

FRANCHISE AGREEMENT - Consent to Use Roads in Edwards Township

After Recording Return To:

Company:
Address:
City, State:
Zip code:
ATTN:

FRANCHISE COVER SHEET

EDWARDS TOWNSHIP, MICHIGAN

Franchise No. 2013 - _____

Applicant/Grantee: _____
(Company Name)

Type of Facilities:

(As described in the attached Exhibit A)

This agreement applies to all Public Roads within Edwards Township, Ogemaw County, Michigan.

Applicant Name

Contact Person

Notice Address

Ordinance No: _____
Effective Date: _____
Expiration Date: _____

EXHIBIT "A"

**EDWARDS TOWNSHIP
TERMS AND CONDITIONS OF FRANCHISE**

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1. Scope and Duration

_____, (Company Name) a corporation, limited liability company, _____ (other), _____ (dba/ aka), its successors and assigns (hereinafter called "Grantee") are hereby granted a franchise to use roads and to set, erect, install, place, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use equipment, structures and apparatus including but not limited to drilling pads, fences, gates, storage and processing facilities, pipelines, transmission and distribution systems, lines, conduits, meter-reading devices, and communication systems, together with any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground (collectively, "Facilities") in, upon, over, under, along, across and through the Edwards Township roads and rights-of-way falling within the area described on the attached Appendix 1 (such roads and rights-of-way being hereafter referred to at times as the "Franchise Area"), for a period of thirty-five (25) years, all in accord with the ordinance granting this Franchise, all applicable

provisions of Edwards Township ordinances, whether specifically referred to or not, and this Exhibit A; provided that, notwithstanding the Township's continued right to enact ordinances, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise (including, without limitation, this Exhibit A), the terms and conditions of this Franchise shall govern and control.

2. Definition of Terms

TOWNSHIP WIDE (BLANKET) RIGHT-OF-WAY PERMIT	A single permit granted to a franchised entity to cover a series of activities in rights-of-way within the entire county.
TOWNSHIP	Edward Township.
TOWNSHIP BOARD	Edwards Township Board of Trustees.
TOWNSHIP ZONING ADMINISTRATOR	Edwards Township Zoning Administrator
COUNTY ROAD STANDARDS	The policy titled Ogemaw County's Right-of-Way Permit for Residential, Commercial, Utilities, and Special Uses; Ogemaw County's Extended Transportation Permit; and Ogemaw County's Building and Special Load Move Permit; and the policy's successor or other relevant County permits.
COUNTY UTILITY POLICY	The policy titled Ogemaw County's Right-of-Way Permit for Residential, Commercial, Utilities, and Special Uses or the policy's successor.
FRANCHISE	The terms and conditions of this franchise agreement, as set forth in this Exhibit A. In accordance with Michigan's Franchise Investment Law, P.A. 269 of 1974, MCL 445.1501 et seq.
GRANTEE	<u>(Company Name)</u> , its successors and assigns, and any other person named in any permit as permittee, and any successor to any rights or interests of a permittee under a permit or in property installed on the right-of-way pursuant to a permit.
MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD)	Latest edition of the MUTCD, Manual on Uniform Traffic Control Devices for Streets and Highways, U.S. Department of Transportation, Federal Highway Administration.

MAP OF DEFINITE LOCATION - for new construction not pre-existing facilities.	Construction plans; plans and specifications; design standards and specifications.
PERMIT	A document including any license, permit, or franchise, authorizing specified use of county rights-of-way and granted under the provisions of this franchise and relevant and applicable Ogemaw County Road Commission standards and permits.
RESTORATION	A general term denoting replacing, repairing, or otherwise restoring the right-of-way to same or equal condition as before any change or construction began thereon.

