City Council Agenda Item Report

FROM: Ryan Cummins, City Manager

MEETING DATE: March 19, 2025

SUBJECT: Ordinance No. 250324-A: Michigan Gas Utilities Corporation Franchise Agreement

DESCRIPTION:

On September 26, 1994, City Council granted Michigan Gas Utilities (MGU) a 30-year franchise to use the highways, streets, alleys and other public places of the City.

That franchise is now expired and MGU has submitted the attached petition for a new 30-year franchise. MGU also proposed a new franchise agreement ordinance. Section 12.1(c) of the City Charger allows franchise to be granted for up to 30-years. Staff and legal reviewed and the following redline changes have been proposed:

- Clarifying that the franchise is non-exclusive.
- Expressly stating that Michigan Gas must obtain a permit before conducting any work in public places.
    - Please note this is already required and current practice.
- Providing that if the City opts to change the grade of any street and that requires relocation of Michigan Gas' facilities, such relocation shall be at Michigan Gas' expense.
- Cleaning up the indemnification language.
- Adding an "entire agreement" clause clarifying that this ordinance/agreement constitutes the entire understanding between the parties.
- Cleaning up publication and recording sections and simply stating that the ordinance shall be published and recorded as required by law.

BUDGET ACTION:

N/A.

LEGAL REVIEW:

Legal reviewed and will be at your meeting to answer questions.

SAMPLE MOTION:
Motion to approve Ordinance No. 250324-A, Michigan Gas Utilities Corporation Franchise Agreement.

PETITION OF MICHIGAN GAS UTILITIES

TO THE CITY COUNCIL OF THE CITY

OF SAUGATUCK, COUNTY OF ALLEGAN,

STATE OF MICHIGAN FOR A FRANCHISE

Now comes Michigan Gas Utilities Corporation. a Delaware corporation doing business in the State of Michigan under the assumed name Michigan Gas Utilities, (hereinafter referred to as "Grantee"), and petitions the City Council of the City of Saugatuck, County of Allegan, State of Michigan, to grant a franchise to Grantee, its successors and assigns, giving it the right, power, authority and permission to use the highways, streets, alleys and other public places of the City of Saugatuck, County of Allegan, 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 said City, and the right, power and permission to conduct and operate a general gas business and distribution system in said City of Saugatuck, County of Allegan, State of Michigan, for a period of thirty (30) years.

MICHIGAN GAS UTILITIES
CORPORATION

By: Renee Burzynski
Renee Burzynski
Area Manager

Date: November 25, 2024

CITY OF SAUGATUCK

ALLEGAN COUNTY, MICHIGAN

ORDINANCE NO. ___

MICHIGAN GAS UTILITIES CORPORATION FRANCHISE AGREEMENT

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At a meeting of the City Council of the City of Saugatuck, Allegan County, Michigan, held at the City of Saugatuck Hall on _____, 202__ at _____ p.m., City Council Member _____ moved to adopt the following ordinance, which motion was seconded by City Council Member _____.

An Ordinance granting to Michigan Gas Utilities Corporation, 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 City of Saugatuck, County of Allegan, 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 said City, and the right, power, and permission to conduct and operate a general gas business and distribution system in said City of Saugatuck, County of Allegan, State of Michigan, for a period of thirty (30) years.

THE CITY OF SAUGATUCK, ALLEGAN COUNTY, ORDAINS:

Deleted: THE CITY COUNCIL OF THE CITY OF SAUGATUCK, COUNTY OF ALLEGAN, STATE OF MICHIGAN HEREBY ORDAINS…

SECTION 1. GRANTING OF NON-EXCLUSIVE FRANCHISE TO USE HIGHWAYS, STREETS, ALLEYS AND PUBLIC PLACES. The City of Saugatuck, County of Allegan, State of Michigan, (hereinafter called "Grantor" or "City"), hereby grants to Michigan Gas Utilities Corporation, a Delaware corporation (hereinafter called "Grantee"), its successors and assigns, a non-exclusive franchise to use the highways, streets, alleys and other public places of the City of Saugatuck, County of Allegan, State of Michigan, for the purpose of constructing, maintaining and operating a gas distribution system in said City 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 City of Saugatuck, County of Allegan, State of Michigan, for the purpose of supplying and distributing to said City 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 said City 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 said City and for the purpose of conducting and operating a gas business in said City, subject to the terms and conditions hereinafter provided, applicable provisions of the Michigan Constitution of 1963, and applicable federal, state, local, and City statutes, ordinances, rules and regulations.

SECTION 2. USE OF HIGHWAYS, STREETS, ALLEYS, AND OTHER PUBLIC PLACES.

Deleted: NON-DISTURBANCE OF PUBLIC TRAVEL: RESTORATION: CONSTRUCTION MAINTENANCE

(a) In laying its pipes, mains and other appurtenances and repairing and maintaining the same, Grantee shall interfere as little as possible with public travel.

(b) After opening any portion of the highways, streets, alleys or other public place, Grantee shall within a reasonable time restore such highway, street, alley, or other public place to the same order and condition as prevailed before opening.

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(c) 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 said highways, streets, alleys, or other public place.

(d) No highway, street, alley, or other public place within the City shall be opened by Grantee until application has been made to the City and any other authority having jurisdiction in the premises, stating the nature of the work and the route, and until the consent of the City and any other authority has been received, except that in emergency situations, Grantee shall take immediate unilateral actions as it determines are necessary to protect the public health, safety, and welfare; in which case, Grantee shall notify the City as soon as reasonably possible. Grantee is solely responsible for obtaining any necessary governmental permits for excavation or construction and shall pay such reasonable and prudent fees, charges, and/or escrows as may be legally required by such public authority to offset its direct costs of permitting.

