisee materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms and conditions of this Franchise, 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 the City’s providing

Franchisee written notice thereof, 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.

- E. This Franchisee shall not be terminated except upon a majority vote of the full membership of the City Council, after reasonable notice to Franchisee and an opportunity to be heard, provided that if exigent circumstances necessitate immediate termination, the hearing may be held as soon as reasonably possible after the termination.
- F. In the event of termination, Franchisee shall immediately discontinue operation of the pipeline(s) and Facilities through and in the City. Once the Grantee's rights to Operate in the City have terminated, Franchisee shall comply with Franchise and CPMC provisions regarding removal and/or abandonment of Facilities.
- G. Termination of this Franchise shall not release Franchisee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release Franchisee from any obligation to remove or secure the pipeline and Facilities pursuant to this Franchise and to restore the City's property.

SECTION 19. RECEIVERSHIP AND FORECLOSURE

- A. Franchisee shall immediately notify the City in writing if it: files a voluntary petition in bankruptcy, a voluntary petition to reorganize its business, or a voluntary petition to effect a plan or other arrangement with creditors; files an answer admitting the jurisdiction of the Court and the material allegations of an involuntary petition filed pursuant to the Bankruptcy Code, as amended; or is adjudicated bankrupt, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of any receiver or trustee or all or any part of its property including all or any parts of its business operations, pipeline(s) or Facilities within or affect the City.
- B. Upon the foreclosure or other judicial sale of all or a substantial part of Franchisee's business operations, pipeline(s) or Facilities within or affecting the geographical area of the City, or upon the occasion of additional events which effectively cause termination of Franchisee's rights or ability to operate the pipeline(s) or Facilities within or affecting the geographical area of the City, Franchisee shall notify the City of such fact.
- C. The City shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of a Franchisee, whether in receivership, reorganization, bankruptcy, or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

(a) Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all of the provisions of this Franchise Agreement and remedied any existing violations and/or defaults; and

Within said one hundred twenty (120) days, such receiver or trustee shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise Agreement granted to the Franchisee except where expressly prohibited by Washington law.

SECTION 20. ASSIGNMENT OF FRANCHISE

Assignment, cessation of service, or transfer of Franchise to a third party is governed by CPMC 20.06.230 – Abandonment/cessation of services/transfer of Franchise to third party.

SECTION 21. LEGAL RELATIONS

- A. 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 and severally liable for its own duties, obligations, and liabilities under this Franchise.

- B. Franchisee accepts any privileges granted by the City to any property in an “as is” condition. Franchisee agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of Grantee’s location of facilities or the facilities themselves in 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. Franchisee 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.

- C. This Franchise shall not create any duty of the City or any of its officials, employees, volunteers, or agents and no liability shall arise from any action or failure to act by the City 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.

- D. This Franchise shall be governed by, and construed in accordance with, the laws of the State of Washington.

SECTION 22. MISCELLANEOUS

If any material provision of this Franchise Agreement is held invalid, illegal, or unenforceable by a court or agency with competent jurisdiction, it shall not affect the balance hereof and 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 Agreement of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Franchise Agreement, either party may apply to a court of competent jurisdiction to reform or reconstitute the Franchise Agreement 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 judicial action remains pending.

- A. 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.
- B. In the event that Franchisee is prevented or delayed in the performance of any of its obligations under this Franchise by reason(s) beyond the reasonable control of Franchisee, then Franchisee's performance shall be excused during the Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence the Franchisee shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation or performance that is satisfactory to the City. Franchisee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.
- C. 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.
- D. By entering into this Franchise, the parties expressly do not intend to create any obligation or liability, or promise any performance to any third party nor have the parties created any third party any right to enforce this Franchise.
- E. This Franchise and all of the terms and conditions shall be binding upon and inure to the benefit of the respective successors and assignees of the parties.
- F. 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.

G. Notices shall be directed to the parties as follows:

To the City:
City Administrator
625 S College Ave
College Place, WA 99362

To the Franchisee:
Eric Martuscelli, VP
200 N Union
Kennewick, WA 99336

- H. The parties each represent and warrant that they have full authority to enter into and to perform this Franchise, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Franchise, except such as may be routinely required and obtained in the ordinary course of business.
- I. This Franchise Agreement, the attachments hereto, and the CPMC incorporated herein 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 Agreement can be amended, supplemented, modified or changed only by an agreement in writing which makes specific reference to the Franchise Agreement or the appropriate attachment and which is signed by the party against whom enforcement of any such amendment, supplement, modification or change is sought. All previous Franchise Agreements between the parties pertaining to Grantee's operation of its pipeline(s) and/or Facilitates in the City are hereby superseded.
- J. City shall, within thirty (30) days after passage of this Ordinance, file with the City Clerk, its unconditional written acceptance of all the terms and conditions of this Franchise. If Franchisee shall fail to so file its written acceptance within such period, then the rights and privileges granted hereunder shall be deemed forfeited.

SECTION 23. CITY CLERK

The City Clerk is authorized and directed to publish a summary hereof in accordance with Revised Code of Washington §§ 35A.13.200 and 35A.12.160.

PASSED by the City Council of the City of College Place, Washington, this 12th day of January, 2021.

DocuSigned by:
Norma L. Hernandez
Norma E. Hernández, Mayor

Attest:

DocuSigned by:
Lisa R. Neissl
Lisa R. Neissl, City Clerk

Approved as to form:

DocuSigned by:
Rea Culwell
Rea Culwell, City Attorney

Passed 01-12-2021
Published 01-15-2021
Effective

ACCEPTANCE:

The provisions of this Franchise are agreed to and hereby accepted. By accepting this franchise, Franchisee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the Franchise and the municipal code and ordinances of the City.

By: _____

Printed Name: Eric Martuscelli

Title: Vice President Field Operations

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) the Franchisee returned a signed copy of this Franchise to the City Council in accordance with this franchise; (2) the Franchisee has presented to the City acceptable evidence of insurance and security as required in this franchise; and (3) the Franchisee has paid all applicable processing costs set forth in the franchise.

The effective date of this Franchise ordinance is: _____, 2020.

By: _____

Printed Name: _____

Title: _____

[End of Franchise]