RIGHT-OF-WAY	All property falling within the area described on the attached Appendix 1 in which Ogemaw County has any form of ownership or title and which is held for public road, right-of-way or other public purposes, regardless of whether or not any road or facility exists thereon or whether or not it is used, improved, or maintained for public travel.
ROADWAY	The portion of the right-of-way, within the outside limits of the side slopes (shoulder to shoulder) or between curb lines, used for vehicular travel.
TRAFFIC CONTROL	A general term more specifically defined in the MUTCD.

3. Permits, Plans, and Specifications

- A. Prior to commencing any work within the Franchise Area on any public road or right-of-way, the Grantee shall comply with and obtain all necessary permits to do such work. Permits required may include, but are not limited to, right-of-way, special use permits, approach permits, conditional use permits, extended transportation permits, special load move/haul road permits and/or any other County, State or Federal permits required. Refer to the Ogemaw County Road Commission permits. Comprehensive Plan and other county development regulations for necessary county permitting.

Consent to Use roads and right-of-way use permits in Edwards Township will require, at a minimum, plans and specifications in duplicate showing: the position, depth, and location of Facilities to be constructed within the Franchise Area at that time and their positions in relation to any involved county road and their locations within the right-of-way. These plans, all drawn to scale, shall be known as the “map of definite location”. Specifications will include class and type of materials and equipment to be used, manner of excavation, construction, installation, and

backfill; location of temporary and permanent structures to be erected; description of road facilities which will be disturbed and plans for their restoration; traffic controls; traffic turnouts and detours; road obstructions; and such other details as are required by the Zoning Administrator.

To the extent that work is permitted under a then-existing permit issued by the Township in connection with the detailed plans and specifications stated above are not required. Grantee shall pay all costs and expenses incurred by the Township in reviewing plans and specifications, as and to the extent required by applicable provisions of the Ogemaw County Road Commission and its policies and permits.

4. **Performance of Work**

- A. No work on any County road or right-of-way shall be commenced until all necessary permits have been obtained and a set of plans and specifications, reviewed, approved, and endorsed by the County Engineer, has been returned to the Grantee.

All work shall be performed in accordance with the approved plans and specifications, and shall be subject to inspection and incremental approval by the Edwards Township Zoning Administrator. Grantee shall pay all reasonable costs and expenses incurred by Edwards Township in inspecting and approving the work, as and to the extent required by applicable provisions of this Agreement or any applicable and relevant County road and/or utility permit or policy. Grantee shall remain solely responsible for compliance with all applicable laws, regulations, codes, and standard plans and specifications in the design and construction of Grantee's Facilities within the Franchise Area. The Grantee shall notify the Township Zoning Administrator a minimum of 48 hours prior to starting any construction activity.

If and to the extent Grantee reasonably determines that action on Grantee's part is necessary to respond to an emergency situation involving Grantee's Facilities within the Franchise Area, and such action would otherwise require the notice specified above, Edwards Township hereby waives the requirement that Grantee give such notice as a prerequisite to undertaking such activity; provided, however, Grantee shall notify the Township Zoning Administrator, verbally or in writing, as soon as practicable and no later than 24 hours following the emergency if the roadway shoulders, embankment or cut slopes, or drainage facilities are disturbed.

- B. Grantee's Facilities within the Franchise Area shall be laid in exact conformance with the map of definite location except where deviations are allowed in writing by the Township Zoning Administrator pursuant to application by Grantee, in which case Grantee shall file a corrected map of definite location.
- C. Any work which disturbs any soil, surface, or structure of any public road or right-of-way within Edwards Township shall be controlled by applicable design standards and specifications of Ogemaw County, and applicable provisions of the Ogemaw County Road Commission and its standards, permits and policies. Grantee, at its expense, shall restore such surface or other facility to at least a condition the same as it was in immediately prior to such disturbance (or make provisions therefore), all to the reasonable satisfaction of the Township Zoning Administrator. The Township Zoning Administrator may cause to be done, at the expense of the Grantee, all work necessary to render any public road or right-of-way safe where a condition which is dangerous to life, health, or property is created by Grantee as a

result of work undertaken by Grantee within the Franchise Area or where Grantee fails to restore any surface or other facility within the Franchise Area as required in this paragraph, but in each case only if Grantee does not promptly take corrective action after receiving written notice from the Township Zoning Administrator regarding such condition or failure.

