

<b>STATE OF MICHIGAN</b> JUDICIAL DISTRICT Eaton County JUDICIAL CIRCUIT COUNTY PROBATE	<b>SUMMONS</b>	<b>CASE NO.</b> 19-919-CZ
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**Court address** 1045 Independence Blvd., Suite 200, Charlotte, MI 48813 **JANICE K. CUNNINGHAM** **Court telephone no.** (517) 543-4335

Plaintiff's name(s), address(es), and telephone no(s). JANE STEPHENS
Plaintiff's attorney, bar no., address, and telephone no. Gregory D. Hanley (P51204), John J. Premo (P55393) Edward F. Kickham Jr. (P70332) Kickham Hanley PLLC 32121 Woodward Avenue, Suite 300 Royal Oak, MI 48073 (248) 544-1500

Defendant's name(s), address(es), and telephone no(s). CHARTER TOWNSHIP OF DELTA
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v

**Instructions:** Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

**Domestic Relations Case**

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. Attached is a completed case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

**Civil Case**

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ \_\_\_\_\_ Court, where

it was given case number \_\_\_\_\_ and assigned to Judge \_\_\_\_\_.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

**SUMMONS**

**NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date 9-4-19	Expiration date* 12-4-19	Court clerk Diana Bosworth
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\*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

**SUMMONS**

Case No. \_\_\_\_\_

**PROOF OF SERVICE**

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

**CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE**☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

- ☐ I served personally a copy of the summons and complaint.  
☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with \_\_\_\_\_

\_\_\_\_\_ List all documents served with the summons and complaint

\_\_\_\_\_ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

- ☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	<b>TOTAL FEE</b>
\$		\$	\$

Signature \_\_\_\_\_

Name (type or print) \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
 Date

My commission expires: \_\_\_\_\_ Date Signature: \_\_\_\_\_  
 Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with \_\_\_\_\_  
 Attachments

\_\_\_\_\_ on \_\_\_\_\_  
 Day, date, time

Signature \_\_\_\_\_ on behalf of \_\_\_\_\_



**STATE OF MICHIGAN  
EATON COUNTY CIRCUIT COURT**

JANE STEPHENS,  
individually and as representative  
of a class of similarly-situated  
persons and entities,

Case No. 19- **919** -CZ  
Hon.

**JANICE K. CUNNINGHAM**

Plaintiff,

v.

CHARTER TOWNSHIP OF DELTA,  
a municipal corporation,

Defendant.

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Gregory D. Hanley (P51204)  
John J. Premo (P55393)  
Edward F. Kickham Jr. (P70332)  
Kickham Hanley PLLC  
32121 Woodward Avenue, Suite 300  
Royal Oak, Michigan 48073  
(248) 544-1500

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**PLAINTIFF'S CLASS ACTION COMPLAINT**

Plaintiff Jane Stephens ("Plaintiff"), by her attorneys, Kickham Hanley PLLC, individually and on behalf of a class of similarly situated class members, states the following for her Class Action Complaint against the Charter Township of Delta (the "Township"):

**INTRODUCTION**

1. This is an action challenging the "Franchise Fees" imposed by the Township on citizens whose properties receive electric service from the Lansing Board of Water and Light ("LBWL"), a municipal utility owned by the City of Lansing, Michigan. The Township has extracted millions of dollars from the payers of the Franchise Fees that it has used to finance the Township's general governmental functions.

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2. The Franchise Fees constitute unlawful taxes that have been imposed by the Township in violation of the Headlee Amendment to the Michigan Constitution because the Franchise Fees were not approved by the Township's voters, as required by Section 31 of the Headlee Amendment.

3. The Franchise Fees also violate equal protection guarantees of the Michigan Constitution (*see* Mich. Constitution 1963, Article 1, § 2) because they are imposed only on Township citizens who are located in those geographical areas of the Township which receive electric service from the LBWL and are not imposed on Township citizens who are located in different geographical areas of the Township which receive their electric service from Consumers Energy. By imposing the Franchise Fees in this manner, the City has failed to treat all persons and entities of the same class equally, but has instead extended privileges to an arbitrary or unreasonable class which are denied to persons and entities who incur the Franchise Fees. No rational basis exists for imposing the Franchise Fees only upon one subset of the citizenry based upon their physical location in the Township.

