

ORDINANCE NO. 3418

AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, MID-TEX DIVISION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO FURNISH, TRANSPORT AND SUPPLY GAS TO THE GENERAL PUBLIC IN THE CITY OF FARMERS BRANCH, DALLAS COUNTY, TEXAS, FOR THE TRANSPORTING, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID MUNICIPALITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY; REPEALING ALL PREVIOUS ATMOS ENERGY GAS FRANCHISE ORDINANCES; PROVIDING THAT IT SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; PRESCRIBING THE TERMS, CONDITIONS, OBLIGATIONS AND LIMITATIONS UNDER WHICH SUCH FRANCHISE SHALL BE EXERCISED; A MOST FAVORED NATIONS CLAUSE, AND A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH, TEXAS, THAT:

SECTION 1. GRANT OF AUTHORITY

A. The City of Farmers Branch, Texas, herein after called "City," hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos" or "Company," its successors and assigns, consent to use and occupy City's present and future Public Rights-of-Way for the purpose of laying, maintaining, constructing, protecting, operating, and replacing the System needed and necessary to deliver, transport and distribute gas in, out of, and through City and to sell gas to persons, firms, and corporations, including all the general public, within City's corporate limits.

B. Said privilege and license being granted by this Ordinance is for a term beginning January 24, 2017, and ending December 31, 2036.

C. The provisions set forth in this Ordinance represent the terms and conditions under which Company shall construct, operate, and maintain the System within City, hereinafter sometimes referred to as the "Franchise." In granting this Franchise, City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of City's present or future generally applicable ordinances. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in City shall be in full force and effect and subject to the exercise thereof by City at any time.

SECTION 2. DEFINITIONS

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words 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 always mandatory and not merely directory.

A. “Affiliate”, in relation to Company, means a Person that controls, is controlled by, or is under common control with Company. As used in this definition, the term “control” means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such Person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract or otherwise.

B. “Calendar Quarter” means the three month periods beginning on January 1, April 1, July 1, and October 1 during each calendar year.

C. “City” means the City of Farmers Branch, a Texas home rule municipality located in Dallas County, Texas.

D. “City Council” means the City Council of the City of Farmers Branch.

E. “City Manager” means City’s city manager, or his or her designee.

F. “Code of Ordinances” means the Code of Ordinances of the City of Farmers Branch, Texas, and all amendments thereto adopted before and after the effective date of this Ordinance.

G. “Company” shall mean Atmos Energy Corporation, Mid-Tex Division, its successors and assigns, but does not include an Affiliate, which shall have no right or privilege granted hereunder except through succession or assignment in accordance with Section 18.

H. “Gross Revenues” shall mean:

(1) all revenues received by Company from the sale of gas to all classes of customers (excluding gas sold to another gas utility in City for resale to its customers within City) within the corporate limits of City;

(2) all revenues received by Company from the transportation of gas through the System of Company within City’s incorporated limits to customers located within City’s incorporated limits (excluding any gas transported to another gas utility in City for resale to its customers within City);

(3) the value of gas transported by Company for Transport Customers through the System of Company located in City’s Public Rights-of-Way (“Third Party Sales”)

(excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Company's monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time that the transportation service is performed; and

(4) "Gross Revenues" shall also include fees paid pursuant to this agreement, revenues billed but not ultimately collected or received by Company, and the following miscellaneous charges: charges to connect, disconnect, or reconnect gas, contributions in aid of construction ("CIAC"), and charges to handle returned checks from consumers within City.

(5) "Gross Revenues" shall not include:

- (a) the revenue of any Affiliate or subsidiary of Company;
- (b) sales taxes;
- (c) any interest or investment income earned by Company; and

(d) all monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within City's Public Right-of-Way.

I. "In the City" or "within the City" are phrases which mean a location or area within City's incorporated boundaries or limits, commonly known as "City limits".

J. "Person" shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include City or any employee, agent, servant, representative or official of City.

