SUBJECT: Renewal and Harmonization of Union Gas Franchise Agreement within the City of Hamilton  
(PW06095/LS06011) - (City Wide)

RECOMMENDATION:

(a) That Council approve the Model Franchise Agreement (MFA) and the letter of understanding with Union Gas, both of which are attached hereto, and that Council authorizes the submission of these to the Ontario Energy Board for approval pursuant to the provisions of Section 9 of The Municipal Franchises Act.

(b) That Council pass and enact the attached by-law upon receipt of an Order from the Ontario Energy Board.

(c) That the General Manager of Public Works be authorized and directed to request the Ontario Energy Board to make an Order declaring and directing that the assent of the municipal electors to the attached by-law and franchise agreement pertaining to the City of Hamilton is not necessary pursuant to the provisions of Section 9(4) of the Municipal Franchises Act.
EXECUTIVE SUMMARY:

This agreement is to address the use of the City's highways by Union Gas. It is part of an ongoing process to rationalize and modernize Right of Way agreements within the City of Hamilton with all utilities, telecommunication providers and other agencies.

Union Gas and its predecessor companies have been supplying natural gas to the City of Hamilton and for parts of the Municipality in excess of 100 years. A review of the City's various agreements as they relate to franchise agreements with Union Gas reveals several different forms of agreements still in place. Multiple issues arise as a result of those agreements since they are not uniform. Over the years, agreements were entered into between Union Gas and the various local municipalities within the former Region of Hamilton-Wentworth. A separate agreement was also entered into with the former Region of Hamilton-Wentworth. These various agreements should be rendered null and void and one agreement should be entered into between the City of Hamilton and Union Gas.

Staff has negotiated an agreement that meets the City of Hamilton’s needs and provides mechanisms to address future enhancements. This 2000 Model Franchise Agreement is attached as schedule “A” and staff recommend that Council approve this. Attached as schedule “B” is a supplementary letter (dated April 7, 2005) of understanding expanding on terms found in the Model Franchise Agreement and staff recommend that Council approve this.

It is the purpose of this report to seek Council approval to render null and void all agreements between Union Gas and the former Corporation of the City of Hamilton, the former Region of Hamilton-Wentworth and the former area municipalities and to authorize the City of Hamilton to enter into the 2000 Model Franchise Agreement along with the supplementary letter of understanding.

BACKGROUND:

The supply and distribution of natural gas in Ontario is highly regulated by the Ontario Energy Board. Agreements between municipalities and natural gas suppliers are further controlled by the Municipal Franchises Act which requires agreements for the supply of natural gas to be approved by the municipality and to be approved by the Ontario Energy Board (OEB). Over the years, the form of agreement that is used
between municipalities and natural gas suppliers has been standardized to the point
that the OEB endorses a specific form of agreement called the “Model Franchise
Agreement”. While the Agreement does not have regulatory status, the Model
Franchise Agreement is broadly used and is very familiar to the OEB.

There are currently seven different Franchise Agreements with Union Gas in the City of
Hamilton. The 1904 Agreement with the old City of Hamilton appears to have no expiry
date. The remaining Agreements all have expiry dates. The Municipal Franchise
The Agreements with the former Town of Ancaster, the Township of Glanbrook, the
Town of Flamborough and the City of Stoney Creek will all expire later this year. The
agreement with the Regional Municipality expires in 2012.

The newer Agreements are not consistent with the 1904 Agreement between Union
Gas and the City of Hamilton. For example, the 1904 Agreement does not contain a
specific formula for dealing with the allocation of costs for relocating gas pipelines, nor a
timeline for underground locates.

It is recommended that as a result of the wording of old agreements, the inconsistencies
between existing agreements and the need to have one agreement that reflects the
municipal structure for the City of Hamilton, a new Franchise Agreement be entered into
between the City of Hamilton and Union Gas.

