



TOWN OF JEROME, ARIZONA

POST OFFICE BOX 335, JEROME, ARIZONA 86331
(928) 634-7943 FAX (928) 634-0715

Founded 1876
Incorporated 1899

ORDINANCE NO. 384

AN ORDINANCE GRANTING TO UNS GAS, INC., AN ARIZONA PUBLIC SERVICE CORPORATION, ITS LEGAL REPRESENTATIVES, SUCCESSORS, LESSEES AND ASSIGNS, CERTAIN POWERS, LICENSES, RIGHTS OF WAY, PRIVILEGES AND FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN IN JEROME, YAVAPAI COUNTY, ARIZONA, AS NOW OR HEREAFTER CONSTITUTED, WORKS, SYSTEMS AND PLANTS FOR THE HANDLING, PRODUCTION, MANUFACTURING, TRANSPORTING, STORING, SALE AND DISTRIBUTION OF GAS INTO, OUT OF, AND THROUGH SAID TOWN, AND FOR THE DISTRIBUTION AND SALE OF SUCH GAS TO SAID TOWN, ITS INHABITANTS AND OTHERS, INCLUDING CUSTOMERS INSIDE, BEYOND AND OUTSIDE THE LIMITS OF SAID MUNICIPALITY, AND TO USE THE PUBLIC PROPERTY OR OTHER PUBLIC PREMISES IN SAID TOWN FOR A PERIOD OF TWENTY-FIVE (25) YEARS; AND PRESCRIBING IN CONNECTION THEREWITH CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS HEREIN MENTIONED; PROVIDING FOR THE PAYMENT TO SAID MUNICIPALITY OF A PERCENTAGE OF CERTAIN REVENUES OF GRANTEE AND ITS OPERATIONS THEREIN; AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the Mayor and Town Council of Jerome, Arizona as follows:

Section 1. That the Town of Jerome, a municipal corporation in Yavapai County, Arizona, hereinafter called the "Town", hereby grants to and vests in UNS Gas, Inc., an Arizona public service corporation, hereinafter called the "Company", a non-exclusive franchise with the right to operate a gas plant, system, pipelines and works in the Town, as now or hereafter constituted, and the authority, license, power and privilege to maintain, construct, build, equip, conduct or otherwise establish and operate in said Town, works or systems and plants to manufacture, use, sell, store, distribute, convey or otherwise establish, conduct, serve, supply or furnish the inhabitants of said Town and others, and to the Town whenever it may desire to contract therefore, gas for light, fuel, power, heat and any and all other useful purposes, and the Company hereby is granted passage, right-of-way and the right to occupy and use in any lawful way during the life of this Franchise every and any and all public property or other public premises of the Town, now existing or may be hereinafter extended, for every and any such service, use, effect and lawful purpose as herein mentioned.

Section 2. The Company is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges herein mention and granted by this Franchise, provided the same do not unreasonably conflict with water or other pipes, sewer (including storm sewers and publicly-owned drainage facilities of all kinds), or any other pre-existing underground installations, and that all work done in said public property or other public premises of the Town by the Company shall be done with the utmost diligence and the least inconvenience to the public or individuals, and that the Company shall, subject to the reasonable approval of the Town and within a reasonable time, restore such public property or other public premises excavated by it to their original condition as nearly as practicable. The Company shall remove or relocate its lines and facilities as and when required by the Town for the public benefit; said removal or relocation shall be made at the sole cost and expense of the Company, except where the Company lawfully installed such lines and facilities prior to the Town's acquisition of the underlying property for public purposes. Completed or "as-built" plans of any facilities installed or relocated by the Company shall be submitted by the Company to the Town as may be



For TTY Access, Call the Arizona Relay Service at 1-800-367-8939 and ask for Town of Jerome at 928-634-7943



Jerome Town Hall Located at 600 Clark Street, Jerome Civic Center

required by the Town Manager. All work performed by the Company and/or its agents shall be in accordance with applicable Town codes, federal and state laws, policies and procedures of the Town and other applicable regulations.

