

APPENDIX A FRANCHISES*

***Cross reference(s)**--Streets, sidewalks and other public property, ch. 74; public and private utility franchises, § 74-141 et seq.; telecommunications, ch. 90; utilities, ch. 94.

ARTICLE I. TELECOMMUNICATIONS*

***Editor's note**--Printed herein is Ordinance No. 1187, as adopted by the city commission on April 13, 1999. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

A permit, granting to Norlight Telecommunications Inc., its successors and assigns, the right, power and authority to lay, maintain and operate telecommunication lines, poles and services on, along, across and under the highways, streets, alleys, and bridges, in the City of Muskegon, Muskegon County, Michigan, for a period of 30 years.

The city commission of the City of Muskegon ordains:

Section 1. Grant of a telecommunication permit and consent to laying of telecommunication lines.

Subject to all the terms and conditions mentioned in this permit, consent, permission, right and authority is hereby given to Norlight Telecommunications Inc., a corporation organized under the laws of the State of Wisconsin (the "company"), and to its successors and assigns to lay, maintain, operate and use necessary equipment, and to lay, maintain, operate and use telecommunications lines, poles, cables, conduits, appliances, buildings and other necessary works in the highways, streets, alleys and bridges in the City of Muskegon, Muskegon County, Michigan (the "city"), and a nonexclusive permit is hereby granted to the company, its successors and assigns, to transact local business in the city for the purposes of producing, storing, transmitting, selling and distributing telecommunication services, into and through the city and all other matters incidental thereto.

Section 2. Consideration.

In consideration of the rights, powers and authority hereby granted, the company shall faithfully perform all things required by the terms hereof. The company shall be responsible for payment of all publication expenses in connection with the adoption of this permit; furthermore, the company shall reimburse the city for any legal expense

incurred in connection with the adoption of this ordinance.

Section 3. Use of streets and public ways.

The company, its successors and assigns, shall not unnecessarily obstruct the passage of any of the highways, streets, alleys, or bridges within the city and shall within a reasonable time after making an opening or excavations, repair the same and leave it in as good condition as before the opening or excavation was made. No work in the right-of-way of any street or highway shall commence without the issuance of permits and payments of all fees required by city ordinance. The company, its successors and assigns shall use due care in exercising the privileges herein contained and shall be liable to the city and to every owner of property abutting the company's telecommunication, electrical lines or other facilities, for all damages and costs arising from the default, carelessness, or negligence of the company or its officers, agents and servants.

All of the company's structures and equipment shall be so placed on either side of the highways so as not to unnecessarily interfere with the use thereof for all highway purposes and the reasonable use of the right-of-way by other utilities, public or private. The same conditions shall apply to streets, alleys, bridges or waterways. All of the company's wires or other facilities shall be erected or installed according to all statutes, ordinances, codes and standards of the industry and the State of Michigan. They shall be erected and securely fastened so as to avoid the endangerment or injury of persons or properties in any place. The company shall have the right to trim trees if necessary in the conducting of such business, subject however to the supervision of the appropriate highway authorities. Before erecting any structure or installing any equipment within the public right-of-way, the company shall give the city at least 30 days' notice explaining the intended work and its location; said notice provisions shall not apply to routine maintenance, emergency repairs or construction, or to the installation of service drops or hook-ups. The rights and authority granted by the city to the company hereunder do not include or endorse the right to use the land of others without consent or to commit trespass in the furtherance of the construction, repair or maintenance of the company's facilities located in the public rights-of-way. In the event of incidental damage to property of others, or permitted landscaping in the right-of-way, the company shall fully restore same to its previous condition.

Section 4. Force majeure.

The company shall not be under any liability for failure to furnish telecommunication services as herein provided, or for any breach of the company's obligations hereunder, if such failure or breach is caused in any part by acts of God, labor troubles, strikes, shortages of supply, accidents, breakage or repair of pipeline, machinery or equipment, failure of suppliers to deliver, shortages of materials or labor, governmental laws, rulings or regulations, or any other causes or contingencies not reasonably within the control of the company.

Section 5. Indemnity.

As part of the consideration for the granting of this permit, the company (indemnitor) shall, at its sole cost and expense, fully indemnify and hold the city (indemnitee), its officers, boards, commissions, agents and employees, harmless

against any and all claims, demands, lawsuits, actions, liability and judgments for damages arising out of the granting or operation of this permit, including but not limited to liability for damages to any former holder of a public utility permit whose permit may have been revoked, interfered with, or superseded by this permit. In further consideration for the granting of this permit, the company shall pay actual attorney's fees, costs and expenses which may be incurred by the city in defense of or in response to any claim, demand, lawsuit, action or administrative proceeding arising out of the granting of this permit or the revocation of prior permits, whether or not judgment is entered against the city.

Section 6. Effective date: term and permit; acceptance by the company; permit termination at will by the city.

The permit shall take effect the day following the date of its publication thereof as an ordinance, which publication shall be made within 30 days after the date of its adoption, and shall continue in effect for a period of 30 years thereafter; provided, however, that when this permit shall become effective the city clerk shall deliver to the company a certified copy of the permit accompanied by written evidence of publication and recording thereof as required by law, and the company shall, within 60 days after receipt of the above documents, file with the city clerk its written acceptance of the conditions and provisions hereof. Upon acceptance and publication hereof, this ordinance shall constitute a contract between the city and the company that is terminable at will by the city.