The Proposed Franchise Agreement

Staff has negotiated a new proposed Franchise Agreement with Union Gas that is
recommended to Council for its consideration and approval. The proposed Agreement
closely follows the “2000 Model Franchise Agreement” that is endorsed by the OEB.
City staff has negotiated the term of the Agreement from a standard 20 year term down
to a term of 14 years. This provides an earlier opportunity for the City to revisit the
terms and conditions of the Agreement since standards in the industry continue to
change.

Staff has also negotiated a favourable response time for gas locates in a Letter of
Understanding. This time frame will alleviate constraints in construction project start
ups and provide the City’s contractor a definite window to obtain locate information.

Staff has also negotiated a further level of understanding between the City and Union
Gas for matters that are not covered in the Franchise Agreement. The proposed
Franchise Agreement with Union Gas is attached to this report as Attachment A. The
proposed Letter of Understanding with Union Gas is attached to this report as
Attachment B.

If the proposed Franchise Agreement with Union Gas is approved by Council, Council
will be asked to pass a by-law similar in content and in form as the draft by-law set out in
Attachment C. The procedure then requires Union Gas to make application to the
OEB to approve the Franchise Agreement and upon obtaining an order from the OEB
approving the Franchise Agreement; Council would then pass and adopt the by-law. It
is anticipated that the proposed Franchise Agreement will be approved by the OEB.
ANALYSIS/RATIONALE:

Under the current Area Municipalities agreements (Ancaster, Dundas, Flamborough, Glanbrook, Stoney Creek and the Region) the financial responsibility for relocation of specific sections of the gas system are defined. On projects that are initiated by the City there is a scale that defines the age of the pipe and how the costs are distributed. The Area Municipality agreements were signed in the 1980s. As noted the Agreement with the former Region expires in 2012.

Based on the above agreements with Area Municipalities if the gas pipe had been installed prior to 1981 then Union Gas paid 100% of all the relocation costs on City initiated projects. If the gas pipe had been installed after 1981 then the City would have paid 35% and Union Gas would have paid 65% of the costs.

The 1904 agreement between the City of Hamilton and Union Gas (last revised in 1957) was silent on this issue and over the years the City has taken the position that the Gas Company was 100% responsible for the relocation costs. Union Gas has differed on this opinion and has previously indicated their desire to resolve this issue. The 1904 agreement applies only within former City of Hamilton boundaries. Under the new agreement, the City would assume additional partial relocation expenses. Analysis of the Union Gas data shows that only 31% of the system within the former City has been installed since 1981.

In absence of any agreement between Utilities and Municipalities, Provincial legislation (Public Service Works on Highways Act) dictates that the costs are borne equally between the 2 parties. The Franchise agreement as laid out by the Ontario Energy Board (OEB) has more favourable conditions for the City regarding relocation costs. This reduces the City’s exposure significantly in relocating existing gas pipes for capital City projects. Actual analysis shows that the City would assume costs in the neighbourhood of $4,000 per year. These costs will be charged directly to the affected specific capital project.

ALTERNATIVES FOR CONSIDERATION:

The OEB dictates service areas to service providers through Certificates of Public Convenience. The Certificates are only issued to one provider and in the City of Hamilton there is only one gas supplier, Union Gas. The City has no ability to tender or alternatively quote for this service on an open market.

The only other option is to continue with the existing 1904 agreement within the old former City of Hamilton boundaries, while renewing the former Area Municipalities and Region agreements.

The above scenario would lead to confusion and conflict between the various agreements. Legal Services has provided a legal opinion that indicates that there is no significant benefit in continuing with the 1904 agreement and in fact some aspects of that agreement may be unenforceable.

To continue to operate under 7 different agreements is difficult and time consuming. The new provisions of the Letter of Understanding will only be applicable to the areas the new agreements cover. Therefore the locate clause, alternate dispute resolution
and insurance provisions would not apply to the City of Hamilton agreement coverage area.

