

CITY OF CASTLEGAR

BYLAW 834

A bylaw authorizing the renewal of the agreement with B.C. Gas Utility Ltd. For the sale and distribution of natural gas within the City of Castlegar.

WHEREAS Section 607 of the Municipal Act authorizes Council by bylaw to renew an agreement granting and exclusive franchise, for a term of years not longer than 21 years, to supply gas services to the inhabitants of the municipality;

AND WHEREAS the Council of the City of Castlegar wishes to renew the agreement made with Inland Natural Gas and assumed by its successor B.C. Gas Utility Ltd. As authorized by the City of Castlegar Gas Franchise bylaws N). 110 and 111;

NOW THEREFORE the Council of the City of Castlegar, in open meeting assembled, enacts as follows:

1. This bylaw may be cited as the "City of Castlegar Gas Franchise Renewal Bylaw No. 834, 1997".
2. The Council is hereby authorized to enter into an agreement with the B.C. Gas Utility Ltd. For the sale and distribution of natural gas within the limits of the City of Castlegar, said agreement to be in accordance with Schedule "A" attached hereto and forming part of this bylaw.
3. The Mayor and Clerk are hereby authorized to sign the said agreement on behalf of the City of Castlegar and to affix the Corporate Seal thereto.
4. This bylaw and agreement shall come into full force and effect upon Council giving final adoption to this bylaw.

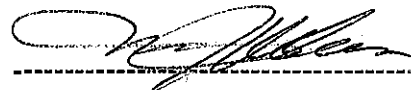
READ A FIRST TIME on the 2nd day of December, 1997

READ A SECOND TIME on the 2nd day of December, 1997

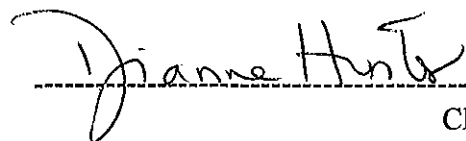
READ A THIRD TIME AND PASSED on the 2nd day of December, 1997.

RECEIVED THE APPROVAL OF THE INSPECTOR OF MUNICIPALITIES on the 9th day of February, 1998

ADOPTED on the 13th day of October, 1998.



Mayor



Clerk

STANDARD FORM FRANCHISE AGREEMENT

**Schedule "A"
to City of Castlegar
Bylaw 834**

THIS AGREEMENT made this 13th day of October, 1998

**Between: BC GAS UTILITY LTD.
111 West Georgia Street
Vancouver, British Columbia
Canada V6E 4M4**

**And: THE CITY OF CASTLEGAR
460 Columbia Avenue
Castlegar, British Columbia
Canada V1N 1G7**

BC GAS UTILITY LTD. STANDARD FORM FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT made this day of

BETWEEN:

The Corporation of the City of Castlegar
460 Columbia Avenue
Castlegar, British Columbia
V1N 1G7

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

BC Gas Utility Ltd., a body corporate duly incorporated under the laws of the Province of British Columbia, and having its registered office in the City of Vancouver, in the Province of British Columbia

(hereinafter called the "Company")

OF THE SECOND PART

WHEREAS the Company has entered into gas purchase contracts for the supply of gas by pipeline for the purposes of making same available for distribution in British Columbia in accordance with the terms of such contracts.

AND WHEREAS the Company was formed for the purpose of engaging in the business of transporting, supplying, distributing and selling gas for industrial, commercial, domestic and other uses for power, heat and energy, and pursuant to the terms and conditions of its contracts with its suppliers, has available for such uses supplies of gas for the purpose of making same available to the Municipality and to consumers within, or in the environs of, the Municipality.

AND WHEREAS the Company has constructed and is operating all the necessary facilities, pipelines, mains and pipes for a supply of gas (which term as used in this Agreement shall include natural gas, manufactured gas, mixed gas, liquefied petroleum gas, synthetic natural gas, liquefied natural gas, and/or other utility gases or any of them or any mixtures thereof) to the Municipality and such consumers or customers as are situated within the boundary limits thereof and is willing to continue to do so on the terms and conditions hereinafter set forth.

