

## ORDINANCE NO. 18-103

### LANSING BOARD OF WATER AND LIGHT ELECTRIC FRANCHISE AGREEMENT

This franchise agreement granting the City of Lansing by its LANSING BOARD OF WATER AND LIGHT (Grantee), its successors and assigns, the right, power and authority to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers, switchgear, substations, and other electrical appliances on, over, under, along and across the highway, streets, alleys, bridges and other public places, and to do a local electric business in the CHARTER TOWNSHIP OF DELTA, EATON COUNTY, MICHIGAN, for a period of thirty (30) years. Acceptance of this agreement acknowledges that this agreement supersedes the Franchise agreement dated September 2, 1986, between the LANSING BOARD OF WATER AND LIGHT and THE CHARTER TOWNSHIP OF DELTA.

THE CHARTER TOWNSHIP OF DELTA, EATON COUNTY, MICHIGAN ORDAINS:

SECTION 1. GRANT, TERM. The Charter Township of Delta, Eaton County, Michigan, hereinafter called the "Charter Township," hereby grants the right, power and authority to the Lansing Board of Water and Light, a municipal utility operating under the laws of the State of Michigan, its successors and assigns, hereinafter called the "Grantee", to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, communication wires for the purpose of operating the utility, transformers and other electrical appliances, padmounted equipment, substations, switchgear for the purposes of transmitting, transforming and distributing electricity on, over, under, along and across the highways, streets, alleys, bridges, other public places, and on private property by easements and to do a local electric business in the Charter Township of Delta, Eaton County, Michigan, for a period of thirty (30) years from the date of acceptance by the Grantee.

The Grantee will, upon expiration of this franchise term or revocation of the franchise by the Charter Township, remove all facilities owned by the Grantee following the Charter Township paying the undepreciated value plus the cost of removal, less the salvage value of all facilities installed thirty (30) years or less.

SECTION 2. CONSIDERATION. In consideration of the rights, power and authority hereby granted, said Grantee shall faithfully perform all things required by the terms hereof.

SECTION 3. CONDITIONS. All of Grantee's towers, masts, poles, guying and padmounted equipment and other appurtenances shall be placed on either side of the highways, streets, alleys, and bridges as not to unnecessarily interfere with the use thereof for highway, street and alley purposes. Upon request the Grantee will furnish the Charter Township with a copy of each right-of-way permit and associated sketch which is furnished to the Eaton County Road Commission or the State of Michigan. All of Grantee's wires carrying electricity shall be securely fastened so as not to endanger or injure persons or

property in said highways, streets and alleys, and shall be done so as not to interfere with the use thereof, and when completed, the same shall be left in as good condition as when work was commenced. The Grantee shall have the right to trim trees if necessary in the conducting of such business. The Charter Township shall be responsible for making petitions, applications, or other means of securing funding for relocations and damages of electric transmission and distribution facilities as described in SECTION 1 when relocations are made at the request of the Charter Township or other public works agencies such as but not limited to the county, state or federal governments but only when reimbursement is available from these entities for such purposes. Requests for relocations by the Charter Township shall include adequate rights-of-way and/or easements acquired by the Charter Township in an acceptable form to the Grantee for relocations and continued access and maintenance of electric transmission and distribution facilities. Where federal, state or local funding is available to the Charter Township or the relocating agency, the Grantee will work cooperatively with the Charter Township to provide necessary documentation for eligible relocation expenses in the appropriate form necessary. To the extent relocations are made at the request of the Charter Township, regardless of the availability of reimbursement funds, the cost for relocations and any damages of electric transmission and distribution facilities shall be the sole responsibility of the Charter Township.

SECTION 4. EXTENSIONS. Grantee shall construct and extend its electric distribution system within the defined service areas of the Charter Township, and shall furnish electric service to applicants residing in the area described in Exhibit A attached (the Defined Service Area) in accordance with applicable laws and Grantee's rules and regulations. In the event that Grantee is currently providing electricity and electric service to the properties that are not correctly designated as within the Defined Service Area on Exhibit A, Grantee during the term of this Franchise shall be permitted to continue to provide electricity and electric service to said properties and said properties shall be deemed part of the Grantee's Defined Service Area.

SECTION 5. HOLD HARMLESS. Said Grantee shall at all times keep and save the Charter Township free and harmless from all loss, costs and damage to which it may be put by reason of construction or maintenance. Provided, however, that Grantee's obligations under this Section shall not apply to any loss, cost, damage or claims arising out of the negligence of the Charter Township, its employees or its contractors. The Charter Township shall hold harmless and defend the Grantee from any and all claims, losses or litigation which result from the Grantee's compliance with the collection and remittance of the franchise fee described in Section 8 of this Ordinance.

However, neither party assumes any liability resulting from gross negligence or willful misconduct of the other. Further nothing herein shall be construed as a waiver of governmental immunity for 3<sup>rd</sup> party claims, which is available to each party as a matter of law.

