

ORDINANCE NO. 1132

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 AND/OR ARTIFICIAL GAS DISTRIBUTION SYSTEM IN THE CITY OF PRINEVILLE, OREGON, AND REPEALING ORDINANCE NO. 1088.

THE PEOPLE OF THE CITY OF PRINEVILLE, OREGON, ORDAIN AS FOLLOWS:

Section 1. That Cascade Natural Gas Corporation, a Washington corporation, its successors and assigns, be and it is hereby granted the right, privilege and franchise to lay, construct and extend and to thereafter operate and maintain in, under, across, through and along the present and future streets, alleys and other public ways of the City of Prineville, 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 of Prineville 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 is a non-exclusive right and franchise.

Section 2. The rights, privileges and franchise hereby granted to and conferred upon the Grantee shall, unless this franchise be sooner terminated, extend for the full term of five (5) years from the date of the acceptance hereof by the Grantee. Grantee shall, within thirty (30) days after the date of the final passage of this ordinance file with the City Recorder its written acceptance of all terms and conditions of this ordinance, and if such acceptance is not filed as herein provided, this ordinance shall be null and void in all respects as if never passed. All rights and privileges granted and duties imposed by this ordinance upon the Grantee 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 Grantee, 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 Grantee 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.

Section 3. This ordinance and the written acceptance thereof by the Grantee shall constitute the contract between the City of Prineville and the Grantee and the same shall be binding upon and inure to the benefit of the Grantee, its successors and assigns, under the conditions herein imposed.

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

Section 5. All pipe lines of the Grantee shall be laid in such a manner as not to interfere with any present public or private irrigation ditches, drain ditches, sewers, water mains, conduits, sidewalks, curbs, paving or other improvements and utilities. All repairs thereto or replacements required shall be accomplished as provided in Section 7. In other than emergency situations, no pipe, conduit or related facilities of the Grantee shall be laid closer than two (2) feet to any water main, other pipe, conduit or related facilities of other utilities unless allowed by City permit. In case of any future improvement or construction of sewers, underground fixtures for the conveyance of water, or any other utility facilities, streets, alleys, and other public ways where any gas mains, pipes, services, attachments, and appurtenances of the Grantee may be situated, and it is necessary to change the location of the same in connection with said improvement or construction, the Grantee shall, at its own expense upon reasonable notice by the City and after reasonable evaluation of alternatives by the City in cooperation with the Grantee, move and change any Grantee facilities necessary to conform to such other public improvement(s). 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 Grantee at a time and upon terms acceptable to Grantee, for any and all costs incurred by Grantee in the relocation of Grantee's facilities. The City will avoid the need for such moving or changing whenever possible. All of the rights herein above stated in this section shall be exclusively for the benefit of and inure solely to the City and are not intended to bestow any third party right to any other utility. In the event Federal, State or other funds are available in whole or in part for utility relocating purposes, the City shall apply for such funds, if deemed appropriate and expedient to do so, and the Grantee will be reimbursed to the extent any such funds are actually realized and to the extent authorized by the granting authority.

Section 6. Gas mains shall be laid in utility easements or in the alleys wherever possible rather than public streets except when necessary to cross streets and no deviation therefrom shall be made without the written consent of the City Council. However, should frequent exceptions occur, the City Council may grant the City Manager the authority to approve and supervise such exceptions. The parties acknowledge that from time to time Grantee 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. Grantee will notify the City as soon as reasonably possible after the emergency.

Section 7. All earth, materials, sidewalks, paving, crossings, or improvements of any kind, disturbed, injured, or removed by the Grantee shall be fully repaired or replaced promptly by the Grantee, to as good or better condition, and the Grantee shall defend, indemnify and hold the City harmless for any claims, loss or damage incidental thereto. The Grantee shall further be required to conform to all applicable ordinances of the City of Prineville related thereto.

Section 8. 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 gas service to the consumer, such requirement extending services to the abutting property line where the main is in the street or alley. The Grantee shall make all reasonable extensions for

supplying gas service to the consumers who are inhabitants of 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 of Prineville 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. The rates to be charged, the rules and regulations in respect to the conditions, character, quality and standards of services to be furnished by the Grantee and all such matters shall be that as may be lawfully prescribed by the Oregon Public Utilities Commission.