4. The Franchise Fees in fact are a total sham because the Township is prohibited by Michigan law (the Foote Act) from imposing any fees as a condition of allowing the LBWL to provide electric service in the Township. *See, e.g., Lansing v. Michigan Power Co.*, 183 Mich. 400, 150 N.W. 250 (1914).

5. The Township therefore must be enjoined from continuing collection of the Franchise Fees and must refund all Franchise Fees it has received since January 1, 2018 and all Franchise Fees it receives during the pendency of this lawsuit.

## **JURISDICTION AND VENUE**

6. Plaintiff is a property owner in the Township who receives electric service from the LBWL, has paid the Franchise Fees, and seeks to act as a class representative for all similarly situated persons.

7. Defendant Charter Township of Delta (the “Township”) is a municipality located in Eaton County, Michigan.

8. Venue and jurisdiction are proper with this Court because all parties are present here and the actions which give rise to Plaintiff's claims occurred in this County.

## **GENERAL ALLEGATIONS CONCERNING THE FRANCHISE FEES**

9. The Township is serviced by two electric utilities, each of whom has been granted a monopoly over sizeable portions of the Township's land area. The LBWL largely services the eastern portion of the Township, while Consumers Energy largely services the western portion of the Township. Small areas of the Township can be serviced by both utilities.

10. The Township has a franchise agreement with Consumers Energy that does not require the payment of any fee in exchange for the grant of the franchise. Thus, persons and entities in the Township who/which receive electric service from Consumers Energy are not required to pay any Franchise Fees to the Township.

11. Prior to January 2018, the Township had a franchise agreement with the LBWL which also did not require the payment of any fee in exchange for the grant of the franchise. In January 2018, however, the Township entered into a new Franchise Agreement with the LBWL which for the first time imposed a Franchise Fee. *See* Exhibit A hereto. The Franchise Agreement was approved by the Township Board through its enactment of Ordinance No. 18-103 on January 2, 2019.

12. Ordinance No. 18-103 was not approved by a majority of the voters of the Township and remains so unapproved today.

13. Section 8 of the Franchise Agreement requires the LBWL to collect the Franchise Fees from its electric customers in the Township and to remit the Fees to the Township:

SECTION 8. FRANCHISE FEE. During the term of this franchise, or the operation of the electric system pursuant to this franchise, and to the extent allowable as a matter of law, the Grantee shall, upon resolution of the Charter Township and acceptance by the Grantee, **collect and remit** to the Charter Township a franchise fee in an amount of five percent (5%) of the revenue, excluding sales tax, from the retail sale of electric energy by the Grantee within the Charter Township, for the use of its streets, public places and other facilities, as well as the maintenance, improvements and supervision thereof. **Such fee will appear on the corresponding energy bills.**

The franchise fee will commence the first day of the month following the effective date of this Ordinance, and shall reflect revenue based on retail sales from 30 days after the effective date of this franchise fee through the applicable quarter. New fiscal years will commence July 1, 2018, and each year thereafter, with the Grantee to pay the franchise fees to the Charter Township on a quarterly basis.

**To the extent the Grantee is precluded from collecting such franchise fees remittance to Charter Township will cease.** [emphasis added]

14. Notably, the Franchise Fees are **not** imposed on the LBWL. Instead, the Agreement appoints the LBWL as a mere collection agent which bears no responsibility to pay the Fees beyond the amount collected from its Township customers. The Franchise Fees are imposed directly on the Township citizens who receive electric service from the LBWL.

15. Various provisions of the Agreement make clear that the Franchise Fees are imposed directly on the Township citizens and not on the LBWL. For example, Section 5 states in pertinent part: "The Charter Township shall hold harmless and defend the Grantee from any and all claims, losses or litigation which result from the Grantee's compliance with the **collection and remittance** of the franchise fee described in Section 8 of this Ordinance." (emphasis added). Section 6 states in pertinent part: "The exclusive right to serve the Defined Service Area of the Charter Township as

described in Exhibit A is a condition concurrent to the **collection and remittance** of the Franchise Fee described in Section 8.” (emphasis added). Finally, and importantly, Section 12 allows the LBWL to charge the Township a fee for collecting and remitting the Franchise Fees. That section provides that the LBWL will receive “an administrative charge of ½ percent (0.5%) of collected franchise fees . . . .”

