

**ORDINANCE 20-03**

**AN ORDINANCE OF THE TOWN OF MILLVILLE, DELAWARE GRANTING TO CHESAPEAKE UTILITIES CORPORATION, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE GAS SUPPLY AND DISTRIBUTION SERVICES FRANCHISE AGREEMENT WITH THE TOWN OF MILLVILLE; PRESCRIBING THE TERMS AND CONDITIONS UNDER WHICH SAID FRANCHISE MAY BE EXERCISED.**

**WHEREAS**, Chesapeake Utilities Corporation and the Town of Millville desire to enter into a franchise agreement for a period of twenty (20) years commencing from the date provided herein; and

**WHEREAS**, the Council of the Town of Millville finds that it is in the public interest of its citizens to enter into a franchise agreement with Chesapeake Utilities Corporation.

**NOW THEREFORE**, the Town of Millville hereby ordains as follows:

**AGREEMENT BETWEEN**

**THE TOWN OF MILLVILLE AND CHESAPEAKE UTILITIES CORPORATION**

**THIS AGREEMENT** ("Agreement") is entered into as of September 10, 2019 between **TOWN OF MILLVILLE**, ("Town"), a municipal corporation of the State of Delaware, 36404 Club House Rd, Millville, Delaware, 19967; and **CHESAPEAKE UTILITIES CORPORATION**, ("Chesapeake"), a corporation organized under the laws of the State of Delaware, 909 Silver Lake Blvd., Dover, Delaware 19904.

**WHEREAS**, a tariff, which is the rates, rules and regulations under which gas service will be supplied by Chesapeake Utilities Corporation to its Customers, is on file with the Public Service Commission of Delaware, is posted and open for inspection at the offices of the Company, and is also available on the Chesapeake website at [www.chpkgas.com](http://www.chpkgas.com).

**WHEREAS**, Chesapeake agrees to provide gas supply and distribution services in the Town and the Town is desirous to have these services for itself and its citizens.

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

**1. Franchise:**

- 1.1. The Town, located in the State of Delaware, hereby grants unto Chesapeake, its successors or assigns, the non-exclusive right, privilege and franchise to carry on

within the municipal limits of the Town, inclusive of annexation areas incorporated hereafter (hereafter the Town of Millville shall include the annexed areas), the business of acquiring, distributing and selling natural or mixed gas ("gas") for light, heat, power and other purposes. The non-exclusive right, privilege and franchise hereby granted (this "Agreement") 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 within the Town, gas mains, valves, manholes, meters, service connections, and other appurtenances for the purpose of distributing gas for light, heat, power, and other purposes to the said Town and the inhabitants thereof. Chesapeake's rights hereunder shall not be assigned without the consent of the Town, which consent shall not be unreasonably withheld.

- 1.2. The term of this franchise shall be for the initial term of twenty (20) years from the effective date hereof, unless terminated sooner in accordance with the other terms and conditions set forth herein. This franchise shall renew for an additional term of twenty (20) years upon terms and conditions mutually acceptable to both Parties. Failure to agree on a renewal, or an extension, shall result in the termination of this Agreement at the expiration of the initial term.
  - 1.3. Chesapeake acknowledges the Town's desire to maximize the number of Town residents who have access to natural gas service. Chesapeake is committed to serving the residents of the Town of Millville in a timely manner and as quickly as permitted, under the terms and conditions of Chesapeake's tariff on file with the Delaware Public Service Commission, as the same may be amended from time to time. The Town acknowledges that Chesapeake's tariff requires that certain economic criteria be met before Chesapeake can extend its distribution system and that Chesapeake's ability to provide service to the residents of the Town is subject to the limitations set forth in Chesapeake's tariff.
  - 1.4. The Town may request reasonable extensions of the system to serve residents and/or non-residents of the Town. In evaluating a request for an extension, Chesapeake shall comply with the terms and conditions of Chesapeake's line extension policy, as set forth in Chesapeake's tariff on file with the Delaware Public Service Commission, as the same may be amended from time to time. After Chesapeake, at its sole expense, has conducted a cost analysis of any such request by the Town to extend the system, the financial responsibility of Chesapeake, the Town, the property owner, and any other party shall be reasonably determined, subject to and consistent with the terms and conditions of Chesapeake's line extension policy.
2. Indemnification: Chesapeake, for itself, its successors or assigns, covenants and agrees to indemnify and hold harmless the Town, its directors, officers, agents, employees and designees, of and from any and all damage, injury, claim, penalty, judgments, costs, charges, expenses (including reasonable attorney's fees) and any

other liability of any nature to the extent said claim arises directly or indirectly from the exercise of Chesapeake's right, privileges and franchise under this Agreement, including, but not limited to, any liability by reason of the distribution of gas under this Agreement, and in connection therewith, the operation or use of streets, alleys, bridges, public highways or other public places by Chesapeake. Notwithstanding the foregoing, Chesapeake shall not be obligated to indemnify the Town, its 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 Town, its directors, officers, agents, employees, or designees. It is expressly understood and agreed that Chesapeake is and shall be deemed to be an independent contractor for purposes of this Agreement and shall therefore be solely responsible to all parties for its respective acts and omissions. This indemnification shall survive the termination of this Agreement. The Town shall be added as an additional insured under Chesapeake's general public liability policy providing minimum coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 in aggregate. Chesapeake shall, at its sole cost and expense, provide and keep in force a general liability insurance policy protecting and indemnifying Chesapeake and the Town. A copy of a certificate of insurance for the referenced policy shall be provided annually, and upon the Town's written request, to the Town evidencing the validity of said insurance coverage.