SECTION 6. NONEXCLUSIVE FRANCHISE. Certain rights, power and authority herein granted, are exclusive as to providing electricity and electric service in certain areas

of the Charter Township as described in the Defined Service Area. Otherwise, with respect to jurisdiction of the Charter Township, this remains a nonexclusive franchise.

The exclusive right to serve the Defined Service Area of the Charter Township as described in Exhibit A is a condition concurrent to the collection and remittance of the Franchise Fee described in Section 8.

SECTION 7. RATES. The rates and rules and regulations governing the supply and use of electricity shall be the same as in the City of Lansing except that the rates shall be increased within the boundaries of the Charter Township by the amount of any taxes, license fees, franchise fees, or any other charges against the Grantee's property or its operations, or the production and/or sale of electrical energy, levied or imposed by the Charter Township.

SECTION 8. FRANCHISE FEE. During the term of this franchise, or the operation of the electric system pursuant to this franchise, and to the extent allowable as a matter of law, the Grantee shall, upon resolution of the Charter Township and acceptance by the Grantee, collect and remit to the Charter Township a franchise fee in an amount of five percent (5%) of the revenue, excluding sales tax, from the retail sale of electric energy by the Grantee within the Charter Township, for the use of its streets, public places and other facilities, as well as the maintenance, improvements and supervision thereof. Such fee will appear on the corresponding energy bills.

The franchise fee will commence the first day of the month following the effective date of this Ordinance, and shall reflect revenue based on retail sales from 30 days after the effective date of this franchise fee through the applicable quarter. New fiscal years will commence July 1, 2018, and each year thereafter, with the Grantee to pay the franchise fees to the Charter Township on a quarterly basis.

To the extent the Grantee is precluded from collecting such franchise fees remittance to Charter Township will cease.

SECTION 9. REVOCATION. The Franchise granted by this Ordinance is subject to revocation upon sixty (60) days' written notice by the party seeking such revocation.

SECTION 10. COMPANY RULES. The Grantee shall have authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this franchise, and to assure uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of laws of the State of Michigan.

SECTION 11. EFFECTIVE DATE. This Ordinance shall take effect immediately following its adoption and publication as required by law, provided however, that it shall cease and be of no effect after sixty (60) days from its adoption unless within said period the Grantee shall accept the same in writing filed with the Charter Township Clerk. Upon

acceptance and publication hereof, this Ordinance shall constitute a contract between the Charter Township and the Grantee.

SECTION 12. PUBLICATION AND ADMINISTRATIVE COSTS. The Charter Township shall assume the cost of publication of this franchise including an initial administrative cost of \$1,500 will be due to the Grantee upon acceptance of this franchise for programmatic implementation and customer bill changes. Thereafter, an administrative charge of ½ percent (0.5%) of collected franchise fees for the quarterly billing will apply.

SECTION 13. FOOTE ACT FRANCHISE. Nothing herein shall be construed as either party rendering an opinion or position as to whether the Grantee has vested franchise rights under the Foote Act, 1905 PA 264. The Grantee does not relinquish any right to assert, and the Charter Township does not waive any right to contest.

SECTION 14. SEVERABILITY. If any provision of this franchise is to any extent illegal, otherwise invalid, or incapable of being enforced, such provision shall be excluded to the extent of such invalidity or unenforceability; all other provisions hereof shall remain in full force and effect.

