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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 CODE
PREVIOUSLY ADOPTED BY REFERENCE; AND
PROVINDING 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 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at the time of passage of the referendum, unless specifically referenced in the Charter, shall remain in place unless rescinded by the Village Council or unless they are in conflict with an ordinance, rule or regulation of the Village; and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 Code to specifically apply to the village.

NOW, THEREFORE, IT IS HEREBY ORDAINED by the Village Council of the Village of Estero, Florida:

Section 1. Lee Code Sections amended.

The following sections were included in the Code of Laws and Ordinances, of the Village of Estero, Florida by virtue of their inclusion in the Lee Code and are hereby amended as ordinances of the Village of Estero. These amendments are not intended to affect the validity of these provisions as laws of Lee.

Lee 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.

43 *Franchise.* A nonexclusive franchise; a nonexclusive grant of rights and privileges to sell
44 gas to consumers within the geographical jurisdiction of the village of Estero.

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

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

52 *Village.* The village of Estero.
53

54 **Sec. 16½-12. Grant of nonexclusive franchise.**

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

73 **Sec. 16½-13. Duties of company.**

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

- (d) Damages to public grounds shall be repaired by replacement and/or restoration, so that the public ground shall be in the same condition after such replacement and/or restoration as before work was begun. Public grounds so affected shall be maintained in the properly restored condition for a period of one year from the date of completion of restoration. Such maintenance shall be performed by the company or its designee at no cost to the village.
- (e) If the company creates a condition which adversely affects the public safety, materially affects the structural stability of public roadways, structures, or other facilities, the village may give written notice to the company specifying the required corrective action, together with the pertinent facts. The company shall have a period of twenty-four (24) hours from the date of notice to correct the deficiency. After that time, the village may take corrective action and charge the cost of correcting the deficiency to the company.
- (f) The village hereby recognizes that the company has the authority to adopt policies and procedures which it deems necessary to conduct its business to enable it to exercise its rights, perform its duties and meet its obligations as set forth in this franchise and to issue uninterrupted service to each and all of its customers; provided, however, that such policies and procedures do not conflict with the provisions of this article, or with any law of the State of Florida or Estero.
- (g) All pipes, mains, valves, blowoffs, and other fixtures installed by the company shall be located within designated easements in the village after securing the approval of the village. These installations shall not obstruct nor interfere with existing uses of such easements. The company shall, whenever practicable, avoid disrupting the use of any street, alley or other highway when it is necessary to perform work in such locations. In case of damage to pavement, sidewalk, driveway or other surfacing caused by such work, the company shall, at its own cost and expense and in a manner approved by village, replace or restore all damaged surfaces to the same condition as before work began. Restored surfaces shall be maintained in the properly restored condition for a period of one year from the restoration date at no cost to the village. If the village decides to alter or change the grade or to relocate or widen or otherwise change any such public use and upon being given reasonable notice by the village, the company shall remove, relay, and/or relocate its fixtures at its own expense. If the company locates its facilities and/or performs any construction in such a manner which creates obstructions or conditions which are or will be dangerous to the traveling public, the village may terminate such easement or license of the company.
- (h) The company shall supply the village with copies of its federal and state regulatory operating reports and trouble reports.

Sec. 16½-14. Street improvements, paving or resurfacing.

The village shall give the company thirty (30) days prior written notice of street improvements, paving or resurfacing of a permanent nature. The notice shall contain a description of the improvements, the streets upon which the improvements are to be made, the extent of the improvements and the approximate time when work will begin and end. This prior notice is being given to allow the company to make those additions, alterations or repairs to its facilities which it deems necessary before the scheduled improvements, paving or resurfacing takes place.

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

Sec. 16½-15. Rates.

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

Sec. 16½-16. Agreement not to compete.

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

Sec. 16½-17. Hold harmless clause.

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

Sec. 16½-18. Insurance.

- (a) The company shall at all times maintain public liability and property damage insurance of at least ten million dollars (\$10,000,000.00).
- (b) The company shall be responsible for notifying the village at once by its insurer, of any deletions or modifications to its insurance coverage. The amount of coverage shall be adjusted by the company from time to time as required by the village council for the protection of the village and the general public, to insure against any liability which may result from any action of the company. All proposed deletions or modifications in insurance coverage shall be submitted to the village by the company at least thirty (30) days prior to the effective date of the change.
- (c) The company's insurance policy shall co-name the village as an additional insured.
- (d) Certificates of insurance shall be filed with the village annually. Certificates of renewal shall be submitted at least thirty (30) days prior to the expiration date of any insurance.

