

## TITLE 11 - FRANCHISES

### CHAPTER 1

#### GAS FRANCHISE

##### **11.1.1. Grant of Gas Franchise and Consent to Laying of Pipes, Etc.**

Subject to all the terms and conditions mentioned in this ordinance, consent is hereby given to Michigan Consolidated Gas Company, a corporation organized under the laws of the State of Michigan (the "Company"), and to its successors and assigns, to lay, maintain, operate, and use gas pipes, mains, conductors, service pipes, and other necessary equipment in the highways, streets, alleys, and other public places in the City of Charlevoix, Charlevoix County, Michigan, and a non-exclusive franchise is hereby granted to the Company, its successors and assigns, to transact local business in the City of Charlevoix for the purposes of conveying gas into and through and supplying and selling gas in the City of Charlevoix and all other matters incidental thereto.

##### **11.1.2. Installation and Extension of System.**

If the provisions and conditions herein contained are accepted by the Company, as in Section 6 hereof provided, then the Company shall furnish gas to applicants residing therein in accordance with applicable laws, rules and regulations; and provided further that such initial installation and any extensions shall be subject to the Main Extension provisions, the Area Expansion Program provisions (if and where applicable), and other applicable provisions now or from time to time hereafter contained in the Company's Rules and Regulations for Gas Service as filed with the Michigan Public Service Commission or successor agency having similar jurisdiction.

##### **11.1.3. Use of Streets and Other Public Places.**

- 11.1.3.1. The Company, its successors and assigns, shall not unnecessarily obstruct the passage of any of the highways, streets, alleys, or other public places within the City of Charlevoix and shall within a reasonable time after making an opening or excavation, repair the same and leave it in as good condition as before the opening or excavation was made. The Company, its successors and assigns, shall use due care in exercising the privileges herein contained and shall be liable to said City of Charlevoix for all damages and costs which may be recovered against the City of Charlevoix arising from the default, carelessness, or negligence of the Company or its officers, agents, and servants.
- 11.1.3.2. No road, street, alley, or highway shall be opened for the laying of trunk lines or lateral mains except upon application to the City Manager of the City of Charlevoix or other authority having jurisdiction in the premises, stating the nature of the proposed work and the route. Upon receipt of such application, the City of Charlevoix may in a timely manner after review, issue a permit to the Company to do the work proposed. Approval of the

permit shall not be unreasonably withheld.

#### **11.1.4. Standards and Conditions of Service; Rules, Regulations and Rates.**

The Company is now under the jurisdiction of the Michigan Public Service Commission to the extent provided by statute; and the rates to be charged for gas, and the standards and conditions of service and operation hereunder, shall be the same as set forth in the Company's schedule of rules, regulations, and rates as applicable in the several cities, villages, and townships in which the Company is now rendering gas service, or as shall hereafter be validly prescribed for the City of Charlevoix under the orders, rules, and regulations of the Michigan Public Service Commission or other authority having jurisdiction in the premises.

#### **11.1.5. Successors and Assigns.**

The words "Michigan Consolidated Gas Company" and "the Company", wherever used herein, are intended and shall be held and construed to mean and include both Michigan Consolidated Gas Company and its successors and assigns, whether so expressed or not.

#### **11.1.6. Effective Date: Terms of Franchise Ordinance; Acceptance by Company.**

This ordinance shall take effect 30 days following the date of publication thereof, which publication shall be made within 10 days after the date of its adoption, and shall continue in effect for a period of 5 years thereafter, subject to revocation at the will of the City of Charlevoix at any time during said 5 year period; provided, however, that when this ordinance shall become effective the City Clerk shall deliver to the Company a certified copy of the ordinance accompanied by written evidence of publication and recording thereof as required by law, and the Company shall, 60 days after receipt of the above documents, file with the City Clerk its written acceptance of the conditions and provisions thereof.

#### **11.1.7. Effective and Interpretation of Ordinance.**

All ordinances and resolutions, and parts thereof, which conflict with any of the terms of this ordinance, are hereby rescinded. In the case of conflict between this ordinance and any such ordinances or resolutions, this ordinance shall control. The catch line headings which precede each Section of this ordinance are for convenience in reference only and shall not be taken into consideration in the construction or interpretation of any of the provisions of this ordinance.

[Ord. 733, 10/20/08]

**CHAPTER 2**  
**METRO ACT**  
(Ord. No. 679, 11-04-02)

**11.2.1. Purpose.**

The purposes of this chapter are to regulate access to and ongoing use of public rights-of-way by telecommunications providers for their telecommunications facilities while protecting the public health, safety and welfare and exercising reasonable control of the public rights-of-way in compliance with the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002) (“Act”) and other applicable law, and to ensure that the City qualifies for distributions under the Act by modifying the fees charged to providers and complying with the Act.

**11.2.2. Conflict.**

Nothing in this chapter shall be construed in such a manner as to conflict with the Act or other applicable law.

