

13.0700

**AQUILA, INC. FRANCISE ORDINANCE
TOWNSHIP OF GRAND HAVEN, MICHIGAN
ord. no. 398 eff. Sept. 24, 2004**

An Ordinance granting to Aquila, Inc., d/b/a Aquila Networks, a Delaware Corporation doing business in the State of Michigan, F/K/A Utilicorp United, Inc. and/or Michigan Gas Utilities, it's successors and assigns, the right, power, authority, and permission to use the highways, streets, alleys, and other public places of the Township of Grand Haven, County of Ottawa, State of Michigan, for the purpose of laying and maintaining natural gas pipes, mains, conduits, valves, drips, and all necessary appurtenances in, under, and along the highways, streets, alleys, and other public places, of said Township, and the right, power, and permission to conduct and operate a general natural gas business and distribution system in said Township of Grand Haven, County of Ottawa, State of Michigan for a period of ten (10) years.

THE TOWNSHIP OF GRAND HAVEN, OTTAWA COUNTY, MICHIGAN
ORDAINS:

13.0701

Sec. 1 NON-EXCLUSIVE FRANCHISE GRANTED

The Charter Township of Grand Haven, Michigan, (hereinafter referred to as "Grantor"), hereby grants a non-exclusive franchise to Aquila, Inc., d/b/a Aquila Networks, a Delaware corporation (hereinafter referred to as "Grantee"), its lessees, successors and assigns. Grantee is hereby granted the right, privilege, franchise, permission and authority to lay, construct, install, maintain, operate and extend in, along, over or across the present and future streets, alleys, avenues, bridges, public rights-of-way and public places as are now within the present or future limits of said Grantor, a natural gas distribution system and all facilities necessary for the purpose of supplying natural gas or processed gas for all purposes to the inhabitants of said Grantor and consumers in the vicinity thereof, and for the distribution of natural gas from or through said Grantor to points beyond the limits thereof. Such facilities shall include, but not be limited to, all mains, services, pipes, conduits and appliances necessary or convenient for transmitting, transporting, distributing and supplying natural gas for all purposes for which it may be used, and to do all other things necessary and proper in providing natural gas service to the inhabitants of Grantor and in carrying on such business; provided, however, that this franchise shall not include facilities for the extraction or clarifying of natural gas product.

In consideration of the rights, power and authority granted by the Grantor, the Grantee shall faithfully perform all duties required by the terms of this Ordinance.

13.0702 Sec. 2 TERM

The rights and privileges granted by this Ordinance shall remain in effect for a period of ten (10) years from the effective date of this Ordinance. The franchise right, power and authority granted herein shall automatically be renewed for a 10-year term thereafter unless, within six (6) months prior to the expiration of the first 10-year term, one party provides the other written notice of its intent not to renew the franchise for the upcoming 10-year term.

13.0703 Sec. 3 GOVERNING RULES AND REGULATIONS

This Ordinance is granted subject to all conditions, limitations and immunities now provided for, or as hereafter amended, and applicable to the operations of a public utility, by State or Federal law. The rates to be charged by Grantee for service within the present or future corporate limits of Grantor and the rules and regulations regarding the character, quality and standards of service to be furnished by Grantee shall be under the jurisdiction and control of such regulatory body or bodies as may, from time to time, be vested by law with authority and jurisdiction over the rates, regulations and quality and standards of service to be supplied by Grantee.

The Grantee specifically agrees to comply with all such laws, statutes, ordinances, and rules and regulations regarding the installation, construction, ownership, or use of the gas and supply system; and specifically Grantee shall be subject to all present and future Township ordinances and policies including, but not limited to, all zoning regulations.

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 natural gas service by the Michigan Public Service Commission (“MPSC”) or its successor bodies. Grantee shall provide Grantor, upon reasonable request, copies of all documents that Grantee sends to the MPSC and copies of all orders, decisions, or correspondence identified in this franchise Grantee receives from said MPSC related to the Grantor and this franchise.

If an energy supplier is unable to furnish an adequate supply of energy due to an emergency, an order or decision of a public regulatory body, or other acts beyond the control of the Grantee, then the Grantee shall have the right and authority to adopt reasonable rules and regulations limiting, curtailing or allocating extensions of service or supply of energy to any customers or prospective customers, and withholding the supply of energy to new customers, provided that such rules and regulations shall be uniform as applied to each class of customers or prospective customers, and shall be non-discriminatory as between communities receiving service from the Grantee.

13.0704 Sec. 4 MISS DIG

If eligible to join, Grantee shall subscribed to and be a member of “Miss Dig” the association of utilities formed pursuant to Act 53 of the P.A. of 1974, as amended, being MCL 460.701, *et seq*, and shall conduct its business in conformance with the statutes, provisions and regulations promulgated thereunder.

