

Introduced:
Public Hearing:
Adopted:
Effective:

CITY OF EAST LANSING

ORDINANCE NO. 1406

LANSING BOARD OF WATER AND LIGHT ELECTRIC FRANCHISE
ORDINANCE

AN ORDINANCE, granting to LANSING BOARD OF WATER AND LIGHT, its successors and assigns, the right, power and authority to, in the defined service area, construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances on, under, along and across the highways, streets, alleys, bridges, waterways, and other public places, and to do a local electric business in the defined service area in the CITY OF EAST LANSING, INGHAM AND CLINTON COUNTIES, MICHIGAN, for a period of thirty years.

THE CITY OF EAST LANSING ORDAINS:

SECTION 1. GRANT, TERM. The CITY OF EAST LANSING, INGHAM AND CLINTON COUNTIES, MICHIGAN, hereinafter City, hereby grants the right, power and authority to the Lansing Board of Water and Light, a municipally owned utility, its successors and assigns, hereinafter called the "Grantee," to, in the defined service area, construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances, hereinafter referred to collectively as electric lines, for the purpose of, in the defined service area, transmitting, transforming and distributing electricity on, under, along and across the highways, streets, alleys, bridges, waterways, and other public places, and to do a local electric business and have an exclusive franchise to provide electricity and electric service in the defined service area only, in the CITY OF EAST LANSING, INGHAM AND CLINTON COUNTIES, MICHIGAN, for a period of thirty years, with said defined service area being shown and depicted on Exhibit A, which is attached hereto and incorporated herein by reference. In the event that the Lansing Board of Water and Light is currently providing electricity and electric service to customers not shown in the defined service area on Exhibit A, the Lansing Board of Water and Light during the term of this franchise, shall be permitted to continue to provide electricity and electric service to said customers.

SECTION 2. FRANCHISE FEE. During the term of this Franchise to provide electricity and electric service to the defined service area in the City of East Lansing, the Grantee shall pay to

the City of East Lansing for the use of the streets, public place and other facilities as well as the maintenance, improvements and supervision thereof, an annual franchise fee in the amount of five percent (5%) of the revenue excluding sales tax from the retail sale of electricity and electric service by the Grantee in the defined service area of the City of East Lansing, with the fiscal year for purposes of determining the annual franchise fee to commence on July 1, 2017, with the new fiscal years commencing on July 1st for each year thereafter, with the first franchise fee to be paid by the Grantee to the City of East Lansing on October 1, 2017, with the Grantee to pay the franchise fees to the City of East Lansing on a quarterly basis thereafter.

SECTION 3. CONSIDERATION. In consideration of the rights, power and authority hereby granted, said Grantee shall faithfully perform all things required by the terms hereof.

SECTION 4. CONDITIONS. Except in cases of emergency, no work requiring any excavation in, opening in or tunneling under any highway, street, alley, bridge, waterway or other public place shall be commenced by said Grantee without first obtaining a permit for said work from the City. Except in cases of emergency, no work requiring the obstruction of any portion of any right of way for longer than one day shall be commenced by Grantee without first obtaining a right of way permit from the City. In cases of emergency, the required permits shall be obtained as soon as practicable after commencement of the work. No highway, street, alley, bridge, waterway or other public place used by said Grantee shall be obstructed longer than necessary during the work of construction or repair, and shall be restored to the same order and condition as when said work was commenced. All of Grantee's structures and equipment shall be so placed on either side of the highways as not to unnecessarily interfere with the use thereof for highway purposes. All of Grantee's wires carrying electricity shall be securely fastened so as not to endanger or injure persons or property in said highways. The Grantee shall have the right to trim trees if necessary in the conducting of such business, subject, however, to the supervision and reasonable control of the City's Department of Public Works and Environmental Services or its successor.

SECTION 5. HOLD HARMLESS. Said Grantee shall at all times keep and save the City free and harmless from all loss, costs and expense to which it may be subject by reason of the electric lines hereby authorized. In case any action is commenced against the City on account of the permission herein given, said Grantee shall, upon notice, defend the City and save it free and harmless from all loss, cost and damage arising out of the electric lines. Provided, however, that Grantee's obligations under this Section 5 shall not apply to any loss, cost, damage or claims arising solely out of the negligence of the City, its employees or its contractors. Furthermore, in the event that any loss, cost, damage or claims arise out of the joint negligence of the City, its employees or its contractors, Grantee's obligations under this Section 5 shall not apply to the proportional extent of the negligence of the City, its employees or its contractors.