Section 7. Permit not exclusive.

The rights, power and authority herein granted are not exclusive. The rights to do telecommunications business hereunder are several, and such rights may be separately exercised, owned and transferred. This permit shall not be assigned by the company without the permission of the city, which shall not be unreasonably withheld. No assignment shall be approved until the assignee is shown to the city to have the financial, technical and practical ability to perform and conform to the requirements of this permit ordinance. The assignment of this permit by the company to an affiliated corporation as part of a corporate reorganization does not require the city's permission. The provisions of this section shall not be interpreted to prevent the granting of additional permits, nor shall it be interpreted to exempt any user or lessee of the facilities installed by the company which user or lessee is required by law to have a franchise or permit from the city. The city does not grant a property right by this permit.

Section 8. Extension.

If the company shall from time to time extend its telecommunications system to and within the city, and furnishes telecommunication services to applicants residing therein, it shall do so in accordance with applicable laws, rules and regulations.

Section 9. Rates.

The company or its users or lessees shall be entitled to charge the inhabitants of said city for telecommunication services furnished therein, the rate as approved by the Michigan Public Service Commission, the Federal Communications Commission, or their successors. 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 board, or by the company.

Section 10. Revocation.

The permit granted by this ordinance is subject to revocation with cause upon 60 days' written notice by the party desiring such revocation, provided revocation by the city shall be at will.

Section 11. City jurisdiction.

The company shall be and remain subject to all ordinances, rules and regulations of the city now in effect, or which might subsequently be adopted for the regulation of land users 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 the company of any of its existing or future rights under state or federal law. Further, this permit is governed, including the interpretation or effect of any term hereof, by Michigan law, statutes and constitution, which shall prevail over any term of this permit.

Section 12. Michigan Public Service Commission or Federal Communications Commission jurisdiction.

The company shall, as to all other conditions and elements of telecommunication services, not herein fixed, be and remain subject to the reasonable rules and regulations of the Michigan Public Service Commission, the Federal Communications Commission, or their successors, applicable to telecommunications service in said city.

Section 13. Successors and assigns.

The words "Norlight Telecommunications Inc.," and the "company," wherever used herein, are intended and shall be held and construed to mean and include both Norlight Telecommunications Inc., and its successors and assigns, whether so expressed or not.

Section 14. Reservation of rights to require franchise.

Article 7, 29 of the 1963 Michigan Constitution requires that all public utilities obtain a [franchise] to conduct a local business within the city. The applicability of this requirement to telecommunications providers may be challenged under section 102(dd) of Act No. 216 of the Public Acts of 1995 (MCL 484.2102(dd)) which purports to define a telecommunications service as not constituting a public utility service. In addition, recent federal telecommunications legislation may affect the franchising of telecommunications providers. Due to these and other pending legal and regulatory uncertainties, and to avoid the expense and delay of litigation that may be unnecessary, the city hereby determines that telecommunications providers shall not be required at this time to obtain a franchise for the transaction of local business within the city. Telecommunications providers shall be required to obtain and maintain a telecommunications permit for access to and ongoing use of public rights-of-way in compliance with the terms of this ordinance. The city reserves the right, in accordance with applicable federal, state and local law, to require telecommunications providers to obtain a franchise in the future to transact local business within the city. The issuance of a telecommunications permit or

permits under this ordinance, and the access to and use of the public rights-of-way by a telecommunications provider, shall not constitute a waiver of or otherwise adversely affect this reservation of rights.

ARTICLE II. GAS*

***Editor's note**--Printed herein is Ordinance No. 1182, as adopted by the city commission on January 12, 1999. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

An ordinance granting a nonexclusive franchise to Michigan Gas Exchange to use local public ways and sell/deliver natural gas.

Whereas, Michigan Gas Exchange, its successors and assigns, seeks a public utility franchise to use the highways, streets, alleys, bridges, and other public places for the transmission of natural gas, and to do local natural gas business in the City of Muskegon, whether utilizing the existing facilities of Michigan Consolidated Gas Co., or installing its own facilities; and,

Whereas, the City of Muskegon, Muskegon County, Michigan, is empowered, pursuant to the Michigan Constitution of 1963, and chapter XIV of its own city Charter, to grant public utility franchises by ordinance:

Now, therefore, the City of Muskegon, Michigan, ordains:

Section 1. Grant of nonexclusive rights.

- A. *Term; revocable at will.* City of Muskegon (city) grants to Michigan Gas Exchange, its successors and assigns (grantee), subject to the terms and conditions set forth below, the nonexclusive right, power and authority to construct, maintain and use gas transmission lines (hereinafter "gas system") on, along, across and under the highways, streets, alleys, and bridges (hereinafter "public ways") in the City of Muskegon, and to do local gas business in the City of Muskegon, Muskegon County, Michigan, for a period of five years. Notwithstanding the term of this agreement, it is revocable at will in accordance with the Michigan State Constitution, article 7, section 25.
- B. *Location in public ways.* To the maximum extent possible, grantee shall place its gas system on, within, and along existing utility facilities in the public ways.
- C. *Lease.* In the event it uses its own facilities, grantee shall not lease or sublease any portion of its gas system within the city to a person who by law is required to obtain the city's permission or consent to transaction business in the city and who lacks such permission or consent. Grantee shall not allow the property of a third party to be affixed or attached to any portion of its gas system or allow other actions with a similar result without the written consent of the city manager or that

person's designee.

