

**STATE OF NEW JERSEY  
COUNTY OF HUNTERDON  
BOROUGH OF BLOOMSBURY**

**ORDINANCE NO. 107-05**

**AN ORDINANCE OF THE BOROUGH OF BLOOMSBURY  
GRANTING MUNICIPAL CONSENT TO NUI  
UTILITIES, INC., d/b/a ELIZABETHTOWN GAS COMPANY  
TO CONSTRUCT, MAINTAIN AND OPERATE A GAS LINE  
FOR THE DISTRIBUTION OF NATURAL AND MIXED GAS.**

**WHEREAS**, NUI Utilities, Inc. doing business as Elizabethtown Gas Company, a Corporation of the State of New Jersey and a public utility subject to the jurisdiction of the New Jersey Board of Public Utilities, on January 26, 2005, filed a Petition with the Borough of Bloomsbury seeking Municipal Consent to construct, operate and maintain natural and mixed gas distribution lines for public and private consumption throughout the Borough of Bloomsbury.

**WHEREAS**, representatives of the Petitioner appeared before the Bloomsbury Borough Committee on September 28, 2004 and January 26, 2005 to present their general plans for extension of gas lines within the Borough as the need arose, and specifically, their immediate desire to extend a line to Bloomsbury Elementary School located within the Borough; and

**WHEREAS**, the Petitioner has provided public notice of such Petition through publication in the official newspaper of the Municipality, the Hunterdon Democrat, and by posting notice of such Petition pursuant to Statute.

**NOW THEREFORE, BE IT ORDAINED** by the Mayor and Council of the Borough of Bloomsbury.

**Section I.** Grant of Municipal Consent.

Pursuant to N.J.S.A., 48:3-11, the Mayor and Council of the Borough of Bloomsbury hereby grants to NUI Utilities, Inc. doing business as Elizabethtown Gas Company, a Corporation of the State of New Jersey (hereinafter "Elizabethtown") with principal offices located at One Elizabethtown Plaza, Union, New Jersey, its successors and assigns, a non-exclusive consent, right and privilege for the use, without impairment of, or obstruction to the public use, of the roads, streets, avenues and ways of the Borough of Bloomsbury to construct, lay, maintain, and operate for a period of ten (10) years, the necessary mains, conductors, pipes and concomitant appurtenances for the purpose of conveying, storing, supplying and distributing natural and mixed gas for heat, power, light and other purposes for public and private use and consumption, along in, or under the following described service area: all the streets, avenues, alleys, parks, parkways, highways, or other public places within the Borough as they now exist

or may be hereinafter laid out by the municipal authorities of the said Borough or dedicated to said Borough.

Section II. Conditions on Grant of Municipal Consent.

The Municipal Consent granted herein is expressly conditioned upon the following:

- (a) the written acceptance of Elizabethtown of the terms and conditions of this municipal Consent Ordinance within thirty (30) days of its final adoption.
- (b) the New Jersey Board of Public Utilities (hereinafter "N.J.B.P.U.") approval of the Consent herein granted and the issuance of such other grants or approvals as determined by the N.J.B.P.U..
- (c) Elizabethtown shall satisfy all Statutory requirements of N.J.S.A. 48:13-1 et seq. regarding the proper organization and operation of a Public Utilities engaged in the distribution of natural and mixed gas, and shall remain subject to the jurisdiction of and comply with all Rules and Regulations of the United States Department of Transportation, Office of Pipeline Safety and the N.J.B.P.U. as well as the Ordinance of the Borough of Bloomsbury.
- (d) Elizabethtown shall construct and continuously maintain and operate their distribution line within the service area in a safe and efficient manner, and maintain such gas distribution lines in a state of good operation and repair and including all streets, roads, and public rights-of-way within the Borough of Bloomsbury wherein its lines are located.
- (e) the construction, operation and maintenance of the gas distribution system within the rights-of-way of the Borough of Bloomsbury shall in no way place any obligation, financial or otherwise, or any liability of any kind, upon the Borough of Bloomsbury and no obligation is to attach for the construction, operation and maintenance of the said gas distribution system to the Borough.
- (f) any and all regulating pits and venting structures or like facilities shall not be located along the public rights-of-way comprising the service. Area.

Section III. Construction; Installation; Restoration.

- A. Construction. In each and every case in which road openings or excavation of any nature are required or made for the purposes aforesaid, Elizabethtown shall restore, all such public and private lands or facilities to as good a condition as existed at the commencement of the said work or such better condition, at its sole cost and expense. All such openings and installation and maintenance shall be undertaken in strict compliance with the standards imposed by the N.J.B.P.U., any other regulatory agency, and all applicable Borough Ordinances with such work to be done in a careful,

prudent and workmanlike manner, and within such time limitations as shall be best for the proper safeguard of the public.

- B. Relocation. If at any time during the period of this Municipal consent, the Borough of Bloomsbury finds it necessary to alter or change the grade of any street, road or other public right-of-way or area, Elizabethtown shall, upon reasonable notice by the Municipality, remove and relocate its distribution line and pipes at the expense of Elizabethtown.
- C. Restoration. In the event that Elizabethtown shall refuse or neglect, after ten (10) days notice in writing by the representative of the Borough, that is, the borough Clerk or Borough Engineer, to restore any disturbed area at its cost and expense, and in compliance with all applicable Municipal Ordinances in effect at the time, to its pre-existing or better condition, any street, road, pavement, driveway or other reserves after having made an opening or excavation, the necessary work to accomplish such restoration may be done by the Borough of Bloomsbury, and thereafter, Elizabethtown shall be liable for the actual and necessary costs thereof, and shall immediately pay such costs to the Borough upon receiving notice thereof.
- D. Preconditions to Undertaking Construction. Elizabethtown shall give to the Borough of Bloomsbury, through its duly designated representative, written notice of its intention to open or excavate any street or other public place in accordance with the Borough of Bloomsbury's Ordinance regulating the excavation and opening of streets, roads and highways, with the exception that such notice requirement shall be waived in the event of an emergent circumstance such that such emergency will affect public health or safety. As soon as practically possible after the occurrence of such emergent circumstance, Elizabethtown shall give prompt written notice to the Borough of any emergency opening or excavation that Elizabethtown shall undertake.

Section IV. Indemnification, Performance Bond, Liability.

- A. Indemnification. Elizabethtown, its successors and assigns, by the acceptance of the grants, rights and privileges conferred by this ordinance, shall at all times and does hereby and will indemnify and hold harmless, the Borough of Bloomsbury and all of its subsidiary agencies, officials and employees for any and all claims of whatsoever kind or nature arising from or relating to the construction, installation, maintenance, laying, repairing, inspecting, or altering of maintains conductors, pipes and appurtenances thereto, and any other facilities, and including, but not by way of limitation, any damages, penalties, costs, attorney's fees and charges for personal injury, property damage or otherwise, based upon

Elizabethtown's negligence or the negligence of its agents, servants, employees or independent contractors.

- B. Performance Bond. Prior to the commencement or any construction or installation under this Municipal Consent, Elizabethtown shall execute and deliver to the Clerk of the Borough and subject to prior review and approval by the Borough Attorney, a Bond in the amount of \$10,000.00 guaranteeing the faithful performance of all of its obligations and undertakings under this Ordinance, which Bond shall be enlarged or renewed from time to time as the Council may require.
- C. Liability Insurance. Elizabethtown agrees to maintain and keep in full force and effect, at its sole expense, and at all times during the terms and duration of this municipal Consent, sufficient liability insurance naming the Borough of Bloomsbury as an additional insured party, and insuring and indemnifying the Borough against any loss by any such claim, suite, judgment, execution or as follows:
  - (a) Elizabethtown shall carry Workman's Compensation Insurance with Statutory limits.
  - (b) Elizabethtown shall at all times, maintain a Comprehensive General Liability Insurance Policy with a single limit amount of \$1,000,000.00 covering liability for any death, personal injury, property damage or other liability arising out of its construction and operation of the gas distribution systems herein and in addition, an excess liability (or "umbrella") policy in the amount of \$3,000,000.00.
  - (c) Elizabethtown shall furnish to the Borough of Bloomsbury a certified copy or Certificate of Insurance of each of the Policies as set forth herein.

Section V. Duration of Consent.

- A. Term. The Limited Municipal consent granted to Elizabethtown herein is for a period of ten (10) years from the effective date of this Ordinance.
- B. Public Hearing. Immediately prior to the ten (10) year expiration of Consent, the Borough of Bloomsbury shall conduct public hearings regarding the performance of Elizabethtown with the terms of this Municipal Consent. The public hearing shall be duly advertised and shall provide any opportunity for all interested persons to participate.

- C. Extension. Upon the conclusion of the public hearings as set forth herein, the Borough of Bloomsbury shall consider such extension and such additional conditions as the record of the public hearings may warrant.
- D. Transferability. The right of Elizabethtown to transfer or assign any and all of its rights and obligations under this Limited Municipal Consent Ordinance shall only be permitted upon Elizabethtown providing to the Borough thirty (30) days advance written notice of such intent to transfer, and specifying the name of the assignee and other pertinent data as may be required by the Borough. No transfer or assignment shall be made without the prior written consent of the Borough of Bloomsbury, which consent shall not be unreasonably withheld. Any notice or request for assignment must contain the written acknowledgement of the proposed assignee to be bound by all the terms and conditions of this Limited Municipal Consent Ordinance and shall require the posting of a replacement Performance Bond and satisfaction of the liability insurance requirements prior to any written consent to transfer by the Bloomsbury Mayor and Council.
- E. Notice of Proceedings. Elizabethtown shall give the Municipality timely written notice of at least fifteen (15) days in advance of all proceedings initiated by Elizabethtown or the N.J.B.P.U. or other Regulatory Agency, when such proceedings may affect the commitments, this Limited municipal Consent or relationship between Elizabethtown and the Municipality, whether or not such notice is required by law. All submissions provided to such Regulatory Agency by Elizabethtown shall also be provided to the Borough of Bloomsbury.

Section VI. Severability.

If the provision of any article, section, subsection, paragraph, subdivision or clause of this Ordinance shall be judged invalid by any Court or Competent jurisdiction, such Order or Judgment shall not effect or invalidate this remainder of any such article, section, subsection, paragraph or clause, and, to this end, the provisions of this Ordinance are hereby declared to be severable.

Section VII. Effective Date.

This Municipal Consent Ordinance shall become effective upon adoption and publication according to law, and only upon written acceptance of this Limited Municipal Consent by Elizabethtown, which written consent shall be filed with the Clerk of the Municipality within thirty (30) days of the date after which Elizabethtown receives notice of the passage of this Ordinance.

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Mark R. Peck, Mayor

ATTEST:

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Lisa A. Burd,  
Acting Borough Clerk

First Reading: April 26, 2005

Publication: May 5, 2005

Public Hearing: May 24, 2005

Adoption: May 24, 2005

Publication of Adoption: June 2, 2005