**11.2.3. Terms Defined.**

The terms used in this chapter shall have the following meanings:

- 11.2.3.1. “Act” means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (Act No. 48 of the Public Acts of 2002), as amended from time to time.
- 11.2.3.2. “City” means the City Charlevoix.
- 11.2.3.3. “City Council” means the City Council of the City Charlevoix or its designee. This Section does not authorize delegation of any decision or function that is required by law to be made by the City Council.
- 11.2.3.4. “City Manager” means the City Manager or his or her designee.
- 11.2.3.5. “Permit” means a non-exclusive permit issued pursuant to the Act and this chapter to a telecommunications provider to use the public rights-of-way in the City for its

telecommunications facilities.

All other terms used in this chapter shall have the same meaning as defined or as provided in the Act, including without limitation the following:

- 11.2.3.6. "Authority" means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Authority created pursuant to Section 3 of the Act.
- 11.2.3.7. "MPSC" means the Michigan Public Service Commission in the Department of Consumer and Industry Services, and shall have the same meaning as the term "Commission" in the Act.
- 11.2.3.8. "Person" means an individual, corporation, partnership, association, governmental entity, or any other legal entity.
- 11.2.3.9. "Public Right-of-Way" means the area on, below or above a public roadway, highway, street, alley, easement or waterway. Public right-of-way does not include a federal, state, or private right-of-way.
- 11.2.3.10. "Telecommunications Facilities or Facilities" means the equipment or personal property, such as copper and fiber cables, lines, wires, switches, conduits, pipes and sheaths, which are used to or can generate, receive, transmit, carry, amplify, or provide telecommunication services or signals. Telecommunication facilities or facilities do not include antennas, supporting structures for antennas, equipment shelters or houses, and any ancillary equipment and miscellaneous hardware used to provide federally licensed commercial mobile service as defined in section 332(d) of part I of title III of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, and service provided by any wireless, two-way communication device.
- 11.2.3.11. "Telecommunications Provider, Provider and Telecommunications Services" mean those terms as defined in Section 102 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2102. Telecommunication Provider does not include a person or an affiliate of that person when providing a federally licensed commercial mobile radio service as defined

in Section 332(d) of part I of the communications act of 1934, chapter 652, 48 Stat. 1064, 47 U.S.C. 332 and further defined as commercial mobile radio service in 47 CFR 20.3, or service provided by any wireless, two-way communication device. For the purpose of the Act and this ordinance only, a Provider also includes as of the following:

- 11.2.3.11.1. A cable television operator that provides a telecommunications service.
- 11.2.3.11.2. Except as otherwise provided by the Act, a person who owns telecommunication facilities located within a public right-of-way.
- 11.2.3.11.3. A person providing broadband internet transport access service.

#### 11.2.4. Permit Required.

- 11.2.4.1. Permit Required. Except as otherwise provided in the Act, a telecommunications provider using or seeking to use public rights-of-way in the City for its telecommunications facilities shall apply for and obtain a permit pursuant to this chapter.
- 11.2.4.2. Application. Telecommunications providers shall apply for a permit on an application form approved by the MPSC in accordance with Section 6(1) of the Act. A telecommunications provider shall file one copy of the application with the City Clerk, one copy with the City Manager, and one copy with the City Attorney. Applications shall be complete and include all information required by the Act, including without limitation a route map showing the location of the provider's existing and proposed facilities in accordance with Section 6(5) of the Act.
- 11.2.4.3. Confidential Information. If a telecommunications provider claims that any portion of the route maps submitted by it as part of its application contain trade secret, proprietary, or confidential information, which is exempt from the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246, pursuant to Section 6(5) of the Act, the telecommunications provider shall prominently so indicate on the face of each map.
- 11.2.4.4. Application Fee. Except as otherwise provided by the Act, the application shall be accompanied by a on-time non-refundable application fee in the amount of \$500.

- 11.2.4.5. Additional Information. The City Manager may request an applicant to submit such additional information which the City Manager deems reasonably necessary or relevant. The applicant shall comply with all such requests in compliance with reasonable deadlines for such additional information established by the City Manager. If the City and the applicant cannot agree on the requirement of additional information requested by the City, the City or the applicant shall notify the MPSC as provided in Section 6(2) of the Act.
- 11.2.4.6. Previously Issued Permits. Pursuant to Section 5(1) of the Act, authorizations or permits previously issued by the City under Section 251 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2251 and authorizations or permits issued by the City to telecommunications providers prior to the 1995 enactment of Section 251 of the Michigan Telecommunications Act but after 1985 shall satisfy the permit requirements of this chapter.
- 11.2.4.7. Existing Providers. Pursuant to Section 5(3) of the Act, within 180 days from November 1, 2002, the effective date of the Act, a telecommunications provider with facilities located in a public right-of-way in the City as of such date, that has not previously obtained authorization or a permit under Section 251 of the Michigan Telecommunications Act, 1991 PA 179, MCL 484.2251, shall submit to the City an application for a permit in accordance with the requirements of this chapter. Pursuant to Section 5(3) of the Act, a telecommunications provider submitting an application under this subsection is not required to pay the \$500 application fee required under subsection (d) above. A provider under this subsection shall be given up to an additional 180 days to submit the permit application if allowed by the Authority, as provided in Section 5(4) of the Act.