Section 2. Use of public rights-of-way by grantee.

Only in the event the grantee installs, or causes to be installed, facilities, (except for meters), the following provisions shall apply concerning facilities owned or in the possession or control of grantee:

- A. *No burden on public ways.* Grantee and its contractors, subcontractors and the grantee's gas system shall not unduly burden or interfere with the present or future use of any of the public ways within the city. Grantee shall erect and maintain its gas 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 or repair to the gas system. Grantee's structures and equipment shall be buried so as to not endanger or injure persons or property in the public ways. If the city in its reasonable judgment determines that any portion of the gas system constitutes an undue burden or interference, grantee at its expense shall modify its gas system or take such other actions as the city 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 city.
- 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 city, any portion of the public ways that is in any way disturbed, damaged, or injured by the construction, operation, maintenance or removal of the gas 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 city, the city shall be entitled to complete the repair and grantee shall pay the costs of the city for such repair.
- C. *Easements.* Any easements required for installation or maintained of a gas system or part thereof by grantee over or under private property 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 agreement. Any easements over or under property owned by the city other than the public ways shall be separately negotiated with the city.
- D. *Pavement cut coordination/additional uses.* Grantee shall coordinate its construction program and all other work in the public ways with the city's program for street construction, rebuilding, resurfacing and repair (collectively, "street resurfacing"). Grantee shall meet with the official of the city 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 city, and to prevent the public ways

from being disturbed by grantee for a period of years after such street resurfacing.

Grantee shall pay to the city the sum of \$1,250.00 for each 50 feet cut into or excavation of any public way, or portion thereof, which was subject to street resurfacing within 18 months prior to such cut or excavation. This fee is in addition to and not in lieu of the obligation to restore the public ways.

- [E. Reserved.]
- F. *Marking.* Grantee shall mark its gas system as reasonably required by the city.
- G. *Compliance with laws.* Grantee shall comply with all laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership or use of its gas 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 piping). Before any installation is commenced, grantee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the city 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. Grantee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.
- H. *Street vacation.* If city 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 agreement, to consent to the vacation and to move its facilities at its sole cost and expense when asked to do so by the city or a court of competent jurisdiction. Grantee shall relocate its facilities to such alternative route as the city, acting reasonably and in good faith, shall designate.
- I. *Relocation.* If the city 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 city, acting reasonably and in good faith, shall designate.
- J. *Public emergency.* The city 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 by the mayor, city manager, police chief or fire chief because of a public emergency. Public emergency shall be any condition which, in the opinion of any of the officials named, poses an immediate threat to the lives or property of the citizens of the city, caused by any natural or manmade disaster, including but not limited to, storms, floods, fire, accidents, explosions, major water main 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 city.

- K. *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.
- L. *Use of existing facilities; compensation to city.* Grantee shall utilize existing facilities wherever practicable, and shall not construct or install any new, different, or additional poles, or other facilities unless expressly authorized by the city.

To the extent that grantee chooses to construct its own equipment (except for meters) or other new facilities, grantee agrees to compensate for city for use of the public rights-of-way. Unless otherwise agreed by the city and grantee, the compensation shall be paid at the rate of \$0.30 per lineal foot of facilities installed.

Section 3. No city liability; indemnification; insurance.

- A. *City not liable.* The city, 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 gas system, or the provision of service over or through the gas 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 agreement, grantee shall defend, indemnify, protect and hold harmless city, its officers, agents, employees, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and 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 of risk.* Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any city-owned or controlled property, including public ways, and grantee hereby agrees to indemnify and hold harmless the city against and from any claim asserted or liability imposed upon the city for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the gas system or grantee's failure to comply with any federal, state or local statute, ordinance or regulation.
- D. *Notice; cooperation and expenses.* City shall give grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent city from cooperating with grantee and participating in the defense of any litigation by city's own counsel.

Grantee shall pay all reasonable expenses incurred by city 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 city attorney, and the actual expenses of city's agents, employees or expert witnesses, and disbursements and liability assumed by city in connection with such suits, actions or proceedings.

- E. *Insurance.* If grantee installs, constructs, owns, controls or possesses any physical facilities (except for meters), in the city separately from those facilities of Michigan Consolidated Gas Co., or its successor, thereafter the grantee shall maintain in force during the remaining period of its franchise, an insurance policy issued by a reputable insurer licensed in the State of Michigan and acceptable to the city for comprehensive general liability coverage, including all risks thereunder, together with any special gas liability endorsements, insuring the city as an additional insured, and covering liability for injuries to any person or property, having liability limits of \$5,000,000.00. A certificate evidencing the issuance of the said policy shall be placed with the city, and the insurance shall be renewed during the entire remaining franchise period as a condition of the continuance of this franchise. A failure to renew or cancellation of the policy shall constitute cancellation of the franchise. The declaration of coverage or any other document from the insurance company regarding notice, shall guarantee that the city shall receive 30 days' written notice of cancellation or modification before the policy may be canceled or changed.

Section 4. Franchise not exclusive.

The rights, power and authority granted herein are not exclusive

Section 5. Rates.