K. "Public Facility" shall mean all present and future water lines, sanitary sewer lines, storm sewer lines, communication lines, irrigations lines, and any other line under jurisdiction and control of City.

L. "Public Right-of-Way" shall mean all present and future land used as public streets, avenues, highways, alleys, sidewalks, boulevards, drives, tunnels, drainage ways, easements dedicated by plat or other instrument for use by public utilities (not including easements owned by City for use by City's utilities), bridges, and other such similar passageways, thoroughfares and public ways under the jurisdiction and control of City.

M. "System" or "System Facilities" shall mean all of Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections, and all other appurtenant equipment used in or incident to providing delivery, transportation, distribution, supply and sales of natural gas, located in the Public Right-of-Way within the City.

N. “Transport Customer” shall mean any Person for which Company transports gas through the System of Company within City’s Public Rights-of-Way for delivery within the City (excluding other gas utilities in City who resell gas to their customers within the City).

SECTION 3. CONDITIONS OF OCCUPANCY

A. Except where inconsistent with this Ordinance, all construction and the work done by Company, and the operation of its business, under and by virtue of this Ordinance, shall be in conformance with the ordinances, rules and regulations now in force and that may hereafter be amended or adopted by City relating to the use of its Public Rights-of-Way, including but not limited to Chapter 70, Article IV, of City’s Code of Ordinances, as amended or succeeded from time to time. This Ordinance shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code, or other state or federal Law.

B. Company shall attempt to utilize the alleys of City insofar as is reasonably practicable in conducting its work and activities hereunder. Notwithstanding the foregoing, however, Company may, when reasonably necessary, utilize the streets and other Public Rights-of-Way to perform such work and activities. Company shall not be required to locate or relocate facilities to a depth of greater than four (4) feet unless otherwise required by City to avoid conflicts with pre-existing facilities, or facilities that are to be either installed or relocated as part of a City public improvement project.

C. Upon request, Company shall identify for City the location of its System Facilities located in the City. All maps temporarily provided by Company to City shall be confidential when clearly identified as such by Company when provided to City, and will be provided solely for City’s use. City agrees to maintain the confidentiality of any non-public information obtained from Company to the extent allowed by law. City shall not be liable to Company for the release of any information City is required to release by law. City shall provide notice to Company of any request for release of information previously designated by Company as proprietary or confidential non-public information prior to releasing the information so as to allow Company adequate time to pursue available remedies for protection. If City receives a request under the Texas Public Information Act that includes Company’s previously designated proprietary or confidential information, City will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the document(s). City also will provide Company with notice of the request, and thereafter Company is responsible for establishing that an exception under the Texas Public Information Act allows City to withhold the information.

SECTION 4. ABANDONMENT OF RIGHT-OF-WAY

A. If City abandons any portion of the Public Rights-of-Way in which Company has facilities, for public safety reasons or in furtherance of a public project, City shall determine whether it is appropriate to retain a public utility easement in such Public Right-of-Way for use by Company. If City determines, in its sole discretion, that the continued use of the Public Right-of-Way by Company is compatible with the abandonment of the Public Right-of-Way, then in consideration of the compensation set forth in Section 9, and to the maximum extent of its right to do so, City shall grant Company an easement for such use, and the abandonment of the Public

Right-of-Way shall be subject to the right and continued use of Company. If City determines, in its sole reasonable discretion, that it is not appropriate to retain a public utility easement in such Public Right-of-Way, Company shall be responsible, subject to the provisions of Section 5, for relocating, its System from such Public Right-of-Way, as directed by City.

B. If Public Right-of-Way is sold, conveyed, abandoned, or surrendered by City to a third party, such action shall be conditioned upon Company's right to maintain use of the former Public Right-of-Way. If the third party requests Company to relocate its System from the former Public Right-of-Way, and if such relocation is agreed to by Company, such relocation shall be at the expense of the party requesting same. In addition, in the event of a third party requesting the relocation, if the relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 5. LAYING OF LINES IN ADVANCE OF PUBLIC IMPROVEMENTS AND RELOCATION OF COMPANY'S FACILITIES

A. Whenever City decides to make any public improvements in any Public Right-of-Way in which mains and pipes already exist or in which Company may propose to lay its mains or pipes, Company will be provided the opportunity, at no expense to City, in advance of such public improvements, to renew such mains or pipes, if defective or inadequate in size, and to lay service lines, or renew same, if inadequate in size or defective, to the property lines where buildings are already located, provided such activities do not delay City's public improvements.

B. Company shall be given written notice of the intention of City to make major public improvements to any Public Facility, including but not limited to pavements, sidewalks, water lines, sanitary sewer lines, storm sewer lines, and communications lines, in any such Public Right-of-Way. Within ninety (90) days from receipt of such notice, Company shall initiate work and thereafter proceed in a workmanlike manner to completion of the necessary work to relocate or adjust its lines and facilities to accommodate City's public improvements and complete such work in a timely manner, with a maximum timeframe of three (3) months in order to preclude the delay of said public improvements, at no cost to City unless such improvements are for the primary purpose of beautification or for the benefit of a private developer. Company shall take reasonable measures to ensure uninterrupted service to its customers and shall reconnect all customer service lines disconnected in the normal course of construction at its own expense. Company shall be required to obtain a permit for all new and all relocated installations, except in response to an emergency or in response to a request for initiation of new service. Company shall obtain a permit for emergency work as soon as possible after the commencement of such work in accordance with City ordinances, rules, and regulations.

C. When Company is required to remove or relocate its mains, laterals or other facilities to accommodate construction by City without reimbursement from City, Company shall have the right to seek recovery of relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Company to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when

Company is required by City to perform relocation. City shall not require that Company document requests for reimbursement to City as a pre-condition to recovery from customers of such relocation costs pursuant to applicable state and federal law. Notwithstanding the foregoing, City shall have the right to request other project documentation to the full extent provided by law.

D. When Company is required by City to remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way to accommodate a request by City, and costs of utility removals or relocations are eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Company as a result of such removal or relocation, and such reimbursement is required to be handled through City, Company's costs and expenses shall be included in any application by City for reimbursement if Company submits its cost and expense documentation to City prior to the filing of the application. If City has knowledge of Company's eligibility for reimbursement, City shall provide reasonable written notice to Company of the deadline for Company to submit documentation of the costs and expenses of such relocation to City. Upon receipt of an amount of reimbursement intended for utility relocation including, but not limited to, gas utilities, City shall remit to Company, within thirty (30) days of receipt, the portion of reimbursement related to the relocation or removal of Company's facilities.

SECTION 6. EXTENSIONS FOR CUSTOMERS

Company shall extend distribution mains in any street up to one hundred (100) feet for any one residential or commercial customer so long as the customer at a minimum uses gas for unsupplemented space heating and water heating. Company shall not be required to extend transmission mains in any Public Rights-of-Way within City or to make a tap on any transmission main within City unless Company agrees to such extension by a written agreement between Company and a customer.

SECTION 7. DUTY TO SERVE

Company hereby agrees that it will not arbitrarily refuse to provide service to any Person that it is economically feasible for Company to serve. In the event that a Person is refused service, said Person may request a hearing before the City Council or its designee, said hearing to be held within forty-five (45) days from the date of the request for hearing. The City Council may order Company to provide service or take any other action necessary to bring Company into compliance with the intent of the City Council in granting this Franchise, including the adoption of an ordinance or resolution in accordance with Section 15.B. The City Council shall render its opinion at its next regular meeting but in no event shall it be required to act in less than seven (7) days.

SECTION 8. RATES

Company shall furnish reasonably adequate service to the public at reasonable rates and charges therefor; and Company shall maintain its System in good order and condition. Such rates shall be established in accordance with all applicable statutes and ordinances. Company shall maintain on file with City copies of its current tariffs, schedules or rates and charges, customer service provisions, and line extension policies. The rates and charges collected from its customers in the City shall be subject to revision and change by either City or Company in the manner provided by law.

SECTION 9. PAYMENTS TO CITY

A. In consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business, Company, its successors and assigns, agrees to pay, and City agrees to accept, such franchise fees in the amount and manner described herein. Such payments shall be made on a quarterly basis, on or before following dates with respect to each calendar quarter:

<u>Payment Due Date</u>	<u>Quarter for Which Payment is Made</u>	<u>Quarter Upon Which Payment is Based</u>
February 15th	October 1 – December 31	October 1 – December 31
May 15th	January 1 – March 31	January 1 – March 31
August 15th	April 1 – June 30	April 1 – June 30
November 15th	July 1 – September 30	July 1 - September 30

The franchise fee shall be a sum of money that shall be equivalent to five percent (5%) of the quarterly Gross Revenues, as defined in Section 2.H., for the preceding calendar quarter and shall be for the rights and privileges during the preceding quarter. The initial payment provided under this Ordinance shall be due on or before May 15, 2017, based on the preceding calendar quarter (January 1, 2017 to March 31, 2017) and shall be for the right and privilege during said calendar quarter. The final payment provided under this Ordinance shall be due on or before February 15, 2037, and will be for the right and privilege during the preceding calendar quarter (October 1, 2036 to December 30, 2036). The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee amount will be paid on or before April 30, 2017, and will be based on the calendar year January 1, 2016, through December 31, 2016. The final CIAC franchise fee amount will be paid on or before April 30, 2037, and will be based on the calendar year January 1, 2036 through December 31, 2036.

B. It is also expressly agreed that the franchise fee payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as a special or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Company or Company's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. Except, however, Company's separate obligation to reimburse City for City's reasonable

rate case expenses and for street repairs or other damage to Public Facilities caused by Company's employees or contractors in accordance with City's ordinances are not affected by Company's payment of franchise fees hereunder. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of occupation taxes, licenses, fees, street or alley rentals or charges, easements or franchise taxes, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay such occupation taxes, licenses, charges, fees or rentals.

C. If Company fails to pay when due any payment provided for in this Section, Company shall pay such amount plus interest at the current prime rate per annum from such due date until payment is received by City.

D. City shall within thirty (30) days of final approval, give Company notice of annexations and disannexations of territory by City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Company shall promptly initiate a process to reclassify affected customers newly located into or out of the City as the result of City's annexation or disannexation no later than sixty (60) days after receipt of notice from City. Company shall not be required to begin including payment for such newly annexed customers in the Franchise Fee payment until the first Franchise Fee payment due following the 60th day after Company receives notice of the annexation from City. In no event shall the Company be required to add premises for the purposes of calculating franchise payment prior to the earliest date that the same premises are added for purposes of collecting sales tax. Upon request from City, Company will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise fee payments.

E. *Atmos Energy Franchise Fee Recovery Tariff.*

(1) Atmos Energy may file with City a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this Ordinance.

(2) City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Atmos Energy's rates; (ii) if City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Atmos Energy's franchise fees is an issue, City will take an affirmative position supporting 100% recovery of such franchise fees by Atmos Energy and; (iii) in the event of an appeal of any such regulatory proceeding in which City has intervened, City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Atmos Energy.

(3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Atmos Energy.

F. *Lease of System Facilities Within Public Rights-of-Way.* Atmos Energy shall have the right to lease, license or otherwise grant to a party other than Atmos Energy the use of the System Facilities within the Public Rights-of-Way provided: (i) Atmos Energy first notifies City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through

the System Facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) Atmos Energy makes the franchise fee payment due on the revenues from such lease pursuant to Section 9 of this Ordinance. This authority to Lease the System Facilities within Public Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees, access line fees, or similar Public Right-of-Way user fees.

