

## FRANCHISE AGREEMENT

1. Franchise. The City of Harrington ("City") hereby grants Chesapeake Utilities Corporation, a Delaware Corporation, its successors or assigns ("Chesapeake" or "Company") the right, privilege and franchise to carry on, within the municipal limits of the City, inclusive of areas annexed hereafter, the business of acquiring, distributing and selling natural, or mixed gas ("gas") for light, heat, power and other purposes. The right, privilege and franchise hereby granted shall be deemed to include the right to construct, operate and maintain in, along and upon the streets, alleys, bridges, public highways and other public places within the City, gas mains, valves, manholes, meters, service connections, and other appurtenances for the purpose of distributing gas for light, heat, power and other purposes to the said City and the inhabitants thereof. The Company's rights hereunder shall not be assigned without the consent of the City, which consent shall not be unreasonably withheld.

The term of this franchise shall be for the initial term of fifteen (15) years from the effective date hereof, unless terminated sooner in accordance with the other terms and conditions set forth herein. The Company will provide written notification with proof of receipt to the City eighteen (18) months prior to, and no sooner than twenty-four (24) months before the expiration date of the agreement. This franchise shall renew for an additional term of fifteen (15) years unless either party hereto provides the other party with written notice of termination at least six (6) months prior to the expiration of the initial term.

The City may request reasonable extensions of the system to serve residents and/or non-residents of the City. In evaluating a request for an extension, Chesapeake shall comply with the terms and conditions of Chesapeake's line extension policy, as set forth in Chesapeake's tariff on file with the Delaware Public Service Commission. After Chesapeake, at its sole expense, has conducted a cost analysis of any such request by the City to extend the system, the financial

responsibility of Chesapeake, the City, the property owner, and any other party shall be reasonably determined, subject to the terms and conditions of Chesapeake's line extension policy.

As Company main extensions pass adjacent to City properties with improved structures (pump stations, buildings, etc.), Company shall provide a service connection line stub out for future connection to the gas utility by City.

2. Indemnification. Chesapeake, for itself, its successors and assigns, covenants and agrees to indemnify and hold harmless the City, its directors, officers, agents, employees or designees, of and from any and all damage, injury, claim, penalty, judgments, costs, charges, expenses (including reasonable attorney's fees) and/or any other liability of any nature arising directly or indirectly from the exercise of Chesapeake's rights, privileges and franchise under this Agreement, including, but not limited to, any liability by reason of the distribution of gas under this Agreement, and in connection therewith, the operation or use of streets, alleys, bridges, public highways or other public places by Chesapeake. Notwithstanding the foregoing, Chesapeake shall not be obligated to indemnify the City, its directors, officers, agents, employees or designees for any claim or liability arising directly or indirectly out of the negligence of the City, its directors, officers, agents, employees, or designees. It is expressly understood and agreed that Chesapeake is and shall be deemed to be an independent contractor for purposes of this Agreement and shall therefore be solely responsible to all parties for its respective acts and/or omissions. This indemnification shall survive the termination of this Agreement. The City shall be added as an additional insured under Chesapeake's general public liability policy. Chesapeake shall, at its sole cost and expense, provide and keep in force a general liability insurance policy protecting and indemnifying Chesapeake and the City. Chesapeake shall send a copy of the certificate of insurance for their general liability policy to the City of Harrington within 30 days of the policy's renewal and each time the policy is renewed, showing the City as an additional insured on the policy.

3. Permits. In order for the Company to cut into, open or excavate in or under the bed of any street, road, highway, lane, alley, avenue, sidewalk, curb or other public way within the corporate limits of the City for the purpose of altering, installing or making additions to any of the gas mains, valves, manholes, meters, service connections, or other appurtenances for any other purpose, the Company must first obtain from the City Manager or his/her designee a permit to cut into, open or excavate such street, road, highway, lane, alley, avenue, curb, sidewalk or other way, except as hereinafter provided. Upon compliance with the above terms, the City Manager shall then issue a permit for such cutting into, opening or excavating, subject to the above terms and conditions of this agreement, and upon being satisfied that such opening or excavation is in a proper location and for a lawful purpose.

