

ORDINANCE NO. 839-06-08-22

AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS, GRANTING TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF PFLUGERVILLE, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH THE CITY OF PFLUGERVILLE, TEXAS, FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY; AND PROVIDING THAT SUCH FEE IS IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES; ESTABLISHING A TERM OF THE AGREEMENT; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, Atmos Energy Corporation is in the business of constructing, maintaining and operating pipelines and equipment for the transportation, delivery, sale and distribution of gas;

WHEREAS, Atmos Energy Corporation desires to provide for natural gas service in, out of and through the City of Pflugerville; and

WHEREAS, Atmos Energy Corporation and the City of Pflugerville desire to provide for the payment of a fee or charge for the use of the public rights-of-way, such fee or charge to be in lieu of other fees and charges (except ad valorem taxes);

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

Section 1. Definitions.

For the purpose of this Franchise, as defined below, the following words and phrases have meaning given in this section. When not inconsistent with the context, words used in the present tense include future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "must" is mandatory and "may" is permissive. Words not defined in this section must be given their common and ordinary meaning.

(A) **AFFILIATE.** Any entity controlling, controlled by or under common control with the entity in question. As used in this definition, the term "control" means, with respect to an entity that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such entity or, with respect to an entity that is not a corporation, the power to direct the management or policies of such entity, whether by operation of law, by contract or otherwise.

(B) **CITY.** The municipal corporation designated as the City of Pflugerville, Texas and including the territory as currently is, or may in the future, be included within the boundaries of the City of Pflugerville.

(C) **CITY COUNCIL.** The legislative body of the City.

(D) **CITY MANAGER.** The City Manager of the City or his or her designee.

(E) **COMPANY.** Atmos Energy Corporation, its successors and assigns, but not including its Affiliates, subsidiaries or any other entity in which it has an ownership interest.

(F) **FACILITIES.** All property of the Company that is reasonably necessary to provide Gas into, within and through the City, including distribution pipes, mains, Gas compressors, meters and all other appurtenant equipment.

(G) **FRANCHISE.** The rights and obligations of the City and the Company set including forth in this Franchise ordinance, as the same may be amended from time to time, and includes those rights and duties provided under the laws of Texas and of the United States.

(H) **GAS.** Such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured, or any mixture thereof.

(I) **PUBLIC RIGHTS-OF-WAY.** Including, but not limited to, streets, medians, boulevards, roads, lanes, alleys, viaducts, bridges and public utility easements that are deeded, dedicated or otherwise available for Company use within the City.

(J) **RAILROAD COMMISSION.** The Railroad Commission of the State of Texas or other authority succeeding to the regulatory powers of the Railroad Commission.

(K) **