

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE

IN RE:)
)
PETITION OF ATMOS ENERGY)
CORPORATION FOR APPROVAL)
OF NEGOTIATED FRANCHISE) Docket No. 20- 00045
AGREEMENT WITH)
KINGSPORT, TENNESSEE)

PETITION FOR APPROVAL OF FRANCHISE
AGREEMENT WITH KINGSPORT, 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 Kingsport, 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.
Erik C. Lybeck, Esq.
Neal & Harwell, PLC
1201 Demonbreun Street, Ste. 1000
Nashville, TN 37203
(615) 726-0573 – Facsimile
sross@nealharwell.com
elybeck@nealharwell.com

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 Kingsport, Tennessee.

4. Atmos Energy currently provides natural gas service to the City of Kingsport pursuant to a franchise agreement incorporated in Ordinance No. 4742.

5. That franchise agreement expires by its terms on March 21, 2020. Pursuant to Tennessee Code Annotated § 65-4-107(b), this franchise shall remain in effect until approval of a subsequent privilege or franchise by the Commission.

6. In anticipation of the expiration of the existing franchise agreement, the Company began negotiations with the City of Kingsport for renewal of the franchise authority in the fall of 2019. These negotiations recently concluded and an ordinance to reenact the existing franchise and amend the term of the existing franchise agreement for an additional twenty (20) years was passed on February 18, 2020, as set forth in Ordinance No. 6849. A true and correct copy of this Ordinance extending the existing franchise agreement is attached hereto as Exhibit 1. A copy of the existing franchise, Ordinance No. 4742, is also included in Exhibit 1.

7. The Ordinance incorporating the franchise agreement was passed on second and final reading by the City of Kingsport on February 18, 2020, which constituted final approval by the City of Kingsport. In accordance with the terms of the Ordinance the franchise agreement will become effective upon final approval by the Tennessee Public Utility Commission.

8. The new franchise agreement with the City of Kingsport 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 franchise agreement with the City of Kingsport attached hereto as Exhibit 1 pursuant to Tennessee Code Annotated § 65-4-107.

Respectfully submitted,

NEAL & HARWELL, PLC

By: 

A. Scott Ross, #15634

Erik C. Lybeck, #35233

1201 Demonbreun Street, Ste. 1000

Nashville, TN 37203

(615) 244-1713 – Telephone

(615) 726-0573 – Facsimile

sross@nealharwell.com

elybeck@nealharwell.com

Counsel for Atmos Energy Corporation

EXHIBIT 1

ORDINANCE NO. 6849

AN ORDINANCE TO REENACT ORDINANCE NO. 4742, ATMOS ENERGY CORPORATION FRANCHISE AGREEMENT AND TO AMEND THE TERM FOR AN ADDITIONAL TWENTY (20) YEARS

WHEREAS, on March 21, 2000, the City of Kingsport and Atmos Energy entered into a Franchise Agreement; and

WHEREAS, the Agreement set forth a term of twenty (20) years; and

WHEREAS, the term expires at the end of March 2020; and

WHEREAS, the parties agree to an extension of the Agreement; and

WHEREAS, the Board of Mayor and Aldermen believe an extension to be in the best interest of the City of Kingsport.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF KINGSPORT as follows:

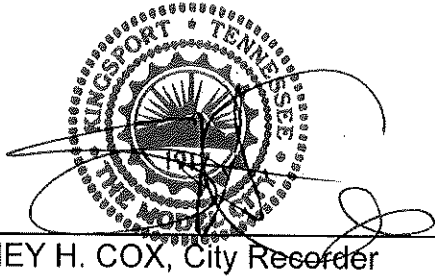
SECTION I. That Ordinance No. 4742 granting a Franchise Agreement to Atmos Energy, a copy of which is attached hereto as Exhibit A, is reenacted except Section II of Ordinance No. 4742 is amended by adding at the end of Section II: Term the following language:

Grant & Term. Following the initial twenty-year term, this Ordinance shall continue in force from March 31, 2020, for a twenty (20) year period unless such franchise is terminated sooner pursuant to Section XXII hereof.

SECTION II. That this ordinance shall take effect from and after the date of its passage as the law directs, the public welfare of the City of Kingsport, Tennessee requiring it.

