

# CITY OF KELOWNA

## BYLAW NO. 8690

### **A Bylaw to Authorize a Franchise Renewal Agreement with BC Gas Utility Ltd.**

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WHEREAS pursuant to Section 607 of the *Local Government Act*, the City of Kelowna is authorized, with the approval of the Inspector, to renew a franchise agreement for a term not exceeding twenty-one years ;

AND WHEREAS the current Franchise Agreement with BC Gas Utility Ltd. for the supply of natural gas was due to expire on January 19, 1999 but was extended by mutual agreement to September 30, 2001 to permit ongoing negotiations between the parties;

AND WHEREAS the City of Kelowna wishes the renew the Franchise Agreement with BC Gas Utility Ltd. for a period of seventeen years;

The Municipal Council of the City of Kelowna, in open meeting assembled, enacts as follows:

1. This Bylaw may be cited as "BC Gas Utility Ltd. Franchise Renewal Agreement Authorization Bylaw No. 8690".
2. The Council is hereby authorized to enter into and carry out the Renewal Franchise Agreement with BC Gas Utility Ltd. as attached to and forming part of this Bylaw as Schedule "1".
3. The Mayor and Clerk are authorized to execute, seal and deliver the Renewal Franchise Agreement with BC Gas Utility Ltd. on behalf of the City of Kelowna.

Read a first, second and third time by the Municipal Council this 11<sup>th</sup> day of June, 2001.

Received the Approval of the Inspector of Municipalities this

Adopted by the Municipal Council of the City of Kelowna this

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Mayor

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City Clerk

THIS AGREEMENT made this                      day of                      , 2001

BETWEEN

CITY OF KELOWNA  
a municipality having an office at  
1435 Water Street  
Kelowna, British Columbia V1Y 1J4

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

BC GAS UTILITY LTD.  
a company having an office at  
1111 West Georgia Street  
Vancouver, British Columbia V6E 4M4

(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 supplier(s), has available for such uses supplies of gas for the purpose of making same available to the Municipality and to consumers or customers within, or in the environs of, the Municipality.

AND WHEREAS the Company will construct and operate all the necessary facilities, pipelines, mains and pipes for a supply of gas (which term as used in this Agreement shall include natural gas, synthetic natural gas, liquefied natural gas, liquefied petroleum gas, manufactured gas and/or other utility gases or any of them or any mixtures thereof) to the Municipality and/or such consumers or customers as are situated within the boundary limits thereof, and is willing 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 extend the present Franchise Agreement, with minor modifications, all in accordance with the terms and conditions as hereinafter provided.

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:

2. 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 Chapter E-4 of the Revised Statutes of Canada, 1985, 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.
3. Subject as hereinafter provided, the Municipality hereby grants to the Company the authority, permission and right for the term of this Agreement as set out in Clause One (1) hereof to enter in, upon and under all public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks within the boundary limits of the Municipality and over which the Municipality has control and authority for such permission and right to give, and the same to use, break up, dig, trench, open up and excavate, and therein, thereon and thereunder place, construct, lay, operate, use, maintain, renew, alter, repair, extend, relay and/or remove a distribution system which term means mains, pipes, valves and facilities for the purpose of carrying, conveying, distributing, supplying and making available for use gas within the said boundary limits of the Municipality as and in the manner herein set out, but excludes any transmission or main pipeline and appurtenances which are an integral part of the natural gas transmission system bringing gas to the boundary limits of the Municipality or through the Municipality by transmission lines to enable distribution to other areas outside its said boundary limits or to other Municipalities or other unorganized areas
4. Before placing, constructing or laying down the distribution system, or any part thereof, the Company shall file with the Municipality, or such officer or official thereof as shall be designated from time to time for such purpose by the Municipality, detailed plans and specifications showing the size and dimensions of the mains and pipes thereof, the proposed depth thereof below the surface of the ground, and the proposed location thereof, and the same shall not be placed, constructed or laid down without the approval of the Municipality or of such designated officer or official, as the case may be, PROVIDED ALWAYS that such approval shall not be unreasonably withheld. In establishing location of mains, the Company shall endeavour to use lanes or alleys in preference to streets, where same are available and the use thereof is compatible with and conforms to the general economics and engineering of the distribution system or the relevant portion thereof.