SECTION 10. EFFECT OF OTHER MUNICIPAL FRANCHISE ORDINANCE FEES ACCEPTED AND PAID BY COMPANY

A. If Company should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in the Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its Public Rights-of-Way in a manner that, if applied to City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Company to City pursuant to this Ordinance shall be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

B. City acknowledges that the exercise of this right is conditioned upon City's acceptance of all terms and conditions of the other municipal franchise *in toto*. City may request waiver of certain terms and Company may grant, in its reasonable discretion, such waiver.

SECTION 11. BOOKS AND RECORDS

A. Company agrees that at the time of each quarterly payment, Company shall also submit to City a statement showing its Gross Revenues for the preceding calendar quarter as defined in Section 2.H. City shall be entitled to treat such statement as though it were sworn and signed by an officer of Company.

B. City may, if it sees fit, upon reasonable notice to Company, have the books and records of Company examined by a representative of City to ascertain the correctness of the reports agreed to be filed herein. Company shall make available to the auditor such personnel and records as City may in its reasonable discretion request in order to complete such audit, and shall make no charge to City therefor. Company shall assist City in its review by providing all requested information no later than fifteen (15) days after receipt of a request. The cost of the audit shall be borne by City unless the audit discloses that Company has underpaid the franchise fee by 10% or more, in which case the reasonable costs of the audit shall be reimbursed to City by Company. If such an examination reveals that Company has underpaid City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section 9.C. Should Company determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Company regarding the existence of such overpayment, City shall review Company's claim and if said overpayment is confirmed, remit the amount of overpayment to Company.

C. If, after receiving reasonable notice from City of City's intent to perform an audit as provided herein, Company fails to provide data, documents, reports, or information required to be furnished hereunder to City, or fails to reasonably cooperate with City during an audit conducted under the terms hereunder, Company shall be liable for payment of a fee as set forth herein. City shall give Company written notice of its intent to impose a fee and shall provide Company with a period to cure its failure, such period not to exceed five (5) working days. If Company fails to cure the alleged failure within the prescribed time period, Company's alleged failure to comply shall be heard at a public meeting of the City Council. Company shall be given written notice of the public meeting no later than five (5) calendar days prior to the posting date of the agenda for the City Council meeting at which such failure is scheduled to be considered by the Council. The notice to Company shall include a list of the failures complained of. Company shall have an opportunity to address the Council at such public meeting. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of City that finds and determines a failure of Company to comply with the requirements of this Section, such failure may be treated as a material violation under Section 15.

SECTION 12. RESERVATION OF RIGHTS: GENERAL

A. City reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of Company's use of the Public Rights-of-Way to ensure the rendering of efficient public service, and the maintenance of Company's System in good repair throughout the term of this Ordinance.

B. The rights, privileges, and Franchise granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other Person for the purpose of furnishing gas within the City.

C. City expressly reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing, or selling gas to and for City and customers at locations within the City.

D. Nothing herein shall impair the right of City to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas, and other charges, to be charged by Company to residential consumers, commercial consumers, industrial consumers, or to any combination of such consumers, within the territorial limits of City as same now exists or as such limits may be extended from time to time hereafter.

SECTION 13. RIGHT TO INDEMNIFICATION, LEGAL DEFENSE AND TO BE HELD HARMLESS

A. In consideration of the granting of this Franchise, Company agrees to indemnify, defend and hold harmless City, its officers, agents, and employees (City and such other persons and entities being collectively referred to herein as “Indemnitees”), from and against all suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company’s intentional and/or negligent acts or omissions in connection with Company’s construction, reconstruction, maintenance, repair, use, operations, or dismantling of System or Company’s provision of service.

B. By entering into this Ordinance, City does not consent to suit, waive any governmental immunity available to City under Texas law or waive any of the defenses of the parties under Texas law.

C. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Company shall, upon notice from any of the Indemnitees, at Company’s sole cost and expense, resist and defend the same with legal counsel selected by Company; provided, however, that Company shall not admit liability in any such matter on behalf of the Indemnitees without their written consent and, provided further, that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Company. Company’s obligation to defend shall apply regardless of whether City is solely or concurrently negligent provided that Indemnitees may be held responsible for the cost of such defense paid for by Company. The Indemnitees shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 13. Nothing herein shall be deemed to prevent the Indemnitees at their election and at their own expense from cooperating with Company and participating in the defense of any litigation by their own counsel. If Company fails to retain defense counsel within seven (7) business days after receipt of Indemnitee’s written notice that Indemnitee is invoking its right to indemnification under this Ordinance, Indemnitees shall have the right to retain defense counsel on their own behalf, and Company shall be liable for all reasonable defense costs incurred by Indemnitees.

SECTION 14. INSURANCE

Company will maintain insurance in accordance with Section 70-169 of the Code of Ordinances, as amended or succeeded. Notwithstanding, such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an approved formal plan of self-insurance maintained by Company in accordance with sound accounting and risk-management practices. A certificate of insurance shall be provided to City. Company will require its self-insurance to respond to the same extent as if an insurance policy had been purchased naming City as an additional insured, and any excess coverage purchased solely for the purpose of insuring Company’s obligations under this Ordinance will name City as an additional insured up to the amounts required by City’s ordinance.

SECTION 15. TERMINATION

A. Right to Terminate. In addition to any rights set out elsewhere in this Ordinance, City reserves the right to terminate the Franchise and all rights and privileges pertaining thereto, in the event that Company violates any material provision of the Franchise.

B. Procedures for Termination.

(1) City may, at any time, terminate this Franchise for a continuing material violation by Company of any of the substantial terms hereof. In such event, City shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to Company at the address set forth in Section 22 hereof. Company shall have sixty (60) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's Franchise is subject to termination under the following provisions. Provided, however, that, if Company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Franchise will not be terminated.

(2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. Company shall be provided at least fifteen (15) days prior written notice of any public hearing concerning the termination of the Franchise. In addition, ten (10) days' notice by publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by Company.

(3) City, after full public hearing, and upon finding material violation or failure to comply, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.

(4) Nothing herein stated shall preclude Company from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction.

(5) Nothing herein stated shall prevent City from seeking to compel compliance by suit in any court of competent jurisdiction if Company fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Company to comply with said terms.

SECTION 16. RENEGOTIATION

If either City or Company requests renegotiation of any term of this Ordinance, Company and City agree to renegotiate in good faith revisions to any and all terms of this Ordinance. If the parties cannot come to agreement upon any provisions being renegotiated, then the existing provisions of this Ordinance will continue in effect for the remaining term of the Franchise.

SECTION 17. NO THIRD PARTY BENEFICIARIES

This Ordinance is made for the exclusive benefit of City and Company, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.

SECTION 18. SUCCESSORS AND ASSIGNS

A. The rights granted by this Ordinance inure to the benefit of Company. Company may, without consent by City, transfer or assign the rights granted by this Ordinance to an Affiliate of Company provided that such Affiliate assumes all obligations of Company hereunder and is bound to the same extent as Company hereunder, and has net capital and liquid assets reasonably equivalent to Company's as of the month immediately preceding the transfer or there are provided other guarantees or assurances of the transferee's or assignee's financial ability to perform this Ordinance reasonably acceptable to City. Company shall give City written notice thirty (30) days prior to such assignment.

B. City will have the right to approve the transfer or assignment of this Franchise except as provided in Section 18.A., provided that City may not unreasonably withhold or delay approval to a transfer or assignment of this Franchise. City shall not be obligated to approve any assignment if the assignee or transferee is materially weaker than Company. For the purpose of this Section 18.B., "materially weaker" means that the long term unsecured debt rating of the assignee or transferee is less than investment grade as rated by both Standard & Poor's Ratings Group, a division of McGraw Hill, Inc. or its successor ("S&P") and Moody's Investors Service, Inc. or its successor ("Moody's"). If the long term unsecured debt rating of the assignee or transferee is not rated by S&P and Moody's or, if rated, such rating is materially weaker than that of Company, City agrees to request and review such additional documents and information reasonably related to the transaction and the legal, financial and technical qualifications of the assignee or transferee, and that said approval shall not be withheld solely on the basis of such ratings, or the lack of such ratings. Any such assignment or transfer shall require that said assignee or transferee assume all obligations of Company to be bound to the same extent as Company hereunder. If within the first ninety (90) days after assignment or transfer to assignee or transferee, City identifies a failure to comply with a material provision of this Franchise, City shall have the right, after notice and opportunity for hearing before Council, to terminate this Franchise.