(Signature blocks on following page]

ATTEST:



By: SIDNEY H. COX, City Recorder

CITY OF KINGSPORT, TENNESSEE:

By: PATRICK W. SHULL, Mayor

Approved as to Form:

J. Michael Billingsley
J. MICHAEL BILLINGSLEY, City Attorney

ATMOS ENERGY CORPORATION

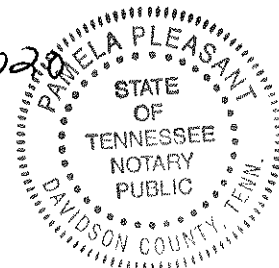
By: Jay Kevin Dobbs
Jay Kevin Dobbs, President
Kentucky/Mid-States Division

Date: 3/2/20

PASSED ON 1ST READING: February 4, 2020

PASSED ON 2ND READING: February 18, 2020

Pamela Pleasant
Notary Public State of Tennessee
County of Williamson
Notary Commission Expires March 3, 2020



ORDINANCE NO. 4742

AN ORDINANCE GRANTING TO UNITED CITIES GAS COMPANY, A DIVISION OF ATMOS ENERGY CORPORATION, ITS SUCCESSORS AND ASSIGNS A FRANCHISE TO CONSTRUCT, MAINTAIN AND OPERATE A SYSTEM OF GAS MAINS, SERVICE PIPES AND OTHER NECESSARY EQUIPMENT AND FACILITIES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING GAS IN, UPON, ACROSS, ALONG AND UNDER THE HIGHWAYS, STREETS, AVENUES, ROADS, COURTS, ALLEYS, LANES, WAYS, UTILITY EASEMENTS, PARKWAYS AND PUBLIC GROUNDS OF THE CITY OF KINGSPORT, TENNESSEE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE CITY OF KINGSPORT, as follows:

SECTION I: DEFINITIONS.

That for the purposes of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used 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) Board of Mayor and Aldermen – the Board of Mayor and Aldermen of the City of Kingsport, Tennessee.
- b) City – the City of Kingsport, Tennessee, and its respective successors and assigns.
- c) City Manager – the City Manager of the City of Kingsport, Tennessee as duly appointed pursuant to Charter. The term "City Manager" also includes his designee.
- d) Company – United Cities Gas Company, a division of Atmos Energy Corporation, a corporation organized and existing under the laws of the State of Texas, and the Commonwealth of Virginia, and its lawful successors or assigns.
- e) Construction – the installation, laying, erection, renewal, repair, replacement, extension or removal of a gas system and any such activity as may be necessary to construct, maintain and operate a gas system.

- f) Gas – natural gas and/or commingled gas and/or substitute therefore.
- g) Gas System – any pipe, pipeline, tube, main, duct conduit, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, appliance, attachment, appurtenance and any other personal property constructed, maintained, or operated by United Cities Gas Company as may be necessary to import, transport, distribute and sell natural gas.
- h) Streets – the public streets, highways, avenues, roads, courts, alleys, lanes, ways, utility easements, parkways, public rights-of-way, or other public grounds, held or controlled by the City, in the City as they now exist or as they may be established at any time during the term of this franchise in the City, but only to the extent of the City's right, title, interest or authority to grant a license or franchise to occupy and use such streets and easements for the construction and operation of a public utility system.
- i) T.R.A. – the Tennessee Regulatory Authority or any successor state agency having jurisdiction over the Company.

SECTION II: TERM.

That there is hereby granted to United Cities Gas Company, for a period of twenty (20) years from and after approval of this ordinance, and the filing of an acceptance by the Company, the nonexclusive right, authority, privilege, and franchise to construct, maintain and operate a Gas System to import, transport, distribute and sell Gas:

- (1) to the City and inhabitants, institutions and businesses thereof for domestic, commercial, industrial and institutional uses and any such other purposes for which it is or may hereafter be used; and
- (2) through the City to inhabitants, institutions and businesses outside the corporate boundaries for domestic, commercial, industrial and institutional uses and any such other purposes for which it is or may hereafter be used.

SECTION III: MODIFICATION.

That this ordinance may be modified in the future by mutual written agreement of the parties and approval by the T.R.A. and is subject to any ordinance that may be adopted by the City establishing reasonable uniform rules, procedures and obligations concerning the use of Streets for construction and operation of utility systems.

SECTION IV: COMPLIANCE WITH APPLICABLE LAWS.

That the Gas System shall be constructed, maintained and operated, in good and safe condition, in accordance with standard engineering practices, and in accordance with any applicable Federal Laws and Regulations, Statutes of the State of Tennessee, the Rules and Regulations of the T.R.A., and Ordinances of the City which do not conflict with any such federal or state laws, rule or regulation, as such practices and laws, statutes, ordinances, rules and regulations now exist or as they may be from time to time amended, changed or modified.

SECTION V: STANDARD OF CARE.

That the Company shall at all times employ a high standard of care and shall install and maintain and use approved methods and devices for preventing failure or accidents which are likely to cause damages, injuries or nuisances to the public.

SECTION VI: LOCATION OF FACILITIES.