16. In sum, the LBWL is required to “collect and remit” the fees to the Township, not merely “pay” the fees to the Township. The ordinance expressly requires the LBWL to include the fees on the “corresponding energy bills.” This is a total “pass-through” obligation. Moreover, if the LBWL cannot collect and remit the fees to the Township (i.e., pass-through the fees), the LBWL does not have to pay anything.

17. The legal incidence of the Franchise Fees falls on the inhabitants of the Township who are electric customers of LBWL. *See, e.g., U.S. v. Mississippi Tax Comm’n*, 421 U.S. 599 (1975) (“where a state requires that its sales tax be passed on to the purchaser and collected by the vendor from him, this establishes as a matter of law that the legal incidence of the tax falls upon the purchaser”).

18. Clearly, if the Township sought to impose a new tax directly on its citizenry without utilizing the LBWL as a collection agent, the City would be required to seek voter approval of that tax under the Headlee Amendment. The City cannot evade that obligation by the subterfuge of its Franchise Agreement with the LBWL.

### **CLASS ALLEGATIONS**

19. Plaintiff brings this action as a class action, pursuant to MCR 3.501, individually and on behalf of a proposed class consisting of all persons or entities who/which have incurred or paid Franchise Fees during the relevant class periods.

20. The members of the Class are so numerous that joinder of all members is

impracticable.

21. Plaintiff's claims are typical of the claims of members of the Class. Plaintiff is a member of the Class it seeks to represent, and Plaintiff was injured by the same wrongful conduct that injured the other members of the Class.

22. The Township has acted wrongfully in the same basic manner as to the entire class.

23. There are questions of law and fact common to all Class Members that predominate over any questions, which, if they exist, affect only individual Class Members, including:

- a. whether the Franchise Fees imposed by the Township are taxes;
- b. whether the Franchise Fees imposed by the Township violate the Headlee Amendment;
- c. whether the Franchise Fees imposed by the Township violate the Foote Act; and
- d. whether the imposition of the Franchise Fees on only one subset of the citizenry of the Township based on their geographical location violates equal protection guarantees under the Michigan Constitution.

24. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has no interests antagonistic to those of the Class. Plaintiff is committed to the vigorous prosecution of this action, and has retained competent and experienced counsel to prosecute this action.

25. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. The prosecution of separate actions would create a risk of inconsistent or varying adjudications. Furthermore, the prosecution of separate actions would substantially impair and impede the ability of individual class members to protect their interests. In addition, since individual refunds may be relatively small for most members of the class, the burden and expense of prosecuting litigation of this nature makes it



unlikely that members of the class would prosecute individual actions. Plaintiff anticipates no difficulty in the management of this action as a class action.

**COUNT I**  
**VIOLATION OF THE HEADLEE AMENDMENT**

26. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

27. The Township is bound by the Michigan Constitution of 1963, including those portions commonly known as the Headlee Amendment.

28. In particular, the Township may not disguise a tax as a fee under Article 9, Section 31 of the Michigan Constitution of 1963, which provides:

Units of Local Government are hereby prohibited from levying any tax not authorized by law or charter when this section is ratified or from increasing the rate of an existing tax above that rate authorized by law or charter when this section is ratified, without the approval of a majority of the qualified electors of that unit of Local Government voting thereon. [Const. 1963, art. 9, § 31].

29. The Franchise Fees are a disguised tax and intended to avoid the obligations of the Headlee Amendment, including the requirement that the Franchise Fees, as taxes, be approved by a majority of the electorate.

30. The Franchise Fees were not “authorized by law or charter” when Headlee was ratified in December 1978. To the contrary, such fees have long been prohibited by the Foote Act.

31. The Franchise Fees have all relevant indicia of a tax:

- a. They have no relation to any service or benefit actually received by the taxpayer;
- b. The amount of the Franchise Fees are disproportionate to the cost incurred by the Township providing the benefits for which the Fees are purportedly imposed;
- c. The Franchise Fees are designed to generate revenue;
- d. The Franchise Fees lack a regulatory purpose;

e. Payment of the Franchise Fees is not discretionary, but effectively mandatory;

f. Various other indicia of a tax described in *Bolt v. City of Lansing* are present.<sup>1</sup>

32. As a direct and proximate result of the Township's implementation of the Franchise Fees, Plaintiff and the Class have been harmed.