5. The Company shall give written notice to the Municipality or such officer or official thereof as shall be designated from time to time by the Municipality for the purposes in the next preceding clause set out, of its intention to break up, dig, trench, open up or excavate any or in or on any, public thoroughfare, highway, road, street, lane, alley, bridge, viaduct, subway, public place, square or park within the boundary limits of the Municipality, 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. The provisions of this clause shall apply notwithstanding the provisions of the next preceding clause and the grant of the approval or approvals therein referred to.
6. Should any of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares or parks, under or on which any part of the distribution system of the Company lies or is constructed, be legally closed as such or alienated by the Municipality or by or under any other paramount authority the Company agrees that with all reasonable speed and dispatch after receipt of written notice from the Municipality, it will remove and (if possible and practicable) relocate, subject as aforesaid to the approval of the Municipality or its Engineer, that part of its distribution system so affected by such closure or alienation, the cost of such removal and/or relocation to be at the cost and expense of the Municipality, unless such removal and/or relocation has been enforced upon the Municipality by any such other paramount authority without the Municipality having applied therefor.
7. The Company agrees with the Municipality that it will create and cause as little damage as possible in the execution of the authorities, permissions and rights to it hereby granted and will use its best endeavour to cause as little obstruction or inconvenience or danger as possible during the progress of any of the work hereinbefore set out, and will place and maintain such warning signs, barricades, lights or flares on, at or near the site of any work in progress as will give reasonable warning thereof and protection therefrom to members of the public, and further agrees to restore without unreasonable delay the said public thoroughfares, highways, roads, streets, lanes, alleys, viaducts, bridges, subways, public places, squares and parks so broken up, dug, trenched, opened up or excavated to a state of repair or condition as nearly as possible as existed immediately before the commencement of such work.
8. The distribution system of the Company and the mains and pipes thereof shall be laid 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 said public thoroughfare, highway, road, street, lane, alley, bridge, viaduct, subway, public place, square or park 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.
9. The Company agrees with the Municipality that it will 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 to it granted or by reason of the construction, maintenance or operation of the distribution system of

the Company within the boundary limits of the Municipality, except where same is not caused by or contributed to by the negligence or default of the Company, or its servants or agents.

10. 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 said additions, repairs or alterations in any way affect any part of the distribution system of the Company, or any equipment thereof, it will give to the Company at its main office within the boundary limits of the Municipality, or at its Head Office in the City of Vancouver, British Columbia, 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 interests of the health or safety of the public, or of 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 thereupon be entitled to appoint a representative to supervise or advise in respect to such additions, repairs or alterations and so long as the directions, instructions or advice of such representative are or is followed or complied with by the Municipality, the Municipality shall be relieved from all liability in connection with any damage done to the property of the Company by reason of such additions, repairs or alterations.
11. Subject to the next clause hereof, the Company agrees with the Municipality that during the term of this Agreement as set out in Clause One (1) hereof and the exclusive charter, right, franchise and privilege herein granted, but commencing only after the construction and putting into service of facilities so to do, it will 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 subject, however, to the terms and conditions of the service agreement between the customer or consumer and the Company, 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 distribution system of the Company. The property line of such property shall be the place of delivery of all gas supplied by the Company, but the Company shall provide and install a meter suitably located on the property to be supplied with gas. The Company shall also supply and install a service pipeline from the property line to the meter on and 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, from time to time. The said meter and service pipeline 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 consumer or purchaser and not by the Company unless any loss or damage occasioned by such utilization or user is directly attributable to the negligence or carelessness of the Company, its servants or agents
13. Subject as hereinafter provided, the Municipality agrees with the Company that it will not during the term of this Agreement as set out in Clause One (1) hereof, itself construct, operate or maintain a distribution system for the supplying of gas to the Municipality and/or its inhabitants and/or consumers or customers within its boundary limits, or to use the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places squares or parks under its control or owned by it, or any part of them, for such purposes.

