

**VILLAGE OF ELLSWORTH  
GAS FRANCHISE ORDINANCE**

Ordinance 3142016

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO USE  
LOCAL PUBLIC WAYS AND TRANSACT LOCAL GAS BUSINESS IN  
THE VILLAGE.

THE VILLAGE OF ELLSWORTH ORDAINS:

SECTION 1. Grant of Non-Exclusive Right.

- A. Term. Village of Ellsworth (Grantor or Village) grants to DTE Gas Company, (Grantee) and its successors and assigns subject to the terms and conditions set forth below, the non-exclusive right, power and authority to lay, maintain and operate gas mains, pipes and services (hereinafter "Gas System") that are owned either by Grantee on, along, across and under the highways, streets, alleys and bridges of the Grantor (hereinafter "Public Ways") or Grantee may use the Gas System of any gas utility as long as the gas utility has the necessary authority from the Michigan Public Service Commission and a valid franchise from Grantor. Grantee is also given the authority to do local gas business within the boundaries of Grantor for a period of fifteen (15) years, unless and until revoked or terminated by one of the parties pursuant to Section 8 hereunder.
- 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. Grantee shall not lease or sublease any portion of its Gas System within the Grantor to a person who by law is required to obtain the Grantor's permission or consent to transaction of business in the Village and who lacks such permission or consent.

SECTION 2. Consideration: Costs: Right-of-Way Fees.

- A. In consideration of the rights, power and authority granted by the Grantor, Grantee shall faithfully perform all duties required by the terms of this Ordinance.
- B. In further consideration of the rights, power and authority granted by the Grantor, Grantee agrees to compensate the Grantor: (1) for the amount of its actual expenses incurred by the Grantor in the drafting and preparation of this Ordinance, including reasonable actual attorney fees, and (2) for the amount of its actual expenses resulting from the process of adopting this ordinance. This franchise shall not become effective until all costs have been paid to Grantor.

SECTION 3. Use of Public Rights-of-Way by 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 Village. 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. If the Grantor 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 Grantor may determine is in the public interest to remove or alleviate the burden, and the Grantee shall do so within a reasonable time period established by the Grantor.
- B. Restoration of Public Ways. Grantee and its contractors and subcontractors shall restore, at Grantee's sole cost and expense and in a manner and within a time period approved by the Grantor in the reasonable exercise of its discretion, 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 Grantor, the Grantor shall be entitled to complete the repair and Grantee shall pay the costs of the Grantor for such repair.
- C. Easements. Any easements over or under property owned by the Grantor other than the Public Ways shall be separately negotiated with the Grantor.
- D. 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. Before any installation is commenced, Grantee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the Grantor or other governmental entity as may be required by law, including, without limitation 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 enacted or amended.
- E. Street Vacation. If the Grantor vacates or consents to the vacation of a street or alley within its jurisdiction, and such vacation necessitates the removal and relocation of Grantee's facilities in the vacated Public Way, Grantee agrees, as a condition of this Ordinance, to consent to the vacation and to move its facilities at its sole cost and expense when asked to do so by the Grantor or a court of

competent jurisdiction. Grantee shall relocate its facilities to such alternative route as the Grantor and Grantee mutually agree, acting reasonably and in good faith.

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

#### SECTION 4. No Grantor Liability; Indemnification.

- A. Grantor Not Liable. The Grantor, its officers, employees, departments, boards and commissions 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 to third parties arising out of Grantee's use of the Public Ways.
- B. Indemnification. As part of the consideration for of this Ordinance, Grantee shall defend, indemnify, protect and hold harmless Grantor, its officers, employees, departments, boards and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and reasonable expenses of any nature (including, without limitation, actual fees and expenses of attorneys, expert witnesses and consultants), arising out of or resulting from the acts or omissions of Grantee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent of the fault of the Grantee, its officers, agents, employees, contractors, successors, or assigns.
- C. Assumption 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 Public Ways, and Grantee hereby agrees to indemnify and hold harmless the Grantor against and from any claim asserted or liability imposed upon the Grantor for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the Gas System or Grantee's failure to comply with any federal, state or local statute, ordinance or regulation.
- D. Notice, Cooperation and Expenses. The Grantor shall give Grantee prompt notice of the making of any claim or the commence of any actions suit or other proceeding covered by the provisions of this Section. Nothing herein shall be deemed to prevent the Grantor from cooperating with Grantee and participating in the defense of any litigation by Grantor's own counsel.

SECTION 5. Insurance.

Grantee will maintain insurance with responsible and reputable insurance companies or associations in such amounts, self-insured retentions and covering such risks including General Liability Insurance as is usually carried by companies engaged in similar businesses and owning similar properties (including customary self-insured retentions) in the same general areas in which the Grantee operates.

General liability policies maintained pursuant to above shall name Grantor as an additional insured. Grantee agrees to indemnify and hold harmless the Grantor from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished by this Ordinance.

SECTION 6. Franchise Not Exclusive.

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

SECTION 7. Michigan Public Service Commission Jurisdiction.

Grantee shall, as to all other conditions and elements of service not herein fixed, be and remain subject to the reasonable rules and regulations of the Michigan Public Service Commission or its successors, applicable to gas service in the Village.

SECTION 8. Revocation.

- A. Notice of Violation. If the Village believes that Grantee has not complied with the terms of this Ordinance, the Village shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Village shall notify Grantee in writing of the exact nature of the alleged noncompliance.
- B. Grantee's Right to Respond or Cure. Grantee shall have thirty (30) days from receipt of the notice described in subsection (A) above to take one or more of the following actions: (i) respond to the Village contesting the assertion of noncompliance, (ii) cure such noncompliance, or (iii) if, by the nature of the noncompliance, compliance cannot be achieved within the thirty (30) day period, initiate reasonable steps toward compliance and notify the Village of the steps being taken and the projected date that compliance will be achieved.
- C. Public Hearing. If Grantee fails to respond to the notice provided pursuant to subsection (A) above or if Grantee fails to cure the noncompliance within thirty (30) days or fails to initiate reasonable steps toward compliance as provided in subsection (B) above, the Village shall schedule a public hearing if it intends to continue its investigation into the noncompliance. The Village shall provide Grantee no less than twenty (20) days prior written notice of such public hearing,

which notice shall specify the time, date, place, and purpose of the public hearing. A notice of the public hearing shall be published by the Village in a newspaper of general circulation within the Village no less than ten (10) days prior to the public hearing.

- D. Enforcement. Subject to applicable federal and state law, in the event the Village, after the public hearing held pursuant to subsection (C) above, determines that Grantee is not in compliance with any provision of this Ordinance, the Village may do one or more of the following:
1. Seek specific performance of any provision of this Ordinance, which reasonably lends itself to such a remedy, or seek other equitable relief.
  2. Commence an action at law for monetary damages.
  3. Commence an action with the Michigan Public Service Commission declaring its rights in the matter.
  4. Revoke the Franchise previously granted by the Village.

SECTION 9. Effective Date.

This Ordinance shall take effect sixty (60) days after adoption by the Ellsworth Village Council and shall continue in effect as provided in Section 1.A. above, subject to the revocation provision of Section 8 above; provided, however, it shall cease and be of no effect unless and until within fifteen (15) days after adoption, the Grantee shall file its written acceptance of the same with the clerk, and pay to the Grantor the sum required by Section 2(B) hereof.

VILLAGE OF ELLSWORTH

By: \_\_\_\_\_  
Hugh Campbell, President

By: \_\_\_\_\_  
Marlene Drenth, Clerk