33. Plaintiff seeks her attorneys' fees and costs as allowed by Article 9, Section 32 of the Michigan Constitution of 1963 and MCL 600.308a.

34. Plaintiff seeks a refund of all amounts to which it and the Class are entitled.

## **COUNT II**

### **VIOLATION OF STATE EQUAL PROTECTION GUARANTEES**

35. Plaintiff incorporates each of the preceding allegations as if fully set forth herein.

36. The City's practice of imposing the Franchise Fees only upon Plaintiffs and the other members of the Class is a constitutionally improper classification which violates State equal protection guarantees.

37. There is no natural distinguishing characteristic between the persons and entities that are subject to the Franchise Fees and the persons and entities in the Township that are not subject to the Franchise Fees. Thus, Plaintiff and the Class are irrationally being charged differently than the similarly situated persons and entities that are not being assessed the Franchise Fees.

38. The City has violated Mich. Constitution 1963, Article 1, § 2 by imposing the Franchise Fees upon Plaintiffs and the Class in violation of their constitutional equal protection guarantees.

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<sup>1</sup> Pursuant to MCR 2.1112(M), Plaintiff identifies subparts (a) through (e) of Paragraph 31 as "factual questions that are anticipated to require resolution by the Court."

39. Plaintiff and the Class have been financially harmed as a result of the City's violation of their constitutional equal protection guarantees.

40. Plaintiff seeks a refund of all amounts to which it and the Class are entitled.

**COUNT III**  
**UNJUST ENRICHMENT – VIOLATION OF FOOTE ACT**

41. Plaintiff incorporates each of the preceding allegations as if fully set forth herein.

42. Michigan law prohibits the Township from imposing any Franchise Fees under these circumstances. Specifically, the Township is prohibited by the Foote Act from imposing any fees as a condition of allowing the LBWL to provide electric service in the Township. *See, e.g., Lansing v. Michigan Power Co.*, 183 Mich. 400, 150 N.W. 250 (1914).

43. By imposing Franchise Fees even though they are prohibited by the Foote Act, the Township has collected amounts in excess of the amounts it was legally entitled to collect.

44. As a direct and proximate result of the Township's improper conduct, the Township has collected millions of dollars to which it is not entitled. By paying the Franchise Fees, Plaintiff and the Class have conferred a benefit upon the Township, and it would be inequitable for the Township to retain that benefit.

45. Under equitable principles, the Township should be required to disgorge the revenues attributable to the Franchise Fees it has imposed or collected since January 1, 2018 and Franchise Fees it imposes or collects during the time this action is pending and refund the Franchise Fees to Plaintiff and the Class.

**COUNT IV**  
**CLAIM IN ASSUMPSIT – VIOLATION OF FOOTE ACT**

46. Plaintiff incorporates each of the preceding allegations as if fully set forth herein.

47. Michigan law prohibits the Township from imposing any Franchise Fees under these circumstances. Specifically, the Township is prohibited by the Foote Act from imposing any fees as

a condition of allowing the LBWL to provide electric service in the Township. *See, e.g., Lansing v. Michigan Power Co.*, 183 Mich. 400, 150 N.W. 250 (1914).

48. A claim to recover amounts paid to a governmental unit in excess of the amount allowed under law is properly filed as an equitable action in assumpsit for money had and received. Therefore, Plaintiff is entitled to maintain an equitable action of assumpsit to recover back the amount of the illegal exaction. *See, e.g., Bond v. Public Schools of Ann Arbor*, 383 Mich. 693, 704, 178 N.W.2d 484 (1970).

49. By imposing Franchise Fees even though they are prohibited by the Foote Act, the Township has collected amounts in excess of the amounts it was legally entitled to collect.

50. As a direct and proximate result of the Township's improper conduct, the Township has collected millions of dollars to which it is not entitled. By paying the Franchise Fees, Plaintiff and the Class have conferred a benefit upon the Township, and it would be inequitable for the Township to retain that benefit.

51. Under equitable principles, the Township should be required to disgorge the revenues attributable to the Franchise Fees it has imposed or collected since January 1, 2018 and Franchise Fees it imposes or collects during the time this action is pending and refund the Franchise Fees to Plaintiff and the Class.