13.0705 Sec. 5 INSURANCE

Grantee shall maintain in full force and effect, for the entire effective period of this Ordinance, commercial general liability insurance covering property damage and bodily injury associated therewith in an amount not less than \$5,000,000; and an automobile liability insurance policy to cover all vehicles used in connection with these activities in the amount of \$2,000,000; and to provide proof, upon request of said insurance to the Grantor in the form of a certificate of insurance.

13.0706 Sec. 6 EMPLOYEE IDENTIFICATION

All personnel of Grantee who have, as part of their normal duties, contact with the general public, shall upon request, provide an identification card signifying employment. Service vehicles of Grantee, its contractors and subcontractors, shall be clearly identified as such to the public.

13.0707 Sec. 7 CONSTRUCTION AND MAINTENANCE OF COMPANY FACILITIES

Any pavements, sidewalks or curbing taken up and any and all excavations made shall be done after prior written notice to inhabitants of Grantor and in such a manner as to cause only such inconvenience to said inhabitants and to the general public as is reasonably necessary. Repairs and replacements shall be made promptly by Grantee, leaving such properties in as good as condition as existed immediately prior to excavation. Promptly shall be deemed to be not more than 30 days following the completion of work.

Grantee agrees that for the term of this grant, it will use its best efforts to maintain and secure facilities and equipment sufficient to meet the current and future energy requirements of Grantor, its inhabitants and industries, and to reasonably protect them from loss of service through acts of vandalism or terror. While maintaining its facilities and equipment, Grantee shall obtain permits as required by ordinance, 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 Grantor as soon as reasonably possible.

Prior to any construction, Grantor will give Grantee reasonable notice, in the form of plans and specifications for street improvements where paving or resurfacing of a permanent nature is involved that affect Grantee's facilities. The notice shall contain the nature and character of the improvements, the rights-of-way upon which the improvements are to be made, the extent of the improvements and the time when Grantor will start the work, and, if more than one right-of-way is involved, the order in which this work is to proceed. The notice shall be given to the Grantee a sufficient length of time, considering reasonable working conditions, in advance of the actual commencement of the work to permit Grantee to make any additions, alterations, or repairs to its facilities.

13.0708 Sec. 8 EXTENSION OF COMPANY FACILITIES

Upon receipt and acceptance of a valid application for service, Grantee shall, subject to its own economic feasibility criteria, make reasonable extensions of its distribution facilities to serve customers located within the current or future corporate limits of Grantor. The Grantee shall comply with all applicable zoning rules and regulations in connection with such extension.

13.0709 Sec. 9 RELOCATION OF COMPANY FACILITIES

Grantee shall install its facilities within public rights-of-way pursuant to the standards and profiles developed and adopted by the Ottawa County Road Commission. If the Grantee's facilities are installed contrary to these standards or profiles and interfere with the extension, construction or maintenance of public utilities, including but not limited to municipal water, sanitary sewer, or storm sewer, the Grantee can be required by the Grantor to relocate the facilities at the Grantee's expense. The Grantor is not expected to modify the standards or profile of its public utilities as delineated by the Ottawa County Road Commission for the convenience of the Grantee.

If Grantor, or the Ottawa County Road Commission, elects to change the grade of or otherwise alter any street, alley, avenue, bridge, public right-of-way, public place or alter any public utility within the public right-of-way for a public purpose, Grantee, upon reasonable notice from Grantor, shall remove and relocate its facilities or equipment situated in the public rights-of-way, if such removal is necessary to prevent interference and not merely for the convenience of the Grantor, at the cost and expense of Grantee.

If Grantor orders or requests Grantee to relocate its facilities or equipment for the primary benefit of a commercial or private project, or as a result of the initial request of a commercial or private developer or other non-public entity, and such removal is necessary to prevent interference and not merely for the convenience of the Grantor or other right-of-way user, Grantee shall receive

payment for the cost of such relocation as a precondition to relocating its facilities or equipment from said commercial or private developer or other non-public entity.

Grantor may consider reasonable alternatives in designing its public works projects so as not to arbitrarily cause Grantee unreasonable additional expense in exercising its authority under this section. Grantor shall exercise good faith and attempt to partner with Grantee to provide a reasonable alternative location for Grantee's facilities when relocation is required.

Grantor shall give Grantee written notice of vacating of a public right-of-way. Vacating of a public right-of-way shall not deprive the Grantee of its right to operate and maintain existing facilities, until the reasonable cost of relocating the same are first paid to the Grantee.

Any person or corporation desiring to move a building or other structure along, or to make any unusual use of any street, alley, avenue, bridge, public right-of-way or public place which shall interfere with the facilities or equipment of the Grantee, shall first give notice to the Grantor and the Grantee and pay a sum sufficient to cover the expense and damage incident of moving Grantee's facilities and equipment.

