

Chapter 34 GAS FRANCHISE

2:300. Grant of gas franchise.

Subject to all the terms and conditions set forth in this Chapter 34, the City of Ann Arbor grants to the DTE Gas Company ("Grantee"), a corporation organized under the laws of the State of Michigan and its successors and assigns approved by the City in accordance with Section 2:310, a franchise to transact local business in the City of Ann Arbor (the "City" or "Grantor") for the purposes of conveying gas into and through and supplying and selling gas in the City and other incidental matters reasonably related to conveying, supplying, and selling gas in the City ("Franchise Purpose"). This franchise also grants a franchise to lay, maintain, operate, and use gas pipes, mains, conductors, service pipes, and other necessary equipment (hereinafter "Gas Transmission System") in the highways, streets, alleys, and other public places in the City of Ann Arbor, Washtenaw County, Michigan for purposes consistent with the Franchise Purpose and the terms of this franchise. Notwithstanding this grant, Grantee must comply with the permit requirements of Section 2:303 and must comply with all provisions of Ann Arbor City Code, all laws which govern use of the rights-of-way of the City including, but not limited to, the Americans with Disabilities Act and the rules and regulations of the City.

(Ord. No.)

2:301. Term of franchise.

The term of the franchise granted by this Chapter 34 is from the later of April 22, 2025 or the date the franchise agreement is executed by both parties through April 22, 2035, subject to revocation at the will of the City at any time during the term of the franchise. This franchise replaces any previous franchises upon execution via signature by both parties.

(Ord. No.)

2:302. Gas service and extension of system.

Upon approval of the provisions and conditions of this Chapter 34 by Grantee, which shall be made in writing prior to April 22, 2025, Grantee shall furnish gas to applicants residing in the City in accordance with applicable laws, rules, and regulations. The initial installation and any extensions shall be subject to the main extension provisions, the area expansion program provisions (if and where applicable), and other applicable provisions now or from time to time hereafter contained in Grantee's rules and regulations for gas service as filed with the Michigan Public Service Commission ("MPSC") or successor agency having similar jurisdiction.

Failure by Grantee to accept the terms of this franchise in writing shall be deemed to be a decision to continue under the franchise adopted into ordinance in 1997 until its expiration on January 31, 2027.

(Ord. No.)

2:303. Use of streets and other public places.

Notwithstanding any implied or explicit rights granted by this franchise, no road, street, alley, or highway (each a "right-of-way") shall be opened for the laying of trunk lines, lateral mains, or other gas pipes, mains, conduits, service pipes, or other equipment, except upon application to the City or other authority having jurisdiction over the premises, stating the nature of the proposed work and the route and issuance of all necessary permits to Grantee to do the work proposed. Grantee shall, within a reasonable

time after making an opening or excavation, repair the same and leave it in as good condition as before the opening or excavation was made. For maintenance and inspections not requiring an opening or excavation, Grantee shall not unnecessarily obstruct the passage of any of the highways, streets, alleys, or other public places within the City. For maintenance and inspections, Grantee may not occupy any right-of-way of the City until it has obtained all permits required for occupancy. For emergency maintenance or repairs needed to maintain safe operation of Grantee's facilities, Grantee may seek permits after the fact for work completed to maintain safe operation of the facilities. Grantee shall use due care in exercising the privileges herein contained and shall be liable to the City for all damages and costs which may be recovered against the City arising from the default, carelessness, or negligence of Grantee or its officers, agents, and servants.

Nothing in the above shall be read to excuse Grantee from adhering to all provisions of Ann Arbor City Code and the City's Public Services Standard Specifications, as amended.

(Ord. No.)

2:304. Street vacation.

If the City 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 right-of-way, Grantee agrees to consent to the vacation and to move its facilities, at its sole cost and expense, when asked to do so by the City. Grantee shall relocate its facilities to such alternative route as mutually agreed between the City and Grantee, accounting for safety and continuity of service during the term of this franchise.

(Ord. No.)

2:305. Relocation.

