

ORDINANCE NO. 2007-5

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 LA PINE OREGON.

THE CITY OF LA PINE ORDAINS AS FOLLOWS:

Section 1. That Cascade Natural Gas Corporation ("Company"), a Washington corporation, its successors and assigns, be and it is hereby granted the right, privilege and franchise to construct, operate and maintain in, through and along the present and future streets of the City of La Pine ("City"), and in, through and along the present and future alleys, parkways, public and other places of said City, mains, pipes, boxes, reducing and regulating stations, laterals, conduits and connections, including service connections, together with all of the necessary appurtenances for the purpose of supplying natural gas for heat, power or other purposes to the City of La Pine 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 grant is a non-exclusive grant.

Section 2. The rights, privileges, and franchise hereby granted to and conferred upon the Company shall, unless this franchise be sooner terminated, extend for a term of ten (10) years from and after the date of the final acceptance of this Ordinance by the Company, herein referred to as the primary term. This franchise will automatically renew for successive periods of five (5) years each unless canceled 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. All rights and privileges granted, and duties imposed by this ordinance upon the Company shall extend to and be binding upon its successors, legal representatives, or assigns, but this privilege and the rights granted under this ordinance cannot be transferred by the Company, either by assignment, sale, consolidation, operation of law, or otherwise without first obtaining the written consent of the City thereto. Notwithstanding anything to the contrary herein contained, permission is hereby granted to the Company to mortgage this franchise, together with the gas utility facilities and properties of the Company, within the City to secure any legal bond issue or other bona fide indebtedness of the Company, with no requirement that the trustees

file any acceptance of this franchise and the liabilities and obligations of said trustees shall in any event be limited to the properties and assets of the Company comprising the trust estate.

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

Section 4. All of the Company's gas property and facilities shall be constructed and at all times maintained in good order and 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 Company's gas property and facilities on the City streets and public places, subject to the provisions of any State and Federal laws applicable thereto, and such regulations shall be in conformance with the standard engineering practice. The Company agrees to promptly conform to all such regulations. The parties acknowledge that from time to time Company is required to make emergency excavations without allowing the standard notification to the City in order to maintain safe operation of the natural gas system and respond to third party incidents that may occur. Company will notify the City as soon as reasonably possible after the emergency in accordance with the current city requirements.

Section 5. All pipe lines of the Company shall be laid in such a manner as not to interfere with any present public or private irrigation or drain ditches, sewers, water mains, conduits, sidewalks, paving, or other public improvements, and all repairs thereto or replacements required shall be accomplished as provided in Section 7. If practicable, no pipe or conduit shall be laid closer than two (2) feet to any water main or other pipe or conduit of other utilities. In case of any future improvement or construction of sewers or underground fixtures for the conveyance of water or of any of the streets, avenues, lanes, alleys, highways and public places where any gas mains, pipes, services, attachments, and appurtenances of the Company may be situated, and it is necessary to change the location of the same in connection with said improvement or construction, the Company shall, upon reasonable notice by the City and after reasonable evaluation of alternatives by the City in cooperation with the Company, at its own

expense, move and change any gas main, pipes, services, attachments or appurtenances to conform to such public improvement. The City will avoid the need for such moving or changing whenever possible. 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 Company at a time and upon terms acceptable to Company, for any and all costs incurred by Company in the relocation of Company's facilities. In the event that Federal, State or other funds are available in whole or in part for utility relocating purposes, the City shall apply for such funds and the Company will be reimbursed to the extent any such funds are actually obtained. The City agrees to protect Company's rights by retaining easements for its facilities located within public rights of ways being vacated by ordinance. If Company's facilities must be relocated from a vacated public right of way, the petitioner of said vacation will bear the expense of moving said facilities.

Section 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. No deviation therefrom shall be made without the written consent of the City council; however, should frequent exception occur, City council will grant the City manager the authority to approve and supervise such exceptions.

Section 7. All earth, materials, sidewalks, paving, crossings, or improvements of any kind, disturbed, injured, or removed by the Company shall be remedied, repaired and replaced by Company and Company shall protect and save the City harmless from any loss or claim of damage occasioned thereon. The Company shall further be required to conform to any ordinance enacted by the City of La Pine or amendment thereof, with reference to the cutting of any streets or sidewalks and the replacement thereof.

Section 8. The Company shall, at all times during the term of this Franchise, install and maintain at its own expense such mains, services, regulating and measuring devices, as may be necessary for supplying service to the consumers. Extensions of service and other services will be offered and furnished under such rules and regulations as may be prescribed from time to time by the Oregon Public Utility Commission.

