

ORDINANCE NO. 98-1

FRANCHISE

MICHIGAN GAS UTILITIES

AN ORDINANCE GRANTING TO MICHIGAN GAS UTILITIES, A DIVISION OF UTILICORP UNITED INC., A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, POWER, AUTHORITY AND PERMISSION TO USE THE HIGHWAYS, STREETS, ALLEYS AND OTHER PUBLIC PLACES OF THE TOWNSHIP OF FAIRFIELD, COUNTY OF LENAWEЕ, STATE OF MICHIGAN, FOR THE PURPOSE OF LAYING AND MAINTAINING GAS PIPES, MAINS, CONDUITS, VALVES, DRIPS AND ALL NECESSARY APPURTENANCES IN, UNDER AND ALONG THE HIGHWAYS, STREETS, ALLEYS AND OTHER PUBLIC PLACES, OF THE CITY, AND THE RIGHT, POWER AND PERMISSION TO CONDUCT AND OPERATE A GENERAL GAS BUSINESS AND DISTRIBUTION SYSTEM IN THE TOWNSHIP OF FAIRFIELD, COUNTY OF LENAWEЕ, STATE OF MICHIGAN FOR A PERIOD OF THIRTY (30) YEARS.

THE TOWNSHIP BOARD OF THE TOWNSHIP OF FAIRFIELD, COUNTY OF LENAWEЕ, STATE OF MICHIGAN HEREBY ORDAINS:

Section 1. Granting of Franchise to Use Highways, Streets, Alleys and Public Places. The Township of Fairfield, County of Lenawee, State of Michigan, (the "Township" or "Grantor"), grants to Michigan Gas Utilities, a division of UtiliCorp United Inc., a Delaware corporation (hereinafter called "Grantee"), its successors and assigns, a franchise to use the highways, streets, alleys and other public places of the Township of Fairfield, County of Lenawee, State of Michigan, for the purpose of constructing, maintaining and operating a gas distribution system in the Township with full right, power and authority to establish, construct, maintain, extend and operate a plant, stations, mains, pipes, conduits, valves, drips and all other appurtenances, apparatus and appliances within the corporate limits of the Township of Fairfield, County of Lenawee, State of Michigan, for the purpose of supplying and distributing to the Township and its inhabitants gas for

heating and other purposes and, for such purposes, to enter upon and use the highways, streets, alleys, and public lands of the Township and lay, maintain, operate, repair and extend therein, through and thereunder such mains, pipes, conduits, valves, drips, apparatus, appliances and other appurtenances as may be necessary and proper for the distribution of gas throughout and beyond the Township and for the purpose of conducting and operating a gas business in the Township subject to the terms and conditions hereinafter provided.

Section 2. Non-Disturbance of Public Travel: Restoration; Construction Maintenance.

In laying its pipes, mains and other appurtenances and repairing and maintaining the same, Grantee shall interfere as little as possible with public travel. After opening any portion of the highways, streets, alleys or other public place, Grantee shall within a reasonable time restore the same as nearly as possible to the same condition as prevailed before opening. While any portion of the highways, streets, alleys or other public place is open, Grantee shall maintain reasonable barriers and lights at night and other warnings to the users of the highways, streets, alleys or other public place. If the Grantor elects to alter or change the grade of or otherwise improve any street, alley, public way, public property or public right-of-way, or construct, repair, or reconstruct any sewer or water system therein, Grantee, upon reasonable notice by Grantor, shall remove, relay, and relocate its facilities or equipment at the cost and expense of the Grantee. However, if the Grantor orders the Grantee to relocate its facilities or equipment for non-public purposes or for the sole benefit of a private project, the Grantee shall have the right to receive reimbursement for the reasonable cost of such relocation.

Section 3. Hold Harmless. Grantee shall at all times hold Grantor harmless from any loss, damage and expense of any kind on account of the Grantee's laying, constructing, maintenance, and use of the mains, pipes, conduits and other appurtenances.

Section 4. Rates Established by Michigan Public Service Commission. The rates to be charged by Grantee and all rules of service shall be those which are established from time to time by the Michigan Public Service Commission or such other body which shall succeed to the jurisdiction, rights, powers and authority of the Commission.

Sections 5. Term. The rights and authority herein granted shall be and continue for a period of thirty (30) years from and after the effective date of this Ordinance; provided, however, the Grantor may cancel this franchise on the tenth (10th) or twentieth (20th) anniversary of this agreement by notifying Grantee in writing of its desire to do so, said notification to be given not more than thirty (30) days before the tenth (10th) or twentieth (20th) anniversary, respectively, of this agreement. If Grantee is not notified of the cancellation by the tenth (10th) or twentieth (20th) anniversary, then this franchise shall continue without cancellation until the thirtieth (30th) year. The anniversary date shall be the date this franchise is accepted by Grantee or otherwise effective by operation of law.

Section 6. Franchise Revocable. The franchise herein granted shall be revocable, at the will of the governing body of this Township, in accordance with Section 460.602 of the Michigan statutes, as amended; PROVIDED, however, pursuant to such statute, if Grantee desires at a future time to have the franchise designated as irrevocable, it may do so by submitting its request to a vote of the electors. Such special elections shall be held at the request of the Grantee, and Grantee shall pay the cost of such special election.

Section 7. Ordinance Effective Date. This ordinance shall take effect on the first (1st) day following the date of publication of the ordinance.

Section 8. Publication. The Township Clerk is hereby directed to cause a true copy of this ordinance to be published in The Adrian Daily Telegram, a newspaper circulating within the community which this ordinance affects within ten days of its passage.

Section 9. Recording of Ordinance. Within one week after the passage of this ordinance, the Township Clerk shall record the ordinance within the books and records of the Township kept by the Clerk for such purpose and the enactment of such ordinance shall be certified by the Clerk therein.

Section 10. Force Majeure. It shall not be a breach or default under this franchise if either party fails to perform its obligations hereunder due to Force Majeure. Force Majeure shall include, but not be limited to, the following: 1) physical events such as acts of God, landslides, lightning,

earthquakes, fires, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe, or freezing or failure of wells; 2) acts of others such as strikes, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order, law, statute, ordinance, or regulations promulgated by a governmental authority having jurisdiction; and any other causes, whether of the kind herein enumerated or otherwise, not reasonably within the control of the affected party to prevent or overcome. Each party shall make reasonable efforts to avoid Force Majeure and to resolve them as promptly as reasonably possible once they occur in order to resume performance.

I hereby certify that the foregoing Ordinance was adopted by the Township Board of the Township of Fairfield, County of Lenawee, State of Michigan at a regular meeting held on the 13th day of April 1998. I further certify that the foregoing Ordinance was introduced at a regular meeting of the Township Board held on the 13th day of Oct 1997 and was thereafter on file for public inspection in the office of the Township Clerk, complete in the form in which it was finally enacted, for a period of at least four weeks after publication of a notice that the foregoing Ordinance was on file.