ORDINANCE NO. 384

FRANCHISE

MICHIGAN GAS UTILITIES

AN ORDINANCE GRANTING TO MICHIGAN GAS UTILITIES CORPORATION, A DELAWARE CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, POWER, AUTHORITY AND PERMISSION TO USE HIGHWAYS, STREETS, AND ALLEY OF THE VILLAGE OF BERRIEN SPRINGS, COUNTY OF BERRIEN, STATE OF MICHIGAN, (OR OTHER PUBLIC PLACES IF THE CONSENT OR APPROVAL OF THE VILLAGE IS FIRST OBTAINED) FOR THE PURPOSE OF LAYING AND MAINTAINING GAS PIPES, MAINS, CONDUITS, VALVES, DRIPS AND ALL NECESSARY APPURTENANCES IN, UNDER AND ALONG OF SAID VILLAGE (OR OTHER PUBLIC PLACES IF THE CONSENT OR APPROVAL OF THE VILLAGE IS FIRST OBTAINED), AND THE RIGHT, POWER, AND PERMISSION TO CONDUCT AND OPERATE A GENERAL GAS BUSINESS AND DISTRIBUTION SYSTEM IN SAID VILLAGE FOR A PERIOD OF THIRTY (30) YEARS.

THE VILLAGE COUNCIL OF THE VILLAGE OF BERRIEN SPRINGS, COUNTY OF BERRIEN, STATE OF MICHIGAN HEREBY ORDAINS:

Section 1. Granting of Franchise to Use Highways, Streets, Alleys and Public Places. The Village of Berrien Springs, County of Berrien, State of Michigan, (hereinafter called the “Village”), hereby grants to Michigan Gas Utilities Corporation, a Delaware corporation (hereinafter called “Grantee”), its successors and assigns, a franchise to use the highways. Streets and alleys of the Village (or other public places if the consent or approval of the Village is first obtained) for the purpose of constructing, maintaining and operating a gas distribution system in said Village 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 Village, for the purpose of supplying and distributing to said village and its inhabitants gas heating and other purposes and, for such purposes, to enter upon and use the highways, streets, alleys of said Village (or other public places if consent or approval of the Village is first obtained) 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 Village and for the purpose of conducting and operating a gas business in said Village subject to the terms and conditions thereinafter 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. No public ways used by Grantee shall be obstructed any longer than necessary to complete the construction or repair work. All of Grantee’s Facilities shall be so placed in the public ways as not to unnecessarily interfere with the use thereof for highway purposes. After opening any portion of the highways, streets and alleys (or other public places if the consent or approval of the Village is first obtained), 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, or alleys is open (or other public place if the consent or approval of the Village is first obtained), Grantee shall maintain reasonable barriers and lights at night and other warnings to the users of said highways, streets or alleys (or other public place if the consent or approval of the Village is first obtained). 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. Said Grantee shall at all times keep, indemnify, and save the Village free and harmless from all loss, costs and expenses, including attorneys’ fees, to which it may be subject by reason of Grantee’s negligence in the laying, constructing, maintenance and use of the Facilities hereby authorized. In case any action is commenced against the Village on account of Grantee’s negligent acts related to the permission herein given, said Grantee shall, upon notice, indemnify and defend the Village, and save it free and harmless from all loss, cost and damage, including attorney fees, arising out of such negligent actions or omissions related to construction and maintenance. However, Grantee need not save the Village harmless from claims, losses and expenses arising out of the negligence of the Village, its employees or agents.

Section 4. Permits. Unless an emergency exists where Grantee determines that there is an immediate and serious threat to the health, safety or welfare of a customer, or the general public, and which requires immediate action, Grantee shall not open or excavate any road street, alley or highway in the Village for the purpose of laying or maintaining natural gas transmission or distribution facilities and other necessary equipment, except upon application to the Michigan Department of Transportation, the Village or other public authority having jurisdiction over the public way, stating the nature of the proposed work and the route. Grantee shall obtain a permit from the public authority having jurisdiction over the highway, street, alley, bridge and other public place for all proposed work within the Village. Prior to any application to construct underground natural gas transmission or distribution facilities and other necessary equipment within the Village, the Village may require a written notice from Grantee within a reasonable time.

Section 5. 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 6. Term. The rights and authority herein granted shall commence upon Grantee’s acceptance and 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 less 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.

Section 7. Franchise Revocable; Irrevocability Upon Approval of Electors. The franchise herein granted shall be cancellable at the will of the governing body of this Village as provided in Section 6, 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 shall be held at the request of said Grantee.

Section 8. Expenses of Election Paid by Grantee. In the event of a special election, the expenses thereof shall be deposited with the Clerk of this Village by the Grantee.

Section 9. Tree Removal. In the case of removal by Grantee that is approved by the Village of a “Village Tree” planted or growing on Village-owned or maintained property or a “Street Tree” located on a street right-of-way or curblawn, the Grantee shall pay the Village $500.00 to replace the tree and to cover administrative costs. However, in the event that the Village does not replace the tree the Village shall refund the payment to Grantee.

Section 10. Repeal of Prior Ordinance. The Franchise Ordinances adopted by Grantor, known as Ordinances Numbers 264 and 380 and all amendments thereto, are hereby repealed. The repeal of the above Ordinances and their 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 11. Publication. The Village Clerk is hereby directed to cause a true copy of this ordinance to be published in the Journal Era, a newspaper circulating within the Village within thirty (30) days hereof.

Section 12. Recording of Ordinance. Within one (1) week after the publication of this ordinance, the Clerk of the Council shall record the publication of this ordinance in the Record of Ordinances book kept by the Clerk for such purpose. Such record shall include the date of passage hereof, the names of the members voting hereon and how each member voted, and the ordinance shall be authenticated by the Village Council President and the Clerk by affixing their official signatures on the record.

Presented by: Jack Davis

Seconded by: Barry Gravitt

Voting in Favor: President Pro-Tem Barry   
 Gravitt, Jack Davis, Sheila Snyder, Sandy   
 Swartz and President Jesse Hibler.

Voting Against: None

Absent: Trustees Lonna Johnson and  
 Kristin von Maur

We hereby attest that the foregoing Ordinance was adopted by the Village Council of the Village of Berrien Springs, County of Berrien, State of Michigan at a regular meeting held on the 20th day of December, 2021.

Dated: 12/20/2021 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Berrien Springs Village President

Dated: 12/20/2021 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Berrien Springs Village Clerk

We further certify that the foregoing Ordinance was published and filed as follows:

Published in: *The Journal Era*

Date of Publication: January 05, 2022

(newspaper Proof of

Publication attached)

Ordinance No. : 384 Date recorded in

Record of Ordinances Book: 01/05/2022

Dated: 01/05/2022 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Berrien Springs Village President

Dated:01/05/2022 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Berrien Springs Village Clerk