

## ORDINANCE NO. 246

## CONSUMERS ENERGY COMPANY GAS AND/OR ELECTRIC FRANCHISE ORDINANCE

AN ORDINANCE, granting to CONSUMERS ENERGY COMPANY, its successors and assigns, the right, power and authority to lay, maintain and operate gas mains, pipes and services, and to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances on, along, across and under the highways, streets, alleys, bridges, waterways, and other public places, and to do a local gas and/or electric business in the CHARTER TOWNSHIP OF COOPER, KALAMAZOO COUNTY, MICHIGAN, for a period of thirty (30) years.

## THE CHARTER TOWNSHIP OF COOPER ORDAINS:

SECTION 1. GRANT, TERM. The CHARTER TOWNSHIP OF COOPER, KALAMAZOO COUNTY, MICHIGAN (the "Township"), hereby grants to Consumers Energy Company, a Michigan corporation, and its successors and assigns, (the "Grantee"), the right, power and authority to lay, maintain and operate gas mains, pipes and services, and to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances on, along, across and under the highways, streets, alleys, bridges, waterways, and other public places ("Public Ways"), and to do a local gas and/or electric business (collectively, the "Electric System") in the Township, for a period of thirty (30) years.

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

SECTION 3. CONDITIONS. Grantee shall not obstruct the Public Ways longer than necessary during the work of construction or repair, and shall be restored to the same order and condition as when said work was commenced. All of Grantee's structures and equipment shall be so placed on either side of the highways as not to unnecessarily interfere with the use thereof for highway purposes. All of Grantee's wires carrying electricity shall be securely fastened so as not to endanger or injure persons or property in said highways. The Grantee shall have the right to trim trees if necessary in the conducting of such business, subject, however, to the supervision of the highway authorities.

SECTION 4. VACATION OR RELOCATION. The Township may require the Grantee to vacate or relocate any portion of the Electric System within the Public ways at the Grantee's expense if such vacation or relocation is necessary to secure the public health and welfare or is otherwise required by the Township in the exercise of a governmental function. If Grantee's electrical system components located within the public highways physically interfere with Township improvements made in furtherance of the rights of the public to the public highways under the jurisdiction of the Township, the Grantee shall relocate components of the electrical system to a mutually agreeable alternative location within the public highways at no charge to the Township, provided however, that nothing in this provision shall be construed as a waiver by Grantee of any of its existing or future rights under state or federal law.

SECTION 5. 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. Before any installation is commenced, Grantee

shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the Township or other governmental entity as may be required by law. Grantee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist.

SECTION 6. HOLD HARMLESS. Said Grantee shall at all times keep and save the Township free and harmless from all claims, losses, liabilities, causes of action, demands, judgments, decrees, and costs and expenses of any nature (including without limitation attorney fees and expert witness fees) resulting solely from the acts or omissions of Grantee, its officers, agents, employees, contractors, successors, or assigns in connection with the Electric System or the Grantee's use of the Public Ways. If any demand is made or any action is commenced against the Township resulting from Grantee's acts or omissions (or the actions of Grantee's officers, agents, employees, contractors, successors, or assigns), in connection with the Electric System or the Grantee's use of the Public Ways, Grantee shall, upon notice, defend and indemnify the Township and save it free and harmless from all loss, cost and damage arising out of such negligent construction and maintenance. Except when arising out of or related to any negligent act or omission of the Township or its agents, employees, or contractors, the Township and its agents, employees, and contractors shall not be liable to the Grantee for any interference with or disruption in the operation of the Electric System, or the provision of service over or through the Electric System, or for any damages arising out of the Grantee's use of the Public Ways.

SECTION 7. FRANCHISE NOT EXCLUSIVE. The rights, power and authority herein granted are not exclusive. The right to do a gas business and the right to do an electric business hereunder are several, and such rights may be separately exercised, owned and transferred. Either manufactured or natural gas may be furnished hereunder.

SECTION 8. EXTENSIONS. Said Grantee shall from time to time extend its gas and electric systems to and within said Township, and shall furnish gas or electricity to applicants residing therein in accordance with applicable laws, rules and regulations.

SECTION 9. RATES. The Grantee shall be entitled to charge the inhabitants of said Township for gas and/or electricity furnished therein, the rates as approved by the Michigan Public Service Commission, to which Commission or its successors, authority and jurisdiction to fix and regulate gas and electric rates and rules regulating such service in said Township, are hereby granted. Such rates and rules shall be subject to review and change at any time upon petition therefor being made by either said Township acting by its Township Board, or by said Grantee.

SECTION 10. REVOCATION. The franchise granted by this Ordinance is subject to revocation upon sixty (60) days written notice by the party desiring such revocation.

SECTION 11. MICHIGAN PUBLIC SERVICE COMMISSION, JURISDICTION. Said Grantee shall, as to all other conditions and elements of service, both gas and electric, not herein fixed, be and remain subject to the rules and regulations of the Michigan Public Service Commission or its successors, applicable to gas or electric service in said Township. Grantee shall, upon the Township's request, permit the Township to inspect and examine all records that Grantee is required to file under the Michigan Public Service Commission's rules and regulations.

SECTION 12. REPEALER. This ordinance, when accepted and published as herein provided, shall repeal and supersede the provisions of a gas and/or electric ordinance adopted by the Township Board on May 9, 1988 entitled:

AN ORDINANCE, granting to CONSUMERS POWER COMPANY, its successors and assigns, the right, power and authority to lay, maintain and operate gas mains, pipes and services, and to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances on, along, across and under the highways, streets, alleys, bridges and other public places, and to do a local gas and/or electric business in the TOWNSHIP OF COOPER, KALAMAZOO COUNTY, MICHIGAN, for a period of thirty years.

and amendments, if any, to such ordinance whereby a gas and/or electric franchise was granted to Consumers Energy Company.

SECTION 13. EFFECTIVE DATE. This ordinance shall take effect upon the day after the date of publication thereof; provided, it shall cease and be of no effect after thirty (30) days from its adoption unless within said period the Grantee shall accept the same in writing filed with the Township Clerk. Upon acceptance and publication hereof, this ordinance shall constitute a contract between said Township and said Grantee.

We certify that the foregoing franchise ordinance was duly enacted by the Township Board of the CHARTER TOWNSHIP OF COOPER, KALAMAZOO COUNTY, MICHIGAN, on the \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Jeff Sorensen, Township Supervisor

Attest:

\_\_\_\_\_  
DeAnna Janssen, Township Clerk

**CHARTER TOWNSHIP OF COOPER**

**NOTICE OF POSTING OF PROPOSED ORDINANCE**

**PLEASE TAKE NOTICE** that at its regular meeting on March 12, 2018, the Township Board received the Proposed Consumers Energy Company Gas and/or Electric Franchise Ordinance (“Proposed Ordinance”). The Proposed Ordinance would grant Consumers Energy Company a nonexclusive franchise from the Township to construct, maintain and commercially use electric lines and do local electric business within the Township.

The Proposed Ordinance will be considered for adoption on April 9, 2018, at 7:00 p.m., at the Township Board meeting at the Township Hall at 1590 West D Avenue, Kalamazoo, Michigan. The Proposed Ordinance is available in its entirety for public inspection. The Proposed Ordinance is posted at the office of the Township Clerk, 1590 West D Avenue, Kalamazoo, Michigan, and is posted on the website of the Charter Township of Cooper, <http://www.coopertwp.org>.

DEANNA JANSSEN, Clerk  
Cooper Charter Township Hall  
1590 West D Avenue  
Kalamazoo, MI 49009  
(269) 382-0223