14. The Company agrees that the rates which the Company will 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.
15. If at any time during the term of this Agreement as set out in Clause One (1) hereof, any dispute, difference or question shall arise between the parties hereto touching the construction, meaning or effect of this Agreement, or any clause thereof, or as to the extent or limit of any authority, permission, right, duty, obligation, benefit or liability of the parties hereto, then every such dispute, difference or question shall be referred to a single arbitrator appointed by the parties hereto or, in default of Agreement, by and under the provisions of the Commercial Arbitration Act of the Province of British Columbia, and the said arbitration shall be held under the provisions of that Statute.
16. The award, determination or decision made under any arbitration held pursuant to the terms of this Agreement shall be final and binding upon the parties hereto, save as in the Commercial Arbitration Act of the Province of British Columbia otherwise provided.
17. Subject always to the provisions of Clause Twelve (12) and Clause Fifteen (15) hereof, in the event of the Company making an authorized assignment or having a receiving order made against it under the Bankruptcy Act and during bankruptcy failing to comply with any of the terms or conditions of this Agreement on its part to be observed or performed, or, the Company not having made an authorized assignment or having a receiving order made against it under the Bankruptcy Act, upon any willful failure or neglect by the Company to comply with any of the major terms or conditions of this Agreement and on its part to be observed or performed which continues for Thirty (30) days after the receipt of written demand by the Municipality for the observance or performance of such terms or conditions, the Municipality shall have the right by written notice to the Company to terminate this Agreement. The rights of the Municipality under this clause are and shall be in addition to or without prejudice to any other rights at law or in equity which it may have against the Company for or by reason of any breach by the Company of this Agreement or any part thereof.
18. Upon the termination of this Agreement at the expiration of the said term of Seventeen (17) years as set out in Clause One (1) hereof or upon the termination of this Agreement by cancellation notice from the Municipality under the provisions of Clause Seventeen (17) hereof, the distribution system of the Company shall be and be deemed always to have been and to remain its own property and as such may be used by it in its business or removed in whole or in part as it shall see fit, and for such purposes, or either of them, said distribution system may remain in, on or under all the public thoroughfares, highways, roads, streets, lanes, alleys bridges, viaducts, subways, public places, squares and parks within the boundary limits of the Municipality and the Company may enter in, upon and under the same and the same to use, break up, dig, trench, open up and excavate for the purpose of the maintenance, renewal, repair, removal or operation of such distribution system, or any part thereof, but not for the extension thereof, PROVIDED THAT the Company shall in so doing comply with and be bound by the provisions of Clauses Two (2), Five (5), Six (6), Seven (7) and Nine (9) hereof, mutatis mutandis, notwithstanding the termination of this Agreement
19. As compensation for the use by the Company of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and

parks as provided in Clause Three (3) hereof, and for the exclusive charter, right, franchise, or privilege to supply gas by pipeline as provided in Clause One (1) hereof, the Company shall pay to the Municipality on the first days of November in each of the years 2001 to and including 2018 or such earlier year in which this Agreement may expire under the provisions hereof a sum equal to Three (3%) per cent 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 amount shall not include revenues from gas supplied for resale, and, within Ninety (90) days after the seventeenth (17<sup>th</sup>) anniversary of the date of this Agreement or after such earlier date on which this Agreement may expire under the said provisions hereof the Company shall pay to the Municipality a sum equal to Three (3%) per cent of the amount received by the Company for gas consumed, save as aforesaid, within the boundary limits of the Municipality during the period from the commencement of the calendar year in which such anniversary or earlier date falls to such anniversary or earlier date, as the case may be. Since this agreement is an extension of that Franchise Agreement dated the 21st day of January, 1957, which expired on the 20th day of January, 1978, it is agreed therefore that the following provisions as found on Page 15, starting in Line 33 of the aforesaid agreement, shall be waived:

"...and, within ninety (90) days after the twenty-first anniversary of the date of this agreement or after such earlier date on which this agreement may expire under the said provisions of Clause Nineteen (19) hereof the Company shall pay to the City a sum equal to three per cent (3%) of the amount received by the Company for gas consumed, save as aforesaid, within the boundary limits of the City during the period from the commencement of the calendar year in which such anniversary or earlier date falls to such anniversary or earlier date, as the case may be."

In any event, this new agreement shall recognize that the Company shall pay to the Municipality on the 1st day of November in the year 2001 a sum equal to Three (3%) per cent of the amount received in the immediately preceding calendar year, i.e. 2000, by the Company for gas consumed within the boundary limits of the Municipality, except as provided herein, which shall not include revenues for gas supplied for resale. The amount received by the Company in any particular period for gas so consumed, and upon which the aforesaid percentage compensation is based, shall be that amount for the equivalent period upon which the percentage tax provided under Section 353 of the Local Government Act, 1996, Revised Statutes of British Columbia, Chapter 323, as now enacted would be payable and as if said percentage compensation herein provided were a tax provided for under said section, and such compensation shall not be or be deemed to be a tax or in lieu of any taxes, rates or licence fees otherwise properly payable to the Municipality. In the event that during the currency of this Agreement, the Company should enter into any contract or franchise agreement similar to this Agreement with another Municipality named and set out wherein under a similar clause to this Clause Twenty-three (23) the Company shall agree to pay to such Municipality, as compensation for the use by the Company of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks for like purposes as in Clause Three (3) hereof set out, a greater percentage compensation than Three (3%) per cent of revenues as herein provided, then such greater percentage shall be and be deemed to be substituted for the Three (3%) per cent in this clause provided, but only applicable to the amounts received by the Company for gas consumed within the boundary limits of the Municipality, save as aforesaid, from the

effective date of such other contract or franchise agreement %until the expiration of the term of this Agreement as provided in Clause One (1) hereof or until the sooner termination hereof as hereinbefore provided.

20. Any notice, demand or request required or desired to be given or made under or in respect of this Agreement shall be deemed to have been sufficiently given to or made upon the party to whom it is addressed if it is mailed at Kelowna, British Columbia, in a prepaid registered envelope addressed respectively as follows:

- (a) If given to or made upon the Municipality:

City of Kelowna,  
1435 Water Street,  
Kelowna, B.C. V1Y 1J4

Attention: City Clerk

- (b) If given to or made upon the Company:

BC Gas Utility Ltd.  
1111 West Georgia Street  
Vancouver, B.C. V6E 4M4

Attention: Legal Department

and any notice demand or request so given or made shall be deemed to have been received and given or made on the day after the mailing thereof. In the event the Company changes its Head Office address, the Municipality shall be notified in writing.

21. Notwithstanding anything to the contrary in this Agreement contained, this Agreement shall be subject to the provisions of the Pipeline Act, the Gas Utility Act and the Energy Efficiency Act of the Province of British Columbia and the proper authorities and powers of the British Columbia Utilities Commission, and nothing herein shall exclude, or be deemed to exclude, the application of the provisions of the said Acts or any jurisdiction thereof or of the said British Columbia Utilities Commission
23. This Agreement shall be assignable by the Company to a subsidiary without consent of the Municipality but otherwise shall only be assignable by the Company with the consent in writing of the Municipality first had and obtained, 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.
25. This agreement 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 Bylaw of the Municipality, which Bylaw shall before coming into force be subject to the approval of the Inspector of Municipalities



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 day and year first above written

CITY OF KELOWNA

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

BC GAS UTILITY LTD.

By: \_\_\_\_\_  
Authorized Signature