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 to the Town in compliance with Town procedures. Emergency construction activities shall be exempt from prior permitting but shall be noticed to the Town Manager, or such other person as the Town shall from time-to-time designate, within 24 hours or as reasonably accomplished.
4. **Restorations:** The repairing and restoring of all openings and obstructions to the condition of the adjacent road bed shall be completed by Chesapeake or by a firm or person employed by Chesapeake as soon as practical and in accordance with the provision of 26 Del. C. §1301(b)(2)a. All work shall be completed in accordance with Town standards, or if none, reasonable and customary standards of road construction and at the sole expense of Chesapeake. If without good cause Chesapeake fails to make such repairs and restorations as soon as practical after the completion of work, the Town shall have the right to make such repairs or restoration or to employ a person or firm to make such repairs and restorations and charge Chesapeake for all reasonable costs of such repairs and restoration of said openings.
5. **Location of Gas Facilities:** If the location of any gas mains, valves, manholes, meters, service connections, or other appurtenances of the erection, laying or removal of the same, will not unreasonably interfere with ordinary travel and/or the use of the streets, utilities, alleys, bridges and public ways of the Town, and/or unnecessarily interfere with the use and enjoyment of private property, and otherwise complies

with this Agreement, the Town Manager or other designated person shall review the application for permit and approve the same and issue a permit or permits therefor, provided all Town requirements are met.

6. Rates: The determination of Chesapeake's rates shall be subject solely to the rules and regulations of the Delaware Public Service Commission, or any other State and Federal authority that shall have jurisdiction over this type of industry or enterprise.
7. Franchise Fee: In consideration of the granting of this franchise and pursuant to 26 Del. C. §1301, Chesapeake shall pay a reoccurring volumetric franchise fee in the amount of \$0.0100 per 100 cubic feet (ccf) of gas delivered to customers during the term of this Agreement (hereinafter the "Volumetric Franchise Fees"). If the Agreement is canceled earlier than the expiration of the initial term, Chesapeake is not obligated to pay the Volumetric Franchise Fees after the date of the cancelation of this Agreement. Chesapeake is authorized, subject to any necessary approvals from any State or Federal regulatory body having jurisdiction over Chesapeake, to collect the Volumetric Franchise Fees from Chesapeake's customers within the Town of Millville (including any future annexations by the Town of Millville), by way of a surcharge on the customer's bill. To ensure Chesapeake is aware of annexations, it shall be the responsibility of the Town to notify Chesapeake of annexations, including the tax parcel numbers annexed. The franchise fee otherwise payable hereunder shall not apply to any gas delivered to any customer of Chesapeake from whom Chesapeake is prohibited by law from collecting said surcharge. Volumetric Franchise Fees shall be paid annually based upon gas delivered at the end of each calendar year (December 31). Volumetric Franchise Fees for the first year in which this Agreement is in effect shall be paid based upon gas delivered at the end of that calendar year (December 31). Payment shall be due within one (1) calendar month of the end of each calendar year.
8. Financial Information: During the term of this Agreement, Chesapeake shall submit written reports to the Town, in a form approved by the Town including the following information:
  - 8.1. Details sufficient to allow the Town to ascertain that the standards prescribed by this Agreement are achieved and maintained.
  - 8.2. Fiscal and financial data sufficient to accurately document franchise fees payable.
  - 8.3. A list of Chesapeake's local managers and their contact information.
  - 8.4. All information provided pursuant to this Section 8 shall be deemed confidential proprietary information of Chesapeake and shall not be disclosed to any third party by the Town unless the Town is required to provide this information under

state or federal laws, including but not limited to the Freedom of Information Act.