(A) That the City reserves the right, by ordinance or resolution of the Board of Mayor and Aldermen, or otherwise through proper representatives of the City, to designate specifically the location of the Gas System of the Company with references to municipal facilities, such as sewer and water mains, drainage facilities, fiber optic cable, signal poles and lines and similar services, other facilities, such as public telephone utilities, public electric utilities, public cable television utilities, and railway communication and power lines, in such a manner as to protect the public safety and public and private property and to facilitate the creation of a convenient, attractive and harmonious community. Failure by the City to so designate does not relieve the Company of its responsibilities in matters of public safety as provided in this Ordinance. The Company shall construct, maintain and locate its Gas System so as not to unreasonably interfere with the construction, location and maintenance of sewer, water, drainage, electrical, signal and fiber optic facilities owned or operated by the City.

(B) The rights and privileges granted by this franchise shall not be in preference or hindrance to the rights of the City and any other lawful governmental authorities having jurisdiction to perform or carry out any public works or public improvements within the Streets. Should the Gas System of the Company interfere with the construction, maintenance or repair of such public works or improvements, the Company, after reasonable advance notice from the City, at the Company's sole expense, shall protect or relocate the Gas System or any applicable part thereof, as directed by the City or other governmental authorities having jurisdiction.

SECTION VII: USE OF PUBLIC WAYS.

(A) That the Company, in any opening it shall make in the Streets of the City, shall be subject to the provisions of this Ordinance and to all applicable ordinances, codes and regulations of the City, which are uniformly applied to all utilities.¹ Specifically, in addition to the requirements contained herein, except in the cases of emergencies, the Company shall at all times comply with Section 94-66 et seq. of the Code of Ordinances, City of Kingsport, 1998, as amended, with respect to any opening it shall make in the Streets of the City. The proposed location of any Gas System to be constructed by the Company in, upon, across, under or over the Streets of the City shall not unreasonably interfere with:

- (1) the public safety or the convenience of persons using the Streets, or
- (2) the use of Streets for purpose of travel, or
- (3) with any use or contemplated use of Streets by the City either above or below the surface of the Street for which plans have been prepared or for which plans are in the course of preparation, which plans have been authorized by the City, and of which the Company has been previously notified by the City.
- (4) personal property lawfully in, upon, along, across, under or over the Streets.

(B) The Gas System's location, construction and maintenance shall not unduly burden regular maintenance procedures of the City and shall be coordinated with the City's annual paving program through the City Manager.

(C) The City may require the Company to obtain a written permit whenever it becomes necessary for the Company to excavate in the Streets in order to install, construct, maintain or extend the Gas System. Such permits are applicable to any and all types of excavations in the Streets, and the Board of Mayor and Aldermen may, by resolution, establish a fee for each excavation made in a Street, provided it is uniformly applied to all persons or entities excavating in the street. Such permits may require the Company to (i) submit a drawing showing the proposed location of the particular part or point of the Streets where construction or excavation is to be conducted, (ii) identify the time and manner of the construction or excavation, (iii) identify the length of time in which such permit shall authorize such work to be done and the hours of each day during which such work shall be undertaken. Exceptions to the requirements for a written permit may be allowed in cases of

¹ The City will uniformly apply all applicable ordinances, codes and/or regulations to all utilities. The only possible exception is the Electric Company due to its 100-year franchise agreement.

emergencies involving public safety or restoration of service.

Whether or not the City requires the Company to obtain a permit, the Company shall submit to the City Manager a drawing of all proposed street cuts prior to performing the work except in the case of an emergency excavation.

In the case of emergency excavations made in the Streets without permit, the Company shall make a report of each such excavation to the City within two (2) working days and pay such fee as may be established by the Board of Mayor and Aldermen for excavations in the Streets. Any permit applications and inspections related to repair of excavations shall be promptly acted upon by the City so as not to unreasonably delay the Company in discharging its public service obligation. Any uniform fees² for permits or inspections charged by the City shall be based on the City's costs of administering the program of issuing permits and conducting inspections for all street cuts in the City. The City is exempt from paying any such fees for work it performs in the streets.

The Company shall use its best efforts to not interfere with or injure any utility or any other public improvement which the City has heretofore made or may hereinafter make in, upon, across, along or under any streets and shall not unnecessarily obstruct or impede such streets of the City.

(D) The permit shall become null and void if no significant construction or progress is made within six (6) months after issuance of the permit.

