

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)
)
PETITION OF ATMOS ENERGY)
CORPORATION FOR APPROVAL)
OF NEGOTIATED FRANCHISE) **Docket No. 13-00024**
AGREEMENT WITH THE TOWN OF)
SMYRNA, RUTHERFORD COUNTY,)
TENNESSEE)

**NOTICE OF FILING
FRANCHISE ORDINANCE**

Pursuant to Tennessee Code Annotated § 65-4-107, Atmos Energy Corporation (“Atmos” or “Company”) has respectfully requested that the Tennessee Regulatory Authority approve a negotiated franchise agreement between Atmos and the Town of Smyrna, Tennessee.

1. In its Petition, Atmos made reference to a new franchise agreement, a copy of which was attached to its Petition as Exhibit 1.
2. The new franchise agreement has now been reviewed by the Town of Smyrna and passed on second reading on February 12, 2013.
3. Atmos now files the Franchise Ordinance, Ordinance No. 13-02, in support of its Petition For Approval of Franchise Agreement in this docket. The Ordinance and the Franchise remain subject to and contingent upon Authority approval.

Respectfully submitted,

NEAL & HARWELL, PLC

By: 

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Counsel for Atmos Energy Corporation

**TOWN OF SMYRNA, TENNESSEE
ORDINANCE NO. 13-02**

AN ORDINANCE GRANTING A NON-EXCLUSIVE FRANCHISE TO ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS TO CONSTRUCT, RECONSTRUCT, MAINTAIN AND OPERATE A SYSTEM FOR THE DISTRIBUTION OF NATURAL GAS AND FOR THE INSTALLATION AND MAINTENANCE OF MAINS, PIPES, PIPELINES, DISTRIBUTION LINES, AND OTHER EQUIPMENT NECESSARY OR INCIDENTAL TO DISTRIBUTION OF SAID GAS UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, ALLEYS, LANES AND OTHER PUBLIC GROUNDS OF A PORTION OF THE TOWN OF SMYRNA, RUTHERFORD COUNTY, TENNESSEE.

- WHEREAS,** the Town Council shall have the management and control of the town finances and all property of the corporation, real, personal, and mixed, and
- WHEREAS,** the Town Council shall have the power to grant to any person, firm, association or corporation (including the municipality) franchises for public utilities, telecommunications systems, and public services to be furnished both inside and outside the municipality and inhabitants therein; and.
- WHEREAS** franchises may be granted for a period of time to be fixed by the Town Council, but not to exceed twenty-five (25) years.

NOW THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF SMYRNA, RUTHERFORD COUNTY, TENNESSEE:

Article I

DEFINITIONS:

As used in this Agreement, the following words and phrases shall have the following meanings:

- (A) *"Agency"* refers to and is the Tennessee Regulatory Authority the state utility regulatory agency having jurisdiction over the rates, services and operations of Grantee within the State of Tennessee or other administrative or regulatory authority succeeding to the regulatory powers of the Agency.
- (B) *"Council" or "Town Council"* refers to and is the governing body of the Town of Smyrna.
- (C) *"Franchise"* shall mean the rights and privileges granted by the Grantor to Grantee under the terms and provisions of this franchise ordinance.
- (D) *"Franchise Area"* shall mean that area within the municipal boundaries of the Town of Smyrna in which Atmos Energy Corporation currently has lines and



customers (as shown more clearly in the areas colored lavender on the map attached hereto as Exhibit A) and such additional areas into which Atmos Energy Corporation is permitted, by written agreement with the Town of Smyrna, to expand its system and/or to provide service to customers.

- (E) *"Grantee"* shall mean Atmos Energy Corporation.
- (F) *"Grantor"* shall mean Smyrna, Tennessee.
- (G) *"Public Right-of-Way"* shall mean any street, highway, alley, avenue, boulevard, sidewalk, pedestrian/bicycle lane or trail, driveway, bridge, utility easement or any other public ways owned, dedicated by plat, occupied or used by the public and within Grantor's geographical limits or boundaries established by applicable law.
- (H) *"Revenues"* refer to and are those amounts of money which the Grantee receives from its customers within the Franchise Area for transportation charges on or the retail sale of gas under rates, temporary or permanent, authorized by the Agency and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. Revenues do not include miscellaneous service charges, including but not limited to turn-ons, meter sets, non sufficient funds, late fees and interest, which are related to but are not a part of the actual retail sale of gas.
- (I) *"System"* shall mean the system of works, pipes, pipelines, facilities, fixtures, apparatus, lines, machinery, equipment, structures, appliances, appurtenances or other infrastructure reasonably necessary for the storage, transportation, distribution or sale of natural, artificial or mixed gas to residential and commercial customers and the public generally, within the geographical limits or boundaries of the Grantor.
- (J) *"Town"* refers to and is the Town of Smyrna, Rutherford County, Tennessee, and includes all territory that currently is or may in the future be included within the boundaries of the Town of Smyrna.

Article II

GRANT OF FRANCHISE:

- (A) There is hereby created and granted unto Grantee a non-exclusive franchise to enter upon, acquire, construct, operate, maintain and repair in the Public Right-of-Way the

System, subject to the provisions of this Agreement. The franchise granted hereunder shall be extended to territories that are hereafter annexed by Grantor upon the same terms and conditions herein, subject to the approval of the Agency, if any such approval is required.

(B) The territory in which the franchise is hereby granted shall consist only of such areas and customers as are currently being served by the Grantee, and such additional areas and customers as have been or shall be agreed to by the Grantor and which are determined by the Town Council to be more convenient and economical for the Grantee to serve rather than by the Grantor through extension of its own gas system OR such areas brought into the Town by annexation and are already being served by the Grantee, which shall be governed by Article XI subject to the general annexation statutes of Tennessee. The Town Manager may agree to minor changes in the Franchise Area without Council approval.

(C) The franchise granted to Grantee by the Grantor shall not be exclusive and the Grantor reserves the right to operate a gas system within the Town or to grant a similar franchise to any other person or entity at any time. In the event the Grantor shall grant to another person or entity during the term hereof a franchise for a gas distribution system within the geographical boundaries or limits of Grantor similar to the one herein granted to Grantee, it is agreed that the terms of any such franchise agreement shall be no more favorable to such new additional grantee than those terms contained herein. Additionally, it is agreed that any such new/additional grantee shall have no right to use any portion of the System without Grantee's written consent.

Article III

TERM, EFFECTIVE DATE, AND ACCEPTANCE OF FRANCHISE:

(A) The initial term of this Franchise shall be through December 31, 2021; provided, this franchise and all rights and privileges herein provided shall be extended for two (2) successive periods of five (5) years each unless a notice of intent to renegotiate is given in writing by either party at least six (6) months before the end of such initial term, or before the end of the first extended term, as the case may be.

(B) The franchise created hereby shall become effective upon its final passage and approval by the Town, in accordance with applicable laws and regulations, and upon acceptance by the Grantee by written instrument within sixty (60) days of passage by the governing body, and filed with the Clerk of the Grantor, subject to the rights and powers of approval of the Agency, if any. If the Grantee does not, within sixty (60) days following passage

of this Ordinance, express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, the Grantee shall be deemed to have accepted this Ordinance and all of its terms and conditions.

(C) When this Franchise becomes effective, all previous ordinances of Town granting franchises for gas delivery purposes that were held by Grantee or Grantee's predecessor in interest shall be automatically canceled and annulled, and shall be of no further force and effect.

(D) On the expiration of this franchise, in the event the same is not renewed, or on the termination of any renewal of said franchise, or on termination of said franchise for any other reason, the System installed, constructed and operated hereunder shall, at the option of the Town become the property of the Town, upon payment to the Grantee, its successors and/or assigns, of the fair market value thereof. Grantor agrees that, at the time of such transfer of facilities, it shall assume Grantee's contractual and regulatory obligations maintained in connection with the system. If the Town does not exercise the option hereunder, then Grantee may exercise its rights under Article X (B).

Article IV

GRANTEE'S RIGHTS IN AND TO PUBLIC RIGHT-OF-WAY:

The Grantee shall have the right and privilege of constructing, erecting, laying, operating, maintaining, replacing, removing and/or repairing Grantee's System through, along, across and under the Public Right-of-Way within the Franchise Area, subject to the inherent police powers conferred upon or reserved unto the Grantor and the provisions of this Agreement.

Article V

OPERATION OF SYSTEM; EXCAVATION OF PUBLIC RIGHT-OF-WAY:

(A) The System shall at all times be installed, operated and maintained in good working condition as will enable the Grantee to furnish adequate and continuous service to all of its residential, commercial and industrial customers. The System shall be designed, installed, constructed and replaced in locations and at depths which comply with all applicable federal and state laws and regulations regarding minimum safety standards for design, construction, maintenance and operation of gas distribution systems.

(B) Grantee shall have the right to disturb, break, and excavate in the Public Right-of-Way as may be reasonable and necessary to provide the service authorized hereby. Except

in an emergency, the Grantee must notify the Town in advance of such action and where reasonably practicable, provide the Town with a plan or map of the proposed work, make application with the Town for approval of such work, and receive approval for same before commencing such work.

(C) Grantee will repair any damage caused solely by Grantee to any part of the Public Right-of-Way and will restore such property to substantially its condition immediately prior to such damage. If the Grantee fails in this regard, then on reasonable notice to Grantee, Grantor may complete such remedial work or repairs and charge the cost thereof to the Grantee.

(D) Grantee shall use reasonable care in conducting its work and activities in order to prevent injury to any person and unnecessary damage to any real or personal property. Whenever the work of the Grantee requires the excavation or opening of a Public Right-of-Way, the Grantee shall place necessary safety devices, lights, barriers, and warnings to properly notify persons of dangers from its work and shall in general comply with all federal, state, and local safety laws and regulations.

(E) Grantee shall, when reasonably practicable, install all pipelines underground at such depth, and perform all construction, maintenance and repair in such manner, so as to minimize interference with traffic or movement in the Public Right-of-Way and so as not to interfere with or damage the existing pavement, curbs, gutters, underground wires or cables, drainage, water or sewer improvements owned or controlled by the Grantor.

(F) Grantee shall at all times indemnify and hold harmless the Town from and against any and all lawful claims for injury to any person or property, including death, by reason of Grantee's operation of the system or its employees' failure to exercise due care and diligence in and about the installing, construction, and maintenance of said system, provided, however, that the Grantor shall have given reasonable notice to Grantee concerning any such claim and a reasonable opportunity to defend the same.

Article VI

MODIFICATION OR IMPROVEMENT OF PUBLIC RIGHT-OF-WAY BY GRANTOR:

(A) In the event that Grantor or any other entity acting on behalf of Grantor requests or demands that Grantee remove, move, modify, relocate, reconstruct or adjust any part of the system from their then-current locations within the Public Right-of-Way in connection with a public project or improvement, then Grantee shall relocate, at its expense, the system facilities

affected by such project or improvement. Grantee's obligations under this paragraph shall apply without regard to whether Grantee has acquired, or claims to have acquired, an easement or other property right with respect to such system facilities. The foregoing provisions of this paragraph shall not apply, and Grantee shall not be obligated to relocate system facilities, whenever any one or more of the following apply: (i) the system facilities are located on private property, or were located on private property prior to any land acquisition or condemnation connected with the public project or improvement; (ii) the system facilities are to be relocated in connection with sidewalk improvements (but excluding sidewalk improvements that are related to or associated with road widenings, the creation of new turn lanes, or the addition of acceleration/deceleration lanes); (iii) the system facilities are to be relocated in connection with a streetscape project or other project undertaken primarily for aesthetic purposes; and/or (iv) the system facilities are to be converted from an overhead configuration or installation to an underground configuration or installation.).

When it is necessary to relocate any of Grantee's facilities within the boundaries of Grantor, Grantor and Grantee shall work cooperatively to minimize costs, delays, and inconvenience to both parties while ensuring compliance with applicable laws and regulations. In addition, Grantor and Grantee shall communicate in a timely fashion to coordinate projects included in Grantor's five-year capital improvement plan, Grantor's short-term work program, or Grantor's annual budget in an effort to minimize relocation of Grantee's facilities. Such communication may include, but is not limited to, (i) both parties' participation in a local utility's coordinating council (or any successor organization) and (ii) both parties' use of the National Joint Utility Notification System (or any alternative comparable systems or successor to such system mutually acceptable to both parties).

Article VII

COMPENSATION FOR USE OF PUBLIC RIGHT-OF-WAY AND

CONSIDERATION FOR FRANCHISE:

(A) In consideration for the granting and exercise of the rights and privileges created hereunder, and in further consideration of the grant to the Franchisee of the right to make use of Public Right-of-Way, Grantee shall pay to the Grantor, during the entire life of the franchise, a sum equal to three percent (3%) of its Revenues as defined in Article I above. The fee prescribed herein shall be paid to the Grantor quarterly on or before the 30th day after the end of each calendar quarter after the effective date hereof, and the Grantee shall furnish to the Grantor quarterly a statement of Grantee's Revenues.

(B) Grantee may add a line-item surcharge to the monthly bills of each of its

customers located within the Town, which surcharge may be designated as a franchise fee, in an amount that is sufficient to recover the portion of the franchise fee paid by the Grantee to the Grantor that is attributable to the Revenue derived by Grantee from such customer.

(C) The franchise fee provided herein, together with any charges of the Grantor for water, sewage and garbage services provided by the Grantor to Grantee, and any applicable occupational license fees or sales, ad valorem or other taxes payable to the Grantor by the Grantee under applicable law, shall constitute the only amounts for which Grantee shall be obligated to pay to the Grantor and shall be in lieu of any and all other costs, levies, assessments, fees or other amounts, of any kind whatsoever, that the Grantor, currently or in the future, may charge Grantee or assess against Grantee's property. The franchise fee herein contemplated shall be uniformly and equally applied to all natural gas and electric utilities, of like services or any other natural gas service that compete with the Grantee, such that Grantee will be excused from collecting and paying franchise fees and/or taxes if Grantee's competitors are not also required to do so.

(D) The Grantor, through its duly authorized representative, shall have reasonable access to, and the right to inspect Grantee's books and records to the extent necessary to confirm the accuracy of the amount of franchise fee being paid to the Town.

Article VIII

SERVICE TO NEW AREAS:

If during the term of this franchise the boundaries of the Grantor are expanded, the Grantor will promptly notify Grantee in writing of any geographic areas annexed by the Grantor during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Grantee by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Grantee may reasonably require in ascertaining whether there exist any customers of Grantee receiving natural gas service in said annexed area. To the extent there are such customers therein, then the revenue of Grantee derived from the retail sale of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Grantee's billing cycle immediately following Franchisee's receipt of the Annexation Notice. The failure by the Grantor to advise Grantee in writing through proper Annexation Notice of any geographic areas which are annexed by the Grantor shall relieve Grantee from any obligation to remit any franchise fees to Grantor based upon revenues derived by Grantee from the retail sale of natural gas to customers within the annexed area prior to Grantor delivering an Annexation

Notice to Grantee in accordance with the terms hereof.

Article IX

VOLUNTARY SALE AND RIGHT OF FIRST REFUSAL

If at any time during the term of this Agreement, the Grantee shall receive a bona fide offer to purchase the system or any portion thereof it shall grant to the Grantor the right of first refusal to purchase the system on the same terms, which right must be exercised within sixty (60) days of written notice to the Grantor.

Article X

BREACH OF FRANCHISE; REMEDIES:

In the event of a breach by Grantee of any material provision hereof, the Grantor may terminate the franchise and rights granted to Grantee hereunder, provided, however, that such termination shall not be effective unless and until the procedures described below have been followed:

(A) Grantor must deliver to Grantee, by certified or registered mail, a written notice signed by the mayor or other duly authorized member of Grantor's governing body, attested by the Grantor's secretary, and sealed with the official seal of the Grantor. Such notice must (i) fairly and fully set forth in detail each of the alleged acts or omissions of Grantee that the Grantor contends constitutes a substantial breach of any material provision hereof, (ii) designate which of the terms and conditions hereof the Grantor contends Grantee breached, and (iii) specify the date, time, and place at which a public hearing will be held by the governing body of the Grantor for the purpose of determining whether the allegations contained in the notice did in fact occur, provided, however, that the date of such hearing may not be less than thirty (30) days after the date of such notice.

(B) Within thirty (30) days following the adjournment of the public hearing described in Subsection (A) above, the Grantor must deliver to Grantee, by certified or registered mail, a written notice signed by the mayor or other duly authorized member of Grantor's governing body, attested by the Grantor's secretary, and sealed with the official seal of the Grantor, setting forth (i) the acts and omissions of Grantee described in the first notice that the governing body of the Grantor determines to have in fact occurred and (ii) the specific terms and conditions hereof listed in the first notice that the governing body of the Grantor determines to have in fact been breached by such acts or omissions of Grantee.

(C) The Grantor must permit Grantee the opportunity to substantially correct all of the breaches hereof set forth in the written notice described in Subsection (B) above within sixty (60) days after Grantee's receipt of such notice.

Article XI

ADDITIONAL REQUIREMENTS; MISCELLANEOUS PROVISIONS:

(A) Grantee shall at all times indemnify and hold harmless the Grantor from and against any and all lawful claims for injury to any person or property by reason of Grantee's or its employees' failure to exercise reasonable care in installing, maintaining, and operating the System. Provided, however, that none of the provisions of this paragraph shall be applicable to the extent the Grantor, its officials, officers, employees, contractors, or agents, were negligent and such negligence was the sole or contributing factor in bringing about injury to any person or property. In such event, any liability shall be apportioned between the Grantor and the Grantee based upon the percentage of fault assigned to each by a court of competent jurisdiction.

(B) Subject to the Town's option under Article III (D), Grantee may remove all or any part of its System upon the expiration or termination of the franchise and rights granted hereby.

(C) Grantee may transfer or assign the franchise created by this agreement to any other person, proprietorship, partnership, firm or corporation with written notification to the Grantor.

(D) If any section, subsection or provision of this ordinance or any part thereof is for any reason found or held to be in conflict with any applicable statute or rule of law, or is otherwise held to be unenforceable, the invalidity of any such section, subsection or provision shall not affect any or all other remaining sections and provisions of this ordinance, which shall remain in full force and effect.

(E) This agreement shall extend to, be binding upon, and inure to the benefit of, the parties hereto, and their respective successors and assigns.

(F) To the extent that any other ordinances of the Grantor or portions thereof are in conflict or inconsistent with any of the terms or provisions hereof, then the terms of this Ordinance shall control.

(G) This Agreement shall be governed by Tennessee law.

(H) Notice hereunder shall be in writing and either hand-delivered or mailed by certified mail, return receipt requested, in the case of the Grantor, to the Town Manager, and in the case of Grantee to its local manager or chief of operations, at: Wayne Turner, 200 Noah

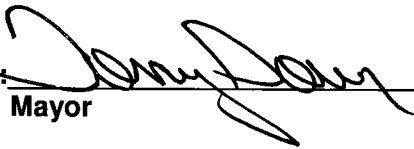
Drive, Franklin, TN 37064.

IN TESTIMONY WHEREOF, witness the signatures of the parties on this the day and date first above written.

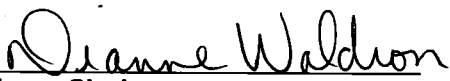
PASSED on first reading by the Town Council the 15 day of January, 2013.

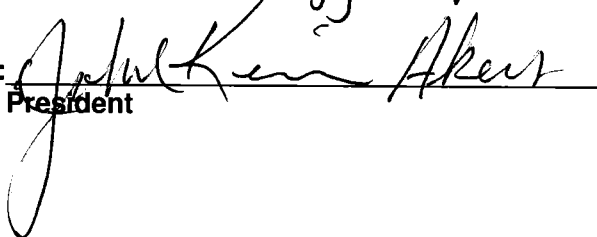
PASSED on second reading by the Town Council the 12 day of February, 2013.

TOWN OF SMYRNA, TENNESSEE

BY: 
Mayor

ATTEST:


Town Clerk

Atmos Energy Corporation
BY: 
President

Town's Mailing Address and Phone Number:

Town of Smyrna
315 South Lowry Street
Smyrna, TN 37167
615-459-2553