Ultimately Union Gas may wish to clarify sections of the existing 1904 agreement which may result in lengthy negotiations. Union Gas and their regulator, the OEB, will insist upon language and terms that are consistent with the Model Franchise Agreement and ultimately the City may arrive at an agreement that is effectively the current MFA.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

FINANCIAL: If adopted the City will take on additional costs of an average estimated $4,000 annually on Capital projects in the future as outlined in the Analysis section. These costs will be offset by the benefits of a consistent construction locate time line, and through reduced staff time in interpretation and coordination of levels of service across the entire City.

Having a single favourably negotiated agreement will provide a stable base to the City moving forward.

Under the *Assessment Act* Gas companies pipes are assessed annually and the below table is a summary of the pipeline taxes paid by Union Gas to the City over the past four years.

**Property Taxes Paid to the City of Hamilton By Union Gas**

<table>
<thead>
<tr>
<th>Year</th>
<th>Pipeline Tax paid to Hamilton City</th>
<th>Education Component</th>
<th>Total $</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>$2,143,726</td>
<td>$1,790,517</td>
<td>$3,934,243</td>
</tr>
<tr>
<td>2004</td>
<td>$2,257,456</td>
<td>$1,766,940</td>
<td>$4,024,396</td>
</tr>
<tr>
<td>2005</td>
<td>$2,364,271</td>
<td>$1,772,002</td>
<td>$4,136,273</td>
</tr>
<tr>
<td>2006</td>
<td>$2,437,308</td>
<td>$1,781,871</td>
<td>$4,219,179</td>
</tr>
</tbody>
</table>

Data provided by Corporate Services, Taxation Department.

STAFFING: There are no staffing implications.

LEGAL: The various outstanding and ongoing franchise agreements should be rendered null and void by any repealing by-law.

**POLICIES AFFECTING PROPOSAL:**

N/A

**RELEVANT CONSULTATION:**

Consultation with the Managers of Construction and Design sections within Capital Planning and Implementation Division of Public works has led to their agreement of this arrangement.

Consultation with Legal Services and Risk Management has led to the proposed new municipal franchise agreement and to the addition of the supplementary Letter of Understanding that addresses and clarifies additional concerns raised by Risk Management.
Consultation with Corporate Services, Taxation, Manager of Tax Accounting resulted in the Tax data provided in this report.

**CITY STRATEGIC COMMITMENT:**

By evaluating the "Triple Bottom Line", (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

**Community Well-Being is enhanced.** ☑ Yes  ☐ No
Continued delivery of an essential utility is maintained.

**Environmental Well-Being is enhanced.** ☑ Yes  ☐ No
A sustainable utility network provides cohesive supply of natural gas. All work performed under this agreement meets all Provincial Environmental requirements.

**Economic Well-Being is enhanced.** ☑ Yes  ☐ No
Investment in Hamilton is enhanced and supported.
A co-ordinated effective utility network that allows access from all properties in accordance with development standards enhances the economic well being of Hamilton.

Does the option you are recommending create value across all three bottom lines?

☑ Yes  ☐ No

By following provincial guidelines and City driven development guidelines we enhance the delivery of this public service.

Do the options you are recommending make Hamilton a City of choice for high performance public servants?

☐ Yes  ☑ No
2000 Model Franchise Agreement

THIS AGREEMENT effective this day of , 20

BETWEEN:

CITY OF HAMILTON

hereinafter called the "Corporation"

- and -

union gas

LIMITED

hereinafter called the "Gas Company"

WHEREAS the Gas Company desires to distribute, store and transmit gas in the Municipality upon the terms and conditions of this Agreement;

AND WHEREAS by by-law passed by the Council of the Corporation (the "By-law"), the duly authorized officers have been authorized and directed to execute this Agreement on behalf of the Corporation;

THEREFORE the Corporation and the Gas Company agree as follows:

Part I - Definitions

1. In this Agreement

   (a) “decommissioned" and "decommissions" when used in connection with parts of the gas system, mean any parts of the gas system taken out of active use and purged in accordance with the applicable CSA standards and in no way affects the use of the term 'abandoned' pipeline for the purposes of the Assessment Act;
(b) "Engineer/Road Superintendent" means the most senior individual employed by the Corporation with responsibilities for highways within the Municipality or the person designated by such senior employee or such other person as may from time to time be designated by the Council of the Corporation;

(c) "gas" means natural gas, manufactured gas, synthetic natural gas, liquefied petroleum gas or propane-air gas, or a mixture of any of them, but does not include a liquefied petroleum gas that is distributed by means other than a pipeline;

(d) "gas system" means such mains, plants, pipes, conduits, services, valves, regulators, curb boxes, stations, drips or such other equipment as the Gas Company may require or deem desirable for the distribution, storage and transmission of gas in or through the Municipality;

(e) "highway" means all common and public highways and shall include any bridge, viaduct or structure forming part of a highway, and any public square, road allowance or walkway and shall include not only the travelled portion of such highway, but also ditches, driveways, sidewalks, and sodded areas forming part of the road allowance now or at any time during the term hereof under the jurisdiction of the Corporation;

(f) "Model Franchise Agreement" means the form of agreement which the Ontario Energy Board uses as a standard when considering applications under the Municipal Franchises Act. The Model Franchise Agreement may be changed from time to time by the Ontario Energy Board;

(g) "Municipality" means the territorial limits of the Corporation on the date when this Agreement takes effect, and any territory which may thereafter be brought within the jurisdiction of the Corporation;

(h) "Plan" means the plan described in Paragraph 5 of this Agreement required to be filed by the Gas Company with the Engineer/Road Superintendent prior to commencement of work on the gas system; and

(i) whenever the singular, masculine or feminine is used in this Agreement, it shall be considered as if the plural, feminine or masculine has been used where the context of the Agreement so requires.
Part II - Rights Granted

2. To provide gas service

The consent of the Corporation is hereby given and granted to the Gas Company to distribute, store and transmit gas in and through the Municipality to the Corporation and to the inhabitants of the Municipality.

3. To Use Highways

Subject to the terms and conditions of this Agreement the consent of the Corporation is hereby given and granted to the Gas Company to enter upon all highways now or at any time hereafter under the jurisdiction of the Corporation and to lay, construct, maintain, replace, remove, operate and repair a gas system for the distribution, storage and transmission of gas in and through the Municipality.

4. Duration of Agreement and Renewal Procedures

(a) If the Corporation has not previously received gas distribution services, the rights hereby given and granted shall be for a term of 20 years from the date of final passing of the By-law.

or

(b) If the Corporation has previously received gas distribution services, the rights hereby given and granted shall be for a term of 14 years from the date of final passing of the By-law provided that, if during the 14 year term of this Agreement, the Model Franchise Agreement is changed, then on the 7th anniversary and on the 14th anniversary of the date of the passing of the By-law, this Agreement shall be deemed to be amended to incorporate any changes in the Model Franchise Agreement in effect on such anniversary dates. Such deemed amendments shall not apply to alter the 14 year term.

(c) At any time within two years prior to the expiration of this Agreement, either party may give notice to the other that it desires to enter into negotiations for a renewed franchise upon such terms and conditions as may be agreed upon. Until such renewal has been settled, the terms and conditions of this Agreement shall continue, notwithstanding the expiration of this Agreement. This shall not preclude either party from applying to the Ontario Energy Board for a renewal of the Agreement pursuant to section 10 of the Municipal Franchises Act.
5. **Approval of Construction**

(a) The Gas Company shall not undertake any excavation, opening or work which will disturb or interfere with the surface of the travelled portion of any highway unless a permit therefore has first been obtained from the Engineer/Road Superintendent and all work done by the Gas Company shall be to his satisfaction.

