

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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. GRANT OF AUTHORITY.

- A. The City of Mesquite, Texas, herein after called "City," hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos" or "Company," its successors and assigns, consent to use and occupy the present and future Public Rights-of-Way of the City for the purpose of laying, maintaining, constructing, protecting, operating and replacing the System needed and necessary to deliver, transport and distribute gas in, out of and through City, and to sell gas to persons, firms and corporations, including all the general public, within the City's corporate limits.
- B. Said privilege and license being granted by this Ordinance is for a term ending December 31, 2017.
- C. The provisions set forth in this Ordinance represent the terms and conditions under which the Company shall construct, operate and maintain the System within the City, hereinafter sometimes referred to as the "Franchise." In granting this Franchise, the City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future generally applicable ordinances of the City. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be

from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time.

SECTION 2. DEFINITIONS.

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A. "Affiliate" shall mean in relation to the Company, a Person that controls, is controlled by or is under common control with the Company. As used in this definition, the term "control" means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than 50 percent of the voting securities of such Person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract or otherwise.
- B. "City" shall mean the City of Mesquite, Texas.
- C. "City Manager" means City's manager, or his or her designee.
- D. "Company" shall mean Atmos Energy Corporation, Mid-Tex Division, its successors and assigns, but does not include an Affiliate, which shall have no right or privilege granted hereunder except through succession or assignment in accordance with Section 19.
- E. "Gross Revenues" shall mean all revenue derived or received, directly or indirectly, from the sale of gas to all classes of customers (excluding gas sold to another gas utility in City for resale to its customers within City) within the corporate limits of City.
 - (1) "Gross revenues" shall include:
 - (a) Revenues derived from the following "miscellaneous charges":
 - i. Charges to connect, disconnect or reconnect gas within the City;
 - ii. Charges to handle returned checks from consumers within the City;
 - iii. Such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and
 - iv. Contributions in aid of construction ("CIAC").
 - (b) Revenues billed but not ultimately collected or received by the Company;
 - (c) Gross receipts fees;

- (d) All revenues derived by Company from the transportation of gas through the System of Company within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City); and
 - (e) The value of gas transported by Company for Transport Customers through the System of Company located in the City's Public Rights-of-Way ("Third Party Sales") (excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Company's monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex Division, as reasonably near the time that the transportation service is performed.
- (2) "Gross revenues" shall not include:
 - (a) The revenue of any Person including, without limitation, an Affiliate, to the extent that such revenue is also included in Gross Revenues of the Company; and
 - (b) Sales taxes; and
 - (c) Any interest income earned by the Company; and
 - (d) All monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's Public Right-of-Way.
- F. "Person" shall mean any natural person or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include the City or any employee, agent, servant, representative or official of the City.
- G. "Public Facility" shall mean all present and future water lines, sanitary sewer lines, storm sewer lines, communications lines and irrigations lines under jurisdiction and control of the City.
- H. "Public Right-of-Way" shall mean all present and future public streets, avenues, highways, alleys, sidewalks, boulevards, drives, tunnels, easements, bridges and other such similar passageways, thoroughfares and public ways under the jurisdiction and control of the City.
- I. "System" or "System Facilities" shall mean all of the Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections and all other appurtenant equipment used in or incident to providing delivery, transportation, distribution, supply and sales of natural gas located in the Public Right-of-Way within the corporate limits of the City.

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

SECTION 3. CONDITIONS OF OCCUPANCY.

- A. All construction and the work done by Company, and the operation of its business, under and by virtue of this Ordinance, shall be in conformance with the ordinances, rules and regulations now in force and that may hereafter be adopted by the City relating to the use of its Public Rights-of-Way, including but not limited to Chapter 15, Article III, Code of Ordinances of the City, entitled "Rights-of-Way Rules and Regulations." This Franchise Ordinance shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code or other state or federal Law.
- B. Company shall attempt to utilize the alleys of the City insofar as is reasonably practicable in conducting its work and activities hereunder. Notwithstanding the foregoing, however, Company may, when reasonably necessary, utilize the streets and other Public Rights-of-Way to perform such work and activities.
- C. Upon request, Company shall identify for the City the location of its System Facilities located in the City. All maps temporarily provided by Company to the City shall be deemed confidential by Company and shall be clearly identified as such by Company with a reference to this Franchise when provided to the City, and will be provided solely for the City's use. The City agrees to maintain the confidentiality of any non-public information obtained from Company to the extent allowed by law. The City shall not be liable to Company for the release of any information the City is required to release by law. The City shall provide notice to Company of any request for release of information previously designated by Company as proprietary or confidential non-public information prior to releasing the information so as to allow Company adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information Act that includes Company's previously designated proprietary or confidential information, City will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the document(s). The City also will provide Company with notice of the request, and thereafter Company is responsible for establishing that an exception under the Texas Public Information Act allows the City to withhold the information.