AND WHEREAS it is to the mutual advantage of the Company and the Municipality to enter into this Agreement.

AND WHEREAS the Company has constructed the necessary transmission and distribution facilities, all in accordance with governmental, municipal, or other regulatory authorities having jurisdiction over same for the supply of gas to and within the Municipality.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. GRANT OF FRANCHISE

The Municipality hereby grants to the Company, its successors and assigns, subject to the terms, conditions and provisions hereinafter contained, the full power, right and liberty to place, construct, renew, alter, repair, maintain, operate and use its pipes and other equipment and appliances (which pipes and other equipment and appliances are hereinafter sometimes called "the gas system"), for mixing, transmitting, distributing, delivering, furnishing, selling and taking delivery of gas upon, along, across, over or under any public thoroughfare, highway, road, street, lane, alley, square, park, public place, bridge, viaduct, subway or watercourse in the Municipality (all or any of which are hereinafter sometimes called "public places") as may be necessary or convenient for the purposes of supplying and conducting gas to the consumers thereof, and the Company by its officers, employees, contractors and licensees as to that end authorized to enter upon any and all public places and to break at its own expense the surface and to make the necessary excavation thereon when and where the same may be required for the aforesaid purpose, and to do all other things reasonably necessary or convenient for the purpose of supplying gas to the inhabitants of the Municipality, and placing, constructing, renewing, altering, repairing, maintaining, operating and using the gas system doing as little damage as may be in the execution of the powers hereby granted, and causing as little obstruction as possible during the progress of the work, and at all other times, and restoring without unreasonable delay the public places in the Municipality to a state of repair or conditions as nearly as reasonably possible as existed immediately before the commencement of such work, and the Company shall at all times, while any public place shall be broken up, cause safeguards to be set up and maintained during which same shall be broken up, and a proper guard during the day to the satisfaction of the Municipal Clerk or such other officer as may be appointed by the Municipality for that purpose.

2. NOT TO INTERFERE WITH EXISTING FACILITIES

The gas system shall be placed and constructed in such manner as not to interfere with any public or private sewer or any other pipe, conduit, duct, manhole or system belonging to the Municipality or which shall have been previously laid down and be then subsisting in any public place by, or with the permission or approval of the Municipality, or by virtue of any charter or right granted by competent government or municipal authority.

3. COMPANY TO INDEMNIFY MUNICIPALITY

The Company agrees with the Municipality that it shall protect, indemnify and save harmless the Municipality from and against all actions, proceedings, claims and demands of any corporation, firm or person against the Municipality and will reimburse the Municipality for all damage and expenses caused to it in respect of or by the execution by the Company of the authorities, permissions and rights hereby granted to it or by reason of the construction, maintenance or operation of the gas system of the Company within the boundary limits of the Municipality, except where caused by or contributed to by the negligence or default of the Municipality or its servants or agents. The Company further agrees that it shall protect and indemnify the Municipality from and against all claims, demands and actions by third persons in respect of damages sustained by reason of any operations of the Company in connection with the execution of the powers hereby granted, or by reason of any operations of the Company in relation to its gas system.

4. WRITTEN NOTICE EXCEPT IN EMERGENCIES

The Company shall give notice in writing to the Municipality or such officer or official thereof as shall be designated from time to time by the Municipality for the purposes set out in Clause Five (5), of its intention to break up, dig, trench, open up or excavate any, or in or on any, public place, not less than three (3) clear days before the beginning of such work, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which cases no notice need be first given but shall be given as soon as practicable thereafter.

5. APPROVAL OF GAS SYSTEM PLANS

A plan showing the proposed location of the gas system to be placed or constructed from time to time shall be first submitted to and approved by such officer or official as shall be designated from time to time by the Municipality for that purpose, and the gas system shall not be placed or constructed without such approval, provided always it shall not be unreasonably withheld.

