

ORDINANCE NO. 509
VILLAGE OF ANSLEY

AN ORDINANCE GRANTING TO SOURCEGAS DISTRIBUTION LLC, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PERMISSION AND AUTHORITY TO CONSTRUCT, MAINTAIN AND OPERATE A GAS TRANSMISSION AND DISTRIBUTION SYSTEM, INCLUDING MAINS, PIPES, CONDUITS, SERVICES AND OTHER STRUCTURES, IN, UNDER, UPON, OVER, ACROSS AND ALONG THE STREETS, ALLEYS, BRIDGES AND PUBLIC PLACES WITHIN THE PRESENT AND FUTURE CORPORATE LIMITS OF THE VILLAGE OF ANSLEY, NEBRASKA FOR THE FURNISHING, TRANSMISSION, DISTRIBUTION AND SALE OF GAS WHETHER ARTIFICIAL, NATURAL, MIXED OR OTHERWISE, FOR LIGHTING, HEATING, DOMESTIC, INDUSTRIAL AND OTHER USES IN SAID VILLAGE AND ELSEWHERE; LIMITING THE TERM OF SAID GRANT; PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID COMPANY MAY OPERATE; REPEALING ORDINANCES 234 AND 417; AND TO PRESCRIBE THE TIME WHEN THIS ORDINANCE SHALL BE IN FULL FORCE AND EFFECT.

BE IT ORDAINED BY THE CHAIRPERSON AND BOARD OF TRUSTEES OF THE VILLAGE OF ANSLEY, NEBRASKA:

SECTION 1. That in consideration of the benefits to be derived by the Village of Ansley, Nebraska, hereinafter referred to as "Municipality", and its inhabitants from the construction and operation of a gas transmission and distribution system in said Municipality there be and hereby are granted to SourceGas Distribution LLC, its successors and assigns, hereafter collectively referred to as "Grantee", the right, permission and authority to construct, maintain and operate a gas transmission and distribution system within the limits of said Municipality, as the same now exists or may hereafter be extended for a period of twenty-five (25) years from and after the final passage date of this Ordinance; provided, however, that the Municipality reserves the right at the end of each ten (10) year period from and after the effective date of the Ordinance, to renegotiate the provisions of this Ordinance with Grantee, its successors and assigns. In order to exercise this right, the Municipality must provide to Grantee written notice of such exercise by a duly authorized representative, no sooner than one-hundred eighty (180) days, and no later than sixty (60) days, prior to the applicable anniversary date of this Ordinance. Upon Grantee receiving a duly authorized notice from the Municipality that complies with the above-stated limitations, Grantee and the Municipality shall negotiate in good faith for a period of up to ninety (90) days after the end of the applicable anniversary date. If no agreement is reached within such ninety (90)-day period, then the Ordinance shall remain in full force and effect.

For said purpose there are hereby further granted to Grantee the right, permission and authority during said period to lay, install, construct, maintain and operate in, under, upon, over, across and along all of the streets, alleys, bridges and places within the present and future corporate limits of said Municipality all mains, pipes, services, conduits and structures necessary or convenient for the furnishing, transmission, distribution and sale of gas whether artificial, natural, mixed or otherwise for lighting, heating, domestic, industrial and other uses, and for transmitting such gas into, through or beyond the limits of said Municipality to other cities, villages and customers.

SECTION 2. That all mains, services, and pipes laid or installed under this grant shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers or other structures already installed, and all such mains, services and pipes shall be installed subject to approval of the Committee on streets and alleys or other authorized representatives of said Municipality.

Grantee, in doing any work in connection with said mains, pipes and services shall avoid, so far as practicable, interfering with the use of any street, alley or public place, and where the paving or surface of any street, alley or public place is disturbed, Grantee at its own expense and in a manner satisfactory to the authorized representatives of said Municipality shall replace such paving or surface in as good condition as before such work was commenced.

In the event that at any time hereafter said Municipality shall lawfully elect to change or alter the grade of any street, alley or public place, or to construct new or additional water or sewer lines, Grantee, upon being directed by resolution of the Chairperson and Board of said Municipality so to do, shall where the same becomes necessary by reason of said change of grade or construction of water or sewer lines, move or relay its mains or service pipes, provided, Grantee shall be compensated by Municipality for costs incurred by Grantee in moving or relaying its lines or facilities or raising or lowering the same.

SECTION 3. Grantee shall have the right to make all such reasonable rules and regulations in the conduct of its business as it may deem necessary or expedient, including without limitation meter deposits in such amounts as may be required to assure payment of bills. Grantee shall make such reasonable extensions of its mains from time to time as may be required to furnish service within said Municipality to parties making application therefor; but Grantee shall not be required to make any extension for the purpose of serving any consumer or consumers if Grantee is, for any reason, unable to obtain an adequate supply of gas to warrant the construction of said extension nor where the estimated revenue to be derived from serving such new consumer or consumers is not sufficient to show an adequate return upon the total additional investment required to serve such consumer or consumers.

