

**CITY OF MILFORD
NOTICE OF ORDINANCE ADOPTION**

NOTICE IS HEREBY GIVEN that City Council of the City of Milford hereby adopted the following ordinance during a regular session on June 12, 2023:

ORDINANCE 2023-21

An Ordinance of the City of Milford Granting to Petroleum Equipment Incorporated, Its Successors and Assigns, the Nonexclusive Right, Privilege, Authority and Franchise to Distribute Propane Gas and to Construct, Operate and Maintain in, along, and upon Public Places, Associated Mains, Valves, Manholes, Meters, and Connections for Purposes of Distributing Propane to the Inhabitants of the Cypress Hall Phase I Subdivision, in the City of Milford, Delaware, in Accordance with the Terms and Conditions of the Franchise Agreement, Executed by All Parties and made effective on June 22, 2023.

WHEREAS, the City of Milford, Delaware (hereinafter referred to as “City of Milford”) has granted a Franchise to Petroleum Equipment Incorporated through the adoption of Ordinance 2023-21 approved by the majority vote of the City of Milford City Council on June 12, 2023 and effective June 22, 2023; and

WHEREAS, having afforded the public adequate notice and opportunity for comment, the City of Milford desires to enter into this agreement with Petroleum Equipment Incorporated for the nonexclusive right, privilege, and Franchise for a term of thirty (30) years, from the effective date of this ordinance; and

WHEREAS, this ordinance shall allow Petroleum Equipment Incorporated to carry on in the City of Milford, and specifically within the Cypress Hall Phase I Subdivision, the business of distributing propane gas and to construct, operate and maintain in public places propane gas mains, valves, manholes, meters, and service connections to distribute propane gas to customers, subject to the terms and conditions of its local laws and regulations on the terms set forth herein; and

WHEREAS, in reaching an agreement on the terms and conditions of the new Franchise, the City of Milford and Petroleum Equipment Incorporated have complied with all Federal and State-mandated procedural and substantive requirements pertinent to this franchise award, and explicitly 26 Del. C. Public Utilities, including the provisions of the Underground Utility Damage Prevention and Safety Act; and

WHEREAS, it is hereby found and determined by the City Council of the City of Milford that it is in the best interests of this City that a Franchise to use the public rights-of-way to conduct the delivery of a propane gas business and for such other business purposes as the company may desire from time to time be granted, subject to the terms and conditions described in this ordinance and franchise agreement.

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE CITY OF MILFORD:

SECTION 1.
AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the 22nd day of June 2023, between the City of Milford ("City of Milford"), an incorporated municipality located in the State of Delaware and Petroleum Equipment, Inc. ("Company"), a corporation organized under the laws of the State of Delaware.

WHEREAS, the Company agrees to provide propane gas supply and distribution services in the City of Milford, specifically the Cypress Hall Phase I Subdivision, as recorded with the Sussex County Recorder of Deeds under PB 385 PG 19, entitled "Phase I Record Plan", and the City of Milford is desirous to have these services provided within said location.

WHEREAS, the Company agrees to comply with provisions of 26 Del.C., Public Utilities. This includes the Underground Utility Damage Prevention and Safety Act.

NOW THEREFORE, in consideration of these premises and the mutual promises set forth herein, the Company and the City of Milford ("the Parties", or individually "Party"), each intending to be legally bound, hereby agree to the following:

1. Franchise: The nonexclusive right, privilege and franchise is hereby granted for a term of thirty (30) years, from the effective date hereof to the Company, its successors, and assigns, to carry on in the City of Milford, specifically Cypress Hall Phase I Subdivision, the business of distributing propane gas ("gas") for heat, power, and other purposes. The nonexclusive right, privilege and franchise hereby granted shall be deemed to include the right to construct, operate and maintain in, along and upon the streets, alleys, bridges, public highways and other public places in Milford, gas mains, valves, manholes, meters, and service connections for the purpose of distributing gas for heat, power, and other purposes to the inhabitants of the Cypress Hall Phase I Subdivision. In addition to the other rights and privileges granted to the Company in this Agreement, the Company shall also have the nonexclusive right to sell gas to customers in the City of Milford, subject to the terms and conditions of its Gas Tariff.
2. Indemnification: The Company, for itself, successors or assigns, covenants and agrees to indemnify and hold harmless the City of Milford, its elective officials, directors, officers, agents, employees or designees, of and from any and all damage, injury, claim, penalty, judgement, costs, charges, expenses (including reasonable attorney's fees) or other liability of any nature to the extent said claim arises directly or indirectly from the exercise of Company's right, privileges, and franchise granted herein, including but no limited to, any liability by reason of the distribution of gas set forth herein, and in connection therewith, the operation or use of the public streets, avenues, roads, alleys, lands, parks, and other public places and ways in the City of Milford by Company. Notwithstanding the foregoing, Company shall not be obligated to indemnify the City of Milford, its elected officials, directors, officers, agents, employees, or designees for any claim or liability to the extent said claim arises directly or indirectly out of the negligence of the City of Milford, its elected officials, directors, officers, agents, employees, or designees. It is expressly understood and agreed that Company is and shall be deemed to be an independent contractor for the purposes set forth herein and shall therefore be solely responsible to all parties for its respective acts and/or omissions. This indemnification shall survive the termination of this franchise.
3. Permits: Before any street, alley, bridge, public highway or other public place is opened, obstructed or in any manner interfered with for the purpose of altering, installing or making additions to any of the gas mains, valves, manholes, meters or service connections for any other purpose, written application shall be made the Manager of the City of Milford or such other