6. NOTICE TO COMPANY OF MUNICIPAL WORKS

The Municipality agrees with the Company that before it makes any additions, repairs or alterations to any of its public services within the boundary limits of the Municipality, and which additions, repairs or alterations may in any way affect any part of the gas system of the Company, it shall give to the Company at its main office in the Province of British Columbia or such other office as the Company may advise the Municipality in writing from time to time not less than three (3) clear days' notice thereof, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which case no notice need be first given but shall be given as soon as practicable thereafter. The Company shall be entitled to appoint a representative to supervise or advise in respect to such additions, repairs or alterations. The provisions of this clause shall not relieve the Municipality of its responsibilities under regulations pursuant to the Gas Safety Act, R.S.B.C. 1979, Chapter 149 and any amendments thereto.

7. CLOSURE OF PUBLIC PLACES BY MUNICIPALITY

Should any of the public places under or on which any part of the gas system of the Company lies or is constructed, be legally closed or alienated by the Municipality or by or under any other paramount authority, the Municipality shall notify the Company forthwith, and the Company agrees that with all reasonable speed and dispatch after receipt of written notice from the Municipality, it shall remove and (if possible and practicable) relocate, subject as aforesaid to the approval of the Municipality, that part of its gas system so affected by such closure or alienation, the cost of such removal or relocation to be at the cost and expense of the Municipality, unless such removal or relocation has been enforced upon the Municipality by any such other paramount authority without the Municipality having applied therefor.

8. ALTERATIONS TO WORK

Notwithstanding anything hereinbefore contained, if either party shall request the other party to make some change in such other party's pipes, equipment, plant or appliances installed on, over, under or adjacent to, public property in order to facilitate the installation or construction of new pipes, equipment, plant or appliances by the requesting party, such other party shall, if it reasonably can, carry out the change or alteration requested and shall charge the requesting party with the entire cost thereof. Such costs shall include without limiting the generality of the foregoing, such overhead charges on labour and materials as may be from time to time be charged by the non-requesting party, as well as all expenses and disbursements incurred by the non-requesting party in carrying out such change or alteration.

9. DAMAGE TO GAS SYSTEM

If the Municipality shall destroy or damage any part of the gas system on, over, or under, public property which was installed before or after the date hereof the Municipality shall bear the cost of repairing the damaged gas system in such manner as to restore the damaged gas system to as good a state of repair as had existed prior to the occurrence of such damage or destruction and to the reasonable satisfaction of the Company.

10. GAS RATES CHARGES TO CONSUMERS

The Company agrees that the rates which the Company shall charge for gas sold to the Municipality or other consumers or customers taking delivery in the manner aforesaid within the boundary limits of the Municipality shall be the applicable rates filed with and approved by the British Columbia Utilities Commission or its successor.

11. ALLOCATION OF GAS

If the Company shall at any time not have a sufficient supply of gas to supply all the requirements of connected customers, the Company shall have the right to prescribe reasonable rules and regulations for allocating the available supply of gas for such requirements to domestic, commercial and industrial customers or consumers in that order or priority, or as approved by the British Columbia Utilities Commission or its successor.

12. EXTENSION OF SERVICES

Subject to the elements, acts of God and the Queen's enemies, and generally all shortages of supply or delays in delivery caused or resulting directly or indirectly from causes beyond the reasonable control of the Company, but commencing only after the construction and putting into service of facilities so to do, the Company shall supply such reasonable quantities of gas as may be required for consumption or purchase by its customers or consumers within the boundary limits of the Municipality, provided that such requirements are to be supplied to places or buildings lying or being on property fronting or lying alongside a main or pipe of the gas system of the Company. The property line of such property shall be the place of delivery of all gas supplied by the Company. The Company shall also supply and install a meter suitably located on the property and a service pipe line from the property line to the meter in accordance with the costs and terms set forth in the

Company's tariff and revisions thereto as filed with and approved by the British Columbia Utilities Commission or its successor, from time to time. The said meter and service pipe line shall be located and installed in a manner and at a location selected by the Company, and shall remain the property of the Company. The expense and risk of utilizing and using such gas after delivery at the said property line shall be borne by the customer or consumer and not by the Company unless any loss or damage occasioned by such utilization or user is directly attributed to the negligence or carelessness of the Company, its servants or agents.

13. COMPLIANCE WITH GAS SAFETY LEGISLATION

The Company agrees that the gas supplied to the Municipality and its inhabitants and to consumers or customers situated within its boundary limits shall at all times be of a quality and standard conforming with the regulations for the time being in force and from time to time formulated under the provisions of the Electricity and Gas Inspection Act being 1980-83 Chapter 86 of the Statutes of Canada, and any amending statutes, and also conforming with any regulations or laws applicable thereto, whether such regulations or laws be made or issued by the Government of Canada or by the Province of British Columbia and whether now or hereafter brought in force and effect.

14. FEE FOR FRANCHISE RIGHTS

As compensation for the use by the Company of the public places, as provided in Clause One (1) hereof, and for the exclusive charter, right, franchise, or privilege to supply gas granted herein, the Company shall pay to the Municipality on the first day of November in each year during the term of this Agreement a sum equal to three (3%) percent of the amount received in each immediately preceding calendar year by the Company for gas consumed within the boundary limits of the Municipality, but such amounts shall not include any percentage for or based upon any revenues received by the Company from gas supplied for resale. On the last day of March of the year immediately following the expiry or termination of this Agreement, the Company shall pay to the Municipality a sum equal to three (3%) percent of the amount received by the Company for gas consumed within the boundary limits of the Municipality during the period from the commencement of the preceding calendar year to the expiry or termination of this Agreement. Such compensation shall not be or be deemed to be in lieu of any taxes, rates, or licence fees otherwise properly payable to the Municipality.

15. DURATION AND EXCLUSIVITY OF FRANCHISE

Subject as hereinafter provided the Municipality hereby covenants and agrees with the Company that the powers hereby granted to the Company for the purpose aforesaid are and shall be granted to the Company exclusively for a period of ten (10) years commencing the **30th day of August, 1998** and expiring on the **29th day of August, 2008** (the "Primary Term") and continuing from year to year after the expiry of the Primary Term until terminated by either party upon twelve (12) months' written notice of termination received one year prior to the expiry of the Primary Term or any anniversary thereafter. Notwithstanding the foregoing, the term of this Agreement shall not continue longer than twenty-one (21) years. During the Primary Term or any extension of the term of this Agreement thereafter the Municipality shall not itself supply gas to any of its inhabitants, or use or allow or consent to any other person, firm, or corporation to supply or distribute gas to any of its inhabitants, or to use the said public places, or any of them, for the purpose of laying gas mains or pipes along, through or under the same; for the purpose of supplying or distributing gas within the boundary limits of the Municipality.

16. RENEWAL

Either party hereto shall have the right at any time prior to six (6) months before the expiration of the term of this Agreement, hereinbefore in Clause Fifteen (15) set out, to give to the other party notice in writing of its desire for a new agreement with powers as hereunder for a term of twenty-one (21) or lesser number of years, and upon such terms and conditions as may be mutually agreed upon. As soon as possible after giving of such notice, the parties shall, in the interest of both of them, enter into negotiations looking towards such a new agreement and shall use their best endeavours to bring such negotiations to a mutually satisfactory conclusion before the expiration of this Agreement.

17. OWNERSHIP OF THE GAS SYSTEM

Upon the termination of this Agreement, the gas system of the Company shall be and remain the Company's property and as such may be used by it in its business or removed in whole or in part as it may see fit, and for any of such purposes, but subject to the conditions of Clause One (1), the Company may enter in, upon and under all the public places in the Municipality and otherwise for the purpose of the maintenance, renewals, repair, removal or operation of the gas system or any part thereof; provided that the Company shall not leave any part of its gas system in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair.