- D. All work within the Franchise Area shall be done in accordance with the current Ogemaw County Road Commission standards, policies and permits in a thorough, professional, and workmanlike manner with minimum interference in public use of a public road. Where any work includes opening of trenches and/or ditches and/or tunneling under a public road or right-of-way, Grantee shall take all reasonable precautions necessary to protect and guard the public from any condition caused by the work. Grantee shall conform to the MUTCD, including directing traffic, signs, and barricades. Subject to Section 8, below, and specifically the rights of Grantee with respect to third parties under Section 8(C), if any line, pole or other facility of Grantee is located that, in the opinion of the Edwards Township Zoning Administrator, any hazard to travel of the public is created, Grantee shall relocate the line, pole, or other facility at its expense upon request of the Township Zoning Administrator. Grantee shall be liable for any damages, including any costs incurred by the County in remedying any failure to provide adequate traffic controls and protection to members of the public and their property.
- E. Before any work which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys is performed by Grantee within the Franchise Area under this Franchise, Grantee shall reference all such monuments and markers. Reference points shall be so located that they will not be disturbed during Grantee's operations under this Franchise. The method of referencing monuments or other points to be referenced shall be approved by the Edwards Township Zoning Administrator. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit and as directed by the Township Zoning Administrator. The cost of monuments or markers lost, destroyed, or disturbed, and the expense of replacement of approved monuments shall be borne by the Grantee. A complete set of reference notes for monument and other ties shall be filed with Ogemaw County.
- G. All work undertaken by Grantee within the Franchise Area shall be performed by the Grantee in compliance with all applicable Federal, State, and County laws, regulations, and policies (including, without limitation, applicable environmental and land use laws and regulations); provided that, notwithstanding Edwards Township's continued right to enact policy power codes and ordinances under the Edwards Township Master Plan and Zoning Ordinance, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise (including, without limitation, this Exhibit A), the terms and conditions of this Franchise shall govern and control.

5. **Aesthetic Considerations**

- A. If Grantee intends to use pesticides within the Franchise Area to control or kill weeds and brush in scenic areas, prior approval must be granted by Edwards Township at least annually (which approval shall not be unreasonably withheld or delayed). Edwards Township may limit or restrict the types, amounts, and timing of applications if a significant negative impact on the aesthetics of the area is anticipated, provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance.

B. Refuse and debris resulting from the installation or maintenance of the Facilities by Grantee shall be promptly removed once the work is completed.

6. **Maintenance of Facilities**

Edwards Township will not assume responsibility for damage to the Grantee's property and various objects that are placed in county roads and rights-of-way. The Grantee will maintain its above-ground Facilities within the Franchise Area so as not to unreasonably interfere with Ogemaw County or Edwards Township maintenance or free and safe passage of traffic.

7. **Hazardous Wastes, Substances**

Grantee agrees that it will not negligently or intentionally cause the release of any hazardous substance, waste, or pollutant or contaminant (as defined by Part 201 of the Michigan Environmental Response Act, Natural Resources and Environmental Protection Act, P.A. 451 of 1994, as amended and/or applicable federal law) into or upon any public road or right-of-way in Edwards Township violation of any state or federal law with respect thereto. Grantee shall immediately notify Edwards Township and the Michigan Department of Environmental Quality of any such illegal release. Grantee shall be completely liable for any and all consequences of such illegal release, including liability under any federal or state statute or common law. Grantee shall indemnify and hold Edwards Township harmless, as provided in paragraph 10, from any and all liability resulting from such an illegal release and shall have full responsibility for completely cleaning up, as required by any government agency, any and all contamination from such release. Edwards Township shall be entitled to full contribution for all costs incurred by it as the result of any release of such materials by Grantee in violation of any state or federal law. Upon any such illegal release of a hazardous substance by Grantee, Edwards Township may give immediate notice of termination of this Franchise, or enter the Franchise Area and take whatever steps it deems appropriate to cure the consequences of any such release, all at the expense of the Grantee, but only if Grantee does not promptly take corrective action after receiving written notice from the Township Zoning Administrator.

8. **Relocation**

A. Pipelines, utility and other facility installations shall be located to minimize need for later adjustment to accommodate future roadway improvement and to permit access to servicing such installations with minimum interference to roadway traffic. If Ogemaw County or Edwards Township causes any public road or right-of-way to be constructed, improved, relocated, realigned, or otherwise changed within the Franchise Area; including traffic controls, drainage, and illumination; or if any part of such road or right-of-way becomes a state highway and relocation or readjustment is directed by the State Director of Transportation so as to reasonably necessitate relocation of any Facility of the Grantee on such road or right-of-way within the Franchise Area (in any case for purposes other than those described in Section 8(C), below), the Township will:

- (a) provide Grantee, within a reasonable time prior to the commencement of the road or right-of-way project, written notice requesting the relocation; and
- (b) provide Grantee with reasonable plans, timetables and specifications for such road or right-of-way project.

After receipt of such notice and such plans, timetables and specifications, Grantee shall relocate such Facilities within the Franchise Area at no charge to Edwards Township. If Edwards Township requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section or within five (5) years after the original installation of the Facilities, the Township shall bear the entire cost of such subsequent relocation.

- B. The Township Zoning Administrator shall have the final approval of the relocation schedule. Grantee shall be responsible for timely compliance with Facility relocation and coordinate with Ogemaw County or Edwards Township's contractor.

The construction, operations, maintenance, and repair of Grantee's Facilities authorized by this Franchise shall not preclude Edwards Township, its agents, or its contractors from grading, excavating, or doing necessary road work contiguous to the said Facilities of the Grantee, provided that the Grantee shall be given forty-eight (48) hours notice of said work, and provided further that the foregoing shall be subject to all other provisions of this Franchise and shall not substantially or unreasonably impair the rights granted to Grantee under this Franchise.

- C. Whenever (a) any public or private development within the Franchise Area, other than a public right of way improvement of the type described in Section 8(A), above, requires the relocation of Grantee's Facilities within the Franchise Area to accommodate such development; or (b) Edwards Township requires the relocation of Grantee's Facilities within the Franchise Area for the benefit of any person or entity other than the Township, then in such event, Grantee shall have the right as a condition of such relocation, to require such developer, person or entity to make payment to Grantee, at a time and upon terms acceptable to Grantee, for any and all costs and expenses incurred by Grantee in the relocation of Grantee's Facilities.
- D. Any condition or requirement imposed by Edwards Township upon any person or entity, other than Grantee, that requires the relocation of Grantee's Facilities shall be a required relocation for purposes of Section 8(C), above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).
- E. Nothing in this Section 8 shall require Grantee to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from this Franchise.

9. Non-Exclusive/Other Occupants

- A. This Franchise is not exclusive. It shall not prohibit Edwards Township from granting other franchises or permits for use of any public roads or rights-of-ways or parts thereof. Subject to this Franchise, Grantee shall not prevent or prohibit Ogemaw County from constructing, altering, maintaining, or using any of said roads or rights-of-way, or affect its jurisdiction over them or any part of them, the County having full power to make all necessary changes, relocations, repairs, maintenance, etc., of the same as the County may deem fit.
- B. All installation, operation, maintenance, and repair by the Grantee of its Facilities on any public road or right-of-way within the Franchise Area shall be done so as not to unreasonably interfere with installation, construction, operation, maintenance, or repair of other utilities, drains, ditches, structures, or other improvements

permitted upon such road or right-of-way, subject to the preference and priority rules set forth below. Owners, public or private, of any such facilities installed prior to construction and/or installation of the Facilities of Grantee, shall have preference as to positioning and location of such facilities. Likewise, Grantee's Facilities shall have preference as to positioning and location over any such other facilities that are installed after the construction and/or installation of the Facilities of Grantee. Such preference shall continue if relocation is required as a result of any construction relocation, realignment, and/or change of grade by the County.