(b) Prior to the commencement of work on the gas system, or any extensions or changes to it (except service laterals which do not interfere with municipal works in the highway), the Gas Company shall file with the Engineer/Road Superintendent a Plan, satisfactory to the Engineer/Road Superintendent, drawn to scale and of sufficient detail considering the complexity of the specific locations involved, showing the highways in which it proposes to lay its gas system and the particular parts thereof it proposes to occupy.

(c) The Plan filed by the Gas Company shall include geodetic information for a particular location:

   (i) where circumstances are complex, in order to facilitate known projects, including projects which are reasonably anticipated by the Engineer/Road Superintendent, or

   (ii) when requested, where the Corporation has geodetic information for its own services and all others at the same location.

(d) The Engineer/Road Superintendent may require sections of the gas system to be laid at greater depth than required by the latest CSA standard for gas pipeline systems to facilitate known projects or to correct known highway deficiencies.

(e) Prior to the commencement of work on the gas system, the Engineer/Road Superintendent must approve the location of the work as shown on the Plan filed by the Gas Company, the timing of the work and any terms and conditions relating to the installation of the work.

(f) In addition to the requirements of this Agreement, if the Gas Company proposes to affix any part of the gas system to a bridge, viaduct or other structure, if the Engineer/Road Superintendent approves this proposal, he may require the Gas Company to comply with special conditions or to enter into a separate agreement as a condition of the approval of this part of the construction of the gas system.
(g) Where the gas system may affect a municipal drain, the Gas Company shall also file a copy of the Plan with the Corporation's Drainage Superintendent for purposes of the Drainage Act, or such other person designated by the Corporation as responsible for the drain.

(h) The Gas Company shall not deviate from the approved location for any part of the gas system unless the prior approval of the Engineer/Road Superintendent to do so is received.

(i) The Engineer/Road Superintendent's approval, where required throughout this Paragraph, shall not be unreasonably withheld.

(j) The approval of the Engineer/Road Superintendent is not a representation or warranty as to the state of repair of the highway or the suitability of the highway for the gas system.

6. **As Built Drawings**

   The Gas Company shall, within six months of completing the installation of any part of the gas system, provide two copies of "as built" drawings to the Engineer/Road Superintendent. These drawings must be sufficient to accurately establish the location, depth (measurement between the top of the gas system and the ground surface at the time of installation) and distance of the gas system. The "as built" drawings shall be of the same quality as the Plan and, if the approved pre-construction plan included elevations that were geodetically referenced, the "as built" drawings shall similarly include elevations that are geodetically referenced. Upon the request of the Engineer/Road Superintendent, the Gas Company shall provide one copy of the drawings in an electronic format and one copy as a hard copy drawing.

7. **Emergencies**

   In the event of an emergency involving the gas system, the Gas Company shall proceed with the work required to deal with the emergency, and in any instance where prior approval of the Engineer/Road Superintendent is normally required for the work, the Gas Company shall use its best efforts to immediately notify the Engineer/Road Superintendent of the location and nature of the emergency and the work being done and, if it deems appropriate, notify the police force, fire or other emergency services having jurisdiction. The Gas Company shall provide the Engineer/Road Superintendent with at least one 24 hour emergency contact for the Gas Company and shall ensure the contacts are current.
8. **Restoration**

The Gas Company shall well and sufficiently restore, to the reasonable satisfaction of the Engineer/Road Superintendent, all highways, municipal works or improvements which it may excavate or interfere with in the course of laying, constructing, repairing or removing its gas system, and shall make good any settling or subsidence thereafter caused by such excavation or interference. If the Gas Company fails at any time to do any work required by this Paragraph within a reasonable period of time, the Corporation may do or cause such work to be done and the Gas Company shall, on demand, pay the Corporation's reasonably incurred costs, as certified by the Engineer/Road Superintendent.