18. ASSIGNMENT

This Agreement shall be assignable by the Company to a subsidiary, or to its successor, without the consent of the Municipality but otherwise shall only be assignable by the Company with the prior written consent of the Municipality, such consent not to be unreasonably withheld. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

19. AGREEMENT SUBJECT TO LAW

This Agreement and everything herein contained shall be subject to the provisions of any statutory provision of the Government of Canada or of the Province of British Columbia relative thereto, and of the proper authorities and powers of the British Columbia Utilities Commission of the Province and nothing herein contained shall be deemed to exclude the application of the provisions of such statutory provisions or any jurisdiction thereof or thereunder, or of the British Columbia Utilities Commission or shall be deemed to be a waiver or abandonment by the Company of any right, privilege, or benefit conferred upon it by such statutory provisions.

20. RESOLUTION OF DISPUTES

If at any time during the term of this Agreement any dispute, difference or question shall arise between the parties hereto touching the construction, meaning or effect of this Agreement or concerning any clause or thing contained herein or the rights or liabilities of the parties respectively under this Agreement, or if the parties are unable to agree with respect to any matter or thing hereof, then every such dispute, difference or question, if within the jurisdiction of the British Columbia

Utilities Commission shall be determined by the British Columbia Utilities Commission and if not within such jurisdiction, shall be referred to arbitration pursuant to the Commercial Arbitration Act (B.C.).

21. BOUNDARY LIMITS

In this Agreement the words "boundary limits" or "limits" of the Municipality or like terms, shall mean the boundary limits or limits of the Municipality as exists from time to time and over which the Municipality has control and authority.

22. NOTICE

Any notice, demand or request required or desired to be given under the terms or in respect of this Agreement shall be deemed to have been well and sufficiently given if mailed prepaid registered post, and addressed respectively as follows:

- (a) if given to the Municipality:

The Corporation of the City of Castlegar
460 Columbia Avenue
Castlegar, British Columbia
V1N 1G7

- (b) if given to the Company:

BC Gas Utility Ltd.
1111 West Georgia Street
Vancouver, British Columbia
Canada, V6E 4M4

Attention: Corporate Secretary

or at such other address as may from time to time be specified in writing by a party hereto, and shall be deemed to have been given three (3) days after the mailing thereof, non postal delivery days excepted.

23. AGREEMENT TO ENURE


Subject to the terms hereof this Agreement shall enure to the benefit of and be binding upon the Municipality, its successors and assigns, and upon the Company, its successors and assigns.

24. AGREEMENT NOT BINDING UNTIL APPROVED


This Agreement shall not be binding upon the parties unless and until it has been approved or assented to as required by law and is subject to the approval of the British Columbia Utilities Commission, and shall not be binding upon the Municipality until it has been authorized or adopted by By-law of the Municipality, which By-law shall before coming into force be subject to the approval of the Minister. This Agreement will be null and void if the conditions set out in this clause are not all met within five (5) months of the date first above written.

IN WITNESS WHEREOF the parties hereto have hereunto caused their respective corporate seals to be affixed, attested to by the signatures of their officers in that behalf, the day and year first above written.

The Municipal Seal of the **Corporation of the City of Castlegar** was hereunto affixed in the presence of:



Authorized Signatory



Authorized Signatory

The Common Seal of **BC Gas Utility Ltd.** was hereunto affixed in the presence of:

Authorized Signatory

Authorized Signatory

Province of British Columbia



No.

Statutory Approval

Under the provisions of section 607 (2)

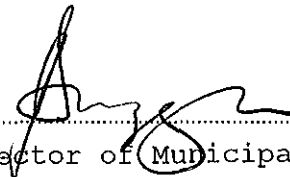
of the Municipal Act

I hereby approve Bylaw No. 834

of the City of Castlegar, *a copy*

of which is attached hereto.

*Dated this 9th day
of February, 1998*


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Deputy Inspector of Municipalities