Sec. 16½-19. Rights of landowners.

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

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

174 Section 125.42, Florida Statutes is hereby included in this agreement in its entirety and
175 shall govern both parties notwithstanding any other provisions of this agreement. If section
176 125.42, F.S., is subsequently changed and/or if it is renumbered, the exact language most
177 proximate to the date of interpretation shall govern.
178

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

180 If the company does not commence construction on its gas distribution system authorized
181 herein, within one year from the date the gate station is set on the pipeline, the company's rights
182 and privileges granted hereunder shall automatically terminate one year and one day after the
183 date the gate station is set.
184

185 **Sec. 16½-22. Assignment.**

186 The company may assign all rights conferred upon it by this franchise, if, and only if, it
187 secures the prior approval of the village council by resolution. Any assignee, upon accepting
188 such assignment shall execute an acknowledgment to the village that it is subject to the
189 provisions of the franchise.
190

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

192 A change in the form of village government shall not affect the validity of this franchise
193 and a successor governmental unit shall automatically assume all of the rights and obligations
194 of the village which are contained herein.
195

196 **Sec. 16½-24. Default.**

197 If the company fails to substantially comply with any of its material obligations set forth
198 herein, the village may give written notice to the company specifying the provision(s) under
199 which the default is claimed, together with the facts which constitute the default. The company
200 shall have a period of six (6) months from the date of notice to cure the default.

201 If default is not cured, to the satisfaction of the village by the end of this six-month period,
202 this franchise shall automatically terminate and all of the rights and privileges granted to the
203 company shall revert to the village. In the event of a disagreement over the existence of a
204 default, the burden of proving the existence of the default shall be upon the village. The
205 company shall have the burden of proving that a default has been cured.
206

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

208 It is specifically agreed by and between the parties hereto that this franchise shall be
209 considered a nonexclusive franchise agreement between the company and the village and as
210 such, is a contractual instrument recognized under the statutes and laws of the State of Florida.
211 This nonexclusive franchise agreement is not intended to nor shall it create rights or actions in
212 favor of third parties except as herein specifically provided.
213

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

215 If the company is in default under this franchise and if such default is not cured in
216 accordance with the provisions contained herein, and/or if this franchise is terminated for any

261 Reviewed for legal sufficiency:

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264 By: 

265 Derek Rooney, Esq., Assistant Village Attorney

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268	Vote:	AYE	NAY
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269	Mayor Ribble	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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270	Vice Mayor Errington	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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271	Councilmember Batos	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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272	Councilmember Boesch	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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273	Councilmember Levitan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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274	Councilmember McLain	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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275	Councilmember Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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reason whatsoever, the gas lines and other associated equipment and/or facilities which have been installed by the company shall be removed. The cost of such removal and the cost of restoration of the right-of-way to its condition immediately prior to the franchise grant date, shall be fully borne by the company.

Sec. 16½-27. Surety bond.

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

Sec. 16½-28. Franchise fee.

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

Sec. 16½-29. Severability.

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

Sec. 16½-30. Acceptance.

Within thirty (30) days of written notice to the company that it has been granted the franchise, the company shall deliver to the village manager its written acceptance of the franchise authorized by this article. The written acceptance shall specifically refer to and accept the terms of this article. If the company fails to submit such acceptance within this period, then this franchise, together with all of the rights and privileges herein granted, shall be null and void and of no force and effect.

Section 2. Effective Date. This Ordinance shall become effective immediately upon adoption by the Village Council of the Village of Estero, Florida.

PASSED on first reading this 10th day of July, 2019.

PASSED AND ADOPTED BY THE VILLAGE COUNCIL of the Village of Estero, Florida this 2nd day of October, 2019.

Attest:

VILLAGE OF ESTERO, FLORIDA

By: Kathy Hall
Kathy Hall, MMC, Village Clerk

By: Bill Ribble
Bill Ribble, Mayor