

**1999 MIDWEST ENERGY GAS FRANCHISE ORDINANCE**

**TOWNSHIP OF BAINBRIDGE  
BERRIEN COUNTY, MICHIGAN**

**Ordinance No. 33**

Adopted: December 6, 1999

Effective: December 27, 1999 for 30 years

A Franchise, granting to MIDWEST ENERGY COOPERATIVE, its successors and assigns, the right, power and authority to lay, maintain and operate gas mains, pipes and services on, along, across and under the highways, streets, alleys, bridges and other public places, and to do a local gas public utility business in the Township of Bainbridge, Berrien County, Michigan for a period of thirty years.

**The Township of Bainbridge ORDAINS:**

**SECTION I**

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

Subject to all the terms and conditions mentioned in this Franchise, consent, permission, right and authority is hereby given to Midwest Energy Cooperative, 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 Township of Bainbridge, Berrien County, Michigan, (the "Township") and a non-exclusive franchise is hereby granted to the Company, its successors and assigns, to transact local business in the Township for the purposes of producing, storing, transmitting, selling and distributing gas, into and through the Township and all other matters incidental thereto.

**SECTION II**

**Use of Streets and Other Public Places**

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 Township and shall within a reasonable time after making an opening or excavations, 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 the Township and to every owner of property abutting the Company's gas pipelines, or other facilities, for all damages and costs arising from the default, carelessness, or negligence of the Company or its officers, agents and servants.

No road, street, alley or highway shall be opened for the laying of gas trunk lines or gas lateral mains except upon application to the State Transportation Commission, the Berrien County Road Commission or the Township or other authority having jurisdiction in the premises (whichever is applicable), stating the nature of the proposed work and the route. Upon receipt of such application, it shall be the duty of the State Transportation Commission or the Township Board, or such other authority as may have jurisdiction, to issue a permit to the Company to do the work proposed.

### **SECTION III**

#### **Force Majeure**

The Company shall not be under any liability for failure to furnish gas service as herein provided, or for any breach of the Company's obligations hereunder, if such failure or breach is caused by acts of God, labor troubles, riot or any other causes or contingencies not reasonably within the control of the Company.

### **SECTION IV**

#### **Indemnity**

As part of the consideration for the granting of this Franchise, the Company (indemnitor) shall, at its sole cost and expense, fully indemnify and hold the Township (indemnitee), its officers, boards, commissions, agents and employees, harmless against any and all claims, demands, lawsuits, actions, liability and judgments for damages arising out of the granting or operation of this Franchise, including but not limited to liability for damages to any former holder of a public utility franchise whose franchise may have been revoked and superseded by this Franchise. In further consideration for the granting of this Franchise, the Company shall pay actual attorney's fees, costs and expenses which may be incurred by the Township in defense of or in response to any claim, demand, lawsuit, action or administrative proceeding arising out of the granting of this Franchise or the revocation of prior franchises, whether or not judgment is entered against the Township.

### **SECTION V**

#### **Effective Date; Term of Franchise; Acceptance by the Company**

This Franchise shall take effect the day following the date of publication thereof, which publication shall be made within thirty (30) days after the date of its adoption, and shall continue in effect for a period of thirty (30) years thereafter; provided, however, that when this Franchise shall become effective the Township Clerk shall deliver to the Company a certified copy of the Franchise accompanied by written evidence of publication thereof as required by law, and the Company shall, within sixty (60) days after receipt of the above documents, file with the Township Clerk its written acceptance of the conditions and provisions hereof.

**SECTION VI**

**Franchise Not Exclusive**

The rights, power and authority granted by this Franchise are not exclusive, and nothing contained herein shall prevent the Township from granting other non-exclusive gas franchises.

**SECTION VII**

**Franchise Revocable**

This Franchise shall be revocable upon sixty (60) days notice during its term at the will of the Township.

**SECTION VIII**

**Effect and Interpretation of Franchise**

All other franchises, ordinances and resolutions, and parts thereof, which conflict with any of the terms of this Franchise are hereby rescinded, to the extent of such conflict. The catch line headings which precede each section of this Franchise 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 Franchise.

**SECTION IX**

**Successors and Assigns**

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

Ayes: 5  
Nays: 0  
Dated Passed: 12-6-99

Attested, by Order of the Township of  
Bainbridge, Berrien County, Michigan

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Beverly Koroch - Hirsch  
Township Clerk

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Leonard Smith  
Township Supervisor

### **CERTIFICATION**

The undersigned, being the duly qualified and acting Clerk of Bainbridge Township, Berrien County, Michigan, hereby certifies that (1) the foregoing is a true and complete copy of a resolution duly adopted by the Township Board at a regular meeting held on 12-6-99, at which meeting a quorum was present and remained throughout, (2) the original thereof is on file in the records in my office, (3) the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended) and (4) minutes of such meeting were kept and will be or have been made available as required thereby.

Date: 12-6-99

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Beverly Koroch Hirsch  
Bainbridge Township Clerk

### **ACCEPTANCE**

This Franchise is hereby accepted by the Company on 12-27-99, pursuant to the terms and conditions set forth in the foregoing Franchise.

MIDWEST ENERGY COOPERATIVE

By: Jon Billen  
Its: President & CEO

Bainbridge Township Clerk

### **MINUTES:**

**Motion by Baiers/Weber to approve the Midwest Energy Franchise for 30 years. Motion carried.**