

ORDINANCE NO. 2018-16

SEMCO ENERGY GAS COMPANY FRANCHISE ORDINANCE

AN ORDINANCE to grant a revocable, nonexclusive Gas Franchise to SEMCO Energy Gas Company, a division of SEMCO Energy, Inc., a Michigan corporation, its successors and assigns, for a period of thirty years.

THE CHARTER TOWNSHIP OF ALLENDALE, OTTAWA COUNTY, MICHIGAN, ORDAINS:

Section 1. Grant of gas franchise to use public rights of way; non-exclusive. Pursuant to Article VII, Section 29 of the Michigan Constitution of 1963, and pursuant to the Public Utility Franchise Act, PA 266 of 1909, as amended, the Charter Township of Allendale (the "Township") hereby grants to SEMCO Energy Gas Company, a division of SEMCO Energy, Inc., a Michigan corporation, its successors and assigns (the "Grantee" or "SEMCO") a non-exclusive franchise to use the public streets, highways, alleys, bridges and other public places in the Township to lay, construct, operate, maintain, and replace all needful and proper gas pipes, mains, conductors, service pipes and other necessary apparatus and equipment. This franchise grants to SEMCO the right and privilege, in its reasonable discretion, subject to regulations of the Michigan Public Service Commission, or successor agency having similar jurisdiction (i) to transact local business within the Township, (ii) to transport and distribute gas, and to install, maintain, operate and use all gas distribution facilities and other necessary equipment on, along, across, and under the highways, streets, alleys, bridges and other public places within the Township, (iii) to convey, supply and sell gas services within the Township, and (iv) to convey and supply gas to neighboring cities, villages and townships supplied with gas by Grantee.

Section 2. Consideration. In consideration of the rights, privilege and authority granted by this franchise, SEMCO shall faithfully perform all obligations required by the terms of this Ordinance.

Section 3. Term and Revocation. The franchise granted under this Ordinance shall continue in effect for a period of thirty (30) years from the effective date of this Ordinance, subject to revocation. The franchise granted under this Ordinance is subject to revocation upon sixty (60) days written notice by the party desiring such revocation.

Section 4. Franchise Nonexclusive. The rights, privilege and authority granted SEMCO under this Ordinance are not exclusive. Either manufactured or natural gas may be furnished under this Ordinance.

Section 5. Use of streets and other public places. (a) SEMCO shall not unnecessarily obstruct the passage of any of the highways, streets, alleys, bicycle paths, sidewalks or other public places within the Township. While any portion of the highways, streets, alleys, bicycle paths, sidewalks or other public places within the Township is open, SEMCO shall maintain reasonable barriers and lights at night and other appropriate warnings to the users of the highways, streets, alleys, bicycle paths, sidewalks or other public place. In addition, within a reasonable time after making an opening or excavation and at its sole cost and expense, SEMCO shall repair the same and leave it in as good as a condition as before the opening or excavation was made.

(b) Unless an emergency exists where SEMCO determines that there is an immediate and serious threat to the health, service, safety or welfare of a customer, or the general public and which requires immediate action, SEMCO shall not open or excavate in the right of way including any road, sidewalk, street, alley or highway in the Township for the purpose of installing or maintaining gas transportation or distribution facilities and other necessary equipment, except upon application to the Michigan Department of Transportation, the Ottawa County Road Commission, the Township, or other public authority having jurisdiction over the public way, if and as required by the public authority. SEMCO shall obtain a permit from the Township or if required by law obtain a permit from the public authority having jurisdiction over the highway, street, alley, bridge and other public place for all proposed work within the Township and shall pay therefore such reasonable permit-related fees as may be legally required by such public authority to offset its direct costs of permitting.

Section 6. Hold Harmless and Indemnification. SEMCO shall use due care in exercising the privileges in this Ordinance and, at its sole cost and expense, shall defend, indemnify and hold harmless the Township, and its employees and agents, from any and all liability which may be imposed upon or incurred by the indemnitee(s), for all damages and costs arising from the negligence of SEMCO or any of its officers, agents, and servants that may arise out of, or be in any way connected with, the operation and maintenance or condition of SEMCO's gas transportation or distribution system and other necessary equipment within the Township rights of way, or SEMCO's failure to comply with any federal or state statute, regulation or rule, or any provision of this Ordinance.

