

# Village of Lake Isabella - Codified Ordinances

## Article X – Utilities & Construction

### **Chapter 1042 – Homeworks Tri-County Electric Utility Franchise**

Originally adopted July 24, 2018, by Ordinance 2018-06

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#### **1042.01 TERM GRANT**

The Village of Lake Isabella grants the right, power and authority to Homeworks Tri-County Electric Cooperative, a Michigan corporation, (the "Grantee"), to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances for the purpose of transmitting, transforming and distributing electricity on, under, along and across the highways, streets, alleys, bridges, waterways, and other public places, and to do a local electric business in the Village of Lake Isabella for a period of thirty (30) years.

#### **1042.03 CONSIDERATION**

In consideration of the rights, power and authority granted by the Village, the Grantee shall faithfully perform all things required by this ordinance and shall further reimburse the Village for actual expenses incurred by it for costs of publication payable within thirty (30) days of the adoption of this ordinance by the Village.

#### **1042.05 CONDITIONS**

(a) Construction: No highway, street, alley, bridge, waterway or other public place used by the Grantee shall be obstructed longer than necessary during the work of construction or repair (the "work") and must be restored to the same good order and condition as when such work was commenced. All towers, masts, poles and

other supports must be set and all wires must be suspended or buried in a careful and proper manner so as not to injure persons or property. Without limitation, work performed by the Grantee within any right-of-way in the Village shall comply with Chapter 652 of the codified ordinances of the Village, as amended.

- (b) Installation and Maintenance: The construction and installation of Grantee's facilities shall be pursuant to plans approved by the Village. The open cut of any Public Right-of-Way shall be coordinated in advance with the Village. Grantee shall install and maintain its facilities in a reasonably safe condition. Grantee may perform maintenance of its facilities without prior approval from the Village, provided that Grantee shall obtain any and all permits required by the Village in the event that any maintenance will disturb or block vehicular traffic or as otherwise required by the Village.
- (c) Tree Trimming: Grantee may trim trees upon and overhanging a public right-of-way so as to prevent the branches of such trees from coming into contact with any of its facilities consistent with any standards adopted by the Village. Grantee shall promptly dispose of all trimmed materials. Grantee shall minimize the trimming of trees to that which is essential to maintain the integrity of its facilities. Except in emergency situations, all trimming of trees in a public right-of-way shall have the advance written approval of the Village, and comply with Section 652.05 1.(g) of the codified ordinances of the Village, as amended.
- (d) Condition of Highways, Streets and Alleys: Grantee's electrical system and associated appurtenances must be neat and slightly and must not unnecessarily interfere with the use of the public rights-of-way. Grantee's electrical system must be suspended or buried so as not to endanger or injure persons or property in the public rights-of-way. All work performed by Grantee must be done so as not to unreasonably interfere with the use of public rights-of-way. Grantee, its contractors and subcontractors shall immediately (subject to seasonal work restrictions) restore, at Grantee's sole expense, in a manner approved by the Village, any portion of a public right-of-way that is in any way disturbed, damaged, or injured by the construction, installation, operation, maintenance or removal of its facilities to a reasonably equivalent (or, at Grantee's option, better) condition as that which existed prior to the disturbance as required by Section 652.05 1.(e) of the codified ordinances of the Village, as amended. In the event that Grantee, its contractors or subcontractors fail to make such repair within a reasonable time,

the Village may make the repair and Grantee shall pay the costs the Village incurred for such repair.

- (e) Notice: Except as otherwise provided for herein, Grantee must give 48 hours written notice to the Village before undertaking any work in the Village involving public rights-of-way. The notice must state the intended duration of any right-of-way obstruction, which obstruction must not continue for more than four (4) hours beyond the stated time unless an extension of time is granted by the Village.
- (f) Emergency: The Grantee may immediately commence construction or repair work resulting from a storm or other act of God or when deemed necessary to prevent danger to life or property, and in such cases, the Grantee must notify the Village of the construction or repair work as soon as reasonably practical.
- (g) No Burden on Public Right-of-Way: Grantee, its contractors, subcontractors, and its facilities shall not unduly burden or interfere with the present or future use of any of the public rights-of-way. Grantee's aerial cables and wires shall be suspended so as to not endanger or injure persons or property in or about the public rights-of-way. If the Village reasonably determines that any portion of the Grantee's facilities constitutes an undue burden or interference due to changed circumstances, Grantee, at its sole expense, shall modify the facilities or take such other actions as the Village may determine is in the public interest to remove or alleviate the burden and Grantee shall do so within a reasonable time period. The Village will attempt to require all occupants of a pole or conduit whose facilities are a burden to remove or alleviate the burden concurrently.
- (h) Relocation: If the Village requests Grantee to relocate, protect, support, disconnect, or remove its facilities because of planned street or utility work, or other planned public projects, Grantee shall relocate, protect, support, disconnect, or remove its facilities at its sole cost and expense including where necessary to such alternate route as the Village, applying reasonable engineering standards, shall specify. Grantee's work shall be completed within a reasonable time period and, to that end, the Village and Grantee shall negotiate a work schedule in good faith. If Grantee fails to meet the agreed-upon schedule except due to acts of God or other causes beyond the reasonable control of the Grantee, then Grantee shall be responsible for any actual costs incurred by the Village as a result of the delay.

