

TOWNSHIP OF COLUMBIA
ELECTRIC FRANCHISE ORDINANCE

Ordinance No. 2021-2

An Ordinance granting a non-exclusive franchise to use local public rights-of-way and transact local electrical business and to provide fiber optic service in the Township of Columbia.

THE TOWNSHIP OF COLUMBIA ORDAINS:

Section 1. Grant.

- (A) The Township of Columbia ("Grantor") hereby grants to Thumb Electric Cooperative, its successors and assigns ("Grantee") the right, power, and authority to use the streets, alleys, avenues, ways, and other public places of Grantor as now constituted and as it may be hereafter extended, for the purpose of building, equipping, maintaining, extending, owning, and operating a plant and system for the manufacture, transmission, distribution, and sale of electricity for lighting, heating, and power purposes as well as for such other purposes as electric energy may be used, in and to said Grantor and to the public generally, and to transmit electric energy over transmission and distribution lines to connections and systems in other localities, with poles, wires, conduits, substations, and apparatus necessary and convenient for such plant and system upon, across, over, and under each and any of said streets, alleys, avenues, ways, and other public places and grounds.
- (B) Grantor further grants to Grantee, its successors and assigns the right, power, and authority to use the streets, alleys, avenues, ways, and other public places of Grantor as now constituted and as it may be hereafter extended, for the purpose of building, equipping, maintaining, extending, owning, and operating a fiber network system for the generation, transmission, distribution, and sale of broadband internet services as well as for such other purposes as fiber may be used, in and to said Grantor and to the public generally, and to provide broadband fiber services to connections and systems in other localities, with all equipment and apparatus necessary and convenient for such system upon, across, over, and under each an any of said streets, alleys, avenues, ways, and other public places and grounds.

- (C) This Franchise Agreement and the grant contained herein recognize that Grantee previously and currently operates facilities and provides electric service within certain areas of the Township and that nothing in this Franchise Agreement shall impair or adversely affect in any manner the existing and continuing right of Grantee to conduct and expand its operations within those areas of the Township where Grantee operates.
- (D) The Grantor further grants to the Grantee the right, power, and authority to construct and maintain equipment related to both electrical and broadband services in the following circumstances where such construction is necessary to connect the Grantee's customers to facilities owned and operated by an authorized public utility under a franchise with Grantor and located within the boundary limits of the Township.

Section 2. Term.

This franchise shall be for a term of up to thirty (30) years; subject, however, to revocation of the term of the Township Board.

Section 3. Consideration.

In consideration of the rights, powers and authority granted, the Grantee shall faithfully perform all things required by this franchise.

Section 4. Conditions.

- (A) As an electric power marketer and third-party supplier of electricity and electrical services, the Grantee will not impair, obstruct or attempt to control any street, alley, bridge, highway, waterway or other public place. The Grantee shall at all times utilize the existing transmission lines and equipment owned and operated by an authorized public utility under a franchise with the Grantor, the terms and conditions of which as may be applicable are incorporated by reference, except as otherwise provided in this Ordinance.
- (B) The franchise shall be further conditioned upon:
 - (1) The Grantee shall provide at least ten (10) days prior, written notice to the owners and/or occupants of any property affected by utility work;
 - (2) The Grantee shall comply with the Columbia Township Zoning Ordinance and other applicable Township ordinances prior to beginning any construction;

- (3) The Grantee shall submit plans and specifications to the Township for review and approval prior to any construction;
- (4) The Grantee shall restore any and all areas where it performs work back to the same or better condition than the area was in prior to the work being commenced;
- (5) The Grantee shall inform the Grantor at least seven (7) days in advance of any and all times when traffic will be blocked or detoured (as well as any other necessary traffic control requirements) due to the Grantee's construction, installation, or maintenance of its facilities;
- (6) If eligible to join, Grantee shall subscribe to and be a member of "MISS DIG", the association of utilities formed pursuant to 1974 PA 53, as amended (MCL 460.701. et seq.) and shall conduct its business in conformance with the statutory provisions and regulations promulgated thereunder;
- (7) Grantee may trim trees upon and overhanging the Public Ways so as to prevent the branches of such trees from coming into contact with the Electric System. Grantee shall minimize the trimming of trees to trimming only those that are essential to maintain the integrity of its Electric System. No trimming shall be done in the Public Ways without previously informing the Grantor; and
- (8) Grantee shall comply with all laws, statutes, ordinances, rules and regulations regarding the installation, construction, ownership or use of its Electric System 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 Electric System). Before any installation is commenced, Grantee shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the Grantor 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 amended.

Section 5. Hold Harmless.