10. Insurance and Security

- A. For the period after the assignment of this Franchise by _____ (Company Name) to the Utility Assignee under Section 18, below, the following insurance provisions shall apply:

Prior to the effective date of this franchise and during its life, the franchisee shall obtain and maintain continuously liability insurance necessary to comply with the hold harmless agreement herein with limits of liability not less than:

\$2,000,000.00 per occurrence

The Township Zoning Administrator may further determine that Business Auto Liability Insurance may also be required. Such insurance shall include Edwards Township, its officers, elected officials, agents, and employees as an additional insured and shall not be reduced or cancelled without thirty (30) days written prior notice to Edwards Township. Such insurance, in its provision for additional insured, shall include a "Cross Liability Endorsement", "Severability of Interests", or "Separation of Insured's" provision indicating:

"The inclusion of more than one insured under this policy shall not affect the rights of any insured as respects any claim, suit, or judgment made or brought by or for any other insured or by or for any employee of any other insured. The policy shall protect each insured in the same manner as though a separate policy had been issued to each except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the insurer would have been liable had only one insured been named."

All insurance policies will be issued on an occurrence basis. Claims made policies are unacceptable. Grantee shall maintain coverage for the duration of this Franchise. Grantee shall provide the County annually a signed certificate of insurance naming Edwards Township as an additional insured. Proof of all insurance shall be in a form acceptable to the County, and all conditions and requirements of insurance stated in this clause 10.A shall be satisfied prior to commencement of construction. All insurance documentation shall be submitted and reviewed by the Edwards Township Zoning Administrator prior to commencement of construction.

Edwards Township may require additional bond, deposit or security as provided in the Edwards Township Zoning Ordinance and other ordinances. Acceptance by the Township of any work performed by the Grantee at the time of completion shall not be a ground for avoidance of this covenant.

In lieu of the insurance requirements set forth in this Section 10, Grantee may self-insure against such risks in such amounts as are consistent with good utility

practice and the per occurrence minimum of \$2,000,000.00. Grantee shall provide Edwards Township with a self-insurance letter as evidence that Grantee maintains a self-insurance program.

11. **Hold Harmless and Indemnity**

- A. The Grantee shall defend, indemnify and hold harmless Edwards Township, its appointed and elected officials, agents, and employees, against all third party claims, losses, suits, actions, costs, counsel fees, litigation costs, expenses, damages, judgments, or decrees on account of any injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence, willful misconduct, or from any breach of any common law, statutory or other delegated duty pursuant to this Franchise of Grantee, Grantee's employees, agents, or subcontractors, in exercising the rights granted to Grantee in this Franchise.
- B. For the avoidance of doubt, for those provisions of this Franchise which a court of competent jurisdiction determines are subject to RCW 4.24.115, then, in the event of damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of the Township, its appointed and elected officials, agents or employees, and the Grantee or the Grantee's agents or employees, the Grantee's liability to hold harmless and indemnify the Township is enforceable only to the extent of the Grantee's negligence.
- C. The Grantee's obligation shall include, but not be limited to, investigating, adjusting, and defending all claims alleging loss from any negligent act, error, or omission or from any breach of any common law, statutory or other delegated duty pursuant to this Franchise of the Grantee or its employees, agents, or subcontractors.
- D. In the event any claim or demand is presented to or filed with Edwards Township by reason of the above-mentioned causes, the Township shall promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand. In case suit or action is brought against Edwards Township for damages arising out of or by reason of the above-mentioned causes, the Township shall promptly notify Grantee thereof and the Grantee will, upon notice to it of the commencement of said action, settle, compromise or defend the same at its sole cost and expense, and in case judgment shall be rendered against the Township in suit or action, the Grantee will fully satisfy said judgment within ninety (90) days after suit or action shall have finally been determined, if determined adversely to Edwards Township. In the event Grantee refuses a tendered defense by the Township pursuant to section 11 of this Franchise and if Grantee's refusal is subsequently determined by a Court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal, then Grantee shall pay all of the Township's reasonable costs for defense of the action including all legal costs, witness fees and attorney fees and indemnify the Township for any settlement made by the Township of the wrongfully refused claim or demand.
- E. Solely to the extent required for Edwards Township to enforce Grantee's indemnification obligations under this Section 11, Grantee waives its immunity under MCL 445.1501 et seq.; provided that the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim

brought against Grantee by any of its employees. This waiver has been mutually negotiated by the parties.

F. The provisions of this Section 11 shall survive the expiration or termination of this agreement.

12. **Reservation of Police Power**

In granting this Franchise, Edwards Township does not waive any of its police powers to regulate the use of public or private roads or rights-of-way in the interest of public health, safety, and general welfare; provided, however, that the Township shall adopt ordinances and regulations in a manner consistent with the terms of this Franchise.

13. **Applicable Laws**

Grantee shall comply with all federal, state, and local laws, rules, and regulations applicable to any work, facility, or operation of Grantee upon public roads or rights-of-way during the life of this Franchise.

14. **Eminent Domain, Powers of the People**

This Franchise is subject to the power of eminent domain and its existence shall not preclude the Township from acquiring by condemnation, in accordance with applicable law, all or a portion of Grantee's Facilities within the Franchise Area for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the Franchise Area conferred by this Franchise. Nothing herein, however, is intended to or will limit any severance damages arising out of any impact of any such condemnation on the Name of Project or related Facilities.

15. **Annexation**

If any road or right-of-way covered by this Franchise is incorporated into the limits of any city or town, this Franchise shall terminate as to any road or right-of-way within the corporate limits of such city or town (except as otherwise provided by applicable law); but this Franchise shall continue as to public roads and rights-of-ways within Edwards Township not incorporated into a city or town.

16. **Vacation**

If Ogemaw County vacates all or a portion of any county road or right-of-way which is subject to this Franchise, and said vacation is for the purpose of acquiring the fee or other property interest in said road or right-of-way for the use of the Township in either its proprietary or governmental capacity, the Edwards Township Board of Trustees may, at its option and by giving thirty (30) days written notice to the Grantee, terminate this Franchise with reference to any public road or right-of-way so vacated and, in its vacation procedure, reserve and grant an easement to Grantee for Grantee's Facilities, and the Township shall not be liable for any damages or loss to the Grantee by reason of such termination.

Whenever a public road or right-of-way or any portion thereof is vacated upon a finding that it is not useful and the public will be benefited by the vacation, the Township may retain an easement in respect to the vacated land for the construction, repair, and maintenance of public utilities and services which at the time of the vacation are

specifically authorized under paragraph 3 or physically located on a portion of the land being vacated, but only in accordance with the provisions of MCL 445.1501 et al. In such event, Ogemaw County shall also, in its vacation procedure, reserve and grant an easement to Grantee for Grantee's Facilities. The Township shall not otherwise be liable for any damages or loss to the Grantee by reason of any such vacation.