Section 3. Prior to commencing any work in a right-of-way (except in emergency circumstances), the Company shall submit plans of work to be performed to the Town Manager for review and approval, and obtain any permit necessary for such work. The Company, upon receipt from the Town of any notification or plans that would require construction or relocation of Company facilities, shall advise the Town on the estimated amount of work required and the anticipated necessary timeframe of such work within ninety (90) days of receipt of such plans. For purposes of budgeting and asset allocation by the Company, the Company shall have one (1) year from the receipt of such plans in which to design and to complete construction or relocation of the necessary facilities. Representatives of the Town and the Company shall, during the entire term of this Franchise, meet at least once in each calendar year to review any projects involving the construction or modification of Town rights-of-way within the subsequent five-year period in order for both parties to adequately plan and budget for such actions and to determine the extent of work required of the Company, if any, for such projects.

Section 4. The Company shall defend the Town against all claims for injury to any person or property caused by the negligence of the Company in the construction or operation of its property, and in the event of a determination of liability shall indemnify the Town. More particularly, the Company does hereby agree to indemnify and hold harmless the Town from any and all liability, claims, demands or judgments arising out of any injury to any person or property because of negligence in whole or in part arising out of the construction, repair, extension, maintenance or operation of its equipment in connection with this Franchise.

Section 5. The Company agrees that at all times during the existence of this Franchise, it will maintain in force, at its own expense, a general liability insurance policy to adequately insure and/or protect the legal liability of the Company with respect to the installation, operation, and maintenance of its facilities, together with all the necessary and desirable appurtenances authorized by this Franchise, to occupy the public property or other premises of the Town. Such insurance program will provide protection for bodily injury and property damage arising from the operation by the Company of its facilities. The Company shall file with the Town documentation of such liability insurance program within thirty (30) days following the request of the Town. The policy limits or any insurance maintained in compliance with this section shall not limit the Company's indemnification requirements under Section 4 of this Franchise.

Section 6. The rates and charges to be charged by the Company for furnishing gas service hereunder and the rules and regulations to be made and enforced by the Company for the conduct of its business shall be those from time to time on file and in effect with the Arizona Corporation Commission applicable to such service.

Section 7. The Company shall have the right and privilege of assigning this Franchise and all rights and privileges granted herein, and whenever the word "Company" appears herein, it shall be construed as applying to its successors, lessees and assigns.

Section 8. The Company shall pay to the Town in consideration of the grant of this Franchise a sum equal to two percent (2%) of all revenues of the Company, including regulatory assessments but excluding transaction privilege taxes and similar governmental impositions, from the retail sales and/or delivery by it of and other charges for services attendant to the retail sale and/or delivery of natural gas delivered through the Company's distribution system within the present and any future corporate limits of the Town, as shown by the Company's billing records. Said payments shall be in lieu of any and all fees, charges or exaction of any kind otherwise assessed by the Town in any way associated with the Company's use of the rights-of-way,

including but not limited to, the construction of the Company's facilities hereunder or for permits or inspections thereof during the term of this Franchise. Beginning on the Effective Date of this Franchise as set forth herein, payment as described herein shall be payable in quarterly amounts within thirty (30) days after the end of each calendar quarter.

Notwithstanding any provision contained herein to the contrary, the Company shall pay, in addition to the payment provided herein, the following charges, taxes and fees as may be established in a code or ordinance properly adopted by the Town: (a) general ad valorem property taxes; (b) transaction privilege and use tax as authorized by law and collected by the Company for its retail sales to its customers within the present and any future corporate limits of the Town; and (c) other charges, taxes or fees generally levied upon businesses by the Town, provided said charge, tax or fee is a flat fee per year and that the annual amount of such fee does not exceed the amount of similar fees paid by any other businesses operated within the Town.