9. **Indemnification**

The Gas Company shall, at all times, indemnify and save harmless the Corporation from and against all claims, including costs related thereto, for all damages or injuries including death to any person or persons and for damage to any property, arising out of the Gas Company operating, constructing, and maintaining its gas system in the Municipality, or utilizing its gas system for the carriage of gas owned by others. Provided that the Gas Company shall not be required to indemnify or save harmless the Corporation from and against claims, including costs related thereto, which it may incur by reason of damages or injuries including death to any person or persons and for damage to any property, resulting from the negligence or wrongful act of the Corporation, its servants, agents or employees.

10. **Insurance**

(a) The Gas Company shall maintain Comprehensive General Liability Insurance in sufficient amount and description as shall protect the Gas Company and the Corporation from claims for which the Gas Company is obliged to indemnify the Corporation under Paragraph 9. The insurance policy shall identify the Corporation as an additional named insured, but only with respect to the operation of the named insured (the Gas Company). The insurance policy shall not lapse or be cancelled without sixty (60) days' prior written notice to the Corporation by the Gas Company.

(b) The issuance of an insurance policy as provided in this Paragraph shall not be construed as relieving the Gas Company of liability not covered by such insurance or in excess of the policy limits of such insurance.

(c) Upon request by the Corporation, the Gas Company shall confirm that premiums for such insurance have been paid and that such insurance is in full force and effect.
11. Alternative Easement

The Corporation agrees, in the event of the proposed sale or closing of any highway or any part of a highway where there is a gas line in existence, to give the Gas Company reasonable notice of such proposed sale or closing and, if it is feasible, to provide the Gas Company with easements over that part of the highway proposed to be sold or closed sufficient to allow the Gas Company to preserve any part of the gas system in its then existing location. In the event that such easements cannot be provided, the Corporation and the Gas Company shall share the cost of relocating or altering the gas system to facilitate continuity of gas service, as provided for in Paragraph 12 of this Agreement.

12. Pipeline Relocation

(a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.

(b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.

(c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:

(i) the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,

(ii) the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,

(iii) the amount paid by the Gas Company to contractors for work related to the project,
(iv) the cost to the Gas Company for materials used in connection with the project, and

(v) a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.

(d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

Part IV - Procedural And Other Matters

13. Municipal By-laws of General Application

The Agreement is subject to the provisions of all regulating statutes and all municipal by-laws of general application, except by-laws which have the effect of amending this Agreement.

14. Giving Notice

Notices may be delivered to, sent by facsimile or mailed by prepaid registered post to the Gas Company at its head office or to the authorized officers of the Corporation at its municipal offices, as the case may be.

15. Disposition of Gas System

(a) If the Gas Company decommissions part of its gas system affixed to a bridge, viaduct or structure, the Gas Company shall, at its sole expense, remove the part of its gas system affixed to the bridge, viaduct or structure.

(b) If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any
loss, cost, expense or damage occasioned thereby. If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation.

16. **Use of Decommissioned Gas System**

   (a) The Gas Company shall provide promptly to the Corporation, to the extent such information is known:

   (i) the names and addresses of all third parties who use decommissioned parts of the gas system for purposes other than the transmission or distribution of gas; and

   (ii) the location of all proposed and existing decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas.

   (b) The Gas Company may allow a third party to use a decommissioned part of the gas system for purposes other than the transmission or distribution of gas and may charge a fee for that third party use, provided

   (i) the third party has entered into a municipal access agreement with the Corporation; and

   (ii) the Gas Company does not charge a fee for the third party's right of access to the highways.

   (c) Decommissioned parts of the gas system used for purposes other than the transmission or distribution of gas are not subject to the provisions of this Agreement. For decommissioned parts of the gas system used for purposes other than the transmission and distribution of gas, issues such as relocation costs will be governed by the relevant municipal access agreement.

