

ORDINANCE NO. 825

AN ORDINANCE GRANTING CASCADE NATURAL GAS CORPORATION, A WASHINGTON CORPORATION ("CASCADE NATURAL GAS"), THE RIGHT, PRIVILEGE AND FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN, IN AND THROUGH, AND ALONG THE PRESENT AND FUTURE HIGHWAYS, PUBLIC STREETS, ALLEYS, AND OTHER PUBLIC PLACES WITHIN THE CITY OF MADRAS, ("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 CITY AND ITS RESIDENTS; AND REPEALING ORDINANCE NUMBER 478 EFFECTIVE JULY 1, 2010.

THE CITY OF MADRAS ORDAINS AS FOLLOWS:

1. Grant of Franchise. Subject to the terms and conditions contained in this Ordinance, City grants to Cascade Natural Gas the right, privilege and franchise to construct, operate and maintain, in, through, and along the present and future highways, public streets, alleys, and other public places within City (collectively, the "Public Ways"), 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 (collectively, "Facilities") to City and its residents, for the full term of this franchise. Cascade Natural Gas will enter into, onto, or over the Public Ways only for the purposes described in the immediately preceding sentence. Notwithstanding anything contained in this Ordinance to the contrary, City will have the authority to prescribe which Public Ways will be used and the location of the Facilities within the Public Ways as may be necessary to minimize public inconvenience, which authority will not be unreasonably exercised by City.
2. Excavation. Subject to the terms and conditions contained in this Ordinance, Cascade Natural Gas may make all needful excavations in any Public Ways for the purpose of placing, erecting, laying, and maintaining the Facilities or repairing, renewing, or replacing the same.
3. Construction Work.
 - (a) Except in the case of an emergency, prior to commencing any construction work within City, Cascade Natural Gas will:

- (i) file with City maps, materials, site plans, and any other reasonably requested information concerning the proposed construction work (including, without limitation, the location of proposed Facilities and a traffic control plan describing the measures that will be taken to ensure compliance with the Uniform Manual of Traffic Control Devices and City regulations);
 - (ii) obtain all necessary construction permits concerning the proposed construction work;
 - (iii) pay in full the construction permit fee as determined by City Council; and
 - (iv) obtain City's prior written consent. In the event Cascade Natural Gas is required to complete any construction work due to the occurrence of an emergency, Cascade Natural Gas will be required to comply with Section 3(a)(i) – (iv) as soon as practicable (but in no event later than five days after the occurrence of the emergency).
- (b) Cascade Natural Gas will conduct its operations and will complete all construction work, including, without limitation, any excavation and/or restoration work, in accordance with the following:
- (i) all construction work will be completed in a safe manner, taking into account all applicable traffic control rules and procedures (including, without limitation, those of the Uniform Manual of Traffic Control Devices);
 - (ii) all construction work will be completed so as to minimize disruption of the Public Way and other public and private property;
 - (iii) all construction work will be completed in accordance with any and all applicable Legal Requirements (as defined below); and
 - (iv) all construction work will be completed in a good workmanlike manner. For purposes of this Ordinance, the term "construction work" means any construction activity in, upon, over, and/or under any Public Way within City, including, but

not limited to, any ordinary construction, excavation, extension, and/or relocation work; the term "emergency" means a human created or natural event or circumstance that causes or threatens widespread loss of life, injury to person or property, human suffering, or significant financial loss.

4. **Restoration.** Under this Ordinance, whenever Cascade Natural Gas (and/or its affiliates, agents, contractors, or subcontractors) disturbs any Public Way within City, Cascade Natural Gas will restore the same to the same or better condition to which it or they was or were prior to the disruption as soon as practicable and without unreasonable delay. If Cascade Natural Gas (and/or its affiliates, agents, contractors, or subcontractors) fails to restore any Public Way to the same or better condition to which it or they was or were prior to the disruption as soon as practicable and without unreasonable delay, City will have the right (but not the obligation) to cause the restoration to be made at the expense of Cascade Natural Gas. Cascade Natural Gas will pay City any and all costs and expenses incurred by City to restore the Public Way(s) within thirty (30) days of City's demand.
5. **Relocation.** City may require Cascade Natural Gas, at Cascade Natural Gas's cost and expense, to move and/or relocate any Facilities wherever City determines that the movement and/or relocation is necessary for an emergency and/or the construction, installation, and/or maintenance of any public work or improvement (but not for solely aesthetic purposes). If the City requires subsequent relocation of the same facility within five (5) years of the initial relocation, City shall bear the expense of the subsequent relocation.