- 8.5. Summary of the previous year's activities in the development of the gas system and total number of customers.
- 8.6. Gross and net book values of the facilities used to distribute gas in the Town.
9. Taxes: All property of Chesapeake within the corporate limits of Town shall at all times be subject to taxation in accordance with any law now or hereafter enacted, provided however, Chesapeake shall have the right to terminate this Agreement if the Town hereafter enacts a tax on Chesapeake's property or profits or otherwise levies a tax on Chesapeake which does not apply on the effective date of the Agreement and does not apply to all businesses selling products or services within the Town, including but not limited to other energy providers such as propane dealers and distributors, oil dealers and distributors, and electric distributors.
10. Receivership: Subject to the provisions of the federal bankruptcy laws, the Town shall have the right to cancel this Agreement one hundred twenty (120) days after the appointment of a receiver or trustee for Chesapeake, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days or unless:
  - 10.1. 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
  - 10.2. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Agreement.
11. 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, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.
12. Financial Risk: During the term of this Agreement, Chesapeake intends to construct certain gas distribution facilities within the Town. For any such investments in gas distribution facilities made by Chesapeake, the Town shall not bear the financial risk associated with Chesapeake's investment in such distribution facilities.
13. Force and Effect: This Agreement shall become effective and shall constitute a binding contract between the Town and Chesapeake on the latter of (1) the date when

the same shall have been duly adopted by a majority vote of the Mayor and Town Council in any regular or special meeting wherein action is taken in compliance with the Town's Charter; or (2) the date when the provisions hereof shall have been accepted by Chesapeake as signified by Chesapeake's execution. This Agreement is also enacted pursuant to and in the manner provided for in the Underground Utility Damage Prevention and Safety Act of Title 26 Delaware Code (as amended) and Chapter 13 ("Gas, Water and Oil Corporations") of Title 26 of the Delaware Code (as amended). Performance of the terms of this Agreement shall commence on the effective date of this Agreement.

14. Approval: Chesapeake warrants and represents that this Agreement represents the binding obligation of Chesapeake and that Chesapeake has acquired, or prior to the effective date will acquire, any and all necessary approvals from any third party whose approval is necessary, including but not limited to any approvals required by the Delaware Public Service Commission.

15. Notice: Any notice herein shall be given by registered or certified mail, postage prepaid, addressed as follows, unless the Party provides written notice of an updated address:

If to the Town:  
The Town of Millville  
Attn: Town Manager  
36404 Club House Road  
Millville, DE 19967

With a Copy to:  
Town Solicitor  
Seth Thompson  
1105 N. Market St., 19<sup>th</sup> Floor  
Wilmington, DE 19801

If to Chesapeake:  
Chesapeake Utilities Corporation  
Attn: Business Unit Leader - Natural Gas Dist.  
500 Energy Lane, Suite 100  
Dover, DE 19901

16. 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 subsidiary without the 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.

17. Rules and Regulations. Chesapeake shall have the right to adopt reasonable rules and regulations governing its business relationship with its customers.

18. Entire Agreement. This Agreement, together with Chesapeake's Delaware tariff, as approved by the Delaware Public Service Commission, as the same may be amended from time to time, comprises the entire Agreement between the Parties hereto

relative to the subject matter hereof, and upon the effective date hereof no earlier agreements, promises or other understandings entered into by either party or its predecessors or assignors in connection therewith, shall be of any force or effect.

#### 19. Dispute Resolution.

19.1. Except for any dispute between the Parties that is subject to the exclusive jurisdiction of the Delaware Public Service Commission, 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 natural 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 Arbitration Rules of the Delaware Superior Court. Unless otherwise agreed, the arbitrators shall render a decision within ninety (90) days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. 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.

19.2. The decision of the arbitrators shall be final and binding upon the Parties, and judgment 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 Delaware Arbitration Act, or applicable law, including but not limited to, any rule or regulation of the Delaware Public Service Commission. The final decision of arbitrators must also be filed with the Delaware Public Service Commission, or any other regulatory authority having jurisdiction, if it affects jurisdictional rules or facilities.

19.3. If the Delaware Public Service Commission or the arbitrator finds that a Party has breached this Agreement, then the non-breaching Party shall have the right to terminate this Agreement upon sixty (60) days' written notice, following the entry of a final non-appealable order.

20. Governing Law. This Agreement shall be governed by the laws of the State of Delaware and the Parties hereto agree that the courts of Delaware shall have jurisdiction over any case or controversy and hereby consent to such jurisdiction. This Agreement is subject to the laws, rules, and regulations applicable to Delaware natural gas utilities.

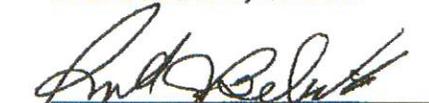
- 21. Severability. In the event that any part of this Agreement is ruled invalid or unenforceable, the Parties agree that this Agreement is deemed severable and that the balance of the terms will remain in full force.
- 22. Amendments. This Agreement shall not be amended except in writing executed by all parties hereto.
- 23. Contra proferentem. The fact that one Party has drafted this Agreement shall in no way be used against that Party in construing the terms, conditions, and obligations hereunder.

ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF MILLVILLE, SUSSEX COUNTY, DELAWARE, ON THIS 10TH DAY OF SEPTEMBER, 2019.

SEAL:

  
 STEVE MANERI, MAYOR

ATTESTED:

  
 RON BELINKO, SECRETARY

The foregoing franchise is hereby accepted this 10<sup>th</sup> day of September, 2019 by Chesapeake Utilities Corporation.

SEAL:

  
 ASSISTANT VICE PRESIDENT  
 CHESAPEAKE UTILITIES CORPORATION

ATTESTED:

  
 WITNESS