person as the City Manager from time-to-time designate, setting forth in general terms the nature, location and extent of openings or obstructions desired and a permit from said City Manager or such other designated person shall be obtained and all specifications set forth in said permit as to the minimum or maximum area or depth or both for opening or other matters, shall be strictly observed by the Company. Emergency construction actions shall be exempt from prior permitting but shall be noticed to the Manager of the City of Milford or such other person as the City Manager shall from time-to-time designate within 24 hours or as reasonably accomplished.

4. Restoration: The repairing and restoring of all openings and obstructions to the condition of the adjacent roadbed shall be completed by the Company or by a firm or person employed by it as soon as practical and shall be completed in accordance with reasonable and customary standards of road construction at the sole expense of the Company. Provided, however, that upon the failure of the Company to make such repairs and restorations within a reasonable time, the City of Milford shall have the right to make such repairs and restoration or to employ a person or firm to make such repairs and restorations and charge the Company for all reasonable costs of such repairs and restorations of all said openings. Any work on State highways shall conform to DelDOT standards.
5. Rates: The determination of the Company's rates shall be subject solely to the rules and regulations of such State or Federal authority which shall have jurisdiction over this type of industry to enterprise.
6. Fees: In consideration of the granting of this franchise and pursuant to 26 Del. C. § 1301, the Company shall pay Milford a volumetric franchise fee in the amount of \$0.010 per 100 cubic feet (CCF) of gas delivered to customers through the Company's distribution system within the limits of the City of Milford. The Company is authorized, subject to any necessary approvals from any State or Federal regulatory body having jurisdiction over the Company, to collect said \$0.0010 per CCF franchise fee from the Company's customers within the City of Milford, by way of a surcharge on the customers' bill. The volumetric franchise fee otherwise payable hereunder shall not apply to any gas delivered to any customer of the Company from whom the Company is prohibited by law from collecting said surcharge. The \$0.010 per CCF franchise fee payable hereunder shall be paid annually to the City of Milford based upon gas delivered to the customers during the period January 1, through December 31. Payment shall be due prior to March 1 of the following year.
7. Financial Information: During the term of this Agreement, the Company shall submit a written annual report to the City of Milford, upon request, within three (3) months of the end of the Company's fiscal year and in a form approved by the City of Milford including the following information:
 - 7.1 Summary of the previous year's activities in the development of the propane gas system and total number of customers.
 - 7.2 Gross and net book values of the facilities used to distribute propane gas in Milford.
 - 7.3 Fiscal and financial data sufficient to accurately document franchise fees payable.
 - 7.4 Details sufficient to allow the City of Milford to ascertain that the standards prescribed by the Agreement are achieved and maintained.
 - 7.5 A list of the Company's local managers.

All such information shall be deemed confidential proprietary information of the Company and shall not be disclosed to any third parties by the City of Milford unless the City of Milford is required to provide this information under the State or Federal laws.

8. Taxes: All property of the Company within the corporate limits of said City of Milford shall at all times be subject to taxation in accordance with any law now or hereafter enacted, provided however, the Company shall have the right to terminate this Agreement if the City of Milford hereafter enacts a tax on the Company's property or profits or otherwise levies a tax on the Company which does not apply on the effective date of the Agreement and does not apply to all businesses selling products or services within the City of Milford, including but not limited to other energy providers such as propane dealers and distributors, oil dealers and distributors, and electric distribution other than Milford's municipal system.

9. Receivership: The City of Milford shall have the right to cancel this Agreement one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy, or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days or unless:

9.1 Within one hundred twenty (120) days after the election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Agreement and remedied all defaults thereunder, and

9.2 Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the Court having jurisdiction in the premises, whereby such reliever or trustee assumes and agrees to be bound by each and every provision of this Agreement.

10. Definitions: For the purpose of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, works in the plural number include the singular number and words in the singular number include the plural number. The word "shall" be mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

11. Financial Risk: During the term of this Agreement, the Company intends to construct certain gas distribution facilities within the City of Milford. For any such investments in gas distribution facilities made by the Company, the City of Milford will not bear the financial risk associated with the Company's investment in such distribution facilities.