If any moving and/or relocation work is done for or at the request of a private individual, entity, developer, or development, the costs of such moving or relocation work will be borne by such requesting private individual, entity, developer, or development. Nothing in this Ordinance will be construed in any way to prevent City from sewerage, grading, planking, rocking, paving, repairing, altering, and/or improving any Public Way in and/or upon which any Facilities will be placed, but all such work and/or improvements will be done if possible so as not to obstruct and/or prevent the free use of said Facilities. City will not require Cascade Natural Gas to remove or relocate Facilities or vacate any Public Way incidental to any public housing or renewal project under ORS Chapters 456 or 457 without reserving Cascade Natural Gas's right therein or without requiring Cascade Natural Gas to be compensated for the costs thereof.

6. Vacations. The City agrees to protect Cascade Natural Gas' rights by retaining easements for its facilities, located in Public Ways, being vacated by City Ordinance. If Cascade Natural Gas' facilities must be relocated from a vacated Public Way the petitioner of said vacation shall bear the expense of moving said facility.
7. Moving Apparatus. Whenever it becomes necessary to temporarily rearrange, remove, lower, and/or raise the Facilities to permit the passage of any building, machinery, and/or other object moved over any Public Way within City, Cascade Natural Gas will perform such construction work within a reasonable period after receiving written notice from the owner or contractor-mover desiring to move said building, machinery, and/or other object. Said notice will:
 - (i) bear the approval of City,
 - (ii) detail the route of movement of the building, machinery, and/or object,
 - (iii) provide that the costs incurred by Cascade Natural Gas in making such a rearrangement of Facilities will be borne by the contractor-mover,
 - (iv) provide that the contractor-mover will indemnify and save Cascade Natural Gas harmless for, from, and against any and all damages, claims, or causes of action whatsoever caused directly or indirectly from such temporary rearrangement of the Facilities, and
 - (v) if required by Cascade Natural Gas, be accompanied by cash deposit or a good and sufficient bond to pay any and all such costs as estimated by Cascade Natural Gas.
8. Payment by Cascade Natural Gas. In consideration of the rights, privileges, and franchise hereby granted, Cascade Natural Gas will pay City from and after the date of the acceptance of this Ordinance, and until its expiration, seven percent (7%) per annum of gross revenues earned by Cascade Natural Gas within the boundary of City. Gross Revenue shall be computed by deducting from the total billings of Cascade Natural Gas the total of all uncollectable billings.

Within sixty (60) days after the end of each calendar quarter, Cascade Natural Gas will file with City a statement showing the total gross revenues received by Cascade Natural Gas for the preceding quarter (the

“Accounting Statement”), and such Accounting Statement will be accompanied by a payment to City of the seven percent (7%) specified herein for each calendar quarter.

Within forty-five (45) days after City’s written request, Cascade Natural Gas will provide and make available for inspection any books, records, and other documents or information City determines necessary or appropriate to audit an Accounting Statement and/or ascertain Cascade Natural Gas’s compliance with this Section 8.

City’s acceptance of any payments under this Section 8 will not be considered a waiver by City of any breach of this Ordinance by Cascade Natural Gas. Notwithstanding anything contained in this Ordinance to the contrary, the franchise fee payable by Cascade Natural Gas under this Section 8 may be decreased or increased from time to time by City upon one hundred eighty (180) days’ prior written notice to Cascade Natural Gas; provided, however, such decrease or increase must be in the public interest as determined by the Public Utility Commission of Oregon pursuant to ORS 221.420(2).