Section 10. The Grantee shall at all times keep maps and records showing the locations and sizes of all gas mains and all appurtenant facilities laid by it or owned by it in the City and surrounding urban growth boundary as defined in the City's Comprehensive Plan, and such maps and records shall be available to the officials of the City of Prineville at all reasonable times.

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

Section 12. As compensation for the right and franchise herein granted, Grantee shall pay to the City an amount equal to five percent (5%) of the gross operating revenues collected from its customers for gas consumed within the City. Gross operating revenues shall be computed by deducting from the total billings of the Grantee the total of all uncollectible items. 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 thirty (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. On or before the 1st day of March of each year during the term of this franchise, the Grantee shall file with the City a sworn statement showing the amount of gross operating revenue of the Grantee within the City

for the calendar year immediately preceding the year in which the statement is filed and will permit the inspection of its books at reasonable hours upon request.

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. It is understood by the City that the portion of the gross revenue tax above three percent (3%) will be itemized on customers' invoices as a City tax.

Section 13. In case of failure on the part of the Grantee, its successors or assigns, to comply with any of the provisions of this ordinance, or if the Grantee, 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 Grantee, its successors or assigns, shall forfeit all rights and privileges granted by this ordinance, and all rights herein shall cease; provided, that such forfeiture shall not occur nor take effect until the City of Prineville 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 local manager and upon the registered agent for receipt of service for the State of Oregon of the Grantee, its successors or assigns, setting forth clearly and in detail the failure or violation complained of and the Grantee, its successors or assigns, shall have ninety (90) days thereafter in which to comply with the conditions of this franchise. If such failure or violation continues beyond said ninety (90) days, then the City Council of the City of Prineville, at its sole discretion, may resort to any lawful or legal remedies, as provide by Oregon Law, for the enforcements thereof. These remedies shall also include the right to decreeing a forfeiture of this franchise.

Section 14. The City reserves and has the right to pursue any remedy to compel or enforce the Grantee, 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 be come effective upon passage and approval by the City of Prineville 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 of Prineville, Oregon.

Section 16. Ordinance Number 1088 dated January 19, 2001, is hereby repealed, subject to formal acceptance by Grantee as required in section 2 and section 15.

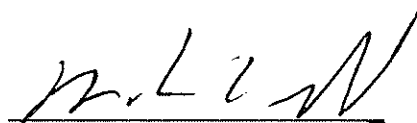
Section 17. The Grantee, by its use of this right and franchise, covenants and agrees with the City to at all times defend, indemnify and hold harmless the City from any claim, loss or damage of every kind and description incidental to such use. It will maintain in full force and effect, with an insurance carrier or carriers authorized to transact business in the State of Oregon the following insurances:

- A. State workers' compensation insurance, complying with the safety laws of the State of Oregon and any amendments thereto.
- B. Grantee agrees to provide certificates of insurance demonstrating financial responsibility and reflecting coverage for bodily injury (\$1,000,000.00 - \$1,000,000.00) and property damage liability (\$1,000,000.00 - \$1,000,000.00) and the City shall be named as an additional insured.

Passed by the City Council of the City of Prineville, Oregon, this 24th day of January 2006.


Approved by the Mayor of the City of Prineville, Oregon, 24th day of January 2006.

By:



Mike Wendel, Mayor

ATTEST:



Robb Corbett, City Manager/Recorder

Approved as to form:



Carl Dutli, City Attorney

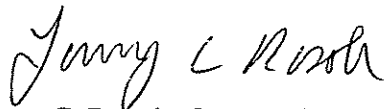
The terms and conditions of the foregoing Franchise Ordinance No. 1132 are hereby accepted this 24th day of January 2006.

CASCADE NATURAL GAS CORPORATION



By: Mike Gardner, Vice President Operations

ATTEST:


Larry C. Rosok, Corporation Secretary

Above acceptance received by:

City Manager/Recorder

Dated _____ 2006