a. Application Required. If the Company needs to cut into, open or excavate in or under the bed of any street, road, highway, lane, alley, avenue, curb, sidewalk or other public way for any purpose as aforesaid shall first make written application to the City Manager or his/her designee for a permit to conduct such work, stating in such application the name of the street, the name and present or past known address of the person, firm or corporation on whose behalf the cutting into, opening or excavating is to be done, the location on such street where such opening or excavation is to be made, the purpose of the opening or excavation, the length, the width and depth of the opening or excavation and the date when such work will be completed.

b. Fee. Each such application for main extensions shall be accompanied by a permit fee of two hundred fifty dollars (\$250.00) and a seventy-five dollar (\$75.00) Utility Review Fee, payable to the City. Fees are not applicable for service connections.

c. Issuance. Upon compliance with the above terms, the City Manager shall then issue a permit for such cutting into, opening or excavating, subject to the above terms and conditions of this agreement.

4. Restorations. The Company shall complete the work pursuant to the terms of such permit as promptly as possible and shall take all precaution to protect all persons and property from damage and shall properly protect the public from injury by reason of any such cutting into, opening or excavation. Any hole, opening, excavation, obstruction or dangerous area created incident to such work shall be roped off or otherwise guarded and caution lights maintained and kept thereat for a period of one hour before sunset to one hour after sunrise. All work performed and materials used in the making and filling of such cutting into, opening or excavation shall comply with the standard specifications of the City of Harrington, or the Delaware Department of Transportation, July 1985, as amended, whichever is applicable. Upon completion of the work, the Company shall fully fill any such opening or excavation so made pursuant to the standard specifications of the City and any additional requirements in this agreement and shall immediately repair and restore the street or way disturbed thereby pursuant to such standard specifications and shall so maintain the same for six months after final inspection and written acceptance by the City Manager or his/her designee on behalf of the City, pursuant to the standard specifications of the City, as aforesaid. In the event the Company fails to comply with these provisions or with the standard specifications of the City, as aforesaid, for 48 hours after written notice to do so shall have been given by the City Manager, said City Manager may proceed to repair, restore and maintain such street, road, highway, lane, alley, avenue, sidewalk, curb or other public way at the cost and expense of the Company. When a City street must be closed to vehicular traffic for a specific period of time, it must be noted on the application with an estimated closing and opening date, not to exceed 15 working days. Upon good cause shown, the fifteen-day period may be extended by the City Manager for an additional period not to exceed 15 working days. If the street is closed for a period longer than 15 working days, a fine of \$25 per day for each successive workday may be levied by the City Manager.

5. Emergencies. (a) In the event of an emergency, i.e. gas leak, severed gas line, etc., and where life and/or property may be in jeopardy, time will be of the essence, and any above operational procedures or language that may inhibit a safe and timely repair are waived.

(b) Chesapeake will provide copies of its Emergency Plan to the City Manager, Fire Chief, and Chief of Police, as well as any other City officials who may request it. Chesapeake will review its Emergency Plan annually, not to exceed 15 months, and revisions will be distributed to the City Manager, Fire Chief, and Chief of Police, as soon as the revised plan can be reasonably printed and distributed.

(c) Chesapeake will provide public information to its customers, the appropriate governmental organizations, and persons engaged in excavation-related activities to recognize a gas emergency. The Company will provide information to the public in reporting gas odors, leaks, and other emergencies to the proper Division's emergency number. Periodic training sessions will be conducted with all Fire Companies in a Division's service territory. These training sessions will coordinate response, resources, and responsibilities between all parties involved.

6. Rates. The determination of the Company's rates shall be subject solely to the rules and regulations of such state or federal authority that shall have jurisdiction over this type of industry or enterprise.

7. Franchise Fee. As long as the Company remains the only natural gas provider in the City, the Company shall pay the City of Harrington a franchise fee in the amount of \$.01 per 100 cubic feet (ccf) of gas delivered to customers through the Company's distribution system within the limits of the City during the term hereof. The Company is authorized, subject to any necessary approvals from any State or Federal regulatory body having jurisdiction over the Company, to collect said franchise fee from the Company's customers within the City, including any future annexations of the City, by way of a surcharge on the customer's bill. The franchise fee otherwise payable hereunder shall not apply to any gas delivered to any customer of the Company from whom the

company is prohibited by law from collecting said surcharge. The payment of the franchise fee and its supporting documentation will be as follows:

1. On December 31st of each year Chesapeake will calculate the total consumption of natural gas for the previous twelve-months (including December) for all Chesapeake Delaware Division natural gas customers who use natural gas within the corporate limits of Harrington, and who pay a monthly franchise fee according to the terms of this agreement.