(E) The Company shall promptly remove or correct any obstruction, damage or defect in any Street which was caused by the Company in the installation, operation, maintenance or extension of the Gas System. Any such obstruction, damage, or defect which is not promptly removed, repaired or corrected by the Company after proper notice to do so, given by the City to the Company, may be removed or corrected by the City, and the cost thereof shall be charged against the Company. Any expense, cost, or damages incurred for repair, relocation, or replacement to City water, sanitary sewer, storm sewer, storm drainage, communication facilities or other property resulting from construction, operation, maintenance or extension of the Gas System shall be borne by the Company and any and all expense and cost incurred in connection therewith by the City shall be fully reimbursed by the Company to the City.

(F) If weather or other conditions do not permit the complete restoration required by this Section, the Company shall temporarily restore the affected Streets or property. Such temporary restoration shall be at the Company's sole expense and the Company shall promptly undertake and complete the required permanent restoration when

² See Footnote 1.

the weather or other conditions no longer prevent such permanent restoration.

(G) The Company shall not open, disturb or obstruct, at any one time, any more of the Streets than reasonably may be necessary to enable it to proceed in laying or repairing the Gas System. Neither shall the Company permit any Street so opened, disturbed or obstructed by it in the installation, construction, repair or extension of its Gas System to remain open or the Streets disturbed or obstructed for a longer period of time than reasonably shall be necessary.

(H) Whenever the City shall widen, reconstruct, realign, pave or repave, or otherwise work on any Streets, or shall change the grade or line of any Streets, or shall construct or reconstruct any water, sanitary sewer, storm sewer, drainage or communications facility of the City, it shall be the duty of the Company at the Company's cost and expense to move, alter or relocate its Gas System or any part thereof as reasonably requested by the City. Upon written notice by the City Manager of the City's intention to perform work as specified above, the Company shall within a reasonable period of time accomplish its obligation in accordance with and to conform to the plans of the City for such construction, reconstruction or improvements. Should the Company fail, refuse or neglect to comply with such notice, the Gas System or any part thereof may be removed, altered or relocated by the City, the cost of which shall be paid by the Company, and the City shall not be liable to the Company for any damages resulting from such removal, alteration or relocation. In cases where the Company believes the costs of relocation by the Company would be cost prohibitive and an alternative location of the City's facilities would be feasible, the City and the Company may jointly evaluate whether the Company could reasonably pay any additional costs to the City for the alternative City facility location in lieu of relocation the Company's facilities.

(I) All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of the Gas System must be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.

(J) The Company shall give all required notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the construction being performed.

(K) Inspections during construction may be made by the City.

(L) Construction and repair shall be performed with the least practical hindrance of the Streets for the purpose of travel or any other public purpose. After any work has commenced by the Company, in, upon, along, across, under, or over the Streets of the City, the same shall be continued in good faith and with due diligence until completed. If, as determined by the City Manager, the Company refuses or fails to proceed in good faith, or

any separable part thereof, with such diligence as will ensure its completion within a reasonable period of time, the City Manager will issue notice to the Company of his findings and instructions and, if after three (3) days of receipt of such notice, the Company has not commenced to re-execute the work, the City Manager will cause the construction required in said notice to be performed and charge the Company the entire cost and expense plus ten (10%) percent of the construction.

(M) When any construction opening or excavation, disturbance, cut or damage is made in, along, upon, across, under or over the Streets for any purpose whatsoever by the Company, any portion of said streets affected or damaged thereby shall be restored, as promptly as possible to as useful, safe, durable, in as good condition as existed prior to making of such opening or such excavation or such damage. If the company is unable to comply with the provisions of this section by reason of strikes, riots, acts of God, or acts of public enemies or other factors beyond its control, restorative work of a temporary nature allowing for such requirements as trench and backfill consolidation and fine grading and vegetative stabilization will be performed. The temporary restorative work shall be accomplished immediately in accordance with best acceptable construction procedures and shall be continuously maintained in a useful and safe condition pending permanent restoration, as per detail attached as Exhibit 1. Where a cut or disturbance is made in a section of sidewalk rather than replacing only the area actually cut, the Company shall replace the full width of the existing sidewalk as determined by the City Manager and the full length of the section or sections cut, a section being defined as that area marked by expansion joints or scoring. Where a cut or disturbance is made by the Company in a section of pavement, rather than repaving only the actual area cut the Company shall, if requested by the City Manager, repave the area between the street cuts when there are two or more street cuts made by the Company within 20' of each other. The width of the repavement shall correspond to the width of the street cut made by the Company. If the Company fails to timely perform said restoration and repair within a reasonable time, the City Manager may issue notice to the Company of his findings and instructions and, if after three (3) days the Company has not commenced the restoration and/or repair, the City Manager will cause the work required in said notice to be done and performed and charge the Company the entire cost and expense of restoration or repair plus ten (10%) percent.