Grantee shall be entitled to charge the inhabitants of the city for gas furnished at the rates approved by the Michigan Public Service Commission, to the extent it, or its successors, have authority and jurisdiction to fix and regulate gas rates and promulgate rules regulating such service in the city. Such rates and rules shall be subject to review and change any time upon petition being made by either the city acting through the city commission or by grantee.

Section 6. City jurisdiction.

Grantee shall be and remain subject to all ordinances, rules and regulations of the city now in effect or which might subsequently be 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 any of its existing or future rights under Michigan or federal law or a limitation upon the existing or future powers of the city pursuant to its Charter or Michigan or federal law.

Section 7. Michigan Public Service Commission.

- A. *Jurisdiction.* 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 gas service by the Michigan Public Service Commission, or its successor bodies.
- B. *Filing.* Grantee shall provide the city with copies of all documents which grantee sends to the Michigan Public Service Commission and copies of all orders,

decisions, or correspondence grantee receives from the public service commission, generally affecting its service or business, and in particular the City of Muskegon. Grantee shall permit city inspection and examination of all records it is required to maintain or file under Michigan Public Service Commission rules and regulations.

Section 8. Effective date.

This ordinance shall take effect 30 days after adoption by the city commission, provided, however, it shall cease and be of no affect after 30 days from its adoption unless and until within said period grantee files an acceptance in writing with the city clerk.

ARTICLE III. ELECTRICITY

DIVISION 1. NORDIC ELECTRIC*

***Editor's note**--Printed herein is Ordinance No. 2008, as adopted by the city commission on January 11, 2000. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

An ordinance granting a nonexclusive franchise to Nordic Electric, L.L.C., to use local public ways and do local electrical business

Whereas, Nordic Electric, L.L.C., its successors and assigns, seeks a public utility franchise to use the highways, streets, alleys, bridges, and other public places for the transmission of electricity, and to do local electric business in the City of Muskegon, and

Whereas, the City of Muskegon, Muskegon County, Michigan, is empowered, pursuant to the Michigan Constitution of 1963, and chapter XIV of its own city Charter, to grant public utility franchises by ordinance,

Now, therefore, the City of Muskegon, Michigan, ordains:

Section 1. Grant of nonexclusive rights.

- A. *Term; revocable at will.* City of Muskegon (city) grants to Nordic Electric, L.L.C., its successors and assigns (grantee), subject to the terms and conditions set forth below, the nonexclusive right, power and authority to construct, maintain and use electric lines consisting of towers, masts, poles, cross-arms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances (hereinafter "electric system") on, along, across and under the highways, streets, alleys, and bridges (hereafter "public ways") as identified

in exhibit A to this ordinance and to do local electric business in the City of Muskegon, Muskegon County, Michigan, for a period of five years. Notwithstanding the term of this agreement, it is revocable at will in accordance with the Michigan State Constitution, article 7, section 25.

- B. *Location in public ways.* To the maximum extent possible, grantee shall place its electrical system on, within, and along existing utility facilities in the public ways.
- C. *Lease.* Grantee shall not lease or sublease any portion of its electrical system within the city to a person who by law is required to obtain the city's permission or consent to transaction business in the city and who lacks such permission or consent. Grantee shall not allow the property of a third party or nonelectrical system wires or any other facilities to be over lashed, affixed or attached to any portion of its electrical system or allow other actions with a similar result without the written consent of the city manager or that person's designee.

Section 2. Use of public rights-of-way by grantee.

- A. *No burden on 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 city. 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 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 city 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 city 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 city.
- 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 city, 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 city, the city shall be entitled to complete the repair and grantee shall pay the costs of the city for such repair.
- C. *Easements.* Any easements required for installation or maintenance of an electric system or part thereof by grantee over or under private property 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 agreement. Any easements over or under property owned by the city other than the public ways shall be separately negotiated with the city.
- 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 city.

- E. *Pavement cut coordination/additional fees.* Grantee shall coordinate its construction program and all other work in the public ways with the city's program for street construction, rebuilding, resurfacing and repair (collectively, "street resurfacing"). Grantee shall meet with the official of the city 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 city, and to prevent the public ways from being disturbed by grantee for a period of years after such street resurfacing.

Grantee shall pay to the city the sum of \$1,250.00 for each 50 feet cut into or excavation of any public way, or portion thereof, which was subject to street resurfacing within 18 months prior to such cut or excavation. This fee is in addition to and not in lieu of the obligation to restore the public ways.

- 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 several inches above the grantee's cable or wire (if such cable or wire is nonconductive);
 - (2) At least several 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.
- G. *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 city 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 Electrical 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.
- H. *Street vacation.* If city 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 agreement, to consent to the vacation and to move its facilities at its sole cost and expense when asked to do so by the city or a court of competent jurisdiction. Grantee shall relocate its facilities to such alternative route, as the

city, acting reasonably and in good faith, shall designate.

- I. *Relocation.* If the city 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 city, acting reasonably and in good faith, shall designate.
- J. *Public emergency.* The city 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 by the mayor, city manager, police chief or fire chief because of a public emergency. Public emergency shall be any condition which, in the opinion of any of the officials named, poses an immediate threat to the lives or property of the citizens of the city, caused by any natural or manmade disaster, including, but not limited to, storms, floods, fire, accidents, explosions, major water main 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 city.
- K. *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.
- L. *Use of existing facilities; compensation to city.* 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 city. 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 city. In the event grantee desires to utilize existing poles, conduits or other facilities owned by the city, 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 city for use of the public rights-of-way. Unless otherwise agreed by the city and grantee, the compensation shall be paid at the rate of \$0.30 per lineal foot of wiring or other facilities installed.