2. The amount payable to the City of Harrington will be equal to the total ccf's consumed by Chesapeake Delaware Division natural gas customers, except those who may be exempt from paying a franchise fee, multiplied by the franchise fee per ccf.

3. Chesapeake will mail the total franchise fee payment to the City of Harrington no later than February 15th.

4. Chesapeake will enclose the following supporting documentation by month for the calendar year with each payment:

- Number of Customers
- Total Consumption (ccf)
- Consumption per Customer
- Franchise Fee

8. Receivership. Subject to the provisions of the federal bankruptcy laws, the City shall have the right to cancel this Agreement one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days or unless:

(a) within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Agreement and remedied all defaults hereunder; and

(b) such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Agreement.

9. Interpretation. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

10. Financial Risk. During the term of this Agreement, the Company intends to construct certain gas distribution facilities within the City. For any such investments in gas distribution facilities made by the Company, the City will not bear the financial risk associated with the Company's investment in such distribution facilities.

11. Forces and Effect. This Agreement shall become effective and shall constitute a binding contract between the City and the Company on the latter of (a) the date when the same shall have been duly adopted by a majority vote of the Council of the City in any regular or special meeting wherein action is taken in compliance with the City Charter; or (b) the date when the provisions hereof shall have been accepted by the Company as signified by the Company's execution. This Agreement is also enacted pursuant to and in the manner provided for in the Underground Utility Damage Prevention and Safety Act of Title 26 of the Delaware Code (as amended) and Chapter 13 ("Gas, Water and Oil Corporations") of Title 26 of the Delaware Code (as amended). Performance of the terms of this Agreement shall commence on the effective date of this Agreement.

12. Approval. Chesapeake warrants and represents that this Agreement represents the binding obligation of Chesapeake and that Chesapeake has acquired, or prior to the effective date will acquire, any and all necessary approvals from any third party whose approval is necessary, including but not limited to any approvals required by the Delaware Public Service Commission.

13. Compliance with Laws. Chesapeake shall comply with all applicable federal, state and local laws, ordinances and regulations related to the provision of gas services under this Agreement and any activity related thereto, including but not limited to, any rules and regulations adopted by the Delaware Public Service Commission, the Underground Utility Damage Prevention and Safety Act of Title 26 of the Delaware Code (as amended) and Chapter 13 ("Gas, Water and Oil Corporations") of Title 26 of the Delaware Code (as amended).

14. Notice. Any notice required herein shall be given by registered or certified mail, postage prepaid, addressed as follows:

If to the City:

City of Harrington  
Attn: City Manager  
106 Dorman Street  
Harrington, DE 19952

With a copy to: City Solicitor

William W. Pepper Sr., Esquire  
414 South State Street  
Dover DE 19901

If to Chesapeake:

Chesapeake Utilities Corporation, Inc.  
Attn: Director of Natural Gas Operations  
350 S. Queen St.  
Dover, DE 19904

With a copy to:

William A. Denman, Esquire  
Parkowski, Guerke & Swayze  
PO Box 598  
Dover, DE 19903

15. Entire Agreement. This Agreement comprises the entire Agreement between the parties hereto relative to the subject matter hereof, and upon the effective date hereof no earlier agreements, promises or other understandings entered into by either party or its predecessors or assignors in connection therewith, shall be of any force or effect.

16. Governing Law. This Agreement shall be governed by the laws of the State of Delaware and the parties hereto agree that any litigation relating to this Agreement shall be conducted in the state courts of Delaware.

17. Severability. In the event that any part of this Agreement is ruled invalid or unenforceable, the parties agree that this Agreement is deemed severable and that the balance of the terms will remain in full force.

18. Amendments. This Agreement shall not be amended except in writing executed by all parties hereto.

19. Contra Proferentum. The fact that one party has drafted this Agreement shall in no way be used against that party in construing the terms, conditions, and obligations hereunder.

