

CITY OF UNION GAP, WASHINGTON
ORDINANCE NO. 2509

AN ORDINANCE GRANTING TO CASCADE NATURAL GAS CORPORATION, A WASHINGTON CORPORATION, ITS SUCCESSORS OR ASSIGNS, THE RIGHT AND PRIVILEGE TO USE AND OCCUPY THE STREETS, AVENUES, LANES, ALLEYS, HIGHWAYS AND OTHER PUBLIC PLACES OF THE CITY OF UNION GAP, STATE OF WASHINGTON, FOR THE PURPOSE OF SUPPLYING, DISTRIBUTING AND SELLING GAS TO THE INHABITANTS OF THE CITY, AND ELSEWHERE; AND THE RIGHT AND PRIVILEGE OF CONSTRUCTING, AND THEREAFTER MAINTAINING A GAS WORKS, MAINS, SERVICE PIPES AND OTHER NECESSARY EQUIPMENT IN SAID CITY, FOR THE DISTRIBUTION OF GAS FOR LIGHT, FUEL, POWER, HEAT AND OTHER PURPOSES, AND REPEALING ORDINANCE NO. 829 OF SAID CITY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF UNION GAP:

Section 1. That Cascade Natural Gas Corporation, its successors or assigns (hereafter designated as “Grantee”), is hereby granted the right and privilege to construct, maintain, use, own and operate a gas works, within the corporate limits of the said City of Union Gap, Washington (hereinafter designated as the “City”), as the same now or may hereafter be extended, and to construct, lay, maintain and operate along the streets, avenues, lanes, alleys, highways and other public places in the said City of Union Gap, a system of mains, pipes and the necessary attachments and appurtenances for the storage, conveyance, distribution and sale of gas for light, fuel, power, heat and other purposes in the City of Union Gap, Washington and elsewhere, and for the storage, distribution and sale of natural gas. Such right and authority, permission and power is hereby granted for a term of ten (10) years from and after the date of the final acceptance of this Ordinance by the Grantee, herein referred to as the primary term. This franchise will automatically renew for successive periods of five (5) years each unless cancelled 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.

Section 2. That the rates to be charged for gas for light, power, heat and other purposes by the Grantee, and character of the service to be rendered by the Grantee shall be such as shall be prescribed by the Washington Utilities and Transportation Commission, or other agency of said state having jurisdiction over said matters under the laws thereof.

Section 3. That the Grantee shall not lay its gas mains, pipes, services, attachments and appurtenances so as to interfere with or obstruct the drainage of said City or the construction of sewers or underground fixtures for the conveyance of water or the necessary and proper use of said streets, avenues, lanes, alleys, highways, and other public places. The Grantee shall with reasonable

promptness restore the surface of said streets, avenues, lanes, alleys, highways and public places in which it shall make excavations to as good condition as they were before the commencement of such work as near as practicable subject to the approval of the City Engineer, and during the progress of such work, the Grantee shall be responsible for keeping such streets and other places guarded, in order to prevent accident to persons or property; and if at any time the City is subjected to liability for injury to persons or property growing out of the actions of the Grantee, its agents, servants or employees, in connection with the operations of the Grantee, the Grantee shall fully indemnify and hold the City harmless from any and all such liability; provided, however, that in case suit be instituted against the City, the City shall promptly notify the Grantee of such suit, giving it ample and reasonable time to defend the same. The City, upon 30 days' written notice to the Grantee, may at any time do, or order to have done any and all work that they consider necessary to restore to a safe condition any such street, alley or other public place left by the Grantee or its agents in a condition dangerous to life or property, and Grantee upon demand, shall pay to the City all costs of such work. 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 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, upon reasonable notice by the City and after reasonable evaluation of the alternatives by the City in cooperation with the Grantee, at its own expense, move and change any gas main, pipes, services, attachments or appurtenances to conform to such public improvement. 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. 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 and the Grantee will be given credit to the extent any such funds are actually obtained. The City agrees to protect Grantee's rights by retaining easements for its facilities located within public rights of ways being vacated by ordinance. If Grantee'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 4. That whenever the Grantee shall desire to excavate in any street, alley or other public place for the purpose of laying gas mains, pipes or other appurtenances, including service pipes, it shall apply to said City for a permit to do so and shall give the City at least twenty-four (24) hours notice thereof, and shall not, during the process of the work, unnecessarily obstruct the passage or proper use of such street, alley or other public place, and shall file with the City maps or prints showing the proposed and final location thereof. 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. Whenever possible, Grantee shall install to the standard locations as specified by the City.

Section 5. This franchise is granted upon the express condition that it shall not be deemed or held to be an exclusive franchise and shall not in any manner prohibit the City from granting other and future franchises over, upon and along any of said public streets, avenues, alleys, highways, public or municipally owned places, and failure on the part of Grantee to comply in any respect with any of the provisions of this Ordinance shall be grounds for forfeiture of the grant.

Section 6. The franchise hereby granted shall not be leased, assigned or otherwise alienated by the Grantee to any third party without the express consent of the City of ordinance passed for that purpose, and no rule of estoppel shall ever be invoked against the City in case it shall assert the invalidity of any attempted transfer in violation of this section. 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 7. The Grantee herein agrees as part of the consideration of this franchise to pay promptly any and all licenses and taxes legally levied by the City.

Section 8. Grantee shall within thirty (30) days of the passage of this Ordinance, file with the City Clerk its written acceptance of all the terms and conditions of the Ordinance, and if such acceptance is not filed as herein provided, this Ordinance shall be null and void and of no force or effect.

Section 9. Ordinance Number 829 dated September 29, 1981 is hereby repealed and all other ordinances and parts of ordinances in conflict herewith shall be, and the same are hereby repealed.

Section 10. That this Ordinance shall be in full force and effect from and after five (5) days after its passage and legal publication provided it be duly accepted as hereinafter specified.

PASSED this _____ day of _____, 2006.

Aubrey C. Reeves, Jr.
Mayor

ATTEST:

APPROVED AS TO FORM:

Kathryn Thompson, CMC
City Clerk

Robert F. Noe
City Attorney

The terms and conditions of the foregoing Franchise Ordinance No. 2509 are hereby accepted this _____ day of _____, 2006.

CASCADE NATURAL GAS CORPORATION

By: _____
Daniel E. Meredith, P.E.
Sr. Dir. Safety & Engineering

ATTEST:

Larry C. Rosok, Vice President & Corporate Secretary

Above acceptance received by:

Kathryn Thompson, CMC, City Clerk

Dated: _____