12. Default by the Company:

12.1 If the Company fails to pay the fees described in Paragraph 6 of this Agreement by the due date, an interest charge shall be added which will be computed at the prevailing prime interest rate for the period between the due date and the date when the payment is made by the Company.

12.2 In the event the Company does not pay the fees prescribed in Paragraph 6 of this Agreement for a period of twelve (12) months after the due date, the Company shall pay the City a penalty charge equal to ten thousand dollars (\$10,000). In the event the Company fails to pay the franchise fee and the \$10,000 penalty charge within twenty-four (24) months after the original due date of the franchise fee, the City of Milford shall have the right to cancel this

Agreement, purchase the gas distribution facilities in Milford, and take over operation of the gas distribution system in Milford, or seek other legal actions. If the City of Milford elects to exercise the right to purchase the gas distribution facilities, such facilities will be purchased from the Company at 300% (three hundred percent) of the net book value of the distribution assets less the unpaid franchise fee and less the \$10,000 penalty charge.

13. Agreement Assignment: Either Party may assign and transfer its rights and obligations hereunder to an affiliate or subsidiary provided that such affiliate or subsidiary has the legal ability to perform its obligations hereunder. Neither Party may assign or transfer its rights hereunder to a non-affiliate or non-subsiidiary without prior written consent of the other Party. All the terms and conditions of this Agreement shall be binding upon all successors and assignees of this Agreement.
14. Force and Effect: This Agreement shall become effective and shall constitute a binding contract between the City of Milford and the Company on the latter of (a) the date when the same shall have been duly adopted by a majority vote of the Council of the City of Milford in any regular or special meeting wherein action is taken in compliance it the City of Milford Charter; or (b) the date when the provisions hereof shall have been accepted by the Company as signified by the Company's execution. This Agreement is also enacted pursuant to and in the manner provided for in 26 Del. C. § 1301. Performance of the terms of this Agreement shall commence on the effective date of this Agreement.
15. Rules and Regulations: The Company shall have the right to adopt reasonable rules and regulations governing its business relationship with its customers.
16. This Agreement shall constitute the entire agreement and understanding between the Parties, superseding any and all previous contracts, agreements, and understanding, oral or written, pertaining to the subject matter contained herein.
17. No failure or delay by either Party to insist upon the strict performance of any term or condition of this Agreement, or to exercise any right, power or remedy permitted in this Agreement shall constitute a waiver of any such term or condition of this Agreement, or preclude any Party from exercising such right, power or remedy at any later time.
18. This Agreement has been executed and entered in the State of Delaware, and this Agreement and its formation, operation and performance shall be governed, construed, performed, and enforced in accordance with the substantive laws of Delaware without regards to conflicts of law. Any dispute arising out of this Agreement shall be litigated in a court in the State of Delaware.
19. Non-Discrimination Provision: The Company will not discriminate against any employee or customer because of race, creed, color, religion, gender, age, national origin, ancestry, disability, sexual orientation, gender identity or expression, marital status, pregnancy, military veteran status, political beliefs or affiliation, genetic history, or other characteristics protected by law. These protections apply to all areas of employment, including recruitment, hiring, training and development, transfer, dismissal, layoff, compensation, benefits, social and recreational programs and to all aspects of the provision / extension of services covered by this agreement.
20. Arbitration:

- 20.1 Any dispute between the Parties with respect to this Agreement may be submitted to arbitration upon the request of either Party pursuant to the following procedures: Each Party shall within thirty (30) days choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) days select a third arbitrator to chair the arbitration panel. Arbitrators shall be knowledgeable in propane gas utility matters and shall not have any current or past substantial business or financial relationships with any Party to the arbitration. The arbitrators shall provide each of the Parties an opportunity to be heard and the Parties shall provide the arbitrators any requested information within fifteen (15) days of the request, and except as otherwise provided herein, the arbitrators shall generally conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Unless otherwise agreed, the arbitrators shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decisions and the reasons, therefore. The direct cost of the arbitration panel shall be divided equally between the parties; all other costs shall be borne by the Party which incurs them.
- 20.2 The decision of the arbitrators shall be final and binding upon the Parties, and judgement may be entered in any court having jurisdiction. The decision of the arbitrators may be appealed solely on the grounds that the conduct of the arbitrators, or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. The final decision of the arbitrators must also be filed with the Delaware Public Service Commission, or any other regulatory authority having jurisdiction, if it affects jurisdiction rules or facilities.

Section 2. Legislative Action Dates.

Council Introduction: May 22, 2023

Council Adoption: June 12, 2023

Effective Date: June 22, 2023

Please contact the City Clerk's Office at 302-422-1111 Ext 1300 or by email at cityclerk@milford-de.gov for additional information.

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