Grantee shall provide gas distribution service in accordance with the rules and regulation of the Nebraska Public Service Commission and Grantee's Nebraska Tariff as revised from time to time.

Whenever the delivery or supply capability of Grantee's system, due to any cause whatsoever not limited to force majeure, is such that Grantee is unable to deliver to consumers served by Grantee the quantity of gas which the consumers require, Grantee shall have the right to prescribe reasonable rules and regulations for allocating the available quantities of gas among such consumers.

To the extent allowed by law, Grantee shall have the right to enter the premises of consumers at reasonable times for the purpose of reading meters, inspecting gas appliances, pipes and equipment and for the purpose of ascertaining loads, making necessary tests and installing, disconnecting, or removing meters.

SECTION 4. Grantee in the construction of said gas system within the limits of said Municipality shall use tested and approved pipes, material and equipment.

SECTION 5. Grantee at all times will keep a map in the office of Grantee or of the Clerk of said Municipality, showing the size and location of its mains laid in said distribution system in said Municipality. This map will be replaced each May with a revised map showing new construction for the previous calendar year or if no new construction took place, as requested by the Municipality.

SECTION 6. In case the available supply of gas shall at any time fail or become insufficient to supply the needs of the public of said Municipality, or should Grantee for any reason be unable to furnish the service herein contemplated, or upon the termination of this franchise for any reason

whatsoever, Grantee shall have the right to remove any and all of its pipe and other equipment or property from said Municipality, but in such event Grantee shall restore the streets, alleys and other public places to as good condition as before such removal, and will hold said Municipality harmless from damage and expense incident to such removal.

SECTION 7. Grantee shall be required, and by the acceptance hereof agrees, to save harmless said Municipality from and against all lawful claims and demands, and from all loss and expense necessarily incurred as a result thereof, arising out of the negligence of Grantee in the construction, removal, replacement, inspection or repair of any mains, pipes, services or appliances of Grantee, or in the use and operation thereof during the term of this Ordinance. The obligations under this paragraph shall not extend to any negligence directly or indirectly caused by the Municipality, elected or appointed officials, its officers, agents, boards or its employees.

SECTION 8. In consideration of the rights and privileges herein granted, the Grantee shall assess, effective the first billing cycle after this franchise becomes effective, to residential (commonly known as domestic) and commercial customers within the Village of Ansley, Nebraska, a franchise fee equivalent to \$0.01 per therm for gas delivered to residential and commercial customers within the Municipality on Grantee's distribution system. Grantee shall pay to the Village Treasurer an annual payment for each year of the duration of this franchise, in an amount equal to the franchise fee collected by Grantee hereunder. Payment shall be made on or before April 1st of each year for the preceding year and each such payment shall be accompanied by a statement supporting the payment.

Such payment shall be in lieu of any and all other fees, charges, licenses, taxes or assessments which the Municipality may impose for the rights and privileges herein granted or for the privilege of doing business within the Municipality and, in the event any such fee, charge, license, tax or assessment shall be imposed by the Municipality, the payment to be made in accordance with the provisions of this section shall be refunded in an amount equal to the annual burden of such fee, charge, license, tax or assessment imposed upon the Grantee. Ad Valorem property taxes imposed generally upon all real and personal property within the Municipality shall not be deemed to affect the obligation of the Grantee under this section.

SECTION 9. This Ordinance and the respective rights and obligations of the parties hereunder are subject to all present and future valid governmental legislation or regulation, whether federal or state, of duly constituted authorities which have jurisdiction over this Ordinance, one or both of the parties, or any transaction hereunder.

SECTION 10. This Ordinance and the rights, authority and franchise herein and hereby granted shall terminate and be of no further force and effect:

- (a) unless within six (6) months after final passage of this Ordinance Grantee shall file with the Clerk of said Municipality a written acceptance hereof; also
- (b) if and when, after such acceptance Grantee shall file with the Clerk of said Municipality a surrender hereof in writing.

SECTION 11. Ordinance No. 234, passed under date of June 3, 1974, is hereby repealed and of no further force or effect.

Ordinance No. 417, passed under date of February 16, 1998, is hereby repealed and of no further force or effect.

SECTION 12. Wherever the term "Grantee" is used herein it shall be held to mean and include SourceGas Distribution LLC, its successors and assigns.

SECTION 13. This Ordinance shall be in full force and effect from and after its final passage and publication as required by law and upon acceptance by Grantee shall be held to constitute a binding contract between said Municipality and Grantee, subject to its terms and conditions.

Passed and approved this 9th day of November, 2015.

ATTEST:

James L. Morgan, Chairperson

Lanette C. Doane, Clerk

(Seal)