9. Indemnification. Cascade Natural Gas will defend, indemnify, and hold City, and each present and future employee, director, officer, agent, and representative of City, harmless for, from, and against any and all claims, actions, proceedings, damages, liabilities, losses, and expenses, including, without limitation, reasonable attorneys fees and costs of suit or defense, arising out of, resulting from, or alleged to arise out of or result from:

- (i) Cascade Natural Gas’s obligation or liability to any third-party,
- (ii) the negligent, careless, or wrongful acts, omissions, failures to act or misconduct of Cascade Natural Gas and/or its affiliates, officers, employees, agents, contractors, or subcontractors in the construction, operation, maintenance, repair, or removal of any Facilities, and/or in providing or offering natural gas through the Facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Ordinance; and/or
- (iii) Cascade Natural Gas’s breach or failure to perform any Cascade Natural Gas representation, warranty, covenant, and/or obligation under this Ordinance. Cascade Natural Gas will defend City at City’s request against any such claims,

actions, proceedings, damages, liabilities, and expenses. City will notify Cascade Natural Gas promptly of any written claims or demands against City of which Cascade Natural Gas is responsible hereunder.

10. Insurance. Cascade Natural Gas, at its cost and expense, will secure and keep in full force and effect during the term of this Ordinance, the following insurance coverage and their respective minimum limits:

- (a) Workers' compensation insurance within statutory limits and employer's liability insurance with limits of not less than \$1,000,000 per occurrence.
- (b) Comprehensive general liability insurance with limits of not less than \$3,000,000 for bodily injury or death to each person; \$3,000,000 for property damage resulting from any one accident; and \$3,000,000 for all other types of liability.
- (c) Automobile liability insurance for all owned, non-owned, and hired vehicles that are, or may be used, by Cascade Natural Gas and its employees in connection with this Ordinance with a limit of \$1,000,000 for each person and \$3,000,000 for each accident.

The above minimum levels of insurance may be provided by a combination of primary and excess policies, at Cascade Natural Gas's election. Each insurance certificate provided by or on behalf of Cascade Natural Gas pursuant to the provisions of this Section 10 will name City as an additional insured and will provide that no cancellation, expiration, modification, or reduction in amount or scope of insurance coverage is permitted without providing City thirty (30) days' prior written notice. All insurance Cascade Natural Gas is required to maintain under this Section 10 will be issued only by insurance companies licensed in Oregon.

Prior to City's execution and acceptance of this Ordinance, and at any other time thereafter within thirty (30) days after City's written request, Cascade Natural Gas will provide City with certificates of insurance to evidence Cascade Natural Gas's compliance with this Section 10. Notwithstanding the above, Cascade Natural Gas may maintain self-insurance that meets the requirements under this Section 10.

11. Term of Franchise. This Ordinance will continue and be in full force and effect for a period of five (5) years, commencing from July 1, 2010 and continuing through June 30, 2015, and will automatically renew for successive periods of five (5) years each, unless sooner terminated as provided in this Ordinance. Notwithstanding anything contained in this Ordinance to the contrary, this Ordinance may be terminated:
- (i) at any time by the mutual written consent of City and Cascade Natural Gas,
 - (ii) by either City or Cascade Natural Gas upon the giving of one hundred and eighty (180) days' prior written notice to the other party,
 - (iii) immediately upon Cascade Natural Gas's provision of notice to City if City fails to comply with any applicable Legal Requirements and/or City breaches or otherwise fails to perform any of City's obligations under this Ordinance, or
 - (iv) immediately upon City's provision of notice to Cascade Natural Gas if Cascade Natural Gas fails to comply with any applicable Legal Requirements and/or Cascade Natural Gas breaches or otherwise fails to perform any of Cascade Natural Gas's obligations under this Ordinance.
12. Franchise Non-Exclusive. Cascade Natural Gas acknowledges and agrees that the franchise created by this Ordinance is and will be construed as a non-exclusive franchise. City expressly reserves the right to grant franchises, licenses, permits, and/or other similar rights to other persons or entities to use and/or to place, erect, lay, maintain, and/or operate in, upon, over, and/or under the Public Ways for similar or different purposes allowed under this Ordinance.
13. Assignment or Transfer of Franchise. Cascade Natural Gas will not be permitted to assign or transfer in any manner whatsoever any interest in or to this franchise or in any Cascade Natural Gas facilities located within City unless the following conditions are met:
- (i) the grantee, assignee, or transferee agrees in writing (in form and substance satisfactory to City) to assume and abide by the terms and conditions contained in this Ordinance; and

- (ii) Cascade Natural Gas provides City thirty (30) days' prior written notice of the proposed assignment or transfer. Subject to the terms and conditions contained in this Section 13, this franchise will be binding on the parties and their respective heirs, executors, administrators, successors, and assigns and will inure to their benefit.

