

**VILLAGE OF MATTAWAN**  
**FRUITBELT ORDINANCE**  
**ORDINANCE NO. 178**

**AN ORDINANCE TO GRANT A NON-EXCLUSIVE FRANCHISE TO USE LOCAL PUBLIC WAYS AND TRANSACT LOCAL ELECTRICAL BUSINESS**

An Ordinance, granting a non-exclusive franchise to use local public ways and transact local electrical business in the Village of Mattawan to Midwest Energy Cooperative, Fruit Belt Electric Division.

**THE VILLAGE OF MATTAWAN ORDAINS:**

**SECTION 1. GRANT OF NON-EXCLUSIVE RIGHTS.**

**A. TERM**

Village of Mattawan (Grantor) grants to Midwest Energy Cooperative, Fruit Belt Electric Division, its successors and assigns (Grantee), subject to the terms and conditions set forth below, the non-exclusive right, power and authority to use electric lines consisting of towers, masts, poles, cross-arms, guys, braces, feeders, transmissions and distribution wires, transformers and other electrical appliances (hereinafter "Electric System") that are owned either by Midwest Energy Cooperative, Fruit Belt Electric Division, or by any other electric utility which has the necessary authority from the Michigan Public Service Commission and a valid franchise from Grantor, which Electric System exists on, along, across and under the highways, streets, alleys and bridges of the Grantor (hereinafter "Public Ways") and to do local electric business in the Grantor for a period of 30 years.

**B. EXPANSION OF SYSTEM**

After first obtaining approval from Grantor of the route and placement of the Electric System components, which approval shall not be unreasonably withheld, Grantee may expand its use of the Public Ways by constructing and maintaining its own towers, masts, poles, cross-arms, guys, braces, feeders, transmission and distribution wires, transformers and other electric appliances. Any expansion of the Electric System by the Grantee as approved by the Grantor shall be subject to all terms and conditions of this Ordinance, including the requirements of Section 3(L) related to the expansion of the Electric System.

**C. LOCATION IN PUBLIC WAYS**

To the maximum extent possible, Grantee shall place its Electric System on, within and along existing utility facilities in the Public Ways.

**D. LEASE**

Grantee shall not lease or sublease any portion of its Electric System within the Grantor to a person who by law is required to obtain the Village's permission or consent to transact business in the Grantor and who lacks such permission or consent. Grantee shall not allow the property of a third party or non-electric system wires or any other facilities to be overlashed, affixed or attached to any portion of its Electric System or allow other actions with a similar result without the written consent of the Mattawan Village Manager or that person's designee.

**SECTION 2. CONSIDERATION; COSTS; RIGHT-OF-WAY FEES**

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

**B.** In further consideration of the rights, power and authority granted by the Grantor, Grantee agrees: 1) to pay to the Grantor a non-refundable application fee in the amount of \$500.00; and 2) to compensate the Grantor: (a) for the amount of its actual expenses incurred by the Grantor in the drafting and preparation of this Ordinance including actual attorney fees, and (b)

for the amount of its actual expenses resulting from the process of adopting this ordinance.

- C. In the event that Grantee, or any company which is a subsidiary, affiliate or other related company to Grantee, pays a fee, charge or other payment of any kind on a periodic basis (such as monthly, quarterly, annually) to any municipality in the State of Michigan as a condition, or in consideration for the right to transact a local utility business in that municipality, Grantee shall notify the Grantor, in writing, of the details of the fee or periodic charge within sixty (60) days of the effective date of the fee or periodic charge, at which time the franchise granted by this Ordinance shall be automatically revoked. Any new franchise granted by the Grantor to Grantee shall require payment of a similar fee or periodic charge as a condition of the new franchise.
- D. Grantee agrees to abide by any future ordinance(s) of the Grantor, if and when formally adopted, which may require the payment by Grantee of a fee, charge or other payment on a periodic basis (such as monthly, quarterly, annually), provided that any such future ordinance(s) apply equally to all electric franchise holders. The Grantor shall notify Grantee within sixty (60) days of the formal adoption of such an ordinance by the Grantor, at which time the franchise granted by this Ordinance shall be automatically revoked. Any new franchise granted by the Grantor to Grantee shall be subject to the provisions of such future ordinance(s), and shall require payment of a similar fee or periodic charge as a condition of the new franchise.