17. **Franchise Handbook**

   The Parties acknowledge that operating decisions sometimes require a greater level of detail than that which is appropriately included in this Agreement. The Parties agree to look for guidance on such matters to the Franchise Handbook prepared by the Association of Municipalities of Ontario and the gas utility companies, as may be amended from time to time.
18. **Other Conditions**

Notwithstanding the cost sharing arrangements described in Paragraph 12, if any part of the gas system altered or relocated in accordance with Paragraph 12 was constructed or installed prior to January 1, 1981, the Gas Company shall alter or relocate, at its sole expense, such part of the gas system at the point specified, to a location satisfactory to the Engineer/Road Superintendent.

19. **Agreement Binding Parties**

This Agreement shall extend to, benefit and bind the parties thereto, their successors and assigns, respectively.

IN WITNESS WHEREOF the parties have executed this Agreement effective from the date written above.

**CITY OF HAMILTON**

Per:

___________________________
Larry Dilanni, Mayor

Per:

___________________________
Kevin C. Christenson, Clerk

**UNION GAS LIMITED**

Per:

___________________________
Curt Bernardi, Assistant Secretary
April 7, 2005

Mr. Scott Stewart, C.E.T.
General Manager, Public Works Department
City of Hamilton
320 – 77 James Street North
Hamilton, ON
L8R 2K3

Dear Mr. Stewart:

Re: City of Hamilton Franchise Agreement

We refer to our ongoing discussions and correspondence with regard to the execution of a new Model Franchise Agreement between Union Gas and the City of Hamilton (“the City”). We confirm that the parties have agreed to the interpretation of certain provisions of the Franchise Agreement and the City has asked Union Gas to confirm the interpretation in writing.

Pipeline Relocation

Section 12 of the Franchise Agreement deals with pipeline relocation and the costs and obligations of each party regarding pipeline relocation. Union Gas confirms that the costs and obligations of each party pursuant to this section is only applicable to the gas system, as defined in the Model Franchise Agreement located within a Highway as defined in the Agreement. All costs and other expenses relating to the relocation of the gas system outside of the Highway are governed either by the Easement held by Union Gas or similar documentation (“Rights”) which provides Union Gas with the right to install and maintain its gas system.

Union Gas agrees that in the event the City acquires additional lands and incorporates those lands into a new Highway, that Union Gas will surrender any Rights which it holds within the new expanded Highway. Notwithstanding the surrender by Union of any Rights as aforementioned the parties agree that the City shall be solely responsible for all costs relating to the relocation of the gas system, in the first instance, and any subsequent relocation of the gas systems within the Highway will be governed by the terms and conditions of the Franchise Agreement.
Costs of Relocations

Union Gas confirms that prior to commencing or undertaking any relocation of its gas systems in accordance with the requirements of the Franchise Agreement, Union Gas shall provide the City with an estimate of the costs for its information only. Union will be pleased to provide information to the City to satisfy the municipality that costs are reasonably and diligently constructed.

Dispute Resolution

Union Gas has a long and respected practice of working with municipalities in the event of issues arising with respect to the application of the terms of the franchise agreement and other operational matters. It is Union’s intent to continue to maintain this commitment through dialogue and consultation in order to resolve issues without recourse to other means. However, Union is willing to commit to utilizing an alternative dispute resolution mechanism in the event the parties cannot come to a mutually agreed upon solution. This could include mediation or other means as agreed to by the parties in advance of proceeding to an alternative mechanism to resolve a dispute.

Locate information

Union Gas shall continue to meet all its statutory and regulatory obligations for line locates including the requirements of the Technical Standards Safety Authority pursuant to Section 9(2) of Ontario Regulation 210/01 under the Technical Standards and Safety Act, 2000 S.O. 2000, c.16.

In the current circumstance, upon receiving a locate request through Ontario One Call from the City, or the City’s authorized agent, Union Gas shall, at no cost to the City, make best efforts to provide locations of its gas system as follows:

1. Within two hours in the event of an emergency;
2. Within four days, 90 percent of the time, in all other cases.

The City and Union Gas acknowledge that these locational time lines may be varied from time to time.

The locations provided by Union Gas to the City shall contain sufficient information, consistent with industry practises. These practises may be varied from time to time.

