

ORDINANCE NO. 2464

AN ORDINANCE granting an extension of the Non-Exclusive Gas Utility Franchise now held by Northwest Natural Gas Company.

WHEREAS, the City of Camas is authorized to grant one or more non-exclusive franchises to construct, operate and maintain a gas utility system within the City of Camas; and

WHEREAS, Northwest Natural Gas Company is subject to that certain Nonexclusive Gas Utility Franchise, pursuant to Ordinance No. 1422, enacted February 9, 1981; and

WHEREAS, Northwest Natural Gas Company has requested a renewal of said ordinance; and

WHEREAS, after such consideration, analysis and deliberation as is required by law, the City has found that Northwest Natural Gas Company has sufficient financial, technical and legal qualifications to provide a gas utility system within the City of Camas; and

WHEREAS, representatives of the City of Camas and Northwest Natural Gas Company have negotiated a Nonexclusive Gas Utility Franchise Agreement with terms therein acceptable to the City of Camas, now therefore,

THE COUNCIL OF THE CITY OF CAMAS DO ORDAIN AS FOLLOWS:

Section I

The City hereby approves that certain Nonexclusive Gas Utility Franchise Agreement between the City of Camas and Northwest Natural Gas Company, which provides as follows:

Section 1: Definitions and Explanations.

- (1) As used in this ordinance.
 - (a) "City" means the City of Camas and the areas within its boundaries, including its boundaries as extended in the future.
 - (b) "Council" means the legislative body of the City.
 - (c) "Grantee" means the corporation referred to in Section 2 of this ordinance.
 - (d) "Gas mains" includes all gas transmission and distribution facilities located on or under any street, bridge or public place within the City.
 - (e) "Person" includes an individual, corporation, association, firm, partnership and joint stock company.
 - (f) "Public place" includes any city-owned park, place or grounds within the City that is open to the public but does not include a right of way.
 - (g) "Right of Way" includes a street, alley, avenue, road, boulevard, thoroughfare bridge or public highway within the City, but does not include a public place.
- (2) As used in this ordinance, the singular number may include the plural and the plural number may include the singular.

Section 2: Rights Granted.

Subject to the conditions and reservations contained in this ordinance, the City hereby grants to NORTHWEST NATURAL GAS COMPANY, a corporation, the right, privilege and franchise to:

- (1) Construct, maintain and operate a gas utility system within the City.
- (2) Install, maintain and operate on and under the streets, bridges and rights of way of the City, facilities for the transmission and distribution of gas to the City and its inhabitants and to other customers and territory beyond the limits of the City; and
- (3) Transmit, distribute and sell gas.

Section 3: Use of Right of Way by Grantee.

Before the Grantee may use or occupy any right of way, the Grantee shall first obtain permission from the City to do so in the form of an encroachment permit pursuant to the Camas Municipal Code and shall comply with any special conditions the City desires to impose on such use or occupation. There shall be no charge imposed to the Grantee for the issuance of an encroachment permit under this section.

Section 4: Duration.

This franchise is granted for a period of 10 years from and after the effective date of this ordinance.

Section 5: Franchise Not Exclusive.

This franchise is not exclusive, and shall not be construed as a limitation on the City in:

- (1) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.
- (2) Constructing, installing, maintaining or operating any City-owned public utility.

Section 6: Public Works and Improvements Not Affected by Franchise.

The City reserves the right to:

- (1) Construct, install, maintain and operate any public improvement, work or facility.
- (2) Do any work that the City may find desirable on, over or under any right of way or public place.
- (3) Vacate, alter or close any right of way or public place, provided that the City shall make available to Grantee with alternative right-of-way for the location of its facilities.
- (4) Whenever the City shall excavate or perform any work in any of the present and future rights of way and public places of the City, or shall contract, or issue permits, for such excavation or work where such excavation or work may disturb Grantee's gas mains, pipes and appurtenances, the City shall, in writing, notify Grantee sufficiently in advance of such contemplated excavation or work to enable Grantee to take such measures as may be deemed necessary to protect such gas mains, pipes and appurtenances from damage and possible inconvenience or injury to the public. In any such case, the Grantee, upon request, shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work.
- (5) Whenever the City shall vacate any right of way or public place for the convenience or benefit of any person or governmental agency or instrumentality, Grantee's right under this franchise shall be preserved as to any of its facilities then existing in such right of way or public place.

Section 7: Continuous Service.

The Grantee shall maintain and operate an adequate system for the distribution of gas in the City. The Grantee shall use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall the Grantee be liable for an interruption or failure of service caused by an act of God, unavoidable accident or other circumstances beyond the control of the Grantee through no fault of its own.

Section 8: Safety Standards and Work Specifications.

(1) The facilities of the Grantee shall at all times be maintained in a safe, substantial and workmanlike manner.

(2) For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

Section 9: Control of Construction.

The Grantee shall file with the City maps showing the location of any construction, extension or relocation of its gas mains in the right of way and public places of the City and shall obtain from the City approval of the location and plans prior to commencement of the work. The City may require the Grantee to obtain a permit before commencing the construction, extension or relocation of any of its gas mains.

Section 10: Right of Way Excavations and Restorations.