ADOPTED with the concurrence of a majority of all members of the Council of the City of  
Harrington at the regular meeting this \_\_\_\_ day of \_\_\_\_\_, 2016.

ATTEST: THE CITY OF HARRINGTON

\_\_\_\_\_  
CLERK OF COUNCIL

\_\_\_\_\_  
MAYOR

The foregoing franchise is hereby accepted this \_\_\_\_ day of \_\_\_\_\_, 2016, by Chesapeake  
Utilities Corporation.

ATTEST: CHESAPEAKE UTILITIES CORPORATION

\_\_\_\_\_  
SECRETARY

\_\_\_\_\_  
SR. VICE PRESIDENT

ORDINANCE 91-01

AN ORDINANCE GRANTING TO CHESAPEAKE UTILITIES CORPORATION, ITS SUCCESSORS AND ASSIGNS, HEREINAFTER REFERRED TO AS THE COMPANY, THE RIGHT, PRIVILEGE AND FRANCHISE OF CARRYING ON IN THE CITY OF HARRINGTON, THE BUSINESS OF PRODUCING, MANUFACTURING, OTHERWISE ACQUIRING, DISTRIBUTING, AND SELLING NATURAL, MIXED OR MANUFACTURED GAS FOR LIGHT, HEAT, POWER, AND OTHER PURPOSES.

Be it ordained by the Mayor and Council of the City of Harrington in council met:

Sec. 1. The exclusive right, privilege, and franchise is hereby granted for a term of twenty-five (25) years to the Chesapeake Utilities Corporation, its successors and assigns, to carry on in the City of Harrington the business of producing, manufacturing, or otherwise acquiring, distributing and selling natural, mixed or manufactured gas for light, heat, power, and other purposes. The exclusive right, privilege and franchise hereby granted shall be deemed to include the right to construct, operate and maintain in, along and upon the streets, alleys, bridges, public highways and other places in the City of Harrington, gas mains, valves, manholes, meters and service connections for the purpose of distributing gas for light, heat, power and other purposes to the said City of Harrington and the inhabitants thereof.

Sec. 2. The Company is to protect and save the City of Harrington harmless and indemnified against all claims for injury and damages of any nature arising directly or indirectly by reason or any act of negligence or omission to act of the Company, its agents or employees in connection with the operation or use of streets, alleys, bridges, public highways, or public places under the franchise hereby granted, including all Court costs and expenses incidental to any suit therefrom.

Sec. 3. Before any street, alley, bridge, public highway or other public place be opened, obstructed or in any manner interfered with for the purpose of altering, installing or making additions to any of the gas mains, valves, manholes, meters or service connections, or for any other purpose, written application shall be made to the Mayor, or such other person as the Mayor and Council of the City of Harrington shall from time to time designate, setting forth in general terms the nature, location and extent of openings or obstructions desired; a permit from said Mayor, or such other designated person, shall be obtained on payment of a fee of twenty five dollars (\$25.00) for each such opening, and all specifications set forth in said permit as to the minimum or maximum area or depth or both, for openings or other matters, shall be strictly observed by the Company. The repairing and restoring for all openings and obstructions to the condition of the adjacent road bed shall be completed by the Company, or by a firm or person employed by it, as soon as practical and shall be completed in accordance with reasonable and customary standards of road

construction at the sole expense of the Company. Provided, however, that upon the failure of the Company to make such repairs and restorations within a reasonable time, the City of Harrington shall have the right to make such repairs or restorations, or to employ a person or firm to make such repairs and restorations and charge the Company for all reasonable costs of such repairs and restorations of said streets. Note: The opening fee may be reviewed within one month of the anniversary of this ordinance and amended by simple resolution of City Council, upon prior notification of Chesapeake Utilities Corporation of the date of said review.

Sec. 4. If the location of any gas mains, valves, manholes, meters or service connection, or the erection, laying or removing of the same, does not interfere unreasonably with ordinary travel and/or the use of the streets, alleys, bridges and public ways of the City of Harrington and otherwise complies with this ordinance, the Mayor, or other designated person, shall approve the same and issue a permit or permits therefor upon payment of the ordained fee.