SECTION 19. COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

This Franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas, the Farmers Branch City Charter, as amended, and all other generally applicable ordinances of the City of Farmers Branch, not inconsistent herewith, including, but not limited to, ordinances regulating the use of Public Rights-of-Way.

SECTION 20. FORCE MAJEURE

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event either City or Company is unable to comply with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which such party is so prevented shall not be counted against such party for any reason. The term "force majeure" as used herein shall mean any cause not reasonably within the control of the party unable to comply with its obligation or undertaking hereunder and includes, but is not limited to, acts of God, strikes, lock-outs, wars, riots, orders or decrees of any lawfully constituted federal, state, or local body, contagions or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakage or accident to machinery or lines of pipe, inability to obtain or delay in obtaining rights-of-way, materials, supplies, or labor permits, temporary failures of gas supply, or necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this Ordinance.

SECTION 21. PREVIOUS ORDINANCES

When this Ordinance becomes effective, all gas franchise ordinances and parts of franchise ordinances applicable to Company or its predecessors in interest granted by the City of Farmers Branch, Texas, are hereby repealed; provided, however, such ordinances or parts of ordinances shall survive and remain in effect after the effective date of this Ordinance with respect to Company's obligation to pay City any fees due and payable by Company pursuant to such ordinances or parts of said ordinances, even if such payments are not due until after the expiration and/or termination of said ordinances or parts of ordinances.

SECTION 22. NOTICES

Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if: (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice:

CITY

City Manager
City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, Texas 75234

City Attorney
City of Farmers Branch
13000 William Dodson Parkway
Farmers Branch, Texas 75234

COMPANY

Manager of Public Affairs
Atmos Energy Corp.
Mid-Tex Division
3697 Mapleshade Lane
Plano, Texas 75075

SECTION 23. PARAGRAPH HEADINGS, CONSTRUCTION

The paragraph headings contained in this Ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this Ordinance and this Ordinance shall not be construed either more or less strongly against or for either party.

SECTION 24. SEVERABILITY

This Ordinance and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision, or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance. If any term or provision of this Ordinance is held to be illegal, invalid or unenforceable, the legality, validity or unenforceability of the remaining terms or provisions of this Ordinance shall not be affected thereby.

SECTION 25. NO WAIVER

Either City or Company shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

SECTION 26. ACCEPTANCE.

A. In order to accept the Franchise granted herein, Company must file with the City Secretary its written acceptance of this Ordinance within 60 days after the City provides written notice to Company of this Ordinance's final passage and approval by City (the "City Adoption Notice").

B. At 11:59 P.M. on December 31, 2036, all rights, franchises and privileges herein granted, unless they have already at that time ceased or been forfeited or extended by mutual agreement while a new franchise is being negotiated, shall at once cease and terminate; provided, however, this Ordinance and the franchise shall remain in effect after said time and date with respect to Company's obligation to pay City any fees due and payable by Company pursuant to this Ordinance, even if such payments are not due until after the expiration and/or termination of this Ordinance.

SECTION 27. EFFECTIVE DATE.

This Ordinance shall become effective on January 24, 2017.

**DULY PASSED BY THE CITY COUNCIL OF THE CITY OF FARMERS BRANCH,
TEXAS, ON THIS THE 24th DAY OF January, 2017.**

APPROVED:

Bob Phelps, Mayor

ATTEST:

Amy Piukana, City Secretary

APPROVED AS TO FORM

Peter G. Smith, City Attorney
(kbl:7/29/16:78052)