17. **Termination**

- A. If Grantee defaults on any term or condition of this Franchise, Edwards Township may serve upon Grantee a written order to so comply within sixty (60) days from the date such order is received by Grantee. If Grantee is not in compliance with this Franchise after expiration of said sixty (60) day period, the Township may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply with this Franchise by Grantee cannot be corrected with due diligence within said sixty (60) day period (Grantee's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which Grantee may so comply shall be extended for such time as may be reasonably necessary and so long as Grantee commences promptly and diligently to effect such compliance. Upon such termination, all rights of the Grantee hereunder shall cease. Should any action or proceeding be commenced to enforce any of the provisions of this Franchise, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorney's fees.
- B. Edwards Township, at its option, may terminate this Franchise by ordinance, as to those roads and rights-of-way upon which Grantee has not constructed or placed any Facilities within five (5) years of the effective date of this Franchise.
- C. In the event that the use of all or any part of Grantee's Facilities is permanently discontinued for any reason, including, but not limited to, discontinuance, obsolescence, or abandonment of the Facilities, or the abandonment, termination, or expiration of this Franchise, the Grantee is solely responsible for the removal and proper disposal of the abandoned/surplus Facilities within the Franchise Area. The Grantee is not entitled to abandon any Facilities in place without Edwards Township's prior express agreement and written consent. The Grantee shall restore the county roads and rights-of-way from which such facilities have been removed to the same or equal conditions as before.
- D. Upon the expiration of this Franchise for any reason other than a default by Grantee or abandonment of the Facilities, the Grantee shall have the first and preferential right to take and receive such authority upon similar terms and conditions.

18. **Assignment**

All terms and conditions of this Franchise are burdens upon the successors and assigns of Grantee, and all privileges as well as all obligations and liabilities of the Grantee inure to its successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned. Neither this Franchise nor any interest therein shall be sold, transferred, or assigned without the prior written consent of the County which consent shall not be unreasonably withheld or delayed; provided, however, that Grantee (including, without limitation, _____ (Company Name) may at any time, without the consent of the Township, assign and transfer this Franchise

and all of its rights and interest in and to this Franchise to _____ (Company Name) or any other regulated utility (the "Utility Assignee"). For the avoidance of doubt, upon any assignment of this Franchise by Grantee to a Utility Assignee, Grantee shall remain liable for all obligations and liabilities arising under or in any way pertaining to this Franchise prior to the effective date of such assignment, and shall be discharged and released of all obligations and liabilities to Edwards Township arising under or in any way pertaining to this Franchise after the effective date of such assignment. Further, notwithstanding the foregoing, the Utility Assignee shall have the right, without the consent of or notice to Edwards Township, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

19. **Effective Date**

This Franchise shall be effective thirty (30) days after approval by the Edwards Township Board of Trustees; PROVIDED that Grantee within such time has signed a copy thereof and returned it to the Township Board.

20. **Severability**

If any provision of this Franchise or its application to any person or circumstance is held to be invalid, such decision shall not affect the validity of the remaining portions of this Franchise or its application to other persons or circumstances.

21. **Limitation of Liability**

Administration of this Franchise shall not be construed to create the basis for any liability on the part of Edwards Township, its appointed and elected officials, and employees for any injury or damage from the failure of the Grantee to comply with the provisions of this Franchise; by reason of any plan, schedule, or specification review, inspection, notice and order, permission, or other approval or consent by the County; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the Township, or for the accuracy of plans submitted to the Township.

22. **Hazardous Conditions**

Whenever any conditions or operations caused by any activity undertaken by Grantee pursuant to this Franchise have become a hazard to life and limb, endanger property or public resources, or adversely affect the safety, use, or stability of a public way or drainage channel, the Township Zoning Administrator shall notify the Grantee in writing of the property upon which the condition or operation is located, or other person or agent in control of said property, and direct them to repair or eliminate such condition or operation within the period specified therein so as to eliminate the hazard and be in conformance with the requirements of this Franchise.

Should the Township Zoning Administrator have reasonable cause to believe that the situation is so adverse as to preclude written notice, he/she may take the measures necessary to eliminate the hazardous situation, provided that he/she shall first make a reasonable effort to notify the Grantee before acting. In such instance, the Grantee (responsible for the creation of the hazardous situation) shall be responsible for the payment of any reasonable costs incurred. If costs are incurred and the hazardous

situation has been created in conjunction with or as a result of an operation for which a bond has been posted pursuant to this title or any other Township authority, the Township Zoning Administrator shall have the authority to forfeit the bond or other security to recover the costs incurred.

