

CHARTER TOWNSHIP OF NILES

ORDINANCE NO. 86

SEMCO ENERGY GAS COMPANY GAS FRANCHISE ORDINANCE

ADOPTED: _____

EFFECTIVE: _____

An Ordinance granting a non-exclusive franchise to SEMCO Energy Gas Company to use local public ways and provide a local gas business.

CHARTER TOWNSHIP OF NILES

BERRIEN COUNTY, MICHIGAN

ORDAINS:

SECTION I

GRANT OF NON-EXCLUSIVE RIGHTS

A. Grant and Term. The Charter Township of Niles, Berrien County, Michigan ("Township"), grants to SEMCO Energy Gas Company, a division of SEMCO Energy, Inc., a Michigan Corporation, (Grantee), its successors and assigns, subject to the terms and conditions set forth below, the non-exclusive right, power and authority to construct, maintain and operate gas mains, pipes and services (hereinafter "Gas System") on, along, across, over and under the public highways, streets, alleys, bridges and waterways (hereinafter also referred to as "Public Ways") and to do a local gas business, within the Township for a period of ten (10) years.

B. Consideration. In consideration of the rights, power and authority hereby granted, said Grantee shall faithfully perform all things required by the terms hereof.

C. Extensions. Grantee shall construct and extend its Gas System within the Township, and shall furnish gas service to applicants residing therein in accordance with applicable laws, rules and regulations and its tariffs.

SECTION II

USE OF PUBLIC RIGHTS-OF-WAY 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 install and maintain its Gas System so as to cause minimum interference with the use of the Public Ways. No Public Way shall be obstructed longer than necessary during the work of construction or repair to the Gas System. Grantee's structures and equipment shall be buried so as to not endanger or injure persons or property in the Public Ways. Grantee will use its best efforts to not unreasonably interfere with or disrupt any public utility apparatus or facilities operated by the Township and, to the extent Grantee interferes with or disrupts any such public utility apparatus or facilities, Grantee shall restore such apparatus or facilities to as good order and condition as when Grantee commenced work.

B. Restoration of Public Ways. Grantee and its contractors and subcontractors shall within a reasonably practical time or a time mutually agreed upon by Grantee and the Township restore, at Grantee's sole cost and expense, 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 contractors or subcontractors fail to make such repair within a time mutually agreed upon by Grantee and the Township, the Township shall, among other remedies, be entitled to have the repair completed and Grantee shall pay the costs for such repair.

C. Easements. Any easements over or under property owned by the Township other than the Public Ways shall be separately negotiated with the Township.

D. Compliance with Laws. Grantee shall comply with all applicable laws, statutes, ordinances, rules and regulations regarding its Gas System, whether federal, state or local, now in force or which hereafter may be promulgated.

E. Street Vacation. Grantee accrues no rights under this franchise which would impair the rights of the Township to vacate or consent to the vacation of a Public Way.

F. Maps. Upon request by Township and without expense to the Township, Grantee shall provide the Township with maps showing its Gas System or portions thereof within the Township, but only to the extent (1) such maps do not contain proprietary information and (2) providing such information would not be inconsistent with the Homeland Security Act of 2002, as amended, or other laws governing the disclosure of information on natural gas facilities.

G. Company Representative. The Grantee shall designate an employee to act as a representative to respond to inquiries from the Township regarding the administration of this franchise and the obligations and services herein. The Grantee shall provide the Township with the person's name and telephone number.

H. Notice. Before commencing the construction or repair work on its Gas System which will require excavation in or the closing of any street, alley, bridge, waterway or other public place, the Grantee shall provide the Township with notice, including a description of the work to be performed, in advance of such work. This notice requirement shall not apply to the installation of gas services on privately owned property nor to any other work performed on such privately owned property. Nothing herein shall preclude the Grantee from immediately commencing construction or repair work within any street, alley, bridge, waterway or other public place when deemed necessary to prevent danger to life or property, and in such case, the Grantee shall notify the Township of such work as soon as reasonably practical.

