

TOWNSHIP OF HOLLY
CODE OF ORDINANCE AMENDMENT
APPENDIX A FRANCHISES (1) CONSUMERS ENERGY FRANCHISE

AN ORDINANCE TO AMEND THE HOLLY TOWNSHIP CODE OF ORDINANCES BY
AMENDING APPENDIX A FRANCHISES (1) CONSUMERS ENERGY FRANCHISE

THE TOWNSHIP OF HOLLY ORDAINS:

SECTION 1 – AMENDMENT

INTENT AND PURPOSE. An Ordinance granting to Consumers Energy Company and its successors and assigns, the right, power and authority to construct, lay, maintain and operate gas mains, pipes and services, and to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers and other electrical appliances on, along, across and under the highways, streets, alleys, bridges, waterways, and other public places, and to do a local gas and/or electric business in the Township of Holly, Oakland County, Michigan, for a period of thirty years.

GRANT, TERM. The Township of Holly, Oakland County, Michigan (the “Township”), hereby grants to the Consumers Energy Company, a Michigan corporation, its successors and assigns (the “Grantee”), the right, power and authority to construct, lay, maintain and operate gas mains, pipes and services (the “gas system”), and to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers, and other electrical appliances (the “electric system”) on, along, across and under the highways, streets, alleys, bridges, waterways, and other public places (collectively “Public Right-of-Ways”), and to do a local gas and/or electric business in the Township for a period of thirty years.

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

USE OF PUBLIC RIGHT-OF-WAYS.

- A. Conditions. Grantee shall not obstruct any Public Right-of-Way longer than necessary during the construction, maintenance, repair, removal or operation of the Gas or Electric systems. All of Grantee's structures and equipment shall be so placed on either side of the Public Right-of-Way so as not to unnecessarily interfere with the use thereof. All of Grantee's wires carrying electricity shall be securely fastened so as not to endanger or injure persons or property.

- B. Restoration. Grantee shall immediately restore, at Grantee's sole cost and expense and in a manner approved by the Township, any portion of the Public Right-of-

Ways that is in any way disturbed, damaged, or injured by the construction, maintenance, repair, removal or operation of the Gas or Electric Systems to as good or better condition than that which existed prior to the disturbance. In the event that the Grantee fails to make such repair within a time specified by the Township, the Township shall be entitled to complete the repair, and the Grantee shall pay the costs of the repair to the Township.

- C. Trees. Grantee shall have the right to trim trees if necessary to prevent tree branches from coming into contact with the Gas or Electric Systems or to otherwise maintain the integrity of the Gas or Electric Systems, provided, however, that Grantee provide prior notice to all state and local governmental agencies with jurisdiction over the Public Right-of-Ways.
- D. Marking. Grantee shall mark its Electric System as follows: Aerial portions of the Electric System shall be marked with a marker on its lines on alternate poles which shall state the Grantee's name and provide a toll-free number to call for assistance. Direct buried underground portions of the Electric System shall have (1) a conducting wire placed in the ground at least several inches above the Grantee's cable or wire (if such cable or wire is non-conductive), (2) at least several inches above that, a continuous colored tape with Grantee's name and a toll-free number and a statement to the effect that there is buried cable beneath, and (3) stakes or other appropriate aboveground markers with the Grantee's name and a toll-free number and indicating that there is buried cable below.
- E. Vacation or Relocation. The Township has the right to require Grantee to vacate or relocate any portion of the Gas or Electric System at the Grantee's expense if such vacation or relocation is necessary to secure the public health and welfare or is otherwise required by the Township in the exercise of a governmental function.
- F. Public Emergency. The Township shall have the right to sever, disrupt, dig up, or otherwise destroy facilities of the Grantee without any prior notice if such action is deemed necessary because of a public emergency. A public emergency shall be any condition which, in the opinion of the Township, poses an immediate threat to the lives or property of the citizens of the Township caused by any natural or man-made disaster, including but not limited to storms, floods, fire, accidents, explosion, major water main breaks, and hazardous material spills. Grantee shall be responsible for repair at its sole expense for any of its facilities damaged pursuant to any such actions taken by the Township.
- G. MISS DIG. If eligible to join, Grantee shall subscribe to and be a member of, or maintain present membership in, "MISS DIG," the association of utilities formed pursuant to Public Act 174 of 2013, as amended (MCL 460.721 et seq.). Grantee shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder.