#### **PRAYER FOR RELIEF**

Plaintiff requests that the Court grant the following relief:

A. Certify this action to be a proper class action with Plaintiff certified as Class Representative and Kickham Hanley PLLC designated Class Counsel;

B. With respect to Count I, define the Class to include all persons or entities which have incurred or paid Franchise Fees at any time in the one-year period prior to the filing of this action and/or which incur or pay the Franchise Fees during the pendency of this action.

C. With respect to Counts II, III and IV, define the Class to include all persons or entities which have incurred or paid Franchise Fees at any time since January 1, 2018 and/or which incur or pay the Franchise Fees during the pendency of this action.

C. With respect to Counts I through IV, enter judgment in favor of Plaintiff and the Class and against the City, and order and direct the City to disgorge and refund all Franchise Fees collected during the respective class periods and to pay into a common fund for the benefit of Plaintiff and all other members of the Class the total amount of Franchise Fees to which Plaintiff and the Class are entitled;

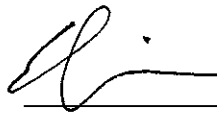
D. Appoint a Trustee to seize, manage and distribute in an orderly manner the common fund thus established;

E. Permanently enjoin the City from collecting any past Franchise Fees and from imposing or collecting Franchise Fees in the future;

F. Award Plaintiff and the Class the costs and expenses incurred in this action, including reasonable attorneys', accountants', and experts' fees; and

G. Grant any other appropriate relief.

KICKHAM HANLEY PLLC



\_\_\_\_\_  
Gregory D. Hanley (P51204)  
John J. Premo (P55393)  
Edward F. Kickham Jr. (P70332)  
32121 Woodward Avenue, Suite 300  
Royal Oak, Michigan 48073  
(248) 544-1500  
Counsel for Plaintiff

Date: September 4, 2019

# EXHIBIT A



## **ORDINANCE NO. 18-103**

### **LANSING BOARD OF WATER AND LIGHT ELECTRIC FRANCHISE AGREEMENT**

This franchise agreement granting the City of Lansing by its LANSING BOARD OF WATER AND LIGHT (Grantee), its successors and assigns, the right, power and authority to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, transformers, switchgear, substations, and other electrical appliances on, over, under, along and across the highway, streets, alleys, bridges and other public places, and to do a local electric business in the CHARTER TOWNSHIP OF DELTA, EATON COUNTY, MICHIGAN, for a period of thirty (30) years. Acceptance of this agreement acknowledges that this agreement supersedes the Franchise agreement dated September 2, 1986, between the LANSING BOARD OF WATER AND LIGHT and THE CHARTER TOWNSHIP OF DELTA.

THE CHARTER TOWNSHIP OF DELTA, EATON COUNTY, MICHIGAN ORDAINS:

SECTION 1. GRANT, TERM. The Charter Township of Delta, Eaton County, Michigan, hereinafter called the "Charter Township," hereby grants the right, power and authority to the Lansing Board of Water and Light, a municipal utility operating under the laws of the State of Michigan, its successors and assigns, hereinafter called the "Grantee", to construct, maintain and commercially use electric lines consisting of towers, masts, poles, crossarms, guys, braces, feeders, transmission and distribution wires, communication wires for the purpose of operating the utility, transformers and other electrical appliances, padmounted equipment, substations, switchgear for the purposes of transmitting, transforming and distributing electricity on, over, under, along and across the highways, streets, alleys, bridges, other public places, and on private property by easements and to do a local electric business in the Charter Township of Delta, Eaton County, Michigan, for a period of thirty (30) years from the date of acceptance by the Grantee.

The Grantee will, upon expiration of this franchise term or revocation of the franchise by the Charter Township, remove all facilities owned by the Grantee following the Charter Township paying the undepreciated value plus the cost of removal, less the salvage value of all facilities installed thirty (30) years or less.

SECTION 2. CONSIDERATION. In consideration of the rights, power and authority hereby granted, said Grantee shall faithfully perform all things required by the terms hereof.