#### 11.2.5. Issuance of Permit.

- 11.2.5.1. Approval or Denial. The authority to approve or deny an application for a permit is hereby delegated to the City Manager. Pursuant to Section 15(3) of the Act, the City Manager shall approve or deny an application for a permit within forty-five (45) days from the date a telecommunications provider files an application for a permit under Section 4(b) of this ordinance for access to a public right-of-way within the City. Pursuant to Section 6(6) of the Act, the City Manager shall notify the MPSC when the City Manager has granted or

denied a permit, including information regarding the date on which the application was filed and the date on which permit was granted or denied. The City Manager shall not unreasonably deny an application for a permit.

11.2.5.2. Form of Permit. If an application for permit is approved, the City Manager shall issue the permit in the form approved by the MPSC, with or without additional or different permit terms, in accordance with Sections 6(1), 6(2) and 15 of the Act.

11.2.5.3. Conditions. Pursuant to Section 15(4) of the Act, the City Manager may impose conditions on the issuance of a permit, which conditions shall be limited to the telecommunications provider's access and usage of the public right-of-way.

11.2.5.4. Bond Requirement. Pursuant to Section 15(3) of the Act, and without limitation on subsection (c) above, the City Manager may require that a bond be posted by the telecommunications provider as a condition of the permit. If a bond is required, it shall not exceed the reasonable cost to ensure that the public right-of-way is returned to its original condition during and after the telecommunications provider's access and use.

#### 11.2.6. Construction/Engineering Permit.

A telecommunications provider shall not commence construction upon, over, across, or under the public right-of-way in the City without first obtaining a construction or engineering permit as required under Chapter 8 of this Code, as amended, for construction within the public rights-of-way. No fee shall be charged for such a construction or engineering permit.

#### 11.2.7. Conduit of Utility Poles.

Pursuant to Section 4(3) of the Act, obtaining a permit or paying the fees required under the Act or under this chapter does not give a telecommunications provider a right to use conduit or utility poles.

#### 11.2.8. Route Maps.

Pursuant to Section 6(7) of the Act, a telecommunications provider shall, within 90 days after the substantial completion of construction of new telecommunications facilities in the City, submit route maps showing the location

of the telecommunications facilities to both the MPSC and to the City. The route maps should be in paper format unless and until the Commission determines otherwise, in accordance with Section 6(8) of the Act.

#### **11.2.9. Repair of Damage.**

Pursuant to Section 15(5) of the Act, a telecommunications provider undertaking an excavation or construction or installing telecommunications facilities within a public right-of-way or temporarily obstructing a public right-of-way in the City, as authorized by a permit, shall promptly repair all damage done to the street surface and all installations under, over, below or within the public right-of-way and shall promptly restore the public right-of-way to its pre-existing condition.

#### **11.2.10. Establishment and Payment of Maintenance Fee.**

In addition to the non-refundable application fee paid to the City set forth in subsection 11.2.4.4. above, a telecommunications provider with telecommunications facilities in the City's public rights-of-way shall pay an annual maintenance fee to the Authority pursuant to Section 8 of the Act.

#### **11.2.11. Modification of Existing Fees.**

In compliance with the requirements of Section 13(1) of the Act, the City hereby modifies, to the extent necessary, any fees charged to telecommunications providers after November 1, 2002, the effective date of the Act, relating to access and usage of the public rights-of-way, to an amount not exceeding the amounts of fees and charges required under the Act, which shall be paid to the Authority. In compliance with the requirements of Section 13(4) of the Act, the City also hereby approves modification of the fees of providers with telecommunication facilities in public rights-of-way within the City's boundaries, so that those providers pay only those fees required under Section 8 of the Act. The City shall provide each telecommunications provider affected by the fee with a copy of this ordinance, in compliance with the requirement of Section 13(4) of the Act. To the extent any fees are charged telecommunications providers in excess of the amounts permitted under the Act, or which are otherwise inconsistent with the Act, such imposition is hereby declared to be contrary to the City's policy and intent, and upon application by a provider or discovery by the City, shall be promptly refunded as having been charged in error.

#### **11.2.12. Savings Clause.**

Pursuant to Section 13(5) of the Act, if Section 8 of the Act is found to be invalid or unconstitutional, the modification of fees under section 11.2.11. above shall be void from the date modification was made.

#### **11.2.13. Use of Funds.**

Pursuant to Section 9(4) of the Act, all amounts received by the City from the Authority shall be used by the City solely for rights-of-way related purposes. In conformance with that requirement, all funds received by the City from the Authority shall be deposited into the Major Street Fund and/or the Local Street Fund maintained by the City under Act No. 51 of the Public Acts of 1951.

#### **11.2.14. Annual Report.**

Pursuant to Section 10(5) of the Act, the City Manager shall file an annual report with the Authority on the use and disposition of funds annually distributed by the Authority.

#### **11.2.15. Cable Television Operators.**

Pursuant to Section 13(6) of the Act, the City shall not hold a cable television operator in default or seek any remedy for its failure to satisfy an obligation, if any, to pay after November 1, 2002, the effective date of this Act, a franchise fee or similar fee on that portion of gross revenues from charges the cable operator received for cable modem services provided through broadband internet transport access services.

#### **11.2.16. Existing Rights.**

Pursuant to Section 4(2) of the Act, except as expressly provided herein with respect to fees, this ordinance shall not affect any existing rights that a telecommunications provider or the City may have under a permit issued by the City or under a contract between the City and a telecommunications provider related to the use of the public rights-of-way.

#### **11.2.17. Compliance.**

The City hereby declares that its policy and intent in adopting this ordinance is to fully comply with the requirements of the Act, and the provisions of this chapter should be construed in such a manner as to achieve that purpose.

**11.2.18. Reservation of Police Powers.**

Pursuant to Section 15(2) of the Act, this ordinance shall not limit the City's right to review and approve a telecommunication provider's access to and ongoing use of a public right-of-way or limit the City's authority to ensure and protect the health, safety and welfare of the public.

**11.2.19. Authorized City Officials.**

The City Manager or his or her designee is hereby designated as the authorized City official to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the municipal chapter violations bureau) for violations under this chapter as provided by the City Code.

**11.2.20. Municipal Civil Infraction.**

A person who violates any provision of this chapter or the terms or conditions of a permit is responsible for a municipal civil infraction. Nothing in this section shall be construed to limit the remedies available to the City in the event of a violation by a person of this chapter or a permit.

[Ord. 727, 04/21/08, *title renum entirely.*]

CHAPTER 3  
VIDEO SERVICE PROVIDER RIGHT-OF-WAY MANAGEMENT  
(Ord. No. 727, 04/21/08)

11.3.1. Purpose:

- 11.3.1.1 Under the Uniform Video Services Local Franchise Act, Video Service Providers may obtain a franchise to provide Video Services in Municipality using a standardized, uniform form of franchise agreement established by the MPSC. This form includes the right to use the Public Right-of-Way to provide such service but does not contain right-of-way management and related provisions.
- 11.3.1.2. Telecommunications providers who obtain such a standardized, uniform form of franchise agreement generally will have previously obtained from Municipality a permit under the Metro Act to construct and maintain their telecommunications facilities in the Public Right-of-Way. Such Metro Act Permits set forth the terms and conditions for such right-of-way usage, standard forms of such permits were agreed to in a collaborative process between municipalities and providers that was initiated by the MPSC, and such standard forms have since been approved by the legislature and the MPSC.
- 11.3.1.3. Because telecommunications providers typically provide Video Services over combined video and telecommunications facilities, such Metro Act Permits generally provide adequate Public Right-of-Way related protections for Municipality and the public when such providers are providing Video Services.
- 11.3.1.4. Other Video Service Providers, in particular new providers or existing cable companies, may not have a Metro Act Permit issued by Municipality.
- 11.3.1.5. The Uniform Video Services Local Franchise Act and the standardized, uniform franchise agreement require Video Service Providers to comply with all valid and enforceable local regulations regarding the use and occupation of the Public Right-of-Way in the delivery of Video Services, including the police powers of the franchising entity, and makes such right-of-way usage subject to the laws of the State of Michigan and the police powers of the franchising entity.

- 11.3.1.6. The Uniform Video Services Local Franchise Act and the standardized, uniform franchise agreement state that franchising entities shall provide Video Service Providers with open, comparable, nondiscriminatory and competitively neutral access to the Public Right-of-Way, and may not discriminate against a Video Service Provider for the authorization or placement of a Video Service or communications network in the Public Right-of-Way.
- 11.3.1.7. The Michigan Constitution reserves reasonable control of their highways, streets, alleys and public places to local units of government.
- 11.3.1.8. The purpose of this ordinance is to promote and protect the public health, safety and welfare and exercise reasonable control over the Public Right-of-Way by regulating the use and occupation of such rights-of-way by Video Service Providers who have a standardized, uniform franchise but who lack a Metro Act Permit from Municipality. This ordinance does so by setting forth terms and conditions for such usage and occupation from the forms of Metro Act permit approved by the MPSC and approved by the legislature in Section 6(1) of the Metro Act, thus providing open, comparable, nondiscriminatory, and competitively neutral access to the Public Right-of-Way and not discriminating against a Video Service Provider for the authorization or placement of a Video Service or communications network in Public Right-of-Way.

**11.3.2. Consistent Interpretation:**

This ordinance shall be interpreted and applied so as to be consistent with the Metro Act and corresponding provisions of the forms of Metro Act permit approved by the MPSC, including applicable MPSC, Metro Authority and court decisions and determinations relating to same.