### SECTION 3. USE OF PUBLIC RIGHTS-OF-WAY BY GRANTEE

#### A. NO BURDEN OF PUBLIC WAYS

Grantee and its contractors, subcontractors and the Grantee's Electric System shall not unduly burden or interfere with the present or future use of any of the Public Ways within the Village. Grantee shall erect and maintain its Electric System so as to cause minimum interference with the use of the Public Ways and with the rights or reasonable convenience of property owners. No Public Way shall be obstructed longer than necessary during the work of construction, maintenance or repair to the Electric System. Grantee's cable, wires, structures and equipment shall be suspended or buried so as to not endanger or injure persons or property in the Public Ways. If the Grantor in its reasonable judgment determines that any portion of the Electric System constitutes an undue burden or interference, Grantee at its expense shall modify its Electric System or take such other actions as the Grantor may determine is in the public interest to remove or alleviate the burden, and the Grantee shall do so within the time period established by the Grantor.

#### B. RESTORATION OF PUBLIC WAYS

Grantee and its contractors and subcontractors shall immediately restore, at Grantee's sole cost and expense and in a manner approved by the Grantor, any portion of the Public Ways that is in any way disturbed, damaged, or injured by the construction, operation, maintenance or removal of the Electric System to as good or better condition than that which existed prior to the disturbance. In the event that Grantee, its contractor or subcontractors fail to make such repair within the time specified by the Grantor, the Grantor shall be entitled to complete the repair and Grantee shall pay the costs of the Grantor for such repair.

#### C. EASEMENTS

Any easements over or under private property necessary for the construction or operation of the Electric System shall be arranged and paid for by Grantee. Any use or intrusion on private property without an easement or other instrument evidencing permission of the property owner shall constitute a trespass by Grantee and a violation of this Ordinance. Any easements over or under property owned by the Grantor other than the Public Ways shall be separately negotiated with the Grantor.

#### D. TREE TRIMMING

Grantee may trim trees upon and overhanging the Public Ways so as to prevent the branches of such trees from coming into contact with the Electric System. Grantee shall minimize the trimming of trees to trimming only those that are essential to maintain the integrity of its Electric System. No trimming shall be done in the Public Ways without previously informing the Grantor.

E. PAVEMENT CUT COORDINATION

Grantee shall coordinate its construction program and all other work in the Public Ways with the Grantor's program for street construction, rebuilding, resurfacing and repair (collectively, "Street Resurfacing"). Grantee shall meet with the official of the Grantor primarily responsible for the Public Ways at least twice per year to this end.

The goals of such coordination shall be to require Grantee to conduct all known work in the Public Ways in conjunction with or immediately prior to any Street Resurfacing planned by the Grantor, and to prevent the Public Ways from being disturbed by Grantee for a period of years after such Street Resurfacing.

F. MARKING

Grantee shall mark its Electric System as follows: Aerial portions of the Electric System shall be marked with a marker on its lines on alternate poles which shall state Grantee's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Electric System shall have (1) a conducting wire placed in the ground at least 12 inches above the Grantee's cable or wire (if such cable or wire is non-conductive), (2) at least 12 inches above that a continuous colored tape with Grantee's name and a toll-free number and a statement to the effect that there is buried cable beneath, and (3) stakes or other appropriate aboveground markers with Grantee's name and a toll-free number and indicating that there is buried cable below.

F. COMPLIANCE WITH LAWS

Grantee shall comply with all laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership or use of its Electric System whether federal, state or local, now in force or which hereafter may be promulgated (including, without limitation, any Ordinance requiring the installation of additional conduit when Grantee installs underground conduit for its Electric System). Before any installation is commenced, Grantee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the Grantor or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Grantee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition) and the National Electric Code (latest edition). Grantee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.

G. STREET VACATION

If the Grantor vacates or consents to the vacation of a street or alley within its jurisdiction, and such vacation necessitates the removal and relocation of Grantee's facilities in the vacated Public Way, Grantee agrees, as a condition of this Ordinance, to consent to the vacation and to move its facilities at its sole cost and expense when asked to do so by the Grantor or a court of competent jurisdiction. Grantee shall relocate its facilities to such alternative route, as the Grantor, acting reasonably and in good faith, shall designate.

H. RELOCATION

If the Grantor requests Grantee to relocate, protect, support, disconnect, or remove its facilities because of street or utility work, Grantee shall relocate, protect, support, disconnect, or remove its facilities, at its sole expense, to such alternate route as Grantor, acting reasonably and in good faith, shall designate.

I. PUBLIC EMERGENCY

The Grantor shall have the right to sever, disrupt, dig up or otherwise destroy facilities of Grantee, without any prior notice, if such action is deemed necessary because of a public emergency. Public emergency shall be any condition which poses an immediate threat to the lives or property of the citizens of the Grantor, caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, major water main or sewer breaks, hazardous material spills, etc. Grantee shall be responsible for repair at its sole expense of any of its facilities damaged pursuant to any such action taken by the Grantor.