(N) After the work of restoring such portion of the Street has been completed as provided herein, the Company shall keep such portion of such Street repaired or restored in as useful, safe, durable, and good condition as it existed prior to the making of such opening, excavation or damage, ordinary wear and tear excepted, for a period of eighteen (18) months from the completion of repair or restoration, if the City Manager determines that such portion of the Street was affected or damaged by the work of the Company.

(O) When Streets are opened, excavated, disturbed, obstructed or any other construction activity is required in the Streets by the Company, said Company, or other person acting on its behalf, shall place and maintain all necessary safety devices, barriers,

lights, and warnings to properly notify all persons of any dangers resulting from such construction entrances, and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting the Street and shall comply with all federal, state and local laws and regulations, including the Manual of Uniform Traffic Control Devices flagging requirements, the Manual for Streets and Highways, as approved by the Federal Highway Administrator and as may be amended from time to time shall be the standard used in determining the necessary placement of such devices, barrier, lights and warnings.

(P) The Company shall provide the City with a master set "as built" drawings and/or maps in an electronic form agreed to by City and the Company certifying the location of all its underground Gas Systems within the City. To the extent City and the Company cannot agree on an appropriate electronic form for the above referenced map or maps, the Company agrees to provide City with such information in hard copy or paper format. The Company shall also provide the City with a list of Streets along which its above ground Gas System is located. The Company shall provide updated maps in accordance with this Section on an annual basis if changes have occurred. The Company also agrees to cooperate with and participate in Tennessee One Call. On at least an annual basis the Company shall meet with the City Manager to discuss its plans for construction and/or maintenance of its gas system for the following year.

SECTION VIII: MISCELLANEOUS CONSTRUCTION PRACTICES.

(A) Any pipe, pipeline, tube, main, service, conduit, duct or other structure laid, constructed, erected, or installed pursuant to the provisions of this franchise, or any tunnel or bore dug or made in the Street in connection with the laying, construction, erection, or installation of the Gas System shall be not less than thirty (30) inches below the surface of the Street when such installation is under three (3) inches or over in diameter and shall not be less than twenty-four (24) inches deep when such installation is under three (3) inches in diameter and measured in each instance from the established grade of the nearest point to the property, tunnel or bore as the case may be.

(B) Where such depths are impractical due to extraordinary circumstances, the Company shall secure the approval of the City Manager, as to the suitable depth or location of said property, tunnel or bore and the same shall be placed in conformity with such approved location or depth, and in a manner reasonably satisfactory to the City Manager.

(C) All manholes, vaults, traps, catch basins or other structures shall be so capped and covered as to be flush with the surface of the Street, and shall not interfere in any way with the use of the Streets for the purpose of travel.

(D) The Company shall not lay, construct, erect, or install in the Streets any vent pipe from any vault, manhole or other structure of the Company except in the manner and

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at the location prescribed or approved by the City Manager, and only in accordance with sound engineering practices.

(E) Not more than one (1) main pipeline shall be laid, constructed, erected or installed in any Street, except where extraordinary circumstances exist making it necessary or in the best interest of the City and its inhabitants, to lay, construct, erect, or install more than one (1) main pipeline in any Street.

SECTION IX: SYSTEM MODIFICATION

If, during the term of this franchise, it becomes necessary or expedient for the City to change the course, grade, width, or location, or improve in any way any Streets, including the laying of any sewer, storm drain, conduit, water or other pipes, in which the Company has any Gas System which, in the opinion of the City Manager, will interfere with such changes on the part of the City, it is agreed the Company will, at its own expense, within twenty (20) days after written notice from the City Manager and request to do so, begin the work of completing any and all things necessary to affect such change in position or location in conformity with such written instructions. It is further agreed that the Company will lend necessary and related support thereof to the City while such work is being completed or performed. Work by the Company shall be done in such a manner as to not impede the progress of the changes being made by the City; provided, however, that this section shall not be interpreted to deny the Company reimbursement in its rate base as provided by State statute.

SECTION X: UNDERGROUND INSTALLATION.

The City reserves the right by ordinance at any time during the term of this franchise to require the Company at its own cost and expense to remove any or all of its mains and service lines above the surface of the streets and to place and locate the same below the surface of the streets whenever such right, in the reasonable opinion of the City Manager, should be exercised by the City. However, this right does not include, above ground pressure regulating, metering or other equipment which is not customarily installed below ground.

SECTION XI: REVIEW BY BOARD.

If the Company is dissatisfied with any determination of the City Manager permitted by the foregoing sections thereof, it may petition the Board of Mayor and Aldermen within ten (10) days after such determination to review the same, which review shall be taken up by the Board of Mayor and Aldermen in the normal course of business.

SECTION XII: CITY'S RIGHT TO CONSTRUCT.

