

# Ordinance No. 52

## GAS FRANCHISE ORDINANCE TOWNSHIP OF COVERT, VAN BUREN COUNTY, MICHIGAN

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO USE LOCAL PUBLIC WAYS AND TRANSACT LOCAL GAS BUSINESS IN THE TOWNSHIP.

THE TOWNSHIP OF COVERT ORDAINS:

### Sec. 1. **GRANT OF NON-EXCLUSIVE RIGHT.**

- A. Term. Township of Covert (Grantor) grants to Great Lakes Energy Gas Services, (Grantee) and its successors and assigns subject to the terms and conditions set forth below, the non-exclusive right, power and authority to lay, maintain and operate gas mains, pipes and services (hereinafter "Gas System") that are owned either by Grantee on, along, across and under the highways, streets, alleys and bridges of the Grantor (hereinafter "Public Ways") or Grantee may use the Gas System of any gas utility as long as the gas utility has the necessary authority from the Michigan Public Service Commission and a valid franchise from Grantor. Grantee is also given the authority to do local gas business within the boundaries of Grantor for a period of five (5) years and continuing thereafter unless and until revoked or terminated by one of the parties pursuant to Section 8 hereunder.
- B. Location in Public Ways. To the maximum extent possible, Grantee shall place its Gas System on, within and along existing utility facilities in the Public Ways.
- C. Lease. Grantee shall not lease or sublease any portion of its Gas System within the Grantor to a person who by law is required to obtain the Grantor's permission or consent to transaction of business in the Township and who lacks such permission or consent.
- D. Periodic Review. In view of the changing regulatory and public utility environment, Grantor and Grantee agree to meet at least six months prior to the end of the initial five year term to review the impact of such changes, if any, on this franchise.

### Sec. 2. **Consideration: Costs: Right-of-Way Fees.**

- A. In consideration of the rights, power and authority granted by the Grantor, Grantee shall faithfully perform all duties required by the terms of this Ordinance.
- B. In further consideration of the rights, power and authority granted by the Grantor, Grantee agrees to compensate the Grantor: (a) for the amount of its actual expenses incurred by the Grantor in the drafting and preparation of this Ordinance, including reasonable actual attorney fees, and (b) for the amount of its actual expenses resulting from the process of adopting this ordinance. This franchise shall not become effective until all fees and costs have been paid to Grantor.

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- C. Grantee agrees to abide by any future ordinance(s) of the Grantor, if and when formally adopted which may require the payment by Grantee of a fee, charge or other payment on a periodic basis (such as monthly, quarterly, annually), provided that any such future ordinance(s) apply equally to all gas franchise holders, including Grantee. The Grantor shall notify Grantee within sixty (60) days of the formal adoption of such an ordinance by the Grantor. Unless the Grantee refuses to agree to the fee, charge or other payment, such fee, charge or other payment will be applied on the expiration of the sixty (60) day period. If Grantee refuses to agree to the fee, charge or other payment, this franchise shall be automatically revoked on the expiration of the sixty (60) day period. Any new franchise granted by the Grantor to Grantee shall be subject to the provisions of such future ordinances, and shall require payment of a similar fee or periodic charge as a condition of the new franchise.

## Sec. 3. **USE OF PUBLIC RIGHTS-OF-WAYS BY GRANTEE.**

- A. No Burden on Public Ways. Grantee and its contractors, subcontractors and the Grantee's Gas System shall not unduly burden or interfere with the present or future use of any of the Public Ways within the Township. Grantee shall erect and maintain its Gas System so as to cause minimum interference with the use of the Public Ways and with the rights or reasonable convenience of property owners. No Public Way shall be obstructed longer than necessary during the work of construction or repair to the Gas System. If the Grantor in its reasonable judgment determines that any portion of the Gas System constitutes an undue burden or interference, Grantee at its expense shall modify its Gas System or take such other actions as the Grantor may determine is in the public interest to remove or alleviate the burden, and the Grantee shall do so within the time period established by the Grantor.
- B. Restoration of Public Ways. Grantee and its contractors and subcontractors shall immediately restore, at Grantee's sole cost and expense and in a manner approved by the Grantor, any portion of the Public Ways that is in any way disturbed, damaged, or injured by the construction, operation, maintenance or removal of the Gas System to as good or better condition than that which existed prior to the disturbance. In the event that Grantee, its contractor or subcontractors fail to make such repair within the time specified by the Grantor, the Grantor shall be entitled to complete the repair and Grantee shall pay the costs of the Grantor for such repair.
- C. Easements. Any easements over or under private property necessary for the construction or operation of the Gas System shall be arranged and paid for by Grantee. Any use or intrusion on private property without an easement or other instrument evidencing permission of the property owner shall constitute a trespass by Grantee and a violation of this Ordinance. Any easements over or under property owned by the Grantor other than the Public Ways shall be separately negotiated with the Grantor.
- D. Compliance with Laws. Grantee shall comply with all laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership or use of its Gas System whether federal, state or local, now in force or which hereafter may be promulgated. Before any installation is commenced, Grantee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the Grantor or other governmental entity as may be required by law, including, without limitation and highway

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permits. Grantee shall comply in all respects with applicable codes and industry standards. Grantee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.