13.0710 Sec. 10 CONFIDENTIAL INFORMATION

Grantor acknowledges that certain information it might request pursuant to this franchise may be of a proprietary and confidential nature. If Grantee requests that any information provided by Grantee to Grantor be kept confidential due to such proprietary or commercial value, Grantor and its employees, agents, and representatives shall maintain the confidentiality of that information, to the extent allowed by law. If Grantor is requested or required by legal or administrative process to disclose any such confidential information, Grantor shall promptly notify Grantee of such request or requirement so that Grantee may seek an appropriate protective order or other relief. Grantor shall use all reasonable efforts to ensure that the confidentiality of Grantee's confidential information is maintained.

13.0711 Sec. 11 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, freezing, storms, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery, equipment or distribution or transmission lines; 2) acts of others such as strikes, work-force stoppages, riots, sabotage, insurrections or wars; 3) governmental actions such as necessity for compliance with any court order,

law, statute, ordinance, executive order, or regulation 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 such event as promptly as reasonably possible once it occurs in order to resume performance; provided, however, that this provision shall not obligate a party to settle any labor strike.

13.0712 Sec. 12 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 body which shall succeed to the jurisdiction, right, power, and authority of said Commission.

13.0713 Sec. 13 HOLD HARMLESS

The Grantee and its contractors and subcontractors shall use due care at all times in exercising the privileges granted herein. Grantee shall hold harmless, defend and indemnify the Grantor and its officers, agents and employees from and against all costs, claims, damages, liabilities, expenses and judgments of proceedings of whatever nature, including without limitations, attorneys fees arising from the Grantee's exercise of its rights pursuant to this Franchise Ordinance whether by the Grantee or the Grantee's contractors or subcontractors; provided, however, that Grantee need not save harmless Grantor from claims, demands, losses and expenses arising out of the sole negligence of Grantor, its employees or agents.

13.0714 Sec. 14 FRANCHISE REVOCABLE; IRREVOCABILITY UPON APPROVAL OF ELECTORS

The franchise herein granted shall be revocable at the will of the governing body of this Township upon sixty (60) days notice thereof; PROVIDED, however, that the same shall become irrevocable if and when confirmed by a 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. In the event of a special election, the expenses thereof shall be paid for by Grantee, and said expenses shall be deposited with the Clerk of the Township in advance of any such election.

13.0715 Sec. 15 SEVERABILITY

If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

13.0716 Sec. 16 NON- WAIVER

Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

13.0717 Sec. 17 REPEAL CONFLICTING ORDINANCES

This ordinance, when accepted by Grantee as provided below, shall constitute the entire agreement between the Grantor and the Grantee relating to this franchise and the same shall supersede all prior ordinances pertaining to this franchise agreement, and any terms and conditions of such prior ordinances or parts of ordinances in conflict herewith are hereby repealed. Ordinance No. 211 dated the 22nd day of August 1994 of the Township of Grand Haven, Michigan, is hereby repealed as of the effective date hereof.

13.0718 Sec. 18 EFFECTIVE DATE AND ACCEPTANCE

This Ordinance shall become effective and be a binding contract between the Grantor and Grantee, upon its final passage and approval by Grantor, in accordance with applicable laws and regulations, and upon acceptance by Grantee by written instrument within sixty (60) days of passage by the governing body, and filed with the Grand Haven Township Clerk, of Grand Haven Township, Michigan. The Grand Haven Township Clerk shall sign and affix the community seal to acknowledge receipt of such acceptance, and return one copy to Grantee. If Grantee does not, within sixty (60) days following passage of this Ordinance express in writing its objections to any terms or provisions contained therein, or reject this ordinance in its entirety, Grantee shall be deemed to have accepted this ordinance and all of its terms and conditions.

13.0719 Sec. 19 EFFECT AND INTERPRETATION OR ORDINANCE

The captions which precede each section of this Ordinance are for convenience in reference only and shall not be taken into consideration in the interpretation of any of the provisions of this Ordinance.

13.0720 Sec. 20 PUBLICATION

The Township Clerk is hereby directed to cause a true copy of this Ordinance to be published in the *Grand Haven Tribune*, a newspaper circulating in the Township within thirty (30) days hereof. Grantee shall promptly reimburse Grantor for all publishing costs incurred for the adoption of this ordinance.

13.0721

Sec. 21 RECORDING OF ORDINANCE

Within one week after the publication of this Ordinance, the Township Clerk shall record the Ordinance in the Book of Ordinance 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. An attested copy of the Ordinance shall also be filed with the Ottawa County Clerk within one week after publication. This ordinance will be effective September 24, 2004.