- A. Grantor Not Liable. The Grantor, and its agents, employees, and contractors, shall not be liable to Grantee or Grantee's customers for any interference with or disruption in the operation of Grantee's Electric System, or the provision of service over or through the Electric System, or for any damages arising out of Grantee's use of the Public Ways.
- B. Indemnification. As part of the consideration for this Ordinance, Grantee shall defend, indemnify, protect and hold harmless Grantor, its officers, agents, employees, departments, boards, and commissions from any and all claims, losses, liabilities, causes of action, demands, judgments, decrees, proceedings, and reasonable expenses of any nature (including, without limitation, actual fees and expenses of attorneys, expert witnesses and consultants), arising out of or resulting from the acts or omissions of Grantee, its officers, agents, employees, contractors, successors, or assigns, but only to the extent of the fault of the Grantee, its officers, agents, employees, contractors, successors, or assigns.
- C. Assumption of Risk. Grantee undertakes and assumes for its officers, agents, contractors and subcontractors and employees, all risk of dangerous conditions, if any, on or about any Grantor owned or controlled property, including Public Ways, and Grantee hereby agrees to indemnify and hold harmless the Grantor against and from any claim asserted or liability imposed upon the Grantor for personal injury or property damage to any person arising out of the installation, operation, maintenance or condition of the electric system or Grantee's failure to comply with any federal, state or local statute, ordinance or regulation.
- D. Notice, Cooperation, and Expenses. The Grantor shall give Grantee prompt notice of the making of any claim or the commence of any actions suit or other proceeding covered by the provisions of this Section.

Nothing herein shall be deemed to prevent the Grantor from cooperating with Grantee and participating in the defense of any litigation by Grantor's own counsel.

Grantee shall pay all expenses incurred by Grantor in defending itself with regard to any such actions, suits or proceedings. These expenses shall include all out-of-pocket expenses such as attorney fees and shall also include the reasonable value of any services rendered by or on behalf of the Grantor's attorney, and the actual expenses of Grantor's agents, employees or expert witnesses, and disbursements and liability assumed by Grantor in connection with such suits, actions or proceedings.

Section 6. Franchise Not Exclusive.

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

Section 7. Franchise Fee.

The Grantee shall pay to the Grantor a one-time franchise fee in the amount of \$500.00, to cover the Township's legal fees related to this Franchise Ordinance. The franchise fee shall be paid to the Grantor within 30 days from the adoption of this ordinance.

Section 8. Rates

The Grantee shall be entitled to charge the citizens of the Township for electricity furnished therein and for broadband internet services at the rate approved by Grantee.

Section 9. Rights of the Grantor.

The franchise shall be subject to the right of the Grantor:

- (1) To require proper and adequate extension of plant and service maintenance at the highest practical standard of efficiency;
- (2) To establish reasonable standards of service and quality of products and prevent unjust discrimination in service or rates;
- (3) To require service in accordance with the terms of the franchise throughout the entire period;
- (4) To impose such other regulations as may be determined by the Board to be conducive to the safety, welfare, and accommodation of the public;
- (5) To require the Grantee to permit joint use of its property and appurtenances located in the streets, alleys, and public places of the Township by the Grantor and other utilities insofar as such joint use may be reasonably practicable and upon payment of reasonable rental; provided, that, in the absence of agreement, upon application by the Grantee, the Board shall provide for arbitration of the terms and conditions of such joint use and the compensation to be paid therefor.

The rights of the Grantor shall not be exercised or construed in a manner which conflicts with the express terms and conditions of this franchise nor with the rules and regulations set forth by the Michigan Public Service Commission governing the provision of electric service by Grantee.

Section 10. Vacation of Rights-of-Way; Relocation of Facilities.

The Grantor has the right to vacate any public right-of-way within the Grantor as well as any right to use same possessed by the Grantee, and/or the Grantor may require the Grantee to relocate its lines and facilities at Grantee's expense when such vacation and/or relocation is made necessary to secure the public health and welfare or is otherwise required by the Grantor in the exercise of a governmental function.

Section 11. Revocation.

The franchise granted by this ordinance is subject to revocation at will by the Grantor.

Section 12. Jurisdiction.

The Grantee shall be and remain subject to all ordinances, rules and regulations of the Grantor now in effect or which might subsequently be adopted for the regulation of land uses or for the protection of the health, safety and general welfare of the public; provided, however, that nothing shall be construed as a waiver by the Grantee of any or its existing or future rights under state or federal law or a limitation upon the existing or future powers of the Grantor pursuant to its charter or state or federal law.

Section 13. Underground Relocation.

If the Grantee has its facilities on aboveground utility poles and the owner of said poles relocates its facilities to an underground conduit, the Grantee shall relocate its facilities in the same underground conduit.

Section 14. Fire Run Charges.

Nothing in this Ordinance shall limit or prohibit the Grantor from collecting fire-run fees from the Grantee pursuant to a duly adopted Township fire protection ordinance.

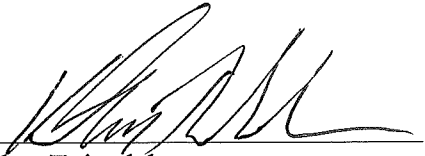
Section 15. Grantee Acceptance.

Prior to this franchise becoming valid, the Grantee shall sign below in acceptance of the terms and conditions of the franchise.

Section 16. Enactment; Effective Date; Conflicts.

This Ordinance was adopted by the Columbia Township Board at a meeting duly held on the 21st day of September 2021 and was published in the Tuscola

County Advertiser on the 29th day of September 2021. This Ordinance shall become effective one (1) day after said date of publication. All ordinances or parts of ordinances in conflict herewith are hereby repealed.


Kathy Trischler
Columbia Township Supervisor


Christine Kolar
Columbia Township Clerk

ACCEPTANCE:

THUMB ELECTRIC COOPERATIVE

By: _____
Its: