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VILLAGE OF ESTERO, FLORIDA

ORDINANCE NO. 2019 - 14

**AN ORDINANCE OF THE VILLAGE COUNCIL OF THE
VILLAGE OF ESTERO, FLORIDA, AMENDING GAS
FRANCHISE PROVISIONS OF THE LEE COUNTY
CODE PREVIOUSLY ADOPTED BY REFERENCE; AND
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the Village of Estero was incorporated by referendum held on November 4, 2014; and

WHEREAS, the Charter of the Village of Estero (“Charter”) at Section 11, “General Provisions,” paragraph (5) “Transitional Ordinances and Resolutions,” provides that all applicable lawful Lee County ordinances currently in place at the time of passage of the referendum, unless specifically referenced in the Charter, shall remain in place unless rescinded by the Village Council or unless they are in conflict with an ordinance, rule or regulation of the Village; and

WHEREAS, the Village Council has determined that it is in the best interests and welfare of the Village and its residents to revise certain provisions of the Lee County Code to specifically apply to the Village.

NOW, THEREFORE, be it ordained by the Village Council of the Village of Estero, Florida:

Section 1. Lee County Code Sections amended.

Lee County Code Chapter 16 1/2 Franchises, article II Gas, previously adopted by reference is amended to read as follows.

ARTICLE II. GAS

Sec. 16½-11. Definitions.

The following definitions shall apply to the following terms used throughout this article:

Company. The applicant for a nonexclusive gas franchise pursuant to this article.

~~*County.* Lee County, Florida.~~

Franchise. A nonexclusive franchise; a nonexclusive grant of rights and privileges to sell gas to consumers within the geographical jurisdiction of ~~Lee County~~ the village of Estero.

46 *Gas.* Natural gas, manufactured gas, mixture of natural gas and manufactured or other
47 forms of gas energy as delivered from the company's central distribution point(s) via gas mains,
48 pipes, and distributing lines and measured by meter upon entry into the customer's premises.
49 It does not include propane or other gases which are delivered by truck and stored in tanks on
50 the property of customers for future use.

51
52 *Public ground.* All streets, alleys, public ways, utility easements, bridges, viaducts, parks
53 and public grounds as to which the county village has the right to grant the use to the company.

54
55 *Village.* The village of Estero.

56
57 **Sec. 16½-12. Grant of nonexclusive franchise.**

- 58
59 (a) The county village is hereby given the authority to grant unto the company, for thirty (30)
60 years from the effective date of the franchise, the nonexclusive right to import, transport,
61 distribute and sell gas for public and private use in the county village as now laid out and
62 as hereafter extended and for these purposes to construct, operate, repair and maintain in,
63 on, over, under and across the public ground of the county village, all facilities and
64 equipment used in connection therewith, and to do all things which are necessary or
65 customary in the accomplishment of these objectives, subject to zoning ordinances, other
66 applicable ordinances, permit procedures, customary practices, and the provisions of this
67 franchise; provided, however, that the county village reserves the right to allow public
68 places to be used for any and all other lawful purposes and subject always to the paramount
69 right of the public in and to such public places for a period of thirty (30) years.
- 70 (b) The county village reserves the right to add to or change its rules, regulations, its fees
71 and/or make other changes as it deems necessary which do not conflict with the rights
72 granted to the company herein.
- 73 (c) Complaints by ~~Lee County~~ Estero citizens about construction and/or service provided by
74 the company shall be corrected within ten (10) working days of the complaint, to the full
75 satisfaction of the county village.

76
77 **Sec. 16½-13. Duties of company.**

- 78
79 (a) The rights and privileges granted to the company under section 16½-12 are conditioned
80 upon the company using due care in the exercise of such rights and privileges.
- 81 (b) The company shall not dig into or excavate the surface of public grounds for any purpose
82 without first obtaining a permit from the county village, for which the county village may
83 impose a reasonable fee. The permit conditions imposed on the company shall not be more
84 burdensome than those imposed on other utilities for similar facilities or work within the
85 county village. The county village shall have the right to determine the time during which
86 construction on public grounds shall take place.
- 87 (c) In emergencies which require the immediate repair of its facilities, the company may dig
88 into or excavate the surface of public grounds prior to obtaining a permit. But, the
89 company shall request the required permit no later than the first working day after such
90 work is begun.

- 91 (d) Damages to public grounds shall be repaired by replacement and/or restoration, so that the
92 public ground shall be in the same condition after such replacement and/or restoration as
93 before work was begun. Public grounds so affected shall be maintained in the properly
94 restored condition for a period of one year from the date of completion of restoration. Such
95 maintenance shall be performed by the company or its designee at no cost to the ~~county~~
96 village.
- 97 (e) If the company creates a condition which adversely affects the public safety, materially
98 affects the structural stability of public roadways, structures, or other facilities, the ~~county~~
99 village may give written notice to the company specifying the required corrective action,
100 together with the pertinent facts. The company shall have a period of twenty-four (24)
101 hours from the date of notice to correct the deficiency. After that time, the ~~county~~ village
102 may take corrective action and charge the cost of correcting the deficiency to the company.
- 103 (f) The ~~county~~ village hereby recognizes that the company has the authority to adopt policies
104 and procedures which it deems necessary to conduct its business to enable it to exercise
105 its rights, perform its duties and meet its obligations as set forth in this franchise and to
106 issue uninterrupted service to each and all of its customers; provided, however, that such
107 policies and procedures do not conflict with the provisions of this article, or with any law
108 of the State of Florida or ~~Lee County~~ Estero.
- 109 (g) All pipes, mains, valves, blowoffs, and other fixtures installed by the company shall be
110 located within designated easements in the ~~county~~ village after securing the approval of
111 the ~~Lee County Department of Transportation and Engineering, in accordance with~~
112 ~~Administrative Policy #010, Utility Placement in County Rights of Way and Easements~~
113 village. These installations shall not obstruct nor interfere with existing uses of such
114 easements. The company shall, whenever practicable, avoid disrupting the use of any
115 street, alley or other highway when it is necessary to perform work in such locations. In
116 case of damage to pavement, sidewalk, driveway or other surfacing caused by such work,
117 the company shall, at its own cost and expense and in a manner approved by ~~Lee County~~
118 ~~Department of Transportation and Engineering, in accordance with Administrative Policy~~
119 ~~#010, Utility Placement in County Rights of Way and Easements~~ village, replace or
120 restore all damaged surfaces to the same condition as before work began. Restored
121 surfaces shall be maintained in the properly restored condition for a period of one year
122 from the restoration date at no cost to the ~~county~~ village. If the ~~county~~ village decides to
123 alter or change the grade or to relocate or widen or otherwise change any such public use
124 and upon being given reasonable notice by the ~~county~~ village, the company shall remove,
125 relay, and/or relocate its fixtures at its own expense. If the company locates its facilities
126 and/or performs any construction in such a manner which creates obstructions or
127 conditions which are or will be dangerous to the traveling public, the ~~county~~ village may
128 terminate such easement or license of the company.
- 129 (h) The company shall supply the ~~county~~ village with copies of its federal and state regulatory
130 operating reports and trouble reports.

131
132 **Sec. 16½-14. Street improvements, paving or resurfacing.**
133

134 The ~~county~~ village shall give the company thirty (30) days prior written notice of street
135 improvements, paving or resurfacing of a permanent nature. The notice shall contain a

136 description of the improvements, the streets upon which the improvements are to be made, the
137 extent of the improvements and the approximate time when work will begin and end. This
138 prior notice is being given to allow the company to make those additions, alterations or repairs
139 to its facilities which it deems necessary before the scheduled improvements, paving or
140 resurfacing takes place.

141 In the event that ~~Lee County~~ Estero should adopt an ordinance or administrative policy
142 which provides such notice for utilities in general, then the company shall be notified in
143 accordance with the provisions therein.

144

145 **Sec. 16½-15. Rates.**

146

147 Gas rates and standards of service may be fixed from time to time by the company and the
148 Florida Public Service Commission, or other rate-making bodies under the laws of the State of
149 Florida. The ~~county~~ village reserves the right to join in the rate-making process if such
150 authority is given to it through the laws of the State of Florida.

151

152 **Sec. 16½-16. Agreement not to compete.**

153

154 As consideration for the franchise fee to be paid to the ~~county~~ village under section 16½-
155 29, the ~~county~~ village agrees not to engage in the business of distributing and selling gas during
156 the life of any franchise granted pursuant to this ordinance or any extension thereof, in
157 competition with the company. The ~~county~~ village reserves the right to grant similar rights,
158 privileges, permits, and or franchises to other entities as, in its sole judgment, it decides to
159 grant.

160

161 **Sec. 16½-17. Hold harmless clause.**

162

163 It is expressly understood and agreed by and between the company and the ~~county~~ village,
164 that the company shall hold the ~~county~~ village, the officers and employees of the ~~county~~ village
165 and members of the ~~county commission~~ village council harmless from any loss, cost or expense
166 sustained on account of any suit, judgment, execution, claim or demand resulting from
167 negligence, or intentional, wanton, willful or reckless acts on the part of the company in the
168 construction, operation or maintenance of the natural gas system under the terms of this
169 franchise. The ~~county~~ village shall notify the company promptly after presentation of any claim
170 or demand. The company also agrees to hold the ~~county~~ village harmless from any costs and
171 expenses resulting from section 16½-16.

172

173 **Sec. 16½-18. Insurance.**

174

175 (a) The company shall at all times maintain public liability and property damage insurance of
176 at least ten million dollars (\$10,000,000.00).

177 (b) The company shall be responsible for notifying the ~~county~~ village at once by its insurer,
178 of any deletions or modifications to its insurance coverage. The amount of coverage shall
179 be adjusted by the company from time to time as required by the ~~board of county~~
180 ~~commissioners~~ village council for the protection of the ~~county~~ village and the general

181 public, to insure against any liability which may result from any action of the company.
182 All proposed deletions or modifications in insurance coverage shall be submitted to the
183 county village by the company at least thirty (30) days prior to the effective date of the
184 change.
185 (c) The company's insurance policy shall co-name the county village as an additional insured.
186 (d) Certificates of insurance shall be filed with the county village annually. Certificates of
187 renewal shall be submitted at least thirty (30) days prior to the expiration date of any
188 insurance.

189

190 **Sec. 16½-19. Rights of landowners.**

191

192 Nothing in this franchise shall prevent landowners from exercising their vested rights or
193 privileges.

194

195 **Sec. 16½-20. Inclusion of section 125.42, F.S.**

196

197 Section 125.42, Florida Statutes is hereby included in this agreement in its entirety and
198 shall govern both parties notwithstanding any other provisions of this agreement. If section
199 125.42, F.S., is subsequently changed and/or if it is renumbered, the exact language most
200 proximate to the date of interpretation shall govern.

201

202 **Sec. 16½-21. Automatic termination.**

203

204 If the company does not commence construction on its gas distribution system authorized
205 herein, within one year from the date the gate station is set on the pipeline, the company's rights
206 and privileges granted hereunder shall automatically terminate one year and one day after the
207 date the gate station is set.

208

209 **Sec. 16½-22. Assignment.**

210

211 The company may assign all rights conferred upon it by this franchise, if, and only if, it
212 secures the prior approval of the ~~board of county commissioners~~ village council by resolution.
213 Any assignee, upon accepting such assignment shall execute an acknowledgment to the county
214 village that it is subject to the provisions of the franchise.

215

216 **Sec. 16½-23. Change in form of government.**

217

218 A change in the form of county village government shall not affect the validity of this
219 franchise and a successor governmental unit shall automatically assume all of the rights and
220 obligations of the county village which are contained herein.

221

222 **Sec. 16½-24. Default.**

223

224 If the company fails to substantially comply with any of its material obligations set forth
225 herein, the county village may give written notice to the company specifying the provision(s)

226 under which the default is claimed, together with the facts which constitute the default. The
227 company shall have a period of six (6) months from the date of notice to cure the default.

228 If default is not cured, to the satisfaction of the county village by the end of this six-month
229 period, this franchise shall automatically terminate and all of the rights and privileges granted
230 to the company shall revert to the county village. In the event of a disagreement over the
231 existence of a default, the burden of proving the existence of the default shall be upon the
232 county village. The company shall have the burden of proving that a default has been cured.

233

234 **Sec. 16½-25. Contractual agreement.**

235

236 It is specifically agreed by and between the parties hereto that this franchise shall be
237 considered a nonexclusive franchise agreement between the company and the county village
238 and as such, is a contractual instrument recognized under the statutes and laws of the State of
239 Florida. This nonexclusive franchise agreement is not intended to nor shall it create rights or
240 actions in favor of third parties except as herein specifically provided.

241

242 **Sec. 16½-26. Cost of removal of gas lines.**

243

244 If the company is in default under this franchise and if such default is not cured in
245 accordance with the provisions contained herein, and/or if this franchise is terminated for any
246 reason whatsoever, the gas lines and other associated equipment and/or facilities which have
247 been installed by the company shall be removed. The cost of such removal and the cost of
248 restoration of the right-of-way to its condition immediately prior to the franchise grant date,
249 shall be fully borne by the company.

250

251 **Sec. 16½-27. Surety bond.**

252

253 The company is required to post a surety bond in the amount of fifty thousand dollars
254 (\$50,000.00), amount to be in effect from the date of initial construction until all work is
255 complete.

256

257 **Sec. 16½-28. Franchise fee.**

258

259 In consideration ~~Lee County~~ Estero granting to the company a franchise pursuant hereto
260 (section 16½-12) and further agreeing not to compete (Section 16½-16), the company shall
261 pay to the county village a fee of four (4) percent of its gross sales generated under this
262 franchise. Payment of the fees is to be made quarterly.

263

264 **Sec. 16½-29. Severability.**

265

266 The provisions of this article are severable; and if any section, subsection, sentence, clause
267 or provision is held invalid by any court of competent jurisdiction, the remaining provisions of
268 this article shall not be affected thereby.