The City reserves the right to lay, construct, erect, install, use, operate or maintain below surface or above the surface improvements of any type or description in, upon, along, across, under or over the Streets. If the necessary location for such improvements unreasonably interfere with any facility or equipment of the Company, then the Company, at its own cost and expense, shall begin the work of changing the location of all facilities and equipment conflicting or interfering with the improvements to a location in, upon, along, across, under or over the Streets with the location approved by the City Manager. The work shall commence within twenty (20) days after written notice from the City Manager requesting the Company relocate its facilities or equipment, and continue the work to completion with reasonable diligence and at its own cost and expense.

SECTION XIII: ABANDONMENT OF FACILITIES.

Upon abandonment of any of the facilities or equipment of the Company located above or below the surface of the Streets, the Company shall notify the City Manager in writing of such abandonment within a reasonable time thereafter and if such abandoned facilities or equipment will then interfere with the use of the Streets by the City, the City Manager shall give written notice thereof to the Company and the Company shall commence to remove the same within twenty (20) days following the date of the written notice and continue the work to completion with reasonable diligence and at its own cost and expense.

SECTION XIV: CITY RESERVATION OF RIGHTS.

All rights and privileges granted hereby are subject to the lawful exercise of the police power of the City to adopt and enforce local laws, rules and regulations necessary to the health, safety and general welfare of the public. Expressly reserved to the City is the right to adopt such additional ordinances and regulations as are necessary for the lawful exercise of its police power for the benefit and safety of the public. Further the City hereby reserves:

- (1) The right to grade, widen, relocate, sewer, pave, macadamize, lay conduits and pipe and to install manholes, poles or other structures therein, or to alter, repair or otherwise provide for the making of local improvements in the Street;
- (2) The right to make and enforce all such local police, sanitary or other regulations by ordinance in the exercise of its police power;
- (3) The right to make and provide for the making of local improvements by special assessment.

The enumeration herein of specific rights reserved shall not be taken as exclusive, or as limiting the reservation made herein.

SECTION XV: INSURANCE.

The Company hereby agrees, upon official request of the City, to furnish to the City evidence of insurance on such amounts as may be reasonably necessary to protect the City. However, the coverage shall, at a minimum, include Workers' Compensation insurance covering the Company's statutory obligation under the laws of the State of Tennessee and Employer's Liability insurance for all its employees engaged in work under the franchise. Minimum limits of liability for Employer's Liability shall be \$100,000 bodily injury each occurrence; \$500,000 bodily injury by disease (policy limit); and \$100,000 bodily injury by disease (each employee).

SECTION XVI: HAZARDOUS WASTE.

The Company shall not transport, dispose of or release any hazardous waste within the Streets. If utilizing any hazardous material in the ordinary course of its business, the Company shall comply with all federal, state, and local laws, rules, regulations, and ordinances controlling air, water, noise, solid wastes, and other pollution, and relating to the storage, transport, release, or disposal of hazardous material, substances or waste. Regardless of the City's acquiescence, the Company shall indemnify and hold City, its officers, agents, employees and volunteers harmless from all costs, claims, damages, causes of action, liabilities, fines or penalties, including reasonable attorney's fees, resulting from the Company's, its agents, assigns, or violation of this paragraph and agrees to reimburse City for all costs and expenses incurred by City in eliminating or remedying such violations, including all remediation and clean up costs. This provision shall survive the expiration, revocation or termination of this franchise.

SECTION XVII: INDEMNIFICATION.

The Company shall at all times defend, indemnify and hold harmless the City and any of the City's representatives from and against all loss sustained by the City on account of any suit, judgment, execution, claim or demand whatsoever resulting from the failure of the Company or its employees to exercise due care and diligence in the construction, operation, and maintenance of its Gas System in the City provided the Company shall have been notified in writing of any claim against the City on account thereof and shall have been given ample opportunity to defend same. The Company shall indemnify, defend and hold harmless the City from any and all demands for fees, claims, suits, actions, causes of action, or judgments based on the alleged infringement or violation of any patent, invention, article, arrangement, or other apparatus that may be used in the performance of any work or activity arising out of the use of any Gas System or the provision of Gas System Service.

The right of indemnification shall include and extend to reasonable attorney fees and trial preparation expenses and other litigation expenses reasonably incurred in defending a claim arising from the operation of the Gas System by the Company, whether or not the claim be proved to be without merit. This provision shall survive the expiration, revocation or termination of this franchise.

SECTION XVIII: FRANCHISE FEE.