23. **Miscellaneous**

This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Michigan.

This Franchise is subject to the provisions of any applicable tariff on file with the Michigan Public Services Commission or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

24. **Notices**

Notices provided for in this Franchise shall be sent to the following addresses:

- 1) Ogemaw County Road Commission
PO Box 157
1250 S. M-33 Hwy
West Branch, MI 48861
989-345-0234
989-345-2337 (fax)

- 2) Grantee:

If to Company Name:

Attn: _____

(Company Name)
(Street Address)
(City, State ZIP)

with a copy to:

Attn: _____

If to the Utility Assignee:

Attn: _____

25. **Governing Law and Stipulation of Venue**

Edwards Township Ordinance No. _____

The Grantee shall promptly notify the Township of any change in notice address. The Grantee hereby agrees to be bound by the laws of the State of Michigan and subjected to the jurisdiction of the State of Michigan. The parties hereby stipulate that this Franchise shall be governed by the laws of the State of Michigan and that any lawsuit regarding this contract must be brought in Ogemaw County, Michigan, or in the case of a federal action, in the United States District Court for the Eastern District of Michigan at Bay City, Michigan.

APPENDIX 1

Franchise Area Boundaries

Entirety of Edwards Township.

APPENDIX 2

Construction Work Technical Standards

Grantee shall submit drawings for the construction work, if required by the Edwards Township Zoning Administrator. Drawings shall be to a working scale, showing position and location of work. Names or number and width of roads, streets, etc., showing their location in plats, or subdivisions of sections, township and range, showing the relative position of such work to existing utilities, constructed, laid installed or erected upon such roads, streets or public places.

Grantee shall specify the type of construction by submitting plans showing the class of material and the manner in which the work is to be accomplished. All such materials and equipment shall be of the highest quality and the manner of excavation, fills, construction, installation, erection of temporary structures, traffic turnouts, road obstruction, barricades, etc., shall meet with provisions of Ogemaw County standards, policies and permits, and shall require approval of the Edwards Township Zoning Administrator. Signing, barricades, and traffic control in the vicinity of the work shall strictly conform to provisions of "the Manual on Uniform Traffic Control Devices for Street and Highways." Grantee shall pay to the Township all applicable fees and charges prescribed by Ogemaw County Road Commission standards, policies and permits

The location, type of work, materials, and equipment used, manner of erection or construction, safeguarding of public traffic during work or after doing same, mode of operation and manner of maintenance of project petitioned for, shall be approved by the Edwards Township Zoning Administrator prior to start of work and shall be subject to inspection of the Township Zoning Administrator so as to assure proper compliance with the terms of this Franchise.

Grantee shall leave all roads, streets, alleys, public places, and structures after installation and operation or removal of utility, in a good and safe condition in all respects as same were in before commencement of work by Grantee.

In case of any damage to any roads, streets, public places, structures or public property of any kind on account of said work by Grantee, Grantee will repair said damage at its own sole cost and expense.

The Edwards Township Zoning Administrator, his/her agents or representative may do, order, or have done any and all work considered necessary to restore to a safe condition any street, alley, public place or structure which is in a condition dangerous to a life, or property resulting from Grantee's Facilities within the Franchise Area or its installation as permitted herein, and upon demand Grantee shall pay to Edwards Township all costs of such work and material.

CERTIFICATE OF ACCEPTANCE

The undersigned grantee hereby accepts all the terms and conditions of this franchise as set forth in Exhibit A for himself and for his heirs, executors, administrators, successors and assigns, being
Franchise No. _____

DATE AT _____ this _____ day of _____ 20_____

(Company or Organization)

Subscribed and sworn to before me
this _____

(authorizing signature of applicant)

Notary Public
In and for _____

(Type or print name and title)

(address)