SECTION III

HOLD HARMLESS

The Grantee shall at all times keep and save the Township free and harmless from all loss, costs, and expense caused by the Grantee in its construction, maintenance and operation of the Gas System hereby authorized. In the event that any loss, cost, or expense is caused by the Township, its employees, its contractors, or third parties that are not party to this franchise, this hold harmless obligation shall not apply. In case any action is commenced against the Township on account of the permission herein granted, said Grantee shall, upon notice, defend the Township and save it free and harmless from all loss, cost and damage arising out of said permission. Provided, however, that this Section shall not apply to any loss, cost, damage or claims caused by the Township, its employees, its contractors, or third parties that are not party to this franchise. Notwithstanding any provision contained in this Ordinance, nothing in this Ordinance shall impair any liability protection afforded the Township pursuant to law.

SECTION IV

REVOCAATION

The franchise granted by this Ordinance is subject to revocation upon sixty (60) days written notice by the party desiring such revocation.

SECTION V

RATES

Grantee shall be entitled to charge the inhabitants of the Township for gas furnished at the rates approved by the Michigan Public Service Commission, to the extent it or its successors, have authority and jurisdiction to fix and regulate gas rates and promulgate rules regulating such service in the Township. Such rates and rules shall be subject to review by the Michigan Public Service Commission at any time upon complaint being made by the Township acting through the Township Board or an application by Grantee.

SECTION VI

TOWNSHIP JURISDICTION

Grantee shall be and remain subject to all ordinances, rules and regulations of the Township 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 (1) nothing herein shall be construed as a waiver by Grantee of any of its existing or future rights under State or Federal Law and (2) that to the extent that Grantee's tariff addresses a particular subject, Grantee's tariff shall govern. The Township shall provide written notice to the Grantee of any new ordinances, rules, or regulation relating to the subject matter of this franchise that are adopted after the adoption of this franchise.

SECTION VII

MICHIGAN PUBLIC SERVICE COMMISSION

A. Jurisdiction. Grantee shall, as to all other conditions and elements of service not addressed or fixed by this Ordinance, remain subject to the rules and regulations applicable to gas service by the Michigan Public Service Commission, or its successor bodies to the extent such jurisdiction applies.

B. Filing. Upon request, Grantee shall provide the Township with copies of all documents which Grantee sends to the Michigan Public Service Commission and copies of all orders, decisions, or correspondence Grantee receives from the Public Service Commission, which in any way pertain to the provision of gas service within the Township.

SECTION VIII

ASSIGNMENT OF FRANCHISE

Except where the Michigan Public Service Commission has granted any required approval of the acquisition, transfer of control, merger or encumbrance transaction underlying the assignment of this Franchise, if the Grantee desires to assign this Franchise to any other person, firm, or corporation, before consummating the assignment, the Grantee shall provide written notice to the Township and allow the Township to consider and object to such assignment for a period of forty-five (45) days from the date of such notice. The Township shall not unreasonably object to an assignment if the Assignee is financially able to carry out the Grantee's obligations under this Franchise. The assignment of this Franchise to a subsidiary, division, or affiliated corporation of Grantee or its parent corporation shall not be considered an assignment requiring the consent of the Township Board.

SECTION IX

SEVERABILITY

The various parts, sections and clauses of this Ordinance are hereby declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court or administrative agency of competent jurisdiction, the remainder of the Ordinance shall not be affected thereby.

SECTION X

REPEAL OF CONFLICTING ORDINANCES

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

SECTION XI

EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after adoption by the Township Board, provided, however, it shall cease and be of no effect after thirty (30) days from its adoption unless and until within said period Grantee files an acceptance in writing with the Township Clerk.

CHARTER TOWNSHIP OF NILES

Terry Eull

ACCEPTANCE

This Franchise, being Ordinance No. 86 of the Ordinances of Charter Township of Niles is hereby accepted by the SEMCO Energy Gas Company on _____, 20____, pursuant to the terms and conditions set forth in the foregoing Franchise.

SEMCO ENERGY GAS COMPANY

By: _____

Its: _____