The Company and the City acknowledge that the City has the right to establish a franchise fee and require the Company to pay compensation to the City for use of the Streets for construction, maintenance and operation of a Gas System. The City acknowledges that the Company competes with East Tennessee Natural Gas (ETNG) in providing gas to industrial customers and that the City does not impose a franchise fee on ETNG at this time. The City further acknowledges that if a franchise fee is imposed on the Company which must be passed on to all of the Company's customers, the Company will be at an economic disadvantage with respect to its industrial customers. Accordingly, any franchise fee which may be imposed on the Company by the City shall be structured so as to not apply to the Company's industrial customers. Any subsequently imposed franchise fee must be approved by the T.R.A. If the T.R.A. refuses to approve a franchise fee which is not uniformly applied to all of the Company's customers, then the ordinance and/or resolution imposing the fee shall be void and of no force or effect. The City also has the option of imposing a uniform franchise fee applicable to all of the Company's customers, provided all privately owned suppliers of natural gas within the corporate limits of the City, including without limitation ETNG, are required to pay an identical franchise fee. Any such franchise fee shall be based upon a percentage of the Company's gross revenues derived from the retail sale of natural gas within the corporate limits of the City; however, the percentage shall not exceed the highest franchise fee percentage then in effect under any other franchise of the Company in the State of Tennessee.

Any franchise fee subsequently established hereunder may be renegotiated with the Company no earlier than every five (5) years following the date of adoption of such franchise fee. Any franchise fee established by the City will be passed directly to customers of the Company pursuant to state law and shall be reflected as a separate line item on the customers' gas bills.

SECTION XIX: TRANSFER OF ASSETS.

(A) In the event the Company desires to sell or transfer the entire assets of the Gas System which is the subject of this ordinance, then the Company must offer to the City the opportunity to buy those assets located and situated in the City upon the same terms as being offered to some other party. A statutory merger, consolidation, recapitalization or sale or transfer of the common stock of the Company does not constitute a sale or transfer

of assets for purposes of this section. The City will have sixty (60) days to accept the offer and an additional sixty (60) days to close said transaction, in the event the City elects to exercise the option to purchase.

(B) In the event the City chooses not to exercise the option to purchase, the City shall continue to have the right to approve any sale, assignment, or transfer the Company may desire and this franchise cannot be sold, assigned, or transferred unless and until:

(1) The Company shall have duly executed a good and sufficient instrument making such transfer, assignment or lease, and a duplicate original thereof shall have been filed with the City Manager.

(2) An ordinance of the City consenting to such transfer, assignment or lease shall have been duly adopted and become effective, such consent shall not be unreasonably withheld.

(3) The transferee, assignee, or lessee shall have duly executed a good and sufficient instrument accepting such transfer, assignment or lease, and assumes all the obligations of the Company under this franchise, and an original thereof shall have been filed in the office of the City Manager.

(C) By the acceptance of the franchise, the Company agrees that in any proceeding for the purpose of regulating the rates of the Company, no greater value shall be placed upon this franchise than its actual cost and expense of acquisition. In any negotiations between the City and the Company for the purchase of the Company's property by the City, no value shall be placed upon this franchise by anyone in arriving at the purchase price.

SECTION XX: T.R.A. RULES AND REGULATIONS.

(A) The City and the Company hereby agree that this Ordinance is subject to the approval of the T.R.A. and that the Ordinance shall also be subject to the rules and regulations of the State of Tennessee as they may from time to time be changed and that all such rules and regulations become part of this Ordinance to the same extent and with the same effect as if said rules and regulations were herein set out in full. A copy of the current T.R.A. rules and regulations are attached hereto as Exhibit 2.

(B) The Company shall make every reasonable effort to furnish an ample and uninterrupted supply of gas to all customers throughout its entire system within the City and on any enlargements and extensions thereof within the City. The Company shall not unreasonably or arbitrarily refuse to make an extension thereof within the City. At the time each and every annexation ordinance of the City becomes operative the City Planning Department shall provide the Company with a copy of the ordinance and its accompanying

map precisely describing said annexed territory. The Company shall not unreasonably or arbitrarily refuse to make an extension for the purpose of giving Gas Service to the City, the inhabitants, institutions and businesses thereof. The Company shall also file with the City its extension policy and any changes as may from time to time be adopted, as filed with and approved by the T.R.A.

(C) The Company shall at all times keep the City Manager apprised of its current gas rates, charges, and pricing policies charged to City residents and changes to such rates, charges, and pricing policies whether changes are initiated by the Company or by a third party. In the event the Company files a rate change request with the Tennessee regulatory authority, it shall provide the City Manager with a copy of the request at the time of filing.