SECTION 4. ABANDONMENT OF RIGHT-OF-WAY.

If City abandons any Public Right-of-Way in which Company has facilities, such abandonment will be governed by the provisions of City's Rights-of-Way Rules and Regulations contained in the Code of the City of Mesquite.

SECTION 5. LAYING OF LINES IN ADVANCE OF PUBLIC IMPROVEMENTS.

- A. Whenever the City shall decide to make any public improvements in any Public Right-of-Way in which mains and pipes already exist or in which Company may propose to lay its mains or pipes, the Company will be provided the opportunity, at no expense to the City, in advance of such public improvements, to renew such mains or pipes, if defective or inadequate in size, and to lay service lines, or renew same, if inadequate in size or defective, to the property lines where buildings are already located, provided such activities do not delay the City's public improvements.
- B. The Company shall be given written notice of the intention of the City to make major public improvements to any Public Facility, including but not limited to pavements, sidewalks, water lines, sanitary sewer lines, storm sewer lines and communications lines, in any such Public Right-of-Way. Within 90 days from receipt of such notice, the Company shall initiate work and thereafter proceed in a workmanlike manner to completion of the necessary work to relocate or adjust its lines and facilities to accommodate the City's public improvements and complete such work within three months to preclude the delay of said public improvements. The Company shall take reasonable measures to ensure uninterrupted service to its customers and shall reconnect all customer service lines disconnected in the normal course of construction at its own expense. If the Company should fail to so proceed, and any street or alley is thereupon paved, except in an emergency or in response to a request for initiation of new service, the Company shall for three years thereafter not be allowed to cut such pavement or excavate in such paved street or alley for any purpose. All pavement cuts or excavations within the three-year period, except in response to an emergency or in response to a request for initiation of new service, shall be performed only upon written permission of the City Engineer under such terms and conditions as the City Engineer may prescribe. Company shall obtain a permit for emergency work as soon as possible after the commencement of such work in accordance with Chapter 15, Article III, Code of Ordinances of the City, entitled "Rights-of-Way Rules and Regulations."

SECTION 6. EXTENSIONS FOR CUSTOMERS.

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

SECTION 7. DUTY TO SERVE.

- A. The Company hereby agrees that it will not arbitrarily refuse to provide service to any Person that it is economically feasible for the Company to serve. In the event that a Person is refused service, said Person may request a hearing before the City Council of the City or its designee, said hearing to be held within 45 days from the date of the

request for hearing. The Council may order the Company to provide service or take any other action necessary to bring the Company into compliance with the intent of the Council in granting this Franchise, including the adoption of an ordinance or resolution in accordance with Section 15.B. The Council shall render its opinion at its next regular meeting but in no event shall it be required to act in less than seven days.

- B. Commencing five calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with operational or maintenance standards as required by this Franchise Ordinance, Company shall pay One Hundred Fifty Dollars (\$150.00) per day for each day that such noncompliance continues.

SECTION 8. RATES.

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

SECTION 9. PAYMENTS TO THE CITY.

- A. In consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business, Company, its successors and assigns, agree to pay and City agrees to accept such franchise fees in the amount and manner described herein. Such payments shall be made on a quarterly basis, on or before the 10th day following the end of each calendar quarter. The franchise fee shall be a sum of money that shall be equivalent to four percent of the quarterly Gross Revenues, as defined in Section 2.E., for the preceding calendar quarter and shall be for the rights and privileges during the quarter in which the payment is made. The last payment pursuant to this Franchise shall be October 10, 2017.
- B. It is also expressly agreed that the franchise fee payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as a special or other character of tax or charge), municipal license, permit and inspection fees, bonds, street taxes and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Company or Company's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. Except, however, Company's separate obligation to reimburse the City for City's reasonable rate case expenses and for street repairs or other damage to Public Facilities caused by Company's employees or contractors in accordance with City's ordinances are not affected by Company's payment of franchise fees hereunder. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of occupation

taxes, licenses, fees, street or alley rentals or charges, easements or franchise taxes, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay such occupation taxes, licenses, charges, fees or rentals.

- C. If the Company fails to pay when due any payment provided for in this section, Company shall pay such amount plus interest at the current prime rate per annum from such due date until payment is received by City.
- D. City shall within 30 days of final approval give Company notice of annexations and disannexations of territory by the City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Company shall promptly initiate a process to reclassify affected customers into the city limits no later than 60 days after receipt of notice from the City. The annexed areas added to the city limits will be included in future franchise fee payments in accordance with the effective date of the annexation if notice was timely received from City. Upon request from City, Company will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise fee payments.

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

- A. If Company should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in the Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its Public Rights-of-Way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Company to City pursuant to this Ordinance shall be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.
- B. The provisions of this Section 10 apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, including without limitation the timing of such payments.

SECTION 11. BOOKS AND RECORDS.

- A. Company agrees that at the time of each quarterly payment, Company shall also submit to the City a statement showing its Gross Revenues for the preceding calendar quarter as defined in Section 2.E. City shall be entitled to treat such statement as though it were sworn and signed by an officer of Company.
- B. City may, if it sees fit, upon reasonable notice to the Company, have the books and records of Company examined by a representative of City to ascertain the correctness of

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

- C. If, after receiving reasonable notice from the City of the City's intent to perform an audit as provided herein, the Company fails to provide data, documents, reports or information required to be furnished hereunder to the City or fails to reasonably cooperate with the City during an audit conducted under the terms hereunder, the Company shall be liable for payment of a fee as set forth herein. The City shall give the Company written notice of its intent to impose a fee and shall provide Company with a period to cure its failure, such period not to exceed five working days. If the Company fails to cure the alleged failure within the prescribed time period, the Company's alleged failure to comply shall be heard at a public meeting of the City Council. The Company shall be given written notice of the public meeting no later than five calendar days prior to the posting date of the agenda for the City Council meeting at which such failure is scheduled to be considered by the Council. The notice to the Company shall include a list of the failures complained of. Company shall have an opportunity to address the Council at such public meeting. Commencing five calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with the requirements of this Section, Company shall pay a fee of One Hundred Dollars (\$100.00) per day for each day that such noncompliance continues.

SECTION 12. RESERVATION OF RIGHTS: GENERAL.

- A. The City reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with State law, regulation and control of Company's use of the Public Rights-of-Way to ensure the rendering of efficient public service and the maintenance of Company's System in good repair throughout the term of this Franchise.
- B. The rights, privileges and Franchise granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights and franchises as it may see fit to any other Person for the purpose of furnishing gas within the City.

- C. City expressly reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing or selling gas to and for the City and inhabitants thereof.
- D. Nothing herein shall impair the right of the City to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas and other charges, to be charged by Company to residential consumers, commercial consumers, industrial consumers or to any combination of such consumers, within the territorial limits of the City as same now exists or as such limits may be extended from time to time hereafter.

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

- A. In consideration of the granting of this Franchise, Company agrees to indemnify, defend and hold harmless the City, its officers, agents and employees (City and such other persons and entities being collectively referred to herein as "Indemnitees"), from and against all suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company's intentional and/or negligent acts or omissions in connection with Company's construction, reconstruction, maintenance, repair, use, operations or dismantling of System or Company's provision of service.
- B. By entering into this Franchise Ordinance, City does not consent to suit, waive any governmental immunity available to the City under Texas law or waive any of the defenses of the parties under Texas law.
- C. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Company shall, upon notice from any of the Indemnitees, at Company's sole cost and expense, resist and defend the same with legal counsel selected by Company; provided, however, that Company shall not admit liability in any such matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Company. Company's obligation to defend shall apply regardless of whether City is solely or concurrently negligent provided that Indemnitees may be held responsible for the cost of such defense paid for by the Company. The Indemnitees shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 13. Nothing herein shall be deemed to prevent the Indemnitees at their election and at their own expense from cooperating with Company and participating in the defense of any litigation by their own counsel. If Company fails to retain defense counsel within seven business days after receipt of Indemnitee's written notice that Indemnitee is invoking its right to indemnification under this Franchise, Indemnitees shall have the right to retain defense counsel on their own behalf, and Company shall be liable for all defense costs incurred by Indemnitees.

SECTION 14. INSURANCE.

The Company will maintain insurance in accordance with Chapter 15, Article III, City Code. Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an approved formal plan of self-insurance maintained by Company in accordance with sound accounting and risk-management practices. A certificate of insurance shall be provided to the City. The Company will require its self-insurance to respond to the same extent as if an insurance policy had been purchased naming the City as an additional insured and any excess coverage will name the City as an additional insured up to the amounts required by City's ordinance.

SECTION 15. TERMINATION.

- A. Right to Terminate. In addition to any rights set out elsewhere in this Franchise Ordinance, the City reserves the right to terminate the Franchise and all rights and privileges pertaining thereto, in the event that the Company violates any material provision of the Franchise.
- B. Procedures for Termination.
- (1) The City may, at any time, terminate this Franchise for a continuing material violation by the Company of any of the substantial terms hereof. In such event, the City shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to the Company at the address set forth in Section 22 hereof. The Company shall have 60 days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's Franchise is subject to termination under the following provisions. Provided, however, that, if the Company commences work or other efforts to cure such violations within 30 days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist and the Franchise will not be terminated.
- (2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby the Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The Company shall be provided at least 15 days prior written notice of any public hearing concerning the termination of the Franchise. In addition, 10 days notice by publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by the Company.

- (3) The City, after full public hearing, and upon finding material violation or failure to comply, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by the Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.
- (4) Nothing herein stated shall preclude Company from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction.
- (5) Nothing herein stated shall prevent the City from seeking to compel compliance by suit in any court of competent jurisdiction if the Company fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Company to comply with said terms.

SECTION 16. RENEGOTIATION.

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

SECTION 17. NO THIRD PARTY BENEFICIARIES.

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

SECTION 18. SUCCESSORS AND ASSIGNS.

No assignment or transfer of this Franchise shall be made, in whole or in part, except in the case of assignment or transfer to an Affiliate without approval of the City Council of the City. Written notice of said transfer or assignment to an Affiliate shall be provided to the City Manager. The City will grant such approval unless withheld for good cause such as:

- (1) The failure of the proposed Assignee or Transferee to agree to comply with all provisions of this Ordinance and such additional conditions as the Council may prescribe in order to remedy existing conditions of non-compliance; and
- (2) The failure of the proposed Assignee or Transferee to provide assurances reasonably satisfactory to the Council of its qualifications, character, the effect of the Transfer and such other matters as the Council deems relevant. Upon approval, the rights, privileges and Franchise herein granted to Company shall extend to and include its successors and assigns. The terms, conditions, provisions, requirements and agreements contained in this Franchise shall be binding upon the successors and assigns of the Company.

SECTION 19. COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES.

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

SECTION 20. FORCE MAJEURE.

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

SECTION 21. PREVIOUS ORDINANCES.

When this Franchise becomes effective, all gas franchise ordinances and parts of franchise ordinances applicable to the Company or its predecessors in interest granted by the City of Mesquite, Texas, are hereby repealed.

SECTION 22. NOTICES.

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

CITY

City Manager
City of Mesquite
1515 N. Galloway
Mesquite, Texas 75149

City Attorney
City of Mesquite
1515 N. Galloway
Mesquite, Texas 75149

COMPANY

Manager of Public Affairs
Atmos Energy Corp.,
Mid-Tex Division
800 E. Border Street
Arlington, Texas 76010

SECTION 23. PARAGRAPH HEADINGS, CONSTRUCTION.

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

SECTION 24. SEVERABILITY.

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

SECTION 25. NO WAIVER.

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

SECTION 26. EFFECTIVE DATE.

This Franchise shall be effective immediately upon acceptance by Company if Company has filed its acceptance in the time as provided by Section 27 herein.

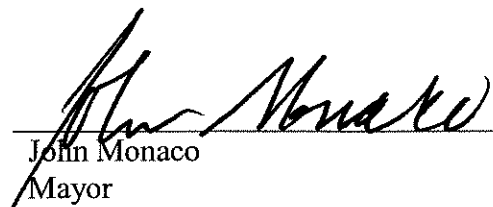
SECTION 27. ACCEPTANCE OF TERMS OF FRANCHISE.

- A. The Company shall have 60 days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary. If the Company does not file such written acceptance of this Franchise Ordinance, the Franchise Ordinance shall be rendered null and void.
- B. At 11:59 P.M. on December 31, 2017, ALL rights, franchises and privileges herein granted, unless they have already at that time ceased or been forfeited or extended by mutual agreement while a new franchise is being negotiated, shall at once cease and terminate.

DULY PASSED AND APPROVED on first reading by the City Council of the City of Mesquite, Texas, on the 19th day of November, 2007.

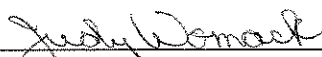
DULY PASSED AND APPROVED on second reading by the City Council of the City of Mesquite, Texas, on the 3rd day of December, 2007.

DULY PASSED AND APPROVED on third and final reading by the City Council of the City of Mesquite, Texas, on the 17th day of December, 2007.



John Monaco
Mayor

ATTEST:



Judy Womack
City Secretary

APPROVED:



B. J. Smith
City Attorney