If any lawful authority having jurisdiction in the Town hereafter prohibits said payment, the obligation to make such payments hereinabove provided for shall forthwith cease. For the purpose of verifying amounts payable hereunder, the books and records of the Company shall be subject to inspection by duly authorized officers or representatives of the Town at reasonable times.

Section 9. This Franchise shall be accepted by the Company in writing, which acceptance shall be filed with the Town within thirty (30) days after the passage of this ordinance, and once so accepted, this ordinance shall be a contract duly executed by and between the Town and the Company.

Section 10. If any section, paragraph, subdivision, clause, phrase or provision hereof shall be adjudged invalid or unconstitutional, the same shall not affect the validity hereof as a whole, or any part or provision other than the part so decided to be invalid or unconstitutional.

Section 11. This Franchise shall continue in full force and effect for a period of twenty-five (25) years from the first day of the calendar month following the election approving this Franchise (the "Effective Date"), which shall be entered in the space provided herein; provided, however, that either party may terminate this Franchise on its tenth (10th) anniversary by giving written notice of its intention to do so not less than one (1) year before the date of termination. If such notice is given for the purpose of negotiating a new franchise and such negotiation is successful, the party giving the notice of termination shall be responsible for the costs of the resulting franchise election. However, the Town may terminate this Franchise in the event Town formally finds, after notice and hearing, that the Company has failed to comply with any material provisions of this Franchise or has failed to correct any failure after thirty (30) days written notice.

Section 12. All plant, system, pipelines, works, and all other physical property installed by the Company in accordance with the terms of this Franchise shall be and remain the property of the Company, and upon expiration of this Franchise or any extension or renewal thereof, the Company is hereby granted the right to enter upon the public property or other public premises of said Town for the purpose of removing any and all such plant, system, pipeline, works and other property of the Company, at any time within six (6) months after termination of this Franchise or any such extension or renewal thereof.

Section 13. This Ordinance shall only become effective after its approval by a majority vote of the qualified electors of the Town at a regular election or at a special election duly and regularly called by the Town Council of Jerome for that purpose. The Company shall pay all of the costs incurred in conducting the franchise election, but if more than one item is on the same ballot, the Company shall pay only that portion of the Town's election expenses determined by dividing all of the Town's expenses by the total number of measures or offices presented on the ballot.

Section 14. Whereas, it is necessary for the preservation of the peace, health and safety of the Town of Jerome, Arizona, an emergency is declared to exist, and this ordinance shall become immediately operative and in force from and after the date of posting hereof.

TOWN OF JEROME

By _____
 Jay Kinsella, Mayor
 On behalf of the Town of Jerome

Date: _____

ATTEST:

 Candace B. Gallagher, CMC, Town Manager/Clerk

APPROVED AS TO FORM:

 Kathleen G. Williamson, Williamson & Young, P.C.
 Town Attorney

ACCEPTED WITHOUT CHANGE:

 Vice President, UNS Gas, Inc.

 Date

EFFECTIVE DATE of this Franchise: **December 1, 2010**

(Attach election result page)

Date of First Reading:	11/9/2010	Date of Adoption:		11/9/2010	
		<i>Ayes</i>	<i>Nays</i>	<i>Absent</i>	<i>Abstain</i>
		5	0	0	0
Dates Published: Entire ordinance published as per statute in each edition of the Verde Independent between 9/29/10 and 10/29/10. Notice of adoption published 11/21/10.					

CERTIFICATION OF POSTING

I, the duly appointed Deputy Clerk of the Town of Jerome, Arizona, or my representative, hereby certify that Ordinance No. 384 was posted on the following dates and times, and at the following places:

	DATE	TIME	PLACE
1			301 Main Street, second floor, exterior posting case
2			970 Gulch Road, side of Gulch Fire Station, exterior posting case
3			600 Clark Street, Jerome Town Hall, exterior posting case
4			120 Main Street, Jerome Post Office, interior posting case

R.A. Shemaitis, Deputy Clerk