If the City requests that Grantee relocate its facilities because of street or utility work, Grantee shall relocate its facilities at its sole expense to such alternate route as mutually agreed between the City and Grantee, accounting for safety and continuity of service during the term of this franchise. If relocation is accomplished as a result of coordination with otherwise scheduled work during the process described in Section 2:310, the City may agree to share relocation costs with Grantee.

(Ord. No.)

2:306. Local State of Emergency, State of Emergency, and/or State of Disaster.

The City shall have the right to require that Grantee make an immediate safe disconnection of any part of Grantee's facilities, without any prior notice, if such action is deemed necessary by the Public Services Area Administrator, the Public Works Manager, the Fire Chief, the Police Chief, or the City Administrator because of a Local State of Emergency or State of Emergency or State of Disaster. Local State of Emergency, State of Emergency, and State of Disaster shall have the meaning stated in PA 390 of 1976, MCL §30.402(2) and relevant sub-sections, and may be declared by any of the officials named. Grantee shall be responsible for repair, at its sole expense, of any of its facilities damaged pursuant to any such disconnection action taken by Grantee at the City's request.

(Ord. No.)

2:307. Identification of system.

- (1) *MISS DIG*. Grantee shall subscribe to and be a member of "MISS DIG," the association of underground utilities formed pursuant to Public Act 174 of 2013, the MISS DIG Underground Facility Damage Prevention and Safety Act, as amended, MCL 460.721 et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

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- (2) *Marking.* Grantee shall mark both the aerial and buried underground portions of its Gas Transmission System in an appropriate manner to indicate its ownership and to provide a toll-free number to call for assistance and to identify the location of the Gas Transmission System within any public right-of-way.

(Ord. No.)

2:308. Indemnity.

- (1) *Disclaimer of liability.* The City shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of the construction, maintenance, repair, use, operation, condition, or dismantling of Grantee's Gas Transmission System and due to the act or omission of any person or entity other than the City.
- (2) *Indemnification.* Grantee shall, at its sole cost and expense, defend, indemnify, and hold harmless the City, all associated, affiliated, allied, and subsidiary entities of the City now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against: (1) Any and all liability, obligation, damages, penalties, claims, liens, limitations, reasonable fees and expenses of attorneys, expert witnesses, and consultants, which may be imposed upon, incurred by, or asserted against the Indemnitees by reason of any act or omission of Grantee, its personnel, employees, agents, contractors, or subcontractors, resulting in personal injury, bodily injury, sickness, disease, or death to any person or damage to, loss of, or destruction of tangible or intangible property, libel, slander, invasion of privacy, and unauthorized use of any trademark, trade name, copyright, patent, service mark, or any other right of any person, firm, or corporation which may arise out of or be in any way connected with the construction, installation, operation, maintenance, or condition of the Gas Transmission System or Grantee's failure to comply with any federal, state, or local law, statute, ordinance, or regulation.
- (3) *Assumption of risk.* Grantee undertakes and assumes for its officers, agents, contractors, subcontractors, and employees, all risk of dangerous conditions, if any, on or about any City-owned or controlled property, including public ways, and Grantee hereby agrees to indemnify and hold harmless the City for personal injury or property damage to any person arising out of the installation, operation, maintenance, or condition of the Gas Transmission System or Grantee's failure to comply with any federal, state, or local statute, ordinance, or regulation.
- (4) *Notice, cooperation, and expenses.*
- (a) The City shall give Grantee prompt notice of the making of any claim or the commencement of any action, suit, or other proceeding covered by the provisions of this Section 2:308.
- (b) Nothing herein shall be deemed to prevent the City from cooperating with Grantee and participating in the defense of any litigation by the City's own counsel.
- (c) Grantee shall pay all expenses incurred by the City 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 City Attorney, and the actual expenses of the City's agents, employees, or expert witnesses, and disbursements and liability assumed by the City in connection with such suits, actions, or proceedings.

(Ord. No.)

2:309. Standards and conditions of service; rules, regulations, and rates.