SECTION 6. EXTENSIONS. Said Grantee shall construct and extend its electric distribution system within the defined service are of said City, and shall furnish electric service to applicants residing in the defined service area in accordance with applicable laws, rules and regulations.

SECTION 7. FRANCHISE NOT EXCLUSIVE. The rights, power and authority herein granted, are not exclusive as to providing electricity and electric service in the entire City of East Lansing.

SECTION 8. RATES. Said Grantee shall be entitled to charge the inhabitants of the defined service area in the City for electricity and electric service furnished therein, the rates as approved by the Michigan Public Service Commission, to which Commission or its successors authority and jurisdiction to fix and regulate electric rates and rules regulating such service in the defined service area of said City, are hereby granted for the term of this franchise. Such rates and rules shall be subject to review and change at any time upon petition therefor being made by either said City, acting by its City Council, or by said Grantee.

SECTION 9. REVOCAION. The franchise granted by this ordinance is subject to revocation at the will of the City Council or Grantee and upon sixty (60) days' written notice by the party desiring such revocation.

SECTION 10. RIGHT OF REGULATION. The Grantee shall be and remain subject to all charter provisions, ordinances, rules and regulations of the City now in effect, or which are subsequently adopted for the regulation of land uses or for the protection of the health, safety and general welfare of the public; provided, however, that nothing herein shall be construed as a waiver by Grantee of its existing or future rights under State or Federal law.

SECTION 11. USE OF STREETS. The franchise granted by this ordinance to allow Grantee to provide electricity and electric service in the defined service area in the City is subject to the right of the City to use, control, and regulate the use of its streets, alleys, bridges, and public places and the space above and beneath them. The Grantee and its contractors and subcontractors shall, at Grantee's own cost and expense, relocate or remove Grantee's facilities from streets, alleys, bridges, and public places whenever (i) the use of such streets, alleys, bridges, and public places by the public for the installation or repair of public improvements, such as, but not limited to, drains, sewers, water mains or pipes, road construction, grading or repair, or (ii) the vacation of any street or public right of way, necessitates such relocation or removal; provided, however, that nothing herein shall be construed as a waiver by Grantee of any of its existing or future rights under state or Federal law. Nothing herein shall restrict or impair Grantee's rights under any statutes or laws regarding the vacation or relocation of public streets. Grantee shall permit joint use of, or attachment to, its poles and other appurtenances located within the streets, alleys and other public places of Grantor in accordance with the rules and regulations of the Michigan Public Service Commission and the Federal Communication Commission, as applicable.

SECTION 12. MICHIGAN PUBLIC SERVICE COMMISSION, JURISDICTION. Said Grantee shall, as to all other conditions and elements of service not herein fixed that fall within the jurisdiction of the Michigan Public Service Commission, be and remain subject to the rules and regulations of the Michigan Public Service Commission or its successors, applicable to electric service in the defined service area of the City.

SECTION 13. EFFECTIVE DATE. This ordinance shall take effect upon the day after the date of publication thereof; provided, however, it shall cease and be of no effect after thirty days from its adoption unless within said period the Grantee shall accept the same in writing filed with the City Clerk. Upon acceptance and publication hereof, this ordinance shall constitute a contract between said City and said Grantee.

We certify that the foregoing Franchise Ordinance was duly enacted by the City Council on the ____ day of _____, 2017.

Mark S. Meadows, Mayor

Marie Wicks, City Clerk

ACCEPTANCE

TO THE CITY COUNCIL OF THE CITY OF EAST LANSING, INGHAM COUNTY,
MICHIGAN:

The LANSING BOARD OF WATER AND LIGHT hereby accepts the franchise granted to it by your City Council on the ____ day of _____, 2017, which said franchise is entitled as follows:

AN ORDINANCE, granting to LANSING BOARD OF WATER AND LIGHT, its successors and assigns, the right, power and authority to in the defined service area construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances on, under, along and across the highways, streets, alleys, bridges, waterways, and other public places, and to do a local electric business in the defined service area in the CITY OF EAST LANSING, INGHAM COUNTY, MICHIGAN, for a period of thirty years.

LANSING BOARD OF WATER AND LIGHT

By: _____

Dated: _____, 2017