(e) If the City lawfully elects to alter or change the grade of any highway, street, alley, or other public place, or construct or replace any underground infrastructure, and

Grantee's pipes, mains, or other appurtenances must be relocated due to a conflict with the alteration, change, construction or replacement, upon reasonable notice from the City, Grantee shall relocate such pipes, mains, or other appurtenances at its own expense.

SECTION 3. HOLD HARMLESS. Grantee shall use due care in exercising the privileges in this Ordinance and, at its sole cost and expense, shall at all times indemnify and hold harmless the City and its officials, employees, contractors, and agents from any loss, damage or expense of any kind on account of the laying, constructing, maintenance, and use of said mains, pipes, conduits and other appurtenances, or any other activity authorized by this Ordinance. However, Grantee need not indemnify or save City harmless from claims, losses and expenses arising out of the negligence of the City, its employees, contractors or agents.

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 said Commission.

SECTION 5. TERM: EFFECTIVE DATE. The rights granted in this franchise shall continue in full force and effect for a period of thirty (30) years from the effective date thereof. The effective date of this franchise shall be the latter of the date of the acceptance of the franchise by Grantee, which if accepted, shall be filed by the Grantee, in writing, within sixty (60) days after the enactment of this ordinance or the day following the date of publication of the ordinance.

SECTION 6. FRANCHISE REVOCABLE; IRREVOCABILITY UPON APPROVAL OF ELECTORS. The franchise herein granted shall be revocable at the will of the governing body of this City, PROVIDED, however, that the same shall become irrevocable if and when confirmed by a three-fifths (3/5) majority of the electors voting upon the question at the next general election or at any special election called for that purpose. Such special election may be held at the request of said Grantee.

SECTION 7. EXPENSES OF ELECTION PAID BY GRANTEE. In the event of a special election, the expenses thereof shall be deposited with the Clerk of this City by the Grantee.

SECTION 8. REPEAL OF PRIOR ORDINANCE. The Franchise Ordinance adopted on

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September 26, 1994, by this City, known as Chapter 26 Gas Franchise of Title II Utilities and Services and all amendments thereto, are hereby repealed. The repeal of the above Ordinance and its amendments does not affect or impair any act done, offense committed, or right accruing, accrued, or acquired or liability, penalty, forfeiture, or punishment incurred prior to the time enforced, prosecuted, or inflicted.

SECTION 9. ENTIRE AGREEMENT. This Ordinance contains the entire agreement between the City and Grantee which grants a gas franchise and thereby, the permission to use the highways, streets, alleys or other public places within the City. Neither the City nor Grantee makes any representations except those expressly or by reference set forth in this Ordinance.

SECTION 10. PUBLICATION AND RECORDING. This Ordinance shall be published and recorded as required by law.

YEAS: _____

NAYS: _____

ABSENT/ABSTAIN: _____

ORDINANCE DECLARED ADOPTED.

_____
Holly Anderson
City of Saugatuck, Mayor

CERTIFICATION

I, Jamie Wolters, being the duly elected and acting Clerk of the City of Saugatuck, Allegan County, Michigan, hereby certifies that (1) the foregoing is a true and complete copy of an Ordinance duly adopted by the City Council at a regular meeting held on _____, 202__, at which meeting a quorum was present and remained throughout, (2) that an original thereof is on file in the records of the City, (3) the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended), and (4) minutes of such meeting were kept and will be or have been made available as required thereby.

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Deleted: The City Clerk is hereby directed to cause a true copy of this ordinance to be published in *The Commercial Record,* a newspaper circulating within the City within the community which this ordinance affects within ten (10) days of its passage

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Deleted: **SECTION 110**. RECORDING OF ORDINANCE. Within one week after the publication of this ordinance, the City Clerk shall record the ordinance within the books and records of the City kept by the Clerk for such purpose and the recording shall be authenticated by the signatures of the Mayor and the City Clerk.¶

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Seconded by: __¶
Voting in Favor: __¶
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Voting Against: __¶
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¶
We hereby certify that the foregoing Ordinance was adopted by the City Council of the City of Saugatuck, County of Allegan, State of Michigan at a regular meeting held on the _____ day of _____, 202_.¶
¶
Dated: __ __¶
Saugatuck City Mayor¶
¶
Dated: __ __¶
Saugatuck City Clerk¶
¶
We certify as follows:¶
¶
Date of Publication: __¶
(Newspaper Proof of¶
Publication attached)¶
¶
¶
Published in: __¶
¶
¶
Ordinance No.: _____ Date recorded in books¶
and records of the City: _____ ¶
¶
Dated: __ __¶
Saugatuck City Mayor¶
¶
Dated: __ __¶
Saugatuck City Clerk

CITY OF SAUGATUCK

ALLEGAN COUNTY, MICHIGAN

ORDINANCE NO. 250324-A

MICHIGAN GAS UTILITIES CORPORATION FRANCHISE AGREEMENT

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upon and use the highways, streets, alleys, and public lands of said City 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 said City and for the purpose of conducting and operating a gas business in said City, subject to the terms and conditions hereinafter provided, applicable provisions of the Michigan Constitution of 1963, and applicable federal, state, local, and City statutes, ordinances, rules and regulations.

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YEAS: _____

NAYS: _____

ABSENT/ABSTAIN: _____

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Holly Anderson
City of Saugatuck, Mayor

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