- (1) Grantee is now under the jurisdiction of the MPSC to the extent provided by statute; and the rates to be charged for gas, and the standards and conditions of service and operation in this City shall

be the same as set forth in Grantee's schedule of rules, regulations, and rates approved by the MPSC, or as shall hereafter be validly prescribed for the City under the orders, rules, and regulations of the MPSC or other authority having jurisdiction.

- (2) The City has adopted a goal of carbon neutrality. The grant of this franchise by the City should not be interpreted by the MPSC, Grantee, or any customer to assume this franchise will be renewed or another franchise for gas service will be granted by the City.

(Ord. No.)

2.310. Coordination of work in the right of way.

Grantee shall be required to attend a meeting not less than once a quarter per calendar year with the Public Services Administration of the City, and their designees and invitees, for the purpose of identifying in good faith, potential opportunities between the City and Grantee to coordinate both parties' work that could affect Grantee's installation, decommissioning, repair, and/or maintenance of the Gas Transmission System in any right-of-way in the City, with the intent of trying to reduce the cost of gas utility services within the City through cost-sharing, decreasing the risk of damage to infrastructure, and increasing public convenience by reducing the length of time any right-of-way in the City is unavailable for public use. Neither the City nor Grantee shall have any obligation to perform any specific activity hereunder unless mutually agreed to, in writing, by both parties.

(Ord. No.)

2.311 Agreement Regarding Climate Action.

Grantee and City agree to comply with and fulfill the terms of the Agreement Regarding Climate Action ("ARCA"). The ARCA has been signed by Grantee's responsible officer and adopted by the City Council together with this franchise. The ARCA arises from collaboration between Grantee and the City regarding certain actions that can be taken in response to climate change. The ARCA provides for points of alignment regarding certain actions that can be taken to combat climate change by Grantee in cooperation with the City. The ARCA is at all times subject to applicable law, regulation, rule, and, where required, MPSC approval. The parties cooperation shall be reported in a jointly prepared compliance report provided annually to City Council. The ARCA includes discussion of opportunities for the City and its citizens, especially those citizens with low or moderate income, to gain access to energy efficiency, distributed energy resources, and evolving technology programs and funding that are made available by Grantee. Except for the requirement to comply with the ARCA, neither the City nor Grantee shall have any independent obligation or requirement to perform any specific activity under this Section 2.311.

(Ord. No.)

2.312 Modification of ARCA.

Upon agreement of the City and Grantee, the ARCA may be modified to adapt to evolving circumstances. Breach of the ARCA shall be addressed as stated in the ARCA and shall not by itself be deemed to be a violation of this Chapter or the franchise. Nothing within the ARCA shall be deemed to limit or otherwise restrict the ability of the City to terminate this franchise at will. In the event of the termination of this franchise, the ARCA shall also automatically terminate.

(Ord. No.)

2:313. City jurisdiction.

Grantee shall be and remain subject to all laws, ordinances, rules, and regulations of the City now in effect or which may be subsequently adopted for the regulation of land uses or for the protection of the health, safety, and welfare of residents of the City.

(Ord. No.)

2:314. Successors and assigns.

Grantee may not sell, assign, sublet, or allow another to use the franchise granted by this Chapter 34 unless the City Council consents to same. If Grantee proposes to transfer or assign any interest of this franchise, written application for such transfer or assignment shall first be made to the City. The City may consider the technical, financial, and fiscal capabilities, as well as the business history and any other information it, in its sole discretion, deems appropriate in evaluating the ability of any prospective successor, assignee, or transferee to undertake the requirements of this franchise. The City Council will not unreasonably withhold approval after review. Any assignment, sublet, or use of this franchise by another entity shall also require the assumption of Grantee's responsibilities under the ARCA.

(Ord. No.)

2:315. Franchise not exclusive.

The rights, powers, and authority granted by this Chapter 34 are not exclusive.

(Ord. No.)

2:316. Franchise not retroactive.

The rights, powers, and authority granted by this Chapter 34 are not retroactive and shall not be construed to authorize any installations or other actions of Grantee which predate the effective date of this Chapter.

(Ord. No.)