- M. *Underground relocation.* If grantee has its facilities on Consumers Energy Company's or any other public utility company's aboveground 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. *Pole/conduit license agreement notification.* If grantee forfeits or otherwise loses its rights under a pole/conduit license agreement with Consumers Energy Company or other entity, then grantee shall notify the city manager in writing within 14 days.

Section 3. No city liability: indemnification; insurance.

- A. *City not liable.* The city, 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 agreement, grantee shall defend, indemnify, protect and hold harmless city, its officers, agents, employees, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and 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 of risk.* Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any city-owned or -controlled property, including public ways, and grantee hereby agrees to indemnify and hold harmless the city against and from any claim asserted or liability imposed upon the city 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.* City shall give grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent city from cooperating with grantee and participating in the defense of any litigation by city's own counsel.

Grantee shall pay all reasonable expenses incurred by city 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 city attorney, and the actual expenses of city's agents, employees or expert witnesses, and disbursements and liability assumed by city in connection with such suits, actions or proceedings.

- E. *Insurance.* If grantee installs or constructs any physical facilities, except for meters in the city separately from those facilities of Consumers Energy Company or its successor, thereafter the grantee shall maintain in force during the remaining period of its franchise, an insurance policy issued by a reputable insurer licensed in the State of Michigan and acceptable to the city for comprehensive general liability coverage, including all risk thereunder, together with any special electric liability endorsements, insuring the city as an additional insured, and covering liability for injuries to any person or property, having liability limits of \$5,000,000.00. A certificate evidencing the issuance of the said policy shall be placed with the city, and the insurance shall be renewed during the entire remaining franchise period as a condition of the continuance of this franchise. A failure to renew or cancellation of the policy shall constitute cancellation of the franchise. The declaration of coverage or any other document from the insurance company regarding notice shall guarantee that the city shall receive 30 days' written notice of cancellation or modification before the policy may be canceled or changed.

Section 4. Franchise not exclusive.

The rights, power and authority granted herein are not exclusive.

Section 5. Rates.

Grantee shall be entitled to charge the inhabitants of the city for electricity furnished at the rates approved by the Michigan Public Service Commission, to the extent it, or its successors, have authority and jurisdiction to fix and regulate electrical rates and promulgate rules regulating such service in the city. Such rates and rules shall be subject to review and change any time upon petition being made by either the city acting through the city commission or by grantee.

Section 6. City jurisdiction.

Grantee shall be and remain subject to all ordinances, rules and regulations of the city now in effect or which might subsequently be 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 any of its existing or future rights under Michigan or federal law or a limitation upon the existing or future powers of the city pursuant to its Charter or Michigan or federal law.

Section 7. Michigan Public Service Commission.

- A. *Jurisdiction.* 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 electric service by the Michigan Public Service Commission, or its successor bodies.
- B. *Filing.* Grantee shall provide the city with copies of all documents which grantee sends to the Michigan Public Service Commission and copies of all orders, decisions, or correspondence grantee receives from the public service commission, generally affecting its service or business, and in particular the City of Muskegon. Grantee shall permit city inspection and examination of all records it is required to maintain or file under Michigan Public Service Commission rules and regulations.

Section 8. Effective date.

This ordinance shall take effect 30 days after adoption by the city commission, provided, however, it shall cease and be of no affect after 30 days from its adoption unless and until within said period grantee files an acceptance in writing with the city clerk.

EXHIBIT A

To

An ordinance granting a nonexclusive franchise to Nordic Electric, L.L.C., to use local public ways and to do local electrical business in the City of Muskegon, Michigan.

Pursuant to section 1, A, of the above referenced ordinance, the City of

Muskegon (city) grants to Nordic Electric, L.L.C., its successors and assigns (grantee), subject to the terms and conditions set forth in the above-referenced ordinance, the nonexclusive right, power, and authority to construct, maintain, and use electric lines consisting as towers, masts, poles, cross-arms, guys, braces, feeders, transmission and distribution wires, transformers, and other electrical appliances (electric system) on, along, across, and under the highways, streets, alleys, and bridges (public ways) identified as follows:

All public ways within city limits of the City of Muskegon.

DIVISION 2. DTE ENERGY MARKETING*

***Editor's note**--Printed herein is Ordinance No. 2015, as adopted by the city commission on April 11, 2000. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

An ordinance granting a nonexclusive franchise to DTE Energy Marketing, Inc., to use local public ways and do local electrical business

Whereas, DTE Energy Marketing, Inc., its successors and assigns, seeks a public utility franchise to use the highways, streets, alleys, bridges, and other public places for the transmission of electricity, and to do local electric business in the City of Muskegon, and

Whereas, the City of Muskegon, Muskegon County, Michigan, is empowered, pursuant to the Michigan Constitution of 1963, and chapter XIV of its own city Charter, to grant public utility franchises by ordinance,

Now, therefore, the City of Muskegon, Michigan, ordains:

Section 1. Grant of nonexclusive rights.