**11.3.3. Definitions:**

The following definitions apply to this ordinance, including Sections 11.3.1. and 11.3.2. above.

- 11.3.3.1. *Act* means the Uniform Video Services Local Franchise Act, being Act 480 of the Public Acts of 2006, MCL 484.3301 and following, as amended from time to time.
- 11.3.3.2. *Claims* shall have the meaning set forth in Section 11.3.6.1.

- 11.3.3.3. *Facilities* means the lines, equipment and other facilities of a Permittee which use or occupy the Public Right-of-Way in the delivery of Video Services in Municipality.
- 11.3.3.4. *Franchise Agreement* means the franchise agreement entered into or possessed by a Video Service Provider with Municipality as required by Section 3(1) of the Act, if it is the standardized, uniform form of franchise agreement established by the MPSC.
- 11.3.3.5. *Manager* means Municipality's City Manager or his or her designee.
- 11.3.3.6. *Metro Act* means the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, being Act No. 48 of the Public Acts of 2002, MCL 484.3101 and following.
- 11.3.3.7. *Metro Act Permit* means a permit to use the Public Right-of-Way issued by Municipality under its ordinance implementing the Metro Act after a provider's application for same to Municipality as set forth in such ordinance.
- 11.3.3.8. *Metro Authority* shall have the same meaning as "Authority" in the Metro Act.
- 11.3.3.9. *MPSC* means the Michigan Public Service Commission, and shall have the same meaning as the term "Commission" in the Act and the Metro Act.
- 11.3.3.10. *Municipality* means the City of Charlevoix.
- 11.3.3.11. *Permittee* means a Video Service Provider with a currently valid Franchise Agreement but without a currently valid Metro Act Permit.
- 11.3.3.11.1 Upon applying to Municipality for and then obtaining a Metro Act Permit from Municipality, a Video Service Provider is not a Permittee and is no longer required to comply with this ordinance. A Video Service Provider is also not a Permittee and is not required to comply with this ordinance if it and Municipality enter into a voluntary franchise agreement as described in Section 11.3.10.2.
- 11.3.3.12. *Person* means an individual, corporation, association, partnership, governmental entity, or any other legal entity.

11.3.3.13. Public Right-of-Way shall have the same meaning as in the Act.

11.3.3.14. Street Construction and Street Resurfacing shall have the meanings set forth in Section 11.3.5.9.

11.3.3.15. Video Service shall have the same meaning as in the Act.

11.3.3.16. Video Service *Provider* shall have the same meaning as in the Act.

**11.3.4. Contacts, Maps and Plans:**

11.3.4.1. Permittee Contacts. Permittee shall provide the Manager with the names, addresses and the like for engineering and construction related information for Permittee and its Facilities as follows:

11.3.4.1.1. The address, e-mail address, phone number and contact person (title or name) at Permittee's local office (in or near Municipality).

11.3.4.1.2. If Permittee's engineering drawings, as-built plans and related records for the Facilities will not be located at the preceding local office, the location address, phone number and contact person (title or department) for them.

11.3.4.1.3. The name, title, address, e-mail address and telephone numbers of Permittee's engineering contact person(s) with responsibility for the design, plans and construction of the Facilities.

11.3.4.1.4. The address, phone number and contact person (title or department) at Permittee's home office/regional office with responsibility for engineering and construction related aspects of the Facilities.

11.3.4.1.5. Permittee shall at all times provide Manager with the phone number at which a live representative of Permittee (not voice mail) can be reached 24 hours a day, seven (7) days a week, in the event of a public emergency.

11.3.4.1.6. Permittee shall notify Municipality in writing pursuant to the notice provisions of the Franchise Agreement of any changes in the preceding information.

11.3.4.2. Route Maps. Within ninety (90) days after the substantial completion of construction of new Facilities in Municipality, Permittee shall submit route maps showing the location of the Facilities to Municipality, in the same manner and subject to the same provisions as apply to telecommunications providers under Section 6(7) and 6(8) of the Metro Act, MCL 484.3106(7) and (8).

11.3.4.3. As-Built Records. Permittee, without expense to Municipality, shall, upon forty-eight (48) hours notice, give Municipality access to all "as-built" maps, records, plans and specifications showing the Facilities or portions thereof in the Public Right-of-Way. Upon request by the Municipality, Permittee shall furnish all "as-built" maps, records, plans and specifications in an electronic format acceptable to the Municipality. Upon request by Municipality, Permittee shall inform Municipality as soon as reasonably possible of any changes from previously supplied maps, records, or plans and shall mark up maps provided by Municipality so as to show the location of the Facilities.

11.3.5. Use of Public Right-of-Way:

11.3.5.1. [Reserved]

11.3.5.2. Overlapping. Permittee shall not allow the wires or any other facilities of a third party to be overlapped to Permittee's Facilities without Municipality's prior written consent. Municipality's right to withhold written consent is subject to the authority of the MPSC under Section 361 of the Michigan Telecommunications Act, MCL 484.2361.

11.3.5.3. No Burden on Public Right-of-Way. Permittee, its contractors, subcontractors, and the Facilities shall not unduly burden or interfere with the present or future use of any of the Public Right-of-Way. Permittee's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the Public Right-of-Way. If Municipality reasonably determines that any portion of the Facilities constitutes an undue burden or interference, due to changed circumstances, Permittee, at its sole expense, shall modify the

Facilities or take such other actions as Municipality may determine is in the public interest to remove or alleviate the burden, and Permittee shall do so within a reasonable time period. Municipality shall attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.

- 11.3.5.4. No Priority. This ordinance does not establish any priority of use of the Public Right-of-Way by Permittee over any present or future permittees or parties having agreements with Municipality or franchises for such use. In the event of any dispute as to the priority of use of the Public Right-of-Way, the first priority shall be to the public's general use of the Public Right-of-Way, the second priority to Municipality, the third priority to the State of Michigan and its political subdivisions in the performance of their various functions, and thereafter as between other permit, agreement or franchise holders, as determined (except as otherwise provided by law) by Municipality in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Michigan.
- 11.3.5.5. Restoration of Property. Permittee, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Permittee's sole expense, in a manner approved by Municipality, any portion of the Public Right-of-Way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of the Facilities to a reasonably equivalent (or, at Permittee's option, better) condition as that which existed prior to the disturbance. In the event that Permittee, its contractors or subcontractors fail to make such repair within a reasonable time, Municipality may make the repair and Permittee shall pay the costs Municipality incurred for such repair.
- 11.3.5.6. Marking. Permittee shall mark its Facilities installed after the effective date of this ordinance as follows: Aerial portions of the Facilities shall be marked with a marker on Permittee's lines on alternate poles which shall state Permittee's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Facilities shall have (1) a conducting wire placed in the ground at least several inches above Permittee's cable (if such cable is nonconductive); (2) at least several inches above that, a continuous colored tape with a statement to the effect that there is buried cable beneath; and (3) upon request by the Municipality stakes or other appropriate above ground markers with Permittee's name and a toll-free number indicating that there is buried cable below. Bored underground portions of the Facilities shall have a conducting wire at the same depth as the cable and

shall not be required to provide the continuous colored tape. Portions of the Facilities located in conduit, including conduit of others used by Permittee, shall be marked at its entrance into and exit from each manhole and handhole with Permittee's name and a toll-free telephone number.

11.3.5.7. Tree Trimming. Permittee may trim trees upon and overhanging the Public Right-of-Way so as to prevent the branches of such trees from coming into contact with the Facilities, consistent with any standards adopted by Municipality. Permittee shall dispose of all trimmed materials. Permittee shall minimize the trimming of trees to that essential to maintain the integrity of the Facilities. Except in emergencies, all trimming of trees in the Public Right-of-Way shall have the advance approval of Manager.

11.3.5.8. Installation and Maintenance. The construction and installation of the Facilities shall be performed pursuant to plans approved by Municipality. The open cut of any Public Right-of-Way shall be coordinated with the Manager or Manager's designee. Permittee shall install and maintain the Facilities in a reasonably safe condition. If the existing poles in the Public Right-of-Way are overburdened or unavailable for Permittee's use, or the facilities of all users of the poles are required to go underground then Permittee shall, at its expense, place such portion of its Facilities underground, unless Municipality approves an alternate location. Permittee may perform maintenance on the Facilities without prior approval of Municipality, provided that Permittee shall obtain any and all permits required by Municipality in the event that any maintenance will disturb or block vehicular traffic or are otherwise required by Municipality.

11.3.5.9. Pavement Cut Coordination. Permittee shall coordinate its construction and all other work in the Public Right-of-Way with Municipality's program for street construction and rebuilding (collectively "Street Construction") and its program for street repaving and resurfacing (except seal coating and patching) (collectively, "Street Resurfacing").

11.3.5.9.1. The goals of such coordination shall be to encourage Permittee to conduct all work in the Public Right-of-Way in conjunction with or immediately prior to any Street Construction or Street Resurfacing planned by Municipality.

- 11.3.5.10. Compliance with Laws. Permittee shall comply with all valid and enforceable federal and state statutes and regulations; and all valid and enforceable local regulations regarding the use and occupation of the Public Right-of-Way, including the police powers of Municipality; regarding the construction, installation, and maintenance of its Facilities, now in force or which hereafter may be promulgated. Before any installation is commenced, Permittee shall secure all necessary permits, licenses and approvals from Municipality or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Municipality shall not unreasonably delay or deny issuance of any such permits, licenses or approvals. Permittee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition adopted by Michigan Public Service Commission) and the National Electric Code (latest edition). Permittee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be amended.
- This section does not constitute a waiver of Permittee's right to challenge laws, statutes, ordinances, rules or regulations now in force or established in the future.
- 11.3.5.11. Street Vacation. If Municipality vacates or consents to the vacation of Public Right-of-Way within its jurisdiction, and such vacation necessitates the removal and relocation of Permittee's Facilities in the vacated Public Right-of-Way, Permittee shall consent to the vacation and remove its Facilities at its sole cost and expense when ordered to do so by Municipality or a court of competent jurisdiction. Permittee shall relocate its Facilities to such alternate route as Municipality and Permittee mutually agree, applying reasonable engineering standards.
- 11.3.5.12. Relocation. If Municipality requests Permittee to relocate, protect, support, disconnect, or remove its Facilities because of street or utility work, or other public projects, Permittee shall relocate, protect, support, disconnect, or remove its Facilities, at its sole cost and expense, including where necessary to such alternate route as Municipality and Permittee mutually agree, applying reasonable engineering standards. The work shall be completed within a reasonable time period.
- 11.3.5.13. Public Emergency. Municipality shall have the right to sever, disrupt, dig-up or otherwise destroy Facilities of Permittee if such action is necessary because of a public emergency. If reasonable to do so under the circumstances, Municipality shall attempt to provide notice to

Permittee. Public emergency shall be any condition which poses an immediate threat to life, health, or property caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, water main breaks, hazardous material spills, etc. Permittee shall be responsible for repair at its sole cost and expense of any of its Facilities damaged pursuant to any such action taken by Municipality.

11.3.5.14. Miss Dig. If eligible to join, Permittee 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.

11.3.5.15. Underground Relocation. If Permittee has its Facilities on poles of Consumers Energy, Detroit Edison or another electric or telecommunications provider and Consumers Energy, Detroit Edison or such other electric or telecommunications provider relocates its system underground, then Permittee shall relocate its Facilities underground in the same location at Permittee's sole cost and expense.

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

#### 11.3.6. Indemnification:

11.3.6.1. Indemnity. Permittee shall defend, indemnify, protect, and hold harmless Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and expenses of any nature (collectively "Claims") (including, without limitation, attorneys' fees) arising out of or resulting from the acts or omissions of Permittee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent such acts or omissions are related to Permittee's use of or installation

of Facilities in the Public Right-of-Way and only to the extent of the fault or responsibility of Permittee, its officers, agents, employees, contractors, successors and assigns.

11.3.6.2. Notice, Cooperation. Municipality shall notify Permittee promptly in writing of any such Claims and the method and means proposed by Municipality for defending or satisfying any such Claims. Municipality shall cooperate with Permittee in every reasonable way to facilitate the defense of any such Claims. Municipality shall consult with Permittee respecting the defense and satisfaction of such Claims, including the selection and direction of legal counsel.

11.3.6.3. Settlement. Municipality shall not settle any Claim subject to indemnification under the preceding two sections without the advance written consent of Permittee, which consent shall not be unreasonably withheld. Permittee shall have the right to defend or settle, at its own expense, any Claim against Municipality for which Permittee is responsible hereunder.

11.3.7. Insurance:

11.3.7.1. Coverage Required. Prior to beginning any construction in or installation of Permittee's Facilities in the Public Right-of-Way, Permittee shall obtain insurance as set forth below and file certificates evidencing same with Municipality. Such insurance shall be maintained in full force and effect until the end of the term of the Franchise Agreement. In the alternative, Permittee may satisfy this requirement through a program of self-insurance, acceptable to Municipality, by providing reasonable evidence of its financial resources to Municipality. Municipality's acceptance of such self-insurance shall not be unreasonably withheld.

11.3.7.1.1. Commercial general liability insurance, including Completed Operations Liability, Independent Contractors Liability, Contractual Liability coverage, railroad protective coverage and coverage for property damage from perils of explosion, collapse or damage to underground utilities, commonly known as XCU coverage, in an amount not less than Five Million Dollars (\$5,000,000).

11.3.7.1.2. Liability insurance for sudden and accidental environmental contamination with minimum limits of Five Hundred Thousand Dollars (\$500,000) and providing coverage for claims discovered within three (3) years after the term of the policy.

Pursuant to the 2006 MPSC decision in Case U-14720, Permittee need not comply with the preceding sentence until such time after the effective date of this ordinance that it decides to place any new or existing Facilities underground within the Public Right-of-Way in Municipality.