14. Severability and Preemption. If all or any portion of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by any Oregon or federal legislation, rules, regulations, or decisions, the remainder of this Ordinance will not be affected but will be deemed as a separate, distinct, and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining provision of this Ordinance will be valid and enforceable to the fullest extent permitted by law.

In the event that federal, Oregon, county, or City laws, rules, ordinances, or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision will be read to be preempted to the extent and the time required by law. In the event such federal, Oregon, county, or City law, rule, ordinance, or regulation is subsequently repealed, rescinded, amended, or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision will thereupon return to full force and effect, and will thereafter be binding, without the requirement of further action on the part of City or Cascade Natural Gas, and any amendments hereto.

15. Governing Law; Venue. This Ordinance is subject to any and all applicable federal, state, county, and City laws, rules, regulations, codes, and ordinances, including, without limitation, any regulations of any administrative agency thereof, all as heretofore or hereafter adopted or established (collectively, the "Legal Requirements"). Any action or proceeding arising out of or concerning this Ordinance will be litigated in courts located in Jefferson County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Jefferson County, Oregon.
16. Consent. Whenever the consent of either City or Cascade Natural Gas is required under this Ordinance, such consent will not be unreasonably withheld, conditioned, or delayed.

17. Compliance with Laws. Cascade Natural Gas will comply with any and all applicable Legal Requirements. The rights and privileges granted by City to Cascade Natural Gas under this Ordinance extend only to the extent of City's right or authority to grant a franchise to occupy and use such areas for the Facilities
18. Effective Date. The terms of this franchise agreement will become effective on July 1, 2010 on which date this ordinance shall repeal and replace Ordinance number 478, the current franchise agreement with Cascade Natural Gas and which is set to expire at that time. Notwithstanding anything contained in this Ordinance to the contrary, the termination of this Ordinance, regardless of how it occurs, will not relieve a party of any obligations that have accrued before termination.
19. Notices. Unless otherwise specified in this Ordinance, any notice required under this Ordinance must be in writing and signed by the party to be bound. Any notice will be deemed given when personally delivered or delivered by facsimile transmission (with electronic confirmation of delivery), or will be deemed given three business days following delivery of the notice by U.S. mail, postage prepaid, by the applicable party to the address of the other party shown below (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day.

To City:

Mike Morgan
 City of Madras
 71 SE "D" St.
 Madras, Oregon 97741-1605
 Facsimile No.: 541-475-7061

with a copy to:

Robert S. Lovlien
 Bryant, Lovlien & Jarvis, PC
 PO Box 880
 Bend, Oregon 97709
 Facsimile No.: 541-389-3386

To Cascade Natural Gas:

Cascade Natural Gas Corporation
 Attn: Region Manager
 64500 O.B. Riley Road, Suite 2
 Bend, Oregon 97701
 Facsimile No.: 541-317-8570

with a copy to:

Region Manager
 Cascade Natural Gas Corporation
 64500 O.B. Riley Road, Suite 2
 Bend, Oregon 97701
 Facsimile No.: 541-317-8570

20. Interpretation. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The words "include," "includes," and "including" are not limiting. A reference to any federal, state, or local law, regulation, or ordinance includes any amendment or modification to such federal, state, or local law, regulation, or ordinance. Reference to "days" means calendar days, with any deadline falling on a day other than a business day being extended to the next business day.
21. Repeal. Ordinance number 478, which is the current franchise agreement with Cascade Natural Gas, is hereby repealed effective July 1, 2010.

Passed by Council and signed by the Mayor on May 25, 2010.

Approved by Cascade Natural Gas Corporation on June 22, 2010.