J. MISS DIG

If eligible to join, Grantee shall subscribe to and be a member of "MISS DIG", the association of utilities formed pursuant to Act 53 of the Public Acts of 1974, as amended, MCL 460.701, et seq., and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

K. USE OF EXISTING FACILITIES; COMPENSATION TO GRANTOR

Grantee shall utilize existing poles, conduits, and other facilities wherever practicable, and shall not construct or install any new, different, or additional poles, or other facilities unless expressly authorized by the Grantor. Where existing utility wiring is located underground, either at the time of initial construction or subsequent thereto, Grantee's Electric System shall also be located underground unless otherwise expressly authorized by the Grantor. In the event Grantee desires to utilize existing poles, conduits or other facilities owned by the Grantor, Grantee shall be obligated to pay the existing standard charge for attachment to, placement in, or other use of those facilities.

To the extent that Grantee chooses to construct its own utility wiring or other new facilities, Grantee agrees to compensate the Grantor for use of the public rights-of-way. Unless otherwise agreed by the Grantor and Grantee, the compensation shall be paid at the same rate per lineal foot of wiring or other facilities installed as that rate which is charged to telecommunications providers under the then current Grantor ordinance regulating telecommunications systems.

L. UNDERGROUND RELOCATION

If Grantee has its facilities on any other public utility company's above ground utility poles and the owner of said poles relocates its facilities to an underground conduit, Grantee shall relocate its facilities underground in the same location.

N. EMPLOYEE IDENTIFICATION

All personnel of Grantee or its contractors or subcontractors who have as part of their normal duties contact with the general public shall wear on their clothing a clearly visible identification card bearing their name and photograph. Grantee shall account for all identification cards at all times. Every service vehicle of Grantee, its contractors or subcontractors shall be clearly identified as such to the public.

SECTION 4. NO GRANTOR LIABILITY: INDEMNIFICATION

A. GRANTOR NOT LIABLE

The Grantor, and its agents, employees, and contractors, shall not be liable to Grantee or Grantee's customers for any interference with or disruption in the operation of Grantee's Electric System, or the provision of service over or through the Electric System, or for any damages arising out of Grantee's use of the Public Ways.

B. INDEMNIFICATION

As part of the consideration for of this Ordinance, Grantee shall defend, indemnify, protect and hold harmless Grantor, its officers, agents, employees, departments, council and committees from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and reasonable expenses of any nature (including, without limitation, actual fees and expenses of attorneys, expert witnesses and consultants), arising out of or resulting from the acts or omissions of Grantee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent of the fault of the Grantee, its officers, agents, employees, contractors, successors, or assigns.

C. ASSUMPTION

Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any Grantor-owned or controlled property, including Public Ways, and Grantee hereby agrees to indemnify and hold harmless the Grantor against and from any claim asserted or liability imposed upon the Grantor for personal injury or property damage to any person arising out of the installation, operation, maintenance or

condition of the electric system or Grantee's failure to comply with any federal, state or local statute, ordinance or regulation.

D. NOTICE, COOPERATION AND EXPENSES

The Grantor shall give Grantee prompt notice of the making of any claim or the commencement of any actions, suit or other proceeding covered by the provisions of this Section.

Nothing herein shall be deemed to prevent the Grantor from cooperating with Grantee and participating in the defense of any litigation by Grantor's own legal counsel.

Grantee shall pay all expenses incurred by Grantor in defending itself with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by or on behalf of the Grantor's attorney, and the actual expenses of Grantor's agents, employees or expert witnesses, and disbursements and liability assumed by Grantor in connection with such suits, actions or proceedings.

SECTION 5. INSURANCE.

Grantee shall, at the time of ownership or construction of any systems, equipment, lines, and/or buildings independent of its use of the existing electric transmission and distribution system, obtain and maintain in full force and effect, for the entire effective period of this Ordinance, the following insurance covering all insurable risks associated with its ownership and use of its Electric System:

- A. A comprehensive general liability insurance policy, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000.00).
- B. An Automobile Liability Insurance Policy to cover any vehicles used in connection with its activities under this Ordinance, in an amount not less than Two Million Dollars (\$2,000,000.00).
- C. Workers' Compensation and Employer's Liability Insurance with statutory limits. The Grantor shall be named as an additional insured in all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) days prior written notice is given to the Grantor. Grantee shall provide the Grantor with a certificate of insurance evidencing such coverage as a condition of this Ordinance and shall maintain on file with the Grantor a current certificate. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall become effective upon publication in a newspaper in general circulation within the Village of Mattawan.