(1) Subject to the provisions of this ordinance, the Grantee may make necessary excavations for the purpose of constructing, installing, maintaining and operating its facilities. Except in emergencies, and in the performance of routine service connections and ordinary maintenance, on private property, prior to making an excavation in the traveled portion of any right of way or public place, and, when required by the City, in any untraveled portion of any right of way or any public place, the Grantee shall obtain from the City approval of the proposed excavation and of its location. Grantee shall give notice to the City by telephone, electronic data transmittal or other appropriate means prior to the commencement of service or maintenance work and as soon as is practicable after the commencement of work performed under emergency conditions.

(2) Grantee agrees to utilize best efforts in limiting pavement cuts in implementing this section, including, but not limited to, the use of boring.

(3) When any excavation is made by the Grantee, the Grantee shall promptly restore the affected portion of the right of way or public place to the same condition in which it was prior to the excavation. The restoration shall be in compliance with specifications, requirements and regulations and generally applicable policies of the City in effect at the time of such restoration. If the Grantee fails to restore promptly the affected portion of a right of way or public place to the same condition in which it was prior to the excavation, upon thirty (30) days prior written notice to Grantee, the City may make the restoration and the cost thereof shall be paid by the Grantee.

(4) When practicable, new gas mains and services shall be installed with a minimum of 24 inches of cover and all new high pressure gas mains shall be installed with 48 inches of cover.

Section 11: Location and Relocation of Facilities.

(1) All facilities of the Grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the right of way and public places and in accordance with any specifications adopted by the City governing the location of facilities.

(2) The City may require, in the public interest, the removal or relocation of facilities maintained by the Grantee in the rights of way and public places of the City, and the Grantee shall remove and relocate such facilities within a reasonable time after receiving notice to do so from the City. The cost of such removal or relocation of its facilities shall be paid by the Grantee, but when such removal or relocation is required for the convenience or benefit of any person, governmental agency or instrumentality other than the City, Grantee shall be entitled to reimbursement for the reasonable cost thereof from such person, agency or instrumentality. The City shall provide the Grantee with timely notice of any anticipated requirement to remove or relocate its facilities and shall cooperate with the Grantee in the matter of assigning or allocating the costs of removal or relocation.

Section 12: Expiration.

At the end of the Franchise term, if the City and Grantee are negotiating another franchise and have not concluded their negotiations, Grantee's rights and responsibilities shall be controlled by this Franchise until the City grants a new franchise and Grantee accepts it.

Section 13: Books of Account and Reports.

The Grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City. The City may inspect the books of account at any time during business hours and may audit the books from time to time. The Council may require periodic reports from the Grantee relating to its operations and revenues within the City.

Section 14: Utility Tax

The Grantee shall pay to the City all taxes imposed by City ordinance pursuant to RCW 35.21.865. The Grantee shall also pay all license fees and taxes which it may be required to pay by any ordinance now in effect or hereinafter enacted including a business or occupation tax or public utility tax on persons engaged in business carried on by Grantee.

Section 15: Supplying Maps Upon Request.

The Grantee shall maintain on file, at an office in Oregon, maps and operational data pertaining to its operations in the City. Upon reasonable notice, an authorized representative of the City may inspect the maps and data any time during business hours at an office of the Grantee. Grantee and the City may determine that the locations of certain gas facilities should be confidential as the public interest may require. In such a case, Grantee is under no obligation to provide records of the location of these facilities to the City and the City shall treat any public record disclosing the location of these facilities as confidential, subject to the provisions of state law and the Oregon Public Records Law. The City shall limit access to any such confidential record to trustworthy employees of the City with a need to know the information set out in the record. The City shall store any such confidential record in a secure and private place and avoid making and distributing copies of the record.

Section 16: Indemnification.

The Grantee shall indemnify and save harmless the City and its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury to, or death of, persons due to any wrongful or negligent act or omission of the Grantee, its agents or employees in exercising the rights, privileges and franchise hereby granted.

Section 17: Assignment of Franchise.

This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the Grantee.

Section 18: Termination of Franchise for Cause.

The City may terminate this franchise as provided in this Section, subject to Grantee's right to a court review of the reasonableness of such action, upon the willful failure of the Grantee to perform promptly and completely each and every material term, condition or obligation imposed upon it under or pursuant to this ordinance. The City shall provide the Grantee written notice of any such failure and the Grantee shall have sixty (60) days from receipt of notice to cure such failure, or if such failure cannot reasonably be cured within sixty (60) days, to commence and diligently pursue curing such failure.

Section 19: Remedies Not Exclusive, When Requirement Waived.

All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy of penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

Section 20: Acceptance.

The Grantee shall, within thirty (30) days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails so to do, this ordinance shall be void.

Section II

Ordinance No. 2453 is hereby amended to the extent of any inconsistencies thereof.

Section III

This ordinance shall take force and be in effect five (5) days from and after its publication according to law.

PASSED by the Council and APPROVED by the Mayor this 6th day of November, 2006.

SIGNED: Paul Davis
Mayor

ATTEST: John M. Auger
Clerk

APPROVED as to form:
[Signature]
City Attorney