SECTION 3. CONDITIONS. All of Grantee's towers, masts, poles, guying and padmounted equipment and other appurtenances shall be placed on either side of the highways, streets, alleys, and bridges as not to unnecessarily interfere with the use thereof for highway, street and alley purposes. Upon request the Grantee will furnish the Charter Township with a copy of each right-of-way permit and associated sketch which is furnished to the Eaton County Road Commission or the State of Michigan. All of Grantee's wires carrying electricity shall be securely fastened so as not to endanger or injure persons or



property in said highways, streets and alleys, and shall be done so as not to interfere with the use thereof, and when completed, the same shall be left in as good condition as when work was commenced. The Grantee shall have the right to trim trees if necessary in the conducting of such business. The Charter Township shall be responsible for making petitions, applications, or other means of securing funding for relocations and damages of electric transmission and distribution facilities as described in SECTION 1 when relocations are made at the request of the Charter Township or other public works agencies such as but not limited to the county, state or federal governments but only when reimbursement is available from these entities for such purposes. Requests for relocations by the Charter Township shall include adequate rights-of-way and/or easements acquired by the Charter Township in an acceptable form to the Grantee for relocations and continued access and maintenance of electric transmission and distribution facilities. Where federal, state or local funding is available to the Charter Township or the relocating agency, the Grantee will work cooperatively with the Charter Township to provide necessary documentation for eligible relocation expenses in the appropriate form necessary. To the extent relocations are made at the request of the Charter Township, regardless of the availability of reimbursement funds, the cost for relocations and any damages of electric transmission and distribution facilities shall be the sole responsibility of the Charter Township.

SECTION 4. EXTENSIONS. Grantee shall construct and extend its electric distribution system within the defined service areas of the Charter Township, and shall furnish electric service to applicants residing in the area described in Exhibit A attached (the Defined Service Area) in accordance with applicable laws and Grantee's rules and regulations. In the event that Grantee is currently providing electricity and electric service to the properties that are not correctly designated as within the Defined Service Area on Exhibit A, Grantee during the term of this Franchise shall be permitted to continue to provide electricity and electric service to said properties and said properties shall be deemed part of the Grantee's Defined Service Area.

SECTION 5. HOLD HARMLESS. Said Grantee shall at all times keep and save the Charter Township free and harmless from all loss, costs and damage to which it may be put by reason of construction or maintenance. Provided, however, that Grantee's obligations under this Section shall not apply to any loss, cost, damage or claims arising out of the negligence of the Charter Township, its employees or its contractors. The Charter Township shall hold harmless and defend the Grantee from any and all claims, losses or litigation which result from the Grantee's compliance with the collection and remittance of the franchise fee described in Section 8 of this Ordinance.

However, neither party assumes any liability resulting from gross negligence or willful misconduct of the other. Further nothing herein shall be construed as a waiver of governmental immunity for 3<sup>rd</sup> party claims, which is available to each party as a matter of law.

SECTION 6. NONEXCLUSIVE FRANCHISE. Certain rights, power and authority herein granted, are exclusive as to providing electricity and electric service in certain areas

of the Charter Township as described in the Defined Service Area. Otherwise, with respect to jurisdiction of the Charter Township, this remains a nonexclusive franchise.

The exclusive right to serve the Defined Service Area of the Charter Township as described in Exhibit A is a condition concurrent to the collection and remittance of the Franchise Fee described in Section 8.

**SECTION 7. RATES.** The rates and rules and regulations governing the supply and use of electricity shall be the same as in the City of Lansing except that the rates shall be increased within the boundaries of the Charter Township by the amount of any taxes, license fees, franchise fees, or any other charges against the Grantee's property or its operations, or the production and/or sale of electrical energy, levied or imposed by the Charter Township.

**SECTION 8. FRANCHISE FEE.** During the term of this franchise, or the operation of the electric system pursuant to this franchise, and to the extent allowable as a matter of law, the Grantee shall, upon resolution of the Charter Township and acceptance by the Grantee, collect and remit to the Charter Township a franchise fee in an amount of five percent (5%) of the revenue, excluding sales tax, from the retail sale of electric energy by the Grantee within the Charter Township, for the use of its streets, public places and other facilities, as well as the maintenance, improvements and supervision thereof. Such fee will appear on the corresponding energy bills.

The franchise fee will commence the first day of the month following the effective date of this Ordinance, and shall reflect revenue based on retail sales from 30 days after the effective date of this franchise fee through the applicable quarter. New fiscal years will commence July 1, 2018, and each year thereafter, with the Grantee to pay the franchise fees to the Charter Township on a quarterly basis.

To the extent the Grantee is precluded from collecting such franchise fees remittance to Charter Township will cease.