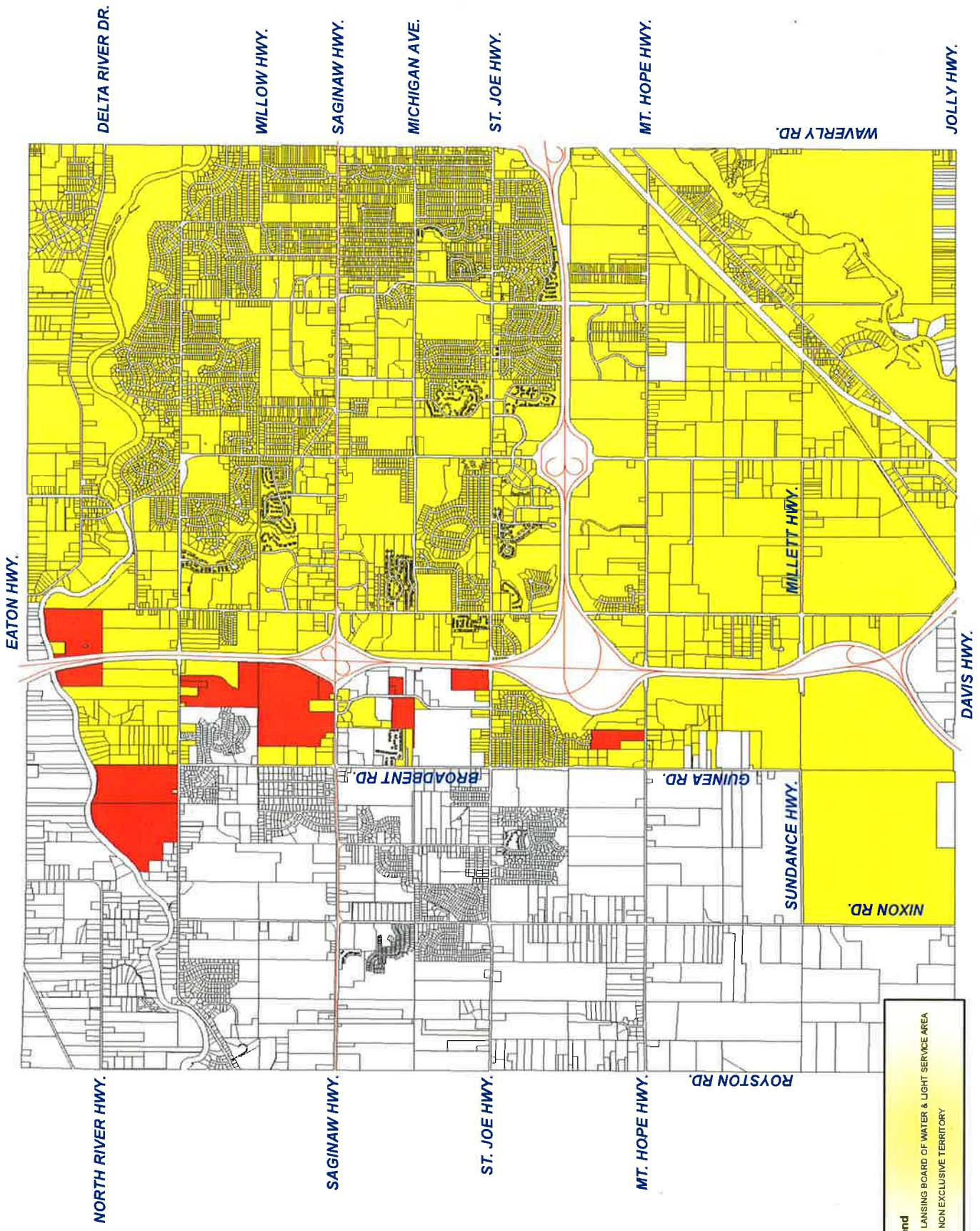
We certify that the foregoing agreement was duly enacted by the Township Board of the Charter Township of Delta, Eaton County, Michigan on the 2<sup>nd</sup> day of Jan, 2018.

  
Kenneth R. Fletcher, Supervisor

I, Mary R. Clark, Clerk of the Charter Township of Delta, Eaton County, Michigan, hereby certify that the above resolution is a true copy of the action taken by the Charter Township of Delta Board of Trustees, on the date set forth and published as set forth above.

  
Mary R. Clark, Clerk





**Legend**

- LANSING BOARD OF WATER & LIGHT SERVICE AREA
- NON EXCLUSIVE TERRITORY



**Lansing Board of Water and Light Electric Franchise Service Areas**

**Exhibit "A"**



Scale = 1:2000

ACCEPTANCE

TO THE TOWNSHIP BOARD OF THE CHARTER TOWNSHIP OF DELTA,  
EATON COUNTY, MICHIGAN

The City of Lansing, by its Board of Water and Light, hereby accepts the franchise granted to it by your Board, on January 2, 2018, by (Ordinance 18-103), which said franchise is entitled as follows: An ordinance granting to the Lansing Board of Water and Light, its successors and assigns the right, power and authority to construct, set, string, lay, operate, repair, maintain and use electric lines consisting of poles, wires, cables, pipes, conduits, masts, towers, crossarms, guys, braces, feeders, transmission wires, transformers and other electrical appliances, on, along, over, under, through and across the highways, streets, alleys, bridges and other public places, and to conduct an electric utility business in the Charter Township of Delta, Eaton County, State of Michigan, for a period of thirty (30) years. Acceptance of this agreement acknowledges that this agreement supersedes the Franchise agreement dated September 2, 1986 between the Lansing Board of Water and Light and The Charter Township of Michigan.

By mutual agreement of the Lansing Board of Water and Light and the Charter Township of Delta, this acceptance is conditioned on 1) Timely execution by Consumers Energy of its Acceptance of the franchise granted by Ordinance 18-10 and strict adherence thereto; and it is expressly understood and agreed that failure to timely execute said Acceptance of Ordinance 18-102 or strictly comply therewith shall render this Acceptance by the Lansing Board of Water and Light a nullity and of no force or effect; and 2) any encroachment by another utility in the BWL defined service area during the term of the Ordinance would negate the condition concurrent to collection and remittance.

City of Lansing, by its  
Board of Water and Light

  
Dick Peffley, General Manager

  
M. Denise Griffin  
BWL Corporate Secretary

1-12-18  
Date

APPROVED  
  
BOARD OF WATER & LIGHT  
LEGAL COUNSEL  
1-12-18