Section 7. Standards and conditions of service; rules, regulations and rates. The rates to be charged by SEMCO for gas services within the Township, and the standards and conditions of service and operation within the Township, shall be the same as set forth in SEMCO's schedule of rules, regulations, and rates as applicable in the cities, villages, and townships where SEMCO is now supplying gas service, or as shall hereafter be validly prescribed for the Township under the orders, rules, and regulations of the Michigan Public Service Commission (the "MPSC<sup>J</sup>"), or other authority having jurisdiction over the provision of such service within the Township. Such rates shall be subject to review by the MPSC, and may change upon complaint being made by the Township, acting by its Township Board, or by an application filed by the Grantee. The Grantee shall, as to all other conditions and elements of service not fixed in this

Ordinance, be and remain subject to the rules and regulations of MPSC or its successors, applicable to gas service within the Township, and shall provide service in accordance with the terms and conditions set forth in its applicable tariff as approved from time to time by the MPSC or its successors.

Section 8. Successors and assigns. Whether so expressed or not, the words "SEMCO Energy Gas Company" and "SEMCO" are intended and shall be held and construed to mean and to include both SEMCO Energy Gas Company, a division of SEMCO Energy, Inc., and its successors and assigns. Grantee shall not assign this franchise to any other person, firm or corporation without the prior written approval of the Township Board, except in those cases where the MPSC or its successors has granted any required approval of the acquisition, transfer of control, merger or encumbrance transaction underlying the assignment of this franchise. The Township Board shall not unreasonably withhold its consent to the assignment. The assignment of this franchise to a subsidiary, division or affiliated corporation of the Grantee or its parent corporation shall not be considered an assignment requiring the consent of the Township Board.

Section 9. Acceptance by SEMCO. SEMCO shall file a written acceptance of gas franchise with the Office of the Township Clerk within thirty (30) days after the effective date of this Ordinance.

Section 10. Force Majeure. The Grantee shall not be liable for failure to furnish service as herein provided, or for any breach of the Grantee's obligations hereunder, if such failure or breach is caused by acts of God, labor troubles, riot, or any other causes or contingencies not reasonably within the control of the Grantee.

Section 11. Entire agreement. This Ordinance contains the entire agreement between the Township and SEMCO which grants a gas franchise and thereby, the permission to use the public rights-of-way within the Township. Neither the Township nor SEMCO makes any representation except those expressly or by reference set forth in this Ordinance.

Section 12. Repeal. All resolutions, ordinances, orders or parts thereof in conflict in whole or in part with any of the provisions of this Ordinance, to the extent of such conflict, are hereby repealed.

Section 13. Severability. This Ordinance and the various sections, subsection, sentences, phrases, and clauses thereof are hereby declared to be severable. If any section, subsection, sentence, phrase or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected.

Section 14. Effective Date. This Ordinance was approved and adopted by the Township Board of Allendale Charter Township, Ottawa County, Michigan, on \_\_\_\_\_, 2018, after introduction and a first reading on November 26, 2018, and publication after first reading as required by Act 359 of the Michigan Public Acts of 1947, as amended. This Ordinance shall be effective on \_\_\_\_\_, 2018.

Adam Elenbaas, Township Supervisor

Laurie Richards, Township Clerk

**CERTIFICATE**

I, Laurie Richards, Clerk for the Charter Township of Allendale, Ottawa County, Michigan, do hereby certify that the foregoing SEMCO Gas Franchise Ordinance was adopted at a regular meeting of the Township Board held on \_\_\_\_\_ 2018. The following members of the Township Board present at the meeting:

\_\_\_\_\_ ' The following members of the Township Board were absent: \_\_\_\_\_

\_\_\_\_\_ ' The Ordinance was adopted by the Township Board with members of the Board \_\_\_\_\_ voting in favor and members of the Board \_\_\_\_\_ voting in opposition. The Ordinance was published in the \_\_\_\_\_ on \_\_\_\_\_ , 2018.

Laurie Richards, Township Clerk

ACCEPTANCE

SEMCO Energy Gas Company, a division of SEMCO Energy, Inc., the Grantee under a Franchise approved by the Township of Allendale, County of Ottawa, Michigan, hereby accepts the Franchise, pursuant to the terms and conditions thereof.

Dated: \_\_\_\_\_, 2018

SEMCO Energy Gas  
Company,  
a division of SEMCO  
Energy, Inc.

By: \_\_\_\_\_  
Colleen Starring  
President SEMCO Energy Gas Company