Sec. 5. All rates and charges fixed by the Company shall be fair, reasonable, and uniform. The determination of the Company's rates shall be subject solely to the rules and regulations of such state and federal authority which shall have jurisdiction over this type of industry or enterprise.

Sec. 6. This ordinance shall be in full force and effect and constitute a binding contract between the City of Harrington and the Company where the same shall have been duly adopted by a majority vote of the Council of the City of Harrington in any regular or special meeting wherein action is taken in compliance with the City Charter and when the provisions hereof shall have been accepted by the Company. This ordinance is also enacted pursuant to and in the manner provided for in 26 Del. Code Sec. 1301.

ADOPTED AND SIGNED WITH THE CONCURRENCE OF A MAJORITY OF ALL MEMBERS OF THE COUNCIL OF THE CITY OF HARRINGTON AT THE REGULAR MEETING THE NINETEENTH DAY OF FEBRUARY, NINETEEN HUNDRED NINETY ONE.

First Reading February 4, 1991;  
Second Reading February 19, 1991.

Winston Linton, Mayor

*Winston Linton*



William Porter, Vice-mayor

*William Porter*

Clifford Outten, Councilman

*Clifford Outten*

Douglas Crouse, Councilman

*Douglas Crouse*

Jack Kohland, Councilman

*Jack Kohland*

Joseph Gleason, Councilman

*Joseph Gleason*

David Shultje, Councilman

*David R. Shultje*

ATTESTED BY CLERK OF COUNCIL:

*J.B. Williams 2/19/91*

The foregoing ordinance is hereby accepted this 12th  
day of April, 1991 by Chesapeake Utilities

Corporation by: *Ralph J. Ledkins*

ATTESTED BY: *Mary Lou Hawkins* (SEAL)

Notary Public  
MARY LOU HAWKINS



\$4.00 STATE DOCUMENT FEE PAID

RECEIVED FOR RECORD

MAY 15 3 20 PM '91

MICHAEL T. SCUSE  
RECORDER OF DEEDS  
KENT COUNTY, DELAWARE

City of Harrington  
Franchise Fee - Chesapeake Utilities  
Comparable Fees and Rates

Municipality	Contract Length	Franchise Fees	Rates	Permit Fees	Property Taxes
Milford	20 years - 1999	\$10,000 First Year	\$0.010 per ccf Annually - surcharge allowed		All lines mains and valves taxed at current rates
Lewes	20 years - 2011	\$45,000 2 year advance against rate collected	\$0.0181 per ccf Quarterly - surcharge allowed	\$250 per distribution main application	All lines mains and valves taxed at current rates
Georgetown	15 years - 2006		\$.010 per ccf Annually - surcharge allowed	5% of the cost, direct, indirect or estimated of each application	All lines mains and valves taxed at current rates
Smyrna	15 years - 2015		\$.0181 per ccf Annually - surcharge allowed		All lines mains and valves taxed at current rates
Dagsboro	15 years	\$30,000 3 year advance against rate collected	\$.0181 per ccf Annually - surcharge allowed		All lines mains and valves taxed at current rates
Seaford	25 years - 2008		\$0.0181 per ccf Quarterly - surcharge allowed	\$25.00 per application	All lines mains and valves taxed at current rates

**City of Harrington  
Employee of the Year Policy**

- 1. **Nominations.** The City Manager or any department head may nominate an employee for the employee of the year award. Nominations are to be submitted in writing to the City Manager by January 20 of each year. Employees working in the Police Department are excluded from the Employee of the Year award since the Police Department offers employee recognition under its own program.
  
- 2. **Selection of Employee of the Year.**
  - a. The City Manager, Mayor, and chair of the Personnel Committee (or longest serving Council Member, if there is no chair of the Personnel Committee) shall select an Employee of the Year from the submitted nominations by February 10 of each year.
  
  - b. The employee shall be selected based on positively promoting the City of Harrington to the public, demonstrating sustained performance, contributing to the achievement of City objectives, distinguishing themselves in other pursuits of City goals, and/or actively participating in community organizations, civic projects, etc.
  
- 3. **Award.** The employee selected as Employee of the Year shall be recognized at a City Council meeting and awarded a certificate or plaque and \$150.

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