

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

IN RE:)
)
)
PETITION OF ATMOS ENERGY)
CORPORATION FOR APPROVAL)
OF NEGOTIATED FRANCHISE) **Docket No. 18- 00114**
AGREEMENT WITH THE CITY OF)
MORRISTOWN, TENNESSEE)

**PETITION FOR APPROVAL OF FRANCHISE
AGREEMENT WITH CITY OF MORRISTOWN, TENNESSEE**

Pursuant to Tennessee Code Annotated § 65-4-107, Atmos Energy Corporation (“Atmos Energy” or “Company”) respectfully requests that the Tennessee Public Utility Commission (“Commission”) approve a negotiated franchise agreement between Atmos Energy and the City of Morristown, Tennessee.

In support of this Petition, Atmos Energy respectfully submits the following:

1. Full name and address of the principal place of business of the company are:

Atmos Energy Corporation
5430 LBJ Freeway S 1800
Dallas, TX 75240

2. All correspondence and communications with respect to this Petition should be sent to the following:

Mark A. Martin
Vice President, Rates & Regulatory Affairs
KY/Mid-States Division
Atmos Energy Corporation
3275 Highland Pointe Dr.
Owensboro, KY 42303
(270) 685-8052 – Facsimile

A. Scott Ross, Esq.
Neal & Harwell, PLC
2000 One Nashville Place
150 Fourth Avenue, North
Nashville, TN 37219-2498
(615) 726-0573 – Facsimile

Douglas C. Walther, Esq.
Associate General Counsel
Atmos Energy Corporation
P. O. Box 650205
Dallas, TX 75265-0205
(972) 855-3080 – Facsimile

3. Atmos Energy serves approximately 132,000 residential, commercial, and industrial customers in Tennessee. Among the areas served is the City of Morristown, Hamblen County, Tennessee.

4. Atmos Energy currently provides natural gas service to the City of Morristown pursuant to a franchise agreement incorporated into City Ordinance No. 3022, dated January 4, 2000.

5. That franchise agreement will expire by its terms on January 3, 2020.

6. In anticipation of the expiration of the existing franchise agreement, the Company began negotiations with the City of Morristown for renewal of the franchise authority in the summer of 2018. These negotiations recently concluded and a new franchise agreement was submitted for first reading and incorporated as Ordinance No. 3618. The Ordinance passed first reading on September 18, 2018.

7. The Ordinance incorporating the new franchise agreement passed second and final reading by the City Council of Morristown on October 2, 2018. A true and correct copy of this franchise agreement incorporated as an Ordinance is attached hereto as Exhibit 1. In

accordance with the terms of the Ordinance, specifically Article III(B), the new franchise agreement will become effective upon final approval by the City Council of the City of Morristown, acceptance by Atmos Energy, and final approval by the Tennessee Public Utility Commission.

8. The new franchise agreement with the City of Morristown is necessary and proper for the public convenience and properly conserves the public interest. Pursuant to Tennessee Code Annotated § 65-4-105(e), the franchise fee will, insofar as practicable, be billed pro rata to the utility customers receiving service within the municipality.

WHEREFORE, Atmos Energy respectfully requests that the Commission approve the new franchise agreement with the City of Morristown attached hereto as Exhibit 1 pursuant to Tennessee Code Annotated § 65-4-107.

Respectfully submitted,

NEAL & HARWELL, PLC

By: 

A. Scott Ross, #15634
1201 Demonbreun Street, Suite 1000
Nashville, TN 37203
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Counsel for Atmos Energy Corporation

ORDINANCE NO. 3618

AN ORDINANCE GRANTING A FRANCHISE TO ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS FOR PERIOD OF TWENTY (20) YEARS TO ERECT, CONSTRUCT, RECONSTRUCT, MAINTAIN AND OPERATE A NATURAL GAS PLANT OR PLANTS FOR THE MANUFACTURING AND PROCESSING OF ANY AND ALL KINDS OF GAS AND 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 THE CITY OF MORRISTOWN, HAMBLLEN COUNTY, TENNESSEE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF MORRISTOWN, HAMBLLEN 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 Public Utility Commission 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 *"City Council"* refers to and is the governing body of the City of Morristown.
- (C) *"City"* refers to and is the City of Morristown, Hamblen County, Tennessee, and includes all territory as currently is or may in the future be included within the boundaries of the City of Morristown.
- (D) *"Force Majeure"* shall mean any and all causes beyond the control and without the fault or negligence of Grantee. Such causes shall include but not be limited to acts of God, acts of the public enemy, insurrections, terrorism, riots, labor disputes, boycotts, labor and material shortages, fires, explosions, flood, breakdowns of or damage to equipment of facilities, interruptions to transportation, embargoes, acts of military authorities, or other causes of a similar nature whether or not foreseen or foreseeable which wholly or partly prevent Grantee from performing one or more of its obligations hereunder.
- (E) *"Franchise"* shall mean the rights and privileges granted by the Grantor to Grantee under the terms and provisions of this franchise ordinance.