- E. Street Vacation. If the Grantor vacates or consents to the vacation of a street or alley within its jurisdiction, and such vacation necessitates the removal and relocation of Grantee's facilities in the vacated Public Way, Grantee agrees, as a condition of this Ordinance, to consent to the vacation and to move its facilities at its sole cost and expense when asked to do so by the Grantor or a court of competent jurisdiction. Grantee shall relocate its facilities to such alternative route as the Grantor, acting reasonably and in good faith, shall designate.
- F. Relocation. If the Grantor requests Grantee to relocate, protect, support, disconnect, or remove its facilities because of street or utility work, Grantee shall relocate, protect, support, disconnect, or remove its facilities, at its sole expense, to such alternate route as Grantor, acting reasonably and in good faith, shall designate.
- G. Public Emergency. The Grantor shall have the right to sever, disrupt, dig up or otherwise destroy facilities of Grantee, without any prior notice, if such action is deemed necessary because of a public emergency. Public emergency shall be any condition which, in the opinion of any of the officials named, poses an immediate threat to the lives or property of the citizens of the Grantor, caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills, etc. Grantee shall be responsible for repair at its sole expense of any of its facilities damaged pursuant to any such action taken by the Grantor.
- H. Miss Dig. Grantee is a subscriber to and a member of "MISS DIG", the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL 460.701. et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.
- I. Employee Identification. All personnel of Grantee or its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing their name and photograph. Grantee shall account for all identification cards at all times. Every service vehicle of Grantee, its contractors or subcontractors shall be clearly identified as such to the public.

#### Sec. 4. **NO GRANTOR LIABILITY; INDEMNIFICATION.**

- A. Grantor Not Liable. The Grantor and its employees shall not be liable to Grantee or Grantee's customers for any interference with or disruption in the operation of Grantee's Gas System, or the provision of service over or through the Gas System, or for any damages arising out of Grantee's use of the Public Ways.
- B. Indemnification. As part of the consideration for of this Ordinance, Grantee shall defend, indemnify, protect and hold harmless Grantor, its officers, employees, departments, boards and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and reasonable expenses of any nature (including, without limitation, actual fees and expenses of attorneys, expert witnesses and consultants), arising out of or resulting from the acts or omissions of Grantee, its officers, agents, employees, contractors,

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successors, or assigns, but only to the extent of the fault of the Grantee, its officers, agents, employees, contractors, successors, or assigns.

- C. Assumption of Risk. Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any Grantor-owned or controlled property, including Public Ways, and Grantee hereby agrees to indemnify and hold harmless the Grantor against and from any claim asserted or liability imposed upon the Grantor for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the gas system or Grantee's failure to comply with any federal, state or local statute, ordinance or regulation.
- D. Notice, Cooperation and Expenses. The Grantor shall give Grantee prompt notice of the making of any claim or the commence of any actions suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent the Grantor from cooperating with Grantee and participating in the defense of any litigation by Grantor's own counsel. Grantee shall pay all expenses incurred by Grantor in defending itself with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by or on behalf of the Grantor's attorney, and the actual expenses of Grantor's agents, employees or expert witnesses, and disbursements and liability assumed by Grantor in connection with such suits, actions or proceedings.

## Sec. 5. **INSURANCE.**

Grantee shall obtain and maintain in full force and effect the following insurance covering all insurable risks associated with its exercise of the rights granted by this ordinance: Comprehensive General Liability Insurance in an amount no less than One Million Dollars (\$1,000,000). The township shall be named as an additional insured in all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) days prior written notice is given to the township. If so requested by the township, Grantee shall provide the township with a certificate of insurance evidencing such coverage and maintain a current certificate on file with the township.

If the insurance policies required by this Section are written with deductibles, the deductibles shall be approved in advance by the Grantor. Grantee agrees to indemnify and hold harmless the Grantor from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Ordinance.

## Sec. 6. **FRANCHISE NOT EXCLUSIVE.**

The rights, power and authority granted herein are not exclusive.

## Sec. 7. **RATES.**

Grantee shall be entitled to charge the inhabitants of the Grantor for gas furnished at the rates approved by the applicable regulatory authority, which has authority and jurisdiction to fix and regulate gas rates and promulgate rules regulating such service in the Township. Such rates and

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rules shall be subject to review and changed any time upon petition being made by either the Grantor acting through its board or by Grantee.

### Sec. 8. **REVOCATION.**

The franchise granted by this Ordinance is subject to revocation or termination at the will of either party upon sixty (60) days' written notice to the other party.

### Sec. 9. **JURISDICTION.**

Grantee shall be and remain subject to all Ordinances, rules and regulations of the Grantor now in effect or which might subsequently be adopted for the regulation of land uses or for the protection of the health, Safety and general welfare of the public; provided, however, that nothing herein shall be construed as a waiver by grantee of any of its existing or future rights under Michigan or Federal law or a limitation upon the existing or future powers of the Grantor pursuant to its charter or Michigan or Federal laws.

### Sec. 10. **EFFECTIVE DATE.**

This Ordinance shall take effect sixty (60) days after adoption by the board and shall continue in effect as provided in Section 1.A. above, subject to the revocation provision of Section 8 above, provided, however, it shall cease and be of no effect unless and until within fifteen (15) days after adoption, the Grantee shall file its written acceptance of the same with the clerk, and pay to the Grantor the sum required by Section 2(B) hereof.

Amendment adopted February 12, 2002

Published March 11, 2002

Effective April 13, 2002

Dennis Palgen, Clerk