- A. *Term; revocable at will.* City of Muskegon (city) grants to DTE Energy Marketing, Inc., its successors and assigns (grantee), subject to the terms and conditions set forth below, the nonexclusive rights, power and authority to construct, maintain and use electric lines consisting of towers, masts, poles, cross-arms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances (hereinafter "electric system") on, along, across and under the highways, streets, alleys, and bridges (hereafter "public ways") as identified in exhibit A to this ordinance and to do local electric business in the City of Muskegon, Muskegon County, Michigan, for a period of five years. Notwithstanding the term of this agreement, it is revocable at will in accordance with the Michigan State Constitution, article 7, section 25.
- B. *Location in public ways.* To the maximum extent possible, grantee shall place its electrical system on, within, and along existing utility facilities in the public ways.

- C. *Lease.* Grantee shall not lease or sublease any portion of its electrical system within the city to a person who by law is required to obtain the city's permission or consent to transaction business in the city and who lacks such permission or consent. Grantee shall not allow the property of a third party or nonelectrical system wires or any other facilities to be over lashed, affixed or attached to any portion of its electrical system or allow other actions with a similar result without the written consent of the city manager or that person's designee.

Section 2. Use of public rights-of-way by grantee.

- A. *No burden on 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 city. 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 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 city 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 city 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 city.
- 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 city, 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 city, the city shall be entitled to complete the repair and grantee shall pay the costs of the city for such repair.
- C. *Easements.* Any easements required for installation or maintenance of an electric system or part thereof by grantee over or under private property 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 agreement. Any easements over or under property owned by the city other than the public ways shall be separately negotiated with the city.
- 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 city.
- E. *Pavement cut coordination/additional fees.* Grantee shall coordinate its construction program and all other work in the public ways with the city's program for street construction, rebuilding, resurfacing and repair (collectively, "street resurfacing"). Grantee shall meet with the official of the city 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 city, and to prevent the public ways from being disturbed by grantee for a period of years after such street resurfacing.

Grantee shall pay to the city the sum of \$1,250.00 for each 50 feet cut into or excavation of any public way, or portion thereof, which was subject to street resurfacing within 18 months prior to such cut or excavation. This fee is in addition to and not in lieu of the obligation to restore the public ways.

- 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 in the ground at least several inches above the grantee's cable or wire (if such cable or wire is nonconductive);
 - (2) At least several 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.
- G. *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 city 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 Electrical 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.
- H. *Street vacation.* If city 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 agreement, to consent to the vacation and to move its facilities at its sole cost and expense when asked to do so by the city or a court of competent jurisdiction. Grantee shall relocate its facilities to such alternative route as the city, acting reasonably and in good faith, shall designate.
- I. *Relocation.* If the city 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 city, acting reasonably and in good faith, shall designate.

- J. *Public emergency.* The city 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 by the mayor, city manager, police chief or fire chief because of a public emergency. Public emergency shall be any condition which, in the opinion of any of the officials named, poses an immediate threat to the lives or property of the citizens of the city, caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, major water main 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 city.
- K. *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.
- L. *Use of existing facilities: compensation to city.* 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 city. 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 city. In the event grantee desires to utilize existing poles, conduits or other facilities owned by the city, grantee shall be obligated to pay the existing standard charge for attachment to, placement in, or other use of the those facilities.

To the extent that grantee chooses to construct its own utility wiring or other new facilities, grantee agrees to compensate the city for use of the public rights-of-way. Unless otherwise agreed by the city and grantee, the compensation shall be paid at the rate of \$0.30 per lineal foot of wiring or other facilities installed.

- M. *Underground relocation.* If grantee has its facilities on Consumers Energy Company's or any other public utility company's aboveground 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. *Pole/conduit license agreement notification.* If grantee forfeits or otherwise loses its rights under a pole/conduit license agreement with Consumers Energy Company or other entity, then grantee shall notify the city manager in writing within 14 days.

Section 3. No city liability; indemnification; insurance.

- A. *City not liable.* The city, 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 agreement, grantee shall defend, indemnify, protect and hold harmless city, its officers, agents,

employees, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (including, without limitation, actual fees and expenses of attorneys, expert witnesses and consultants), arising out of resulting from the acts or omission 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 of risk.* Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any city-owned or controlled property, including public ways, and grantee hereby agrees to indemnify and hold harmless the city against and from any claim asserted or liability imposed upon the city 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.* City shall give grantee notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent city from cooperating with grantee and participating in the defense of any litigation by city's own council.

Grantee shall pay all reasonable expenses incurred by city 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 city attorney, and the actual expenses of city's agents, employees or expert witnesses, and disbursements and liability assumed by city in connection with such suits, actions or proceedings.

- E. *Insurance.* If grantee installs or constructs any physical facilities, except for meters in the city separately from those facilities of Consumers Energy Company or its successor, thereafter the grantee shall maintain in force during the remaining period of its franchise, an insurance policy issued by a reputable insurer licensed in the State of Michigan and acceptable to the city for comprehensive general liability coverage, including all risks thereunder, together with any special electric liability endorsements, insuring the city as an additional insured, and covering liability for injuries to any person or property, having liability limits of \$5,000,000.00. A certificate evidencing the issuance of the said policy shall be placed with the city, and the insurance shall be renewed during the entire remaining franchise period as a condition of the continuance of this franchise. A failure to renew or cancellation of the policy shall constitute cancellation of the franchise. The declaration of coverage or any other document from the insurance company regarding notice, shall guarantee that the city shall receive 30 days' written notice of cancellation or modification before the policy may be canceled or changed.