Section 9. The Company shall maintain maps and records showing the locations and sizes of all gas mains owned by it in the City. Such maps and records shall be available to the officials of the city of La Pine at all reasonable times. Company shall, upon request, coordinate with appropriate City officials regarding emergency planning and operation of the gas system.

Section 10. The Company, its successors and assigns, may make such reasonable rules and regulations for the protection of its property, for the service and charges to its customers, for the prevention of loss and waste, for safety purposes, for the conduct and operation of its business in respect to the sale or distribution of gas as may be advisable or necessary from time to time, all in accordance herewith and in conformity with existing laws and regulations.

Section 11. As compensation for the right, privilege and license herein granted, Company shall pay to the City an amount equal to seven percent (7 %) of the gross revenues collected from its customers for gas consumed within the City. Gross revenue shall be computed by deducting from the monthly total billings of the Company the total of all uncollected items for that month. Such compensation shall be due for each calendar month or fraction thereof, within thirty (30) days from and after the close of such calendar month or fraction thereof. Within (30) days after the termination of this privilege, compensation shall be paid for the period elapsing since the close of the last calendar month for which compensation has been paid.

The City shall have the right to inspect the records of the Company at reasonable times to verify the monthly billings and uncollected items and other necessary information to assist in ascertaining compliance with this ordinance.

Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this privilege occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting the balance due thereon.

Section 12. In case of failure on the part of the Company, its successors or assigns, to comply with any of the provisions of this ordinance, or if the Company, its successors or assigns, do or cause to be done, any act or thing prohibited by or in violation of the terms of this ordinance, the Company, and its successors or assigns, shall forfeit all rights and privileges

granted by this ordinance, and all rights here shall cease; provided, that such forfeiture shall not occur nor take effect until the City of La Pine 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 registered agent for receipt of service in the State of Oregon of the Company, its successors or assigns, setting forth clearly and in detail the failure or violation complained of and the Company, its successors 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 La Pine, at its sole discretion, shall have the right to forthwith determine that this franchise is forfeited. Said determination shall be made, however, only upon proof established to the satisfaction of the City Council, and such as would be considered competent evidence in any court of record, showing a breach of this franchise, and showing that the rights of the City of La Pine or its inhabitants have been materially or substantially affected thereby. Provided, however, that such failure or default or violation shall not constitute grounds for forfeiting of this franchise if due materially, substantially and reasonably to act of God, fire, flood, storm or other element or causality, theft, war, disaster, strike, lock-out, boycott, prevailing war or war preparation, or bona fide legal proceedings, beyond the control of the Company, its successors or assigns.

Section 13. The City reserves and has the right to pursue any remedy to compel or enforce the Company, its successors or assigns, to comply with the terms hereof, and furnish the service herein called for, and the pursuance of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture for any reason herein stated, nor shall the delay of the City in declaring a forfeiture stop it from thereafter doing so, unless the action of the City shall have prevented, caused or contributed materially to the failure to perform or do the act or thing complained of.

Section 14. In the event that any sentence, clause, paragraph or section of this ordinance be held void by any court, it shall not affect the balance hereof, and this ordinance shall become effective upon passage and approval by the City of La Pine 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 for the City of La Pine, Oregon.

Section 15. The Company, by its use of this right and privilege, covenants and agrees with the City to at all times protect and save harmless the City from all claims, accidents, suits, liability, loss, expenses, or damage of every kind and description which may accrue to or be suffered by any person or persons, firm, corporation or any building, or any damage arising out of the ownership, excavation, installation, construction, repair or operation of said natural gas system or any act done by the Company under this right and privilege. Company will maintain in full force and effect, with an insurance carrier or carriers authorized to transact business in the State of Oregon, a certificate of insurance demonstrating financial responsibility.

Passed and adopted by the City Council of the City of La Pine this 12th
day of Sept., 2007, by the following vote:

By: 

MAYOR OF LA PINE
title

ATTEST:



City Recorder

ACCEPTANCE

The terms and conditions of the foregoing Franchise Ordinance No. 2007-5 are hereby accepted this 20th day of SEPTEMBER 2007.

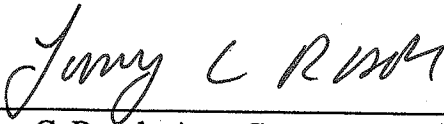
CASCADE NATURAL GAS CORPORATION

By




Daniel E. Meredith
Sr. Director, Safety & Engineering

ATTEST:



Larry C. Rosok, Asst. Corporate Secretary

Above acceptance received by:



Luana Damerval
City Recorder

Dated 10-1-2007