**SECTION 9. REVOCATION.** The Franchise granted by this Ordinance is subject to revocation upon sixty (60) days' written notice by the party seeking such revocation.

**SECTION 10. COMPANY RULES.** The Grantee shall have authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Grantee to exercise its rights and perform its obligations under this franchise, and to assure uninterrupted service to each and all of its customers. Provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or of laws of the State of Michigan.

**SECTION 11. EFFECTIVE DATE.** This Ordinance shall take effect immediately following its adoption and publication as required by law, provided however, that it shall cease and be of no effect after sixty (60) days from its adoption unless within said period the Grantee shall accept the same in writing filed with the Charter Township Clerk. Upon



acceptance and publication hereof, this Ordinance shall constitute a contract between the Charter Township and the Grantee.

SECTION 12. PUBLICATION AND ADMINISTRATIVE COSTS. The Charter Township shall assume the cost of publication of this franchise including an initial administrative cost of \$1,500 will be due to the Grantee upon acceptance of this franchise for programmatic implementation and customer bill changes. Thereafter, an administrative charge of ½ percent (0.5%) of collected franchise fees for the quarterly billing will apply.

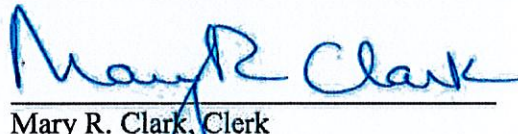
SECTION 13. FOOTE ACT FRANCHISE. Nothing herein shall be construed as either party rendering an opinion or position as to whether the Grantee has vested franchise rights under the Foote Act, 1905 PA 264. The Grantee does not relinquish any right to assert, and the Charter Township does not waive any right to contest.

SECTION 14. SEVERABILITY. If any provision of this franchise is to any extent illegal, otherwise invalid, or incapable of being enforced, such provision shall be excluded to the extent of such invalidity or unenforceability; all other provisions hereof shall remain in full force and effect.

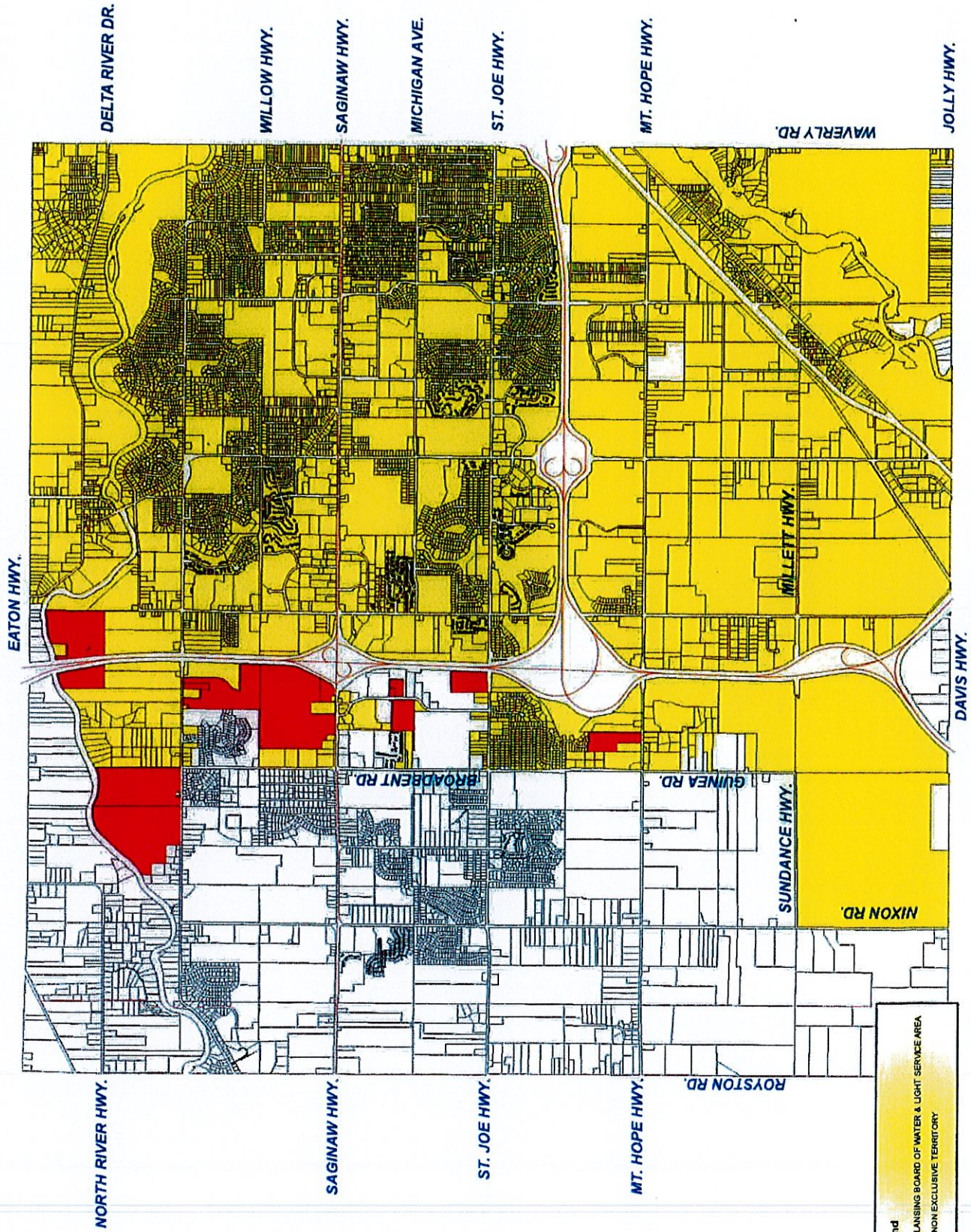
We certify that the foregoing agreement was duly enacted by the Township Board of the Charter Township of Delta, Eaton County, Michigan on the 2<sup>nd</sup> day of Jan, 2018.