Union Gas shall provide and identify to the City’s engineer an individual who shall be Union Gas’ contact person for the purpose of the requirements for locate process information. Each Party shall also provide to the other Party an emergency contact number at which personnel shall be available at all times and shall ensure that the aforementioned number is current.
Insurance

Pursuant Section 10 of the Franchise Agreement, Union Gas shall provide the City with a Certificate of Insurance with comprehensive and general liability insurance in the amount of Fifty Million Dollars ($50,000,000.00), or such other amounts as Union Gas is obligated to indemnify the City pursuant to Section 9 of the Franchise Agreement.

Union Gas has a long and positive relationship with the City of Hamilton, from both an operational and community perspective. We are committed to working closely with municipal staff to our mutual benefit in meeting the needs of your citizens and our customers.

In closing, as previously highlighted the 2000 Model Franchise Agreement has been approved by the AMO and the OEB. Currently, approximately one hundred other municipalities are operating under this revised model and as renewals occur with other municipalities this model will be the standard for the province.

Should you have any questions or if we can assist further in this process please call.

Yours very truly,

Frank Scremin, P. Eng.
Manager of Operations, Hamilton
UNION GAS LIMITED

/bk
cc: Paul Riedtyk
    Frank Varga
    Max Hagerman
    Mark Murray
    Lynn Marentette
CITY OF HAMILTON

BY-LAW NUMBER 06-_____

A BY-LAW TO AUTHORIZE A FRANCHISE AGREEMENT
BETWEEN THE CORPORATION OF THE CITY OF HAMILTON
and UNION GAS LIMITED

WHEREAS the Council of the City of Hamilton deems it expedient to enter into the attached franchise agreement (the "Franchise Agreement") with Union Gas Limited;

AND WHEREAS the Ontario Energy Board by its Order issued pursuant to The Municipal Franchises Act on the                  day of                    , 20    has approved the terms and conditions upon which and the period for which the franchise provided in the Franchise Agreement is proposed to be granted, and has declared and directed that the assent of the municipal electors in respect of this By-Law is not necessary:

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. THAT the Franchise Agreement between the City of Hamilton and Union Gas Limited, attached hereto and forming part of this by-law, is hereby authorized and the franchise provided for therein is hereby granted.

2. THAT the Mayor and Clerk be and they are hereby authorized and instructed on behalf of the City of Hamilton to enter into and execute under its corporate seal and deliver the Franchise Agreement, which is hereby incorporated into and forming part of this By-Law.

3. THAT the following by-laws be and the same are hereby repealed:
   
   By-law #3884-90 for the former Corporation of the Town of Dundas, passed in Council on the 4\textsuperscript{th} day of March, 1991;
   
   By-law #91-6 for the former Corporation of the Town of Ancaster, passed in Council on the 9\textsuperscript{th} day of September, 1991;
   
   By-law #453-91 for the former Corporation of the Township of Glanbrook, passed in Council on the 18\textsuperscript{th} day of November, 1991;
   
   By-law #89-147-A for the former Corporation of the Town of Flamborough, passed in Council on the 6\textsuperscript{th} day of November, 1989;
   
   By-law #R97-031 for the former Corporation of the Regional Municipality of Hamilton-Wentworth, passed in Council on the 6\textsuperscript{th} day of May, 1997;
   
   By-law #3320-91 for the former Corporation of the City of Stoney Creek, passed in Council on the 10\textsuperscript{th} day of September, 1991;
   
   By-law #400 as amended by By-Laws Numbers 443, 2590, 4168, 4936, and 8028 for the Corporation of the City of Hamilton, passed in Council on the 26\textsuperscript{th} day of September, 1904;
4. **THAT** this by-law shall come into force and take effect as of the final passing thereof.

    Dated this day of , 2006.

    CITY OF HAMILTON

    ________________________________
    Larry Dilanni, Mayor

    ________________________________
    Kevin C. Christenson, Clerk