H. Compliance with Laws. Grantee shall comply with all laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership or use of its Gas and Electric Systems, whether federal, state or local, now in force or which hereafter may be promulgated (including, without limitation, any ordinance requiring the installation of additional conduit when Grantee installs underground conduit for its Gas or Electric Systems). Before any installation is commenced, Grantee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the Township or other governmental entity as may be required by law, including, without limitation, all utility line permits and highway permits. Grantee shall comply in all respects with applicable codes and industry standards, including but not limited to the National Electrical Safety Code (latest edition) and the National Electric Code (latest edition). Grantee shall comply with all zoning and land use ordinances and historic preservation ordinances as may exist or may hereafter be adopted or amended

HOLD HARMLESS. The Township and its agents, employees, and contractors shall not be liable to the Grantee or the Grantee's customers for any interference with or disruption in the operation of the Gas or Electric Systems, or the provision of service over or through the Gas or Electric Systems, or for any damages arising out of the Grantee's use of the Public Right-of-Ways. Grantee shall at all times keep and save the Township free and harmless from all claims, losses, liabilities, causes of action, demands, judgments, decrees, and costs and expense of any nature (including without limitation attorney fees and expert witness fees) arising out of or resulting from the acts or omissions of Grantee, its officers, agents, employees, contractors, successors, or assigns in connection with the Gas or Electric System or the Grantee's use of the Public Right-of-Ways. In case any demand is made or any action is commenced against the Township on account of the permission herein granted, Grantee shall, upon notice, defend and indemnify the Township.

ASSUMPTION OF RISK. Grantee undertakes and assumes for its officers, agents, contractors, subcontractors, and employees all risk of dangerous conditions, if any, on or about any Township-owned or controlled property, including the Public Right-of-Ways, and Grantee hereby agrees to indemnify and hold harmless the Township against and from any claim asserted or liability imposed upon the Township for personal injury or property damage to any person arising out of the installation, operation, maintenance, or condition of the Gas or Electric Systems or the Grantee's failure to comply with any federal, state or local statute, ordinance or regulation

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

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

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

REVOCATION. The franchise granted by this Ordinance is subject to revocation upon sixty (60) days written notice by either party.

MICHIGAN PUBLIC SERVICE COMMISSION, JURISDICTION. Grantee shall, as to all other conditions and elements of service, both gas and electric, not herein fixed, be and remain subject to the rules and regulations of the Michigan Public Service Commission (“MPSC”) or its successors, applicable to gas or electric service and shall provide service in accordance with the terms and conditions set forth in its applicable tariff as approved from time to time by the MPSC. Grantee shall permit the Township to inspect and examine all records that Grantee is required to maintain or file under the MPSC’s rules and regulations.

SECTION 2 - INVALIDITY

If any word, clause, sentence, paragraph, or section of this Ordinance is held to be unconstitutional, illegal or otherwise unenforceable, such decision shall not affect the validity of the remaining portions of the Ordinance

SECTION 3 - REPEALER. This ordinance, when accepted and published as herein provided, shall repeal and supersede the provisions of a gas and/or electric ordinance adopted by the Township Board on November 12, 1987 and amendments, if any, to such ordinance whereby a gas and/or electric franchise was granted to Consumers Energy Company.

SECTION 4 - EFFECTIVE DATE. This ordinance shall take effect upon the day after the date of publication thereof, provided, it shall cease and be of no effect after thirty days from its adoption unless within said period the Grantee shall accept the same in writing filed with the Township Clerk. Upon acceptance and publication hereof, this ordinance shall constitute a contract between said Township and said Grantee.

SECTION 5 - ADOPTION

At a regular meeting of the Township Board of the Township of Holly held on the 18th day of October, 2017 adoption of the foregoing ordinance was moved by K. Winchester and supported by M. Freeman.

CERTIFICATION

I, duly elected clerk of the Township of Holly, County of Oakland, and State of Michigan, do hereby certify that the foregoing is a true copy of the Holly Township Ordinance Amendments to Appendix A, Franchises (1,) Consumers Energy Franchise adopted by the Township Board of Trustees of the Township of Holly at the regular meeting held on the 18th day of October, 2017 at which a quorum was present.

Karin S. Winchester, MMC
Holly Township Clerk
Oakland County, Michigan

George A. Kullis, Supervisor
Township of Holly
Oakland County, Michigan

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