Section 4. Franchise not exclusive.

The rights, power and authority granted herein are not exclusive.

Section 5. Rates.

Grantee shall be entitled to charge the inhabitants of the city for electricity furnished at the rates approved by the Michigan Public Service Commission, to the extent it, or its successors, have authority and jurisdiction to fix and regulate electrical rates and promulgate rules regulating such service in the city. Such rates and rules shall be subject to review and change any time upon petition being made by either the city through the city commission or by grantee.

Section 6. City jurisdiction.

Grantee shall be and remain subject to all ordinances, rules and regulations of the city now in effect or which might subsequently be 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 any of its existing or future rights under Michigan or federal law or a limitation upon the existing or future powers of the city pursuant to its Charter or Michigan or federal law.

Section 7. Michigan Public Service Commission.

- A. *Jurisdiction.* 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 electric service by the Michigan Public Service Commission, or its successor bodies.
- B. *Filing.* Grantee shall provide the city with copies of all documents which grantee sends to the Michigan Public Service Commission and copies of all orders, decisions, or correspondence grantee receives from the public service commission, generally affecting its service or business, and in particular the City of Muskegon. Grantee shall permit city inspection and examination of all records it is required to maintain or file under Michigan Public Service Commission rules and regulations.

Section 8. Effective date.

This ordinance shall take effect 30 days after adoption by the city commission, provided, however, it shall cease and be of no affect after 30 days from its adoption unless and until within said period grantee files an acceptance in writing with the city clerk.

EXHIBIT A

To

An ordinance granting a nonexclusive franchise to DTE Energy Marketing, Inc., to use local public ways and to do local electrical business in the City of Muskegon, Michigan.

Pursuant to section 1, A, of the above referenced ordinance, the City of Muskegon (city) grants to DTE Energy Marketing, Inc., its successors and assigns (grantee), subject to the terms and conditions set forth in the above-referenced ordinance, the nonexclusive right, power, and authority to construct, maintain, and use electric lines consisting as towers, masts, poles, cross-arms, guys, braces, feeders, transmission and distribution wires, transformers, and other electrical appliances

(electric system) on, along, across, and under the highways, streets, alleys, and bridges (public ways) identified as follows:

All public ways within city limits of the City of Muskegon.

DIVISION 3. QUEST ENERGY*

***Editor's note**--Printed herein is Ordinance No. 2026, as adopted by the city commission on July 25, 2000. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, headings and catchlines have been made uniform and the same system of capitalization, citation to state statutes and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

An ordinance granting a nonexclusive franchise to Quest Energy to use local public ways and do local electrical business

Whereas, Quest Energy, its successors and assigns, seeks a public utility franchise to use the highways, streets, alleys, bridges, and other public places for the transmission of electricity, and to do local electric business in the City of Muskegon, and

Whereas, the City of Muskegon, Muskegon County, Michigan, is empowered, pursuant to the Michigan Constitution of 1963, and chapter XIV of its own city Charter, to grant public utility franchises by ordinance,

Now, therefore, the City of Muskegon, Michigan, ordains:

Section 1. Grant of nonexclusive rights.

- A. *Term; revocable at will.* City of Muskegon (city) grants to Quest Energy, its successors and assigns (grantee), subject to the terms and conditions set forth below, the nonexclusive right, power and authority to construct, maintain and use electric lines consisting of towers, masts, poles, cross-arms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances (hereinafter "electric system") on, along, across and under the highways, streets, alleys, and bridges (hereafter "public ways") as identified in exhibit A to this ordinance and to do local electric business in the City of Muskegon, Muskegon County, Michigan, for a period of five years. Notwithstanding the term of this agreement, it is revocable at will in accordance with the Michigan State Constitution, article 7, section 25.
- B. *Location in public ways.* To the maximum extent possible, grantee shall place its electrical system on, within, and along existing utility facilities in the public ways.
- C. *Lease.* Grantee shall not lease or sublease any portion of its electrical system within the city to a person who by law is required to obtain the city's permission or consent to transaction business of the city and who lacks such permission or consent. Grantee shall not allow the property of a third party or nonelectrical system wires or any other facilities to be over lashed, affixed or attached to any

portion of its electrical system or allow other actions with a similar result without the written consent of the city manager or that person's designee.

Section 2. Use of public rights-of-way by grantee.

- A. *No burden on 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 city. 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 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 city 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 city 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 city.
- 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 city, 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 city, the city shall be entitled to complete the repair and grantee shall pay the costs of the city for such repair.
- C. *Easements.* Any easements required for installation or maintenance of an electric system or part thereof by grantee over or under private property 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 agreement. Any easements over or under property owned by the city other than the public ways shall be separately negotiated with the city.
- 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 city.
- E. *Pavement cut coordination/additional fees.* Grantee shall coordinate its construction program and all other work in the public ways with the city program for street construction, rebuilding, resurfacing and repair (collectively, "street resurfacing"). Grantee shall meet with the official of the city 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 city, and to prevent the public ways from being disturbed by grantee for a period of years after such street resurfacing.

Grantee shall pay to the city the sum of \$1,250.00 for each 50 feet cut into or excavation of any public way, or portion thereof, which was subject to street resurfacing within 18 months prior to such cut or excavation. This fee is in addition to and not in lieu of the obligation to restore the public ways.