  
Kenneth R. Fletcher, Supervisor

I, Mary R. Clark, Clerk of the Charter Township of Delta, Eaton County, Michigan, hereby certify that the above resolution is a true copy of the action taken by the Charter Township of Delta Board of Trustees, on the date set forth and published as set forth above.

  
Mary R. Clark, Clerk







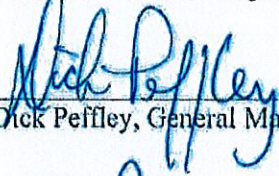
## ACCEPTANCE

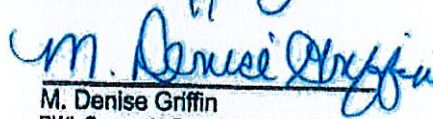
TO THE TOWNSHIP BOARD OF THE CHARTER TOWNSHIP OF DELTA,  
EATON COUNTY, MICHIGAN

The City of Lansing, by its Board of Water and Light, hereby accepts the franchise granted to it by your Board, on January 2, 2018, by (Ordinance 18-103), which said franchise is entitled as follows: An ordinance granting to the Lansing Board of Water and Light, its successors and assigns the right, power and authority to construct, set, string, lay, operate, repair, maintain and use electric lines consisting of poles, wires, cables, pipes, conduits, masts, towers, crossarms, guys, braces, feeders, transmission wires, transformers and other electrical appliances, on, along, over, under, through and across the highways, streets, alleys, bridges and other public places, and to conduct an electric utility business in the Charter Township of Delta, Eaton County, State of Michigan, for a period of thirty (30) years. Acceptance of this agreement acknowledges that this agreement supersedes the Franchise agreement dated September 2, 1986 between the Lansing Board of Water and Light and The Charter Township of Michigan.


By mutual agreement of the Lansing Board of Water and Light and the Charter Township of Delta, this acceptance is conditioned on 1) Timely execution by Consumers Energy of its Acceptance of the franchise granted by Ordinance 18-10 and strict adherence thereto; and it is expressly understood and agreed that failure to timely execute said Acceptance of Ordinance 18-102 or strictly comply therewith shall render this Acceptance by the Lansing Board of Water and Light a nullity and of no force or effect; and 2) any encroachment by another utility in the BWL defined service area during the term of the Ordinance would negate the condition concurrent to collection and remittance.

City of Lansing, by its  
Board of Water and Light

  
Dick Peffley, General Manager

  
M. Denise Griffin  
BWL Corporate Secretary

1-12-18  
Date

APPROVED  
  
BOARD OF WATER & LIGHT  
LEGAL COUNSEL  
1-12-18