- (i) As regulated by Section 652.03 of the codified ordinances of the Village, as amended, the placement of new aerial or aboveground electric service or transmission wires and utility poles in, on or across the streets or public rights-of-way of the Village is prohibited. All electric service or transmission wires, and similar materials shall be placed underground pursuant to a permit issued as provided in chapter 652.

**1042.07 GRANTEE LIABILITY, INDEMNIFICATION AND HOLD HARMLESS**

Grantee must at all times keep and save the Village and its officials, officers, employees and agents free and harmless from all claims for damages, costs and expense arising from or related to Grantee's negligent or other legally actionable errors or omissions in the exercise of rights under this Ordinance. In case any action asserting a claim against the Village on account of the permission herein given is commenced, Grantee must defend the action and save the Village and its officials, officers, employees and agents free and harmless from all costs, expenses, losses and damages of or awarded or incurred in the action. Grantee must reimburse the Village for any costs incurred in responding to any emergency involving Grantee's electric transmission or distribution facilities. Nothing in this section authorizes the Village to make or attempt to make alterations or repairs to Grantee's electric transmission or distribution facilities, structures, and equipment. The Village will promptly provide written notice to Grantee of claims or actions believed to be the responsibility of Grantee under this Section.

**1042.09 EXTENSIONS**

The Grantee may construct and extend its electric distribution system within the Village, and may furnish electric service to applicants residing in the Village in accordance with applicable laws, rules and regulations.

**1042.11 FRANCHISE NOT EXCLUSIVE**

The rights, power and authority granted by this Ordinance are not exclusive.

**1042.13 RATES/SERVICE**

The Grantee is entitled to charge Grantee's cooperative members in the Village for electricity furnished at rates as approved by Grantee's membership, as determined from time to time in accordance with Michigan law. Service standards shall be as established by the Michigan Public Service Commission.

**1042.15 REVOCATION**

The franchise granted by this Ordinance is subject to revocation by either the Village or Grantee upon the provision of one hundred twenty (120) days written notice to the other.

**1042.17 MICHIGAN PUBLIC SERVICE COMMISSION JURISDICTION**

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

**1042.19 NO LIABILITY**

The Village, and its agents, employees and contractors, are not liable to Grantee or to Grantee's customers for any interference with or disruption in the operation of Grantee's electrical system, or for any damages arising out of Grantee's use of the public rights-of-way, except to the extent of the gross negligence or willful misconduct of the Village, its agents, employees or contractors.

**1042.21 NO ASSIGNMENT**

Grantee may not assign this Agreement to any other person, firm or corporation without the prior written approval of the Village except that assignment to a corporate affiliate of Grantee, which corporate affiliate is controlled by Grantee, will not be considered an assignment for the purposes of this Agreement. The Village may not unreasonably withhold its consent to an assignment if the assignee is financially able to carry out the Grantee's obligations under this Agreement.

**1042.23 COMPLIANCE WITH LAWS**

Grantee shall be subject to and comply with all applicable laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership or use of the Grantee's electrical system, whether federal, state or local, now in force or which are later promulgated including, without limitation, compliance with section XIV of the Village Charter, the terms of which shall be deemed incorporated herein by reference. Before any installation is commenced, Grantee must secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the Village or other governmental entity as is required by law. Nothing in this Ordinance is to be construed as a waiver by Grantee or the Village of any of

their existing or future rights to contest any statute, ordinance or regulation which either believes is unlawful or invalid.