- 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 several inches above the grantee's cable or wire (if such cable or wire is nonconductive);
 - (2) At least several inches above that a continuous colored tape with grantee's name and a toll-free member 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.
- G. *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 city 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 Electrical 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.
- H. *Street vacation.* If city 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 agreement, to consent to the vacation and to move its facilities at its sole cost and expense when asked to do so by the city or a court of competent jurisdiction. Grantee shall relocate its facilities to such alternative route as the city, acting reasonably and in good faith, shall designate.
- I. *Relocation.* If the city 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 city, acting reasonably and in good faith, shall designate.
- J. *Public emergency.* The city 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 by the mayor, city manager, police chief or fire chief because of a public emergency. Public emergency shall be any condition which, in the opinion of any of the officials named, poses an immediate threat to the lives or property of the citizens of the city, caused by any natural or manmade disaster,

including, but not limited to, storms, floods, fire, accidents, explosions, major water main 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 city.

- K. *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.
- L. *Use of existing facilities: compensation to city.* 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 city. 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 city. In the event grantee desires to utilize existing poles, conduits or other facilities owned by the city, 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 city for use of the public rights-of-way. Unless otherwise agreed by the city and grantee, the compensation shall be paid at the rate of \$0.30 per lineal foot of wiring or other facilities installed.

- M. *Underground relocation.* If grantee has its facilities on Consumers Energy Company's or any other public utility company's aboveground 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. *Pole/conduit license agreement notification.* If grantee forfeits or otherwise loses its rights under a pole/conduit license agreement with Consumers Energy Company or other entity, then grantee shall notify the city manager in writing within 14 days.

Section 3. No city liability: indemnification; insurance.

- A. *City not liable.* The city, 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 agreement, grantee shall defend, indemnify, protect and hold harmless city, its officers, agents, employees, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and 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 of risk.* Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any city-owned or -controlled property, including public ways, and grantee hereby agrees to indemnify and hold harmless the city against and from any claim asserted or liability imposed upon the city 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.* City shall give grantee prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent city from cooperating with grantee and participating in the defense of any litigation by city's own counsel.

Grantee shall pay all reasonable expenses incurred by city 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 city attorney, and the actual expenses of city's agents, employees or expert witnesses, and disbursements and liability assumed by city in connection with such suits, actions or proceedings.

- E. *Insurance.* If grantee installs or constructs any physical facilities, except for meters in the city separately from those facilities of Consumers Energy Company or its successor, thereafter the grantee shall maintain in force during the remaining period of its franchise, an insurance policy issued by a reputable insurer licensed in the State of Michigan and acceptable to the city for comprehensive general liability coverage, including all risks thereunder, together with any special electric liability endorsements, insuring the city as an additional insured, and covering liability for injuries to any person or property, having liability limits of \$5,000,000.00. A certificate evidencing the issuance of the said policy shall be placed with the city, and the insurance shall be renewed during the entire remaining franchise period as a condition of the continuance of this franchise. A failure to renew or cancellation of the policy shall constitute cancellation of the franchise. The declaration of coverage or any other document from the insurance company regarding notice, shall guarantee that the city shall receive 30 days written notice of cancellation or modification before the policy may be canceled or changed.

Section 4. Franchise not exclusive.

The rights, power and authority granted herein are not exclusive.

Section 5. Rates.

Grantee shall be entitled to charge the inhabitants of the city for electricity furnished at the rates approved by the Michigan Public Service Commission, to the extent it, or its successors, have authority and jurisdiction to fix and regulate electrical rates and promulgate rules regulating such service in the city. Such rates and rules shall be subject to review and change any time upon petition being made by either the city

acting through the city commission or by grantee.

Section 6. City jurisdiction.

Grantee shall be and remain subject to all ordinances, rules and regulations of the city now in effect or which might subsequently be 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 any of its existing or future rights under Michigan or federal law or a limitation upon the existing or future powers of the city pursuant to its Charter or Michigan or federal law.

Section 7. Michigan Public Service Commission.

- A. *Jurisdiction.* 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 electric service by the Michigan Public Service Commission, or its successor bodies.
- B. *Filing.* Grantee shall provide the city with copies of all documents which grantee sends to the Michigan Public Service Commission and copies of all orders, decisions, or correspondence grantee receives from the public service commission, generally affecting its service or business, and in particular the City of Muskegon. Grantee shall permit city inspection and examination of all records it is required to maintain or file under Michigan Public Service Commission rules and regulations.

Section 8. Effective date.

This ordinance shall take effect 30 days after adoption by the city commission, provided, however, it shall cease and be of no affect after 30 days from its adoption unless and until within said period grantee files an acceptance in writing with the city clerk.

EXHIBIT A

To

An ordinance granting a nonexclusive franchise to DTE Energy Marketing, Inc., to use local public ways and to do local electrical business in the City of Muskegon, Michigan.

Pursuant to section 1, A, of the above referenced ordinance, the City of Muskegon (city) grants to DTE Energy Marketing, Inc., its successors and assigns (grantee), subject to the terms and conditions set forth in the above-referenced ordinance, the nonexclusive right, power, and authority to construct, maintain, and use electric lines consisting as towers, masts, poles, cross-arms, guys, braces, feeders, transmission and distribution wires, transformers, and other electrical appliances (electric system) on, along, across, and under the highways, streets, alleys, and bridges (public ways) identified as follows:

All public ways within city limits of the City of Muskegon.