- 11.3.7.1.3. Automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000).
  - 11.3.7.1.4. Workers' compensation and employer's liability insurance with statutory limits, and any applicable Federal insurance of a similar nature.
  - 11.3.7.1.5. The coverage amounts set forth above may be met by a combination of underlying (primary) and umbrella policies so long as in combination the limits equal or exceed those stated. If more than one insurance policy is purchased to provide the coverage amounts set forth above, then all policies providing coverage limits excess to the primary policy shall provide drop down coverage to the first dollar of coverage and other contractual obligations of the primary policy, should the primary policy carrier not be able to perform any of its contractual obligations or not be collectible for any of its coverages for any reason during the term of the Franchise Agreement, or (when longer) for as long as coverage could have been available pursuant to the terms and conditions of the primary policy.
- 11.3.7.2. Additional Insured. Municipality shall be named as an additional insured on all policies (other than worker's compensation and employer's liability). All insurance policies shall provide that they shall not be canceled, modified or not renewed unless the insurance carrier provides thirty (30) days prior written notice to Municipality. Permittee shall annually provide Municipality with a certificate of insurance evidencing such coverage. All insurance policies (other than environmental contamination, workers' compensation and employer's liability insurance) shall be written on an occurrence basis and not on a claims made basis.
- 11.3.7.3. Qualified Insurers. All insurance shall be issued by insurance carriers licensed to do business by the State of Michigan or by surplus line carriers on the Michigan Insurance Commission approved list of companies qualified to do business in Michigan. All insurance and surplus line carriers shall be rated A+ or better by A.M. Best Company.

- 11.3.7.4. Deductibles. If the insurance policies required by this ordinance are written with retainages or deductibles in excess of \$50,000, they shall be approved by Manager in advance in writing. Permittee shall indemnify and save harmless Municipality from and against the payment of any deductible and from the payment of any premium on any insurance policy required to be furnished hereunder.
- 11.3.7.5. Contractors. Permittee's contractors and subcontractors working in the Public Right-of-Way shall carry in full force and effect commercial general liability, environmental contamination liability, automobile liability and workers' compensation and employer liability insurance which complies with all terms of section 11.3.8 and all of its subsections. In the alternative, Permittee, at its expense, may provide such coverages for any or all its contractors or subcontractors (such as by adding them to Permittee's policies).
- 11.3.7.6. Insurance Primary. Permittee's insurance coverage shall be primary insurance with respect to Municipality, its officers, agents, employees, elected and appointed officials, departments, boards, and commissions (collectively "them"). Any insurance or self-insurance maintained by any of them shall be in excess of Permittee's insurance and shall not contribute to it (where "insurance or self-insurance maintained by any of them" includes any contract or agreement providing any type of indemnification or defense obligation provided to, or for the benefit of them, from any source, and includes any self-insurance program or policy, or self-insured retention or deductible by, for or on behalf of them).

**11.3.8. Performance Bond or Letter of Credit:**

- 11.3.8.1. Municipal Requirement. Municipality may require Permittee to post a bond (or letter of credit), in the amount provided in Section 15(3) of the Metro Act, as amended, MCL 484.3115(3).

**11.3.9. Removal:**

- 11.3.9.1. Removal; Underground. As soon as practicable after the term of the Franchise Agreement expires, Permittee or its successors and assigns shall remove any underground cable or other portions of Permittee's Facilities from the Public Right-of-Way which has been

installed in such a manner that it can be removed without trenching or other opening of the Public Right-of-Way. Permittee shall not remove any underground cable or other portions of the Facilities which requires trenching or other opening of the Public Right-of-Way except with the prior written approval of Manager. All removals shall be at Permittee's sole cost and expense.

11.3.9.1.1. For purposes of Section 11.3.9.1., "cable" means any wire, coaxial cable, fiber optic cable, feed wire or pull wire.

11.3.9.2. Removal; Above Ground. As soon as practicable after the expiration of the term of a Franchise Agreement, Permittee, or its successor or assigns at its sole cost and expense, shall, unless waived in writing by Manager, remove from the Public Right-of-Way all above ground elements of its Facilities, including but not limited to poles, pedestal-mounted terminal boxes, and lines attached to or suspended from poles.

11.3.9.3. Schedule. The schedule and timing of removal shall be subject to approval by Manager. Unless extended by Manager, removal shall be completed not later than twelve (12) months following the expiration of the term of the Franchise Agreement. Portions of Permittee's Facilities in the Public Right-of-Way that are not removed within such time period shall be deemed abandoned and, at the option of Municipality exercised by written notice to Permittee at the address provided for in the Franchise Agreement, title to the portions described in such notice shall vest in Municipality.

#### 11.3.10. Other Items:

11.3.10.1. Duties. Permittees shall faithfully perform all duties required by this ordinance.

11.3.10.2. Different Terms. The Act allows local units of government and Video Service Providers to enter into voluntary franchise agreements that include terms and conditions which are different from those required under the Act or which are different from those in the standardized, uniform form of franchise agreement established by the MPSC. The Metro Act allows municipalities and providers to mutually agree to Metro Act Permit terms differing from those in the standard forms of Metro Act permit approved by the MPSC. Current or prospective Permittees who desire terms different from those in this ordinance, as applied to

them, should request such a voluntary franchise agreement or a mutually agreed to Metro Act Permit from Municipality.

11.3.10.3. Authorized Officials. The Manager, which includes his or her designee, is hereby designated as the authorized official of Municipality to issue municipal civil infraction citations (directing alleged violators to appear in court) or municipal civil infraction violation notices (directing alleged violators to appear at the municipal chapter violations bureau) for violations of this ordinance, as provided by Municipality's ordinances or Municipal code.