- (F) *"Grantee"* shall mean Atmos Energy Corporation.
- (G) *"Grantor"* shall mean City of Morristown, Hamblen County, Tennessee.
- (H) *"Public Right-of-Way"* shall mean the surface, the airspace above the surface and area below the surface of 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 the Grantor's geographical limits or boundaries established by applicable law.
- (I) *"Revenues"* refer to and are those amounts of money which the Grantee receives from its customers within the Grantor's geographical limits or boundaries for 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 on, 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.
- (J) *"System"* shall mean the system of works, pipes, pipelines, facilities, fixtures, apparatus, lines, machinery, equipment, structures, appliances, appurtenances, maintenance and/or office facility 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.

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 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 franchise granted to Grantee by the Grantor shall not be exclusive and the Grantor reserves the right 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 term of this Franchise shall be for a term of twenty (20) years.
- (B) The franchise created hereby shall become effective upon its final passage and approval by the City, in accordance with applicable laws and regulations, upon approval by the Agency, 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. 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) The terms and conditions of Ordinance No. 3022 are superseded by the terms and conditions hereof.
- (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 plant and facilities of the Grantee installed, constructed and operated hereunder shall, at the option of the City become the property of the City, upon payment to the Grantee, its successors and/or assigns, of a fair valuation thereof, such fair valuation to be determined by agreement between the City and the Grantee, its successors and/or assigns. 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 City does not exercise the option hereunder, then Grantee may exercise its rights under Article X (C).

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 a gas distribution system through, along, across and under the public right-of-way within the geographical boundaries or limits of the Grantor as it now exists or may hereafter be constructed or extended, 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.
- (C) Grantee will repair any damage caused solely by Grantee to any part of the Public Right-of-Way and will restore, as nearly as practicable, such property to substantially its condition immediately prior to such damage. In the event the Grantee shall fail to fulfill its obligation under this section, the Grantor, after giving the Grantee reasonable written notice, and failure of the Grantor to make such repairs or restoration, may make the necessary restoration or repairs itself and the Grantee shall be liable for the actual cost of same.
- (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.
- (E) Grantee shall, when reasonably practicable, install all pipelines underground at such depth and in such manner so as not to interfere with the existing pavement, curbs, gutters, underground wires or cables or water or sewer pipes owned or controlled by the Grantor.

Article VI

DEGRADATION/RESTORATION OF PUBLIC RIGHT-OF-WAY:

- (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 streets, alleys, and public places of Grantor 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 and shall not affect the amounts paid or to be paid to Grantee under the provisions of this Ordinance. Notwithstanding the foregoing

provisions of this paragraph, Grantee shall not be obligated to relocate, at its expense, any of the following: (i) system facilities that are located on private property at the time relocation is requested or demanded; (ii) system facilities that are relocated in connection with sidewalk improvements (unless such sidewalk improvements are related to or associated with road widenings, the creation of new turn lanes, or the addition of acceleration/deceleration lanes); (iii) streetscape projects or other projects undertaken primarily for aesthetic purposes; or (iv) system facilities that are converted from an overhead configuration or installation to an underground configuration or installation.

- (B) Grantor and Grantee recognize that both parties benefit from economic development within the boundaries of Grantor. Accordingly, 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 five percent (5%) of its Revenues. 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 geographical boundaries or limits of Grantor, 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 and at all times reasonable, shall have access to, and the right to inspect Grantee's books and records that are necessary to confirm the accuracy of the amount of franchise fee being paid to the City.

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
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.

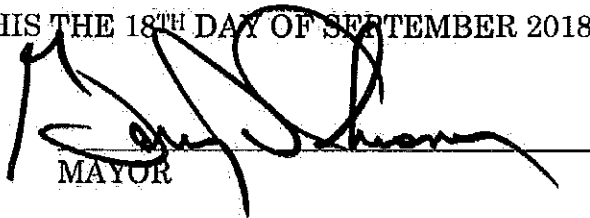
Article X
ADDITIONAL REQUIREMENTS: MISCELLANEOUS PROVISIONS

- (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) Grantee shall provide adequate service personnel and equipment to respond to customer service calls from locations within the City, and shall provide the local public safety agencies, including, but not limited to the City police and fire departments, Morristown Rescue Service and 911 Center, the Grantee's toll free emergency telephone number.
- (C) Subject to the City'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.
- (D) 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.
- (E) 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.
- (F) This agreement shall extend to, be binding upon, and inure to the benefit of, the parties hereto, and their respective successors and assigns.
- (G) 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.

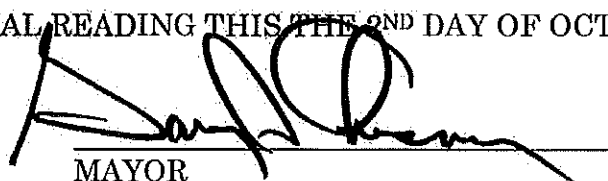
PASSED ON FIRST READING THIS THE 18TH DAY OF SEPTEMBER 2018.


MAYOR

ATTEST


CITY ADMINISTRATOR

PASSED ON SECOND AND FINAL READING THIS THE 2ND DAY OF OCTOBER 2018.


MAYOR

ATTEST:

A. N. [Signature]
CITY ADMINISTRATOR

ATMOS ENERGY CORPORATION

BY: Jay Kevin Dobbs [Signature]
Jay Kevin Dobbs, President
Kentucky/Mid-States Division

City's Mailing Address and Phone Number:

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