(D) During such time, if any, as there is no other duly constituted governmental authority having jurisdiction over the tariffs, rates, fixed charges, terms and conditions of service to be rendered by the Company, then the Board of Mayor and Aldermen of the City of Kingsport, Tennessee shall have jurisdiction to prescribe and fix by ordinance tariffs, rates, charges, terms and conditions governing the furnishing of said Gas Service which shall be sufficient to yield to the Company a reasonable return upon the fair value of its property used and useful in rendering said service.

SECTION XXI: ANNUAL REPORT.

The Company shall, upon request by the City, file with the City Manager a duplicate original of the Annual Report of the Company's operations in the City filed with the T.R.A., as now required by the Public Utility Act, or as may be required by any other act of legislature of the State of Tennessee, as soon as practical after one duplicate original of said report has been filed with said authority or its successors.

SECTION XXII: DEFAULT AND CURE.

Both the Company and the City recognize there may be circumstances whereby compliance with the provisions of this Ordinance is impossible or is delayed because of circumstances beyond the Company's control. In this instance, the Company shall use its best efforts to comply in a timely manner and to the extent possible. In the event of a substantial breach by Company of any material provision of this Ordinance, the City, acting by and through its Board of Mayor and Aldermen, may terminate the franchise and rights granted to Company hereunder, provided, however, that such termination shall not be effective unless and until the procedures described below have been followed:

- (1) The City must deliver to Company, by certified or registered mail, a written notice. Such notice must (i) fairly and fully set forth in detail each of the alleged acts or omissions of Company that the City contends constitutes a substantial breach of any material provision

hereof within 30 days of the alleged breach or within 30 days of the City's actual or constructive notice of the alleged breach whichever is later; and (ii) designate which of the terms and conditions hereof the City contends Company breached.

- (2) The City shall permit Company the opportunity to substantially correct and cure all of the breaches hereof set forth in the written notice described in subsection (1) above within thirty (30) days after Company's receipt of such notice before termination may occur.
- (3) If the Company objects and disagrees with the City's determination that a substantial breach of a material provision has occurred, the Company may submit the issue to the Board of Mayor and Aldermen for review within thirty (30) days of receipt of the written notice described in subsection (1) above. Termination of this Ordinance shall be stayed during the course of any such review or subsequent litigation on the issue until the matter is either resolved by agreement between the parties or upon entry of a final order of a court authorizing termination by the City.

In the event the Ordinance is properly terminated pursuant to the terms of this section prior to the expiration of the 20-year period or any renewal period thereafter, the Company shall not be entitled to claim lost profits against the City for the balance of time remaining under the 20-year period or any renewal period thereafter in a sale of assets to the City or any condemnation action. In the event of termination and/or expiration of this Ordinance, the Company may continue to operate on the same terms and conditions pending either a negotiated sale of its assets, negotiation of a new franchise or condemnation, whichever first occurs, with a minimum period of six months and a maximum period of 24 months, absent agreement of the parties.

SECTION XXIII: SEVERABILITY PROVISION.

After adoption of this ordinance, should any section, subsection, sentence, provision, clause or phrase of this ordinance be declared by the Tennessee regulatory authority or by a court competent jurisdiction to be invalid or unconstitutional, such declaration shall not affect the validity of this ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional, it being the intent in adopting this ordinance that no portion thereof or provision or regulations contained therein shall become inoperative or fail by reason of the unconstitutionality or in validity of any other portion or provision or regulation.

SECTION XXIV: NOTICE.

Any written notice herein required to be given by the City, or any of its officers or agents, to the Company, shall be deemed to have been duly served if delivered in person to any officer of the Company or to its local agent or manager, or if sent by certified mail to the postal address of the Company.

SECTION XXV: PRIOR AGREEMENT.

All ordinances or parts of ordinances establishing a prior franchise agreement for Gas in conflict with the provisions of this ordinance are hereby repealed.

SECTION XXVI: EFFECTIVE DATE.

The franchise shall become effective and all its terms, provisions and conditions binding upon both the City and the Company fifteen (15) days after its final passage, provided the Company shall within said fifteen (15) days endorse on the original ordinance its acceptance of this franchise in the words and figures following:

United Cities Gas Company hereby accepts this franchise this 27TH day
of MARCH, 2000.

UNITED CITIES GAS COMPANY,
A Division of Atmos Energy Corporation



THOMAS BLOSE
President




JEANETTE D. BLAZIER
Mayor

ATTEST:



DEPUTY CITY RECORDER

ATTEST:

 *C. Searby*
JAMES H. DEMMING *Warren J. Searby*
City Auditor *Deputy*

APPROVED AS TO FORM:

J. Michael Billingsley
J. MICHAEL BILLINGSLEY
City Attorney

PASSED ON 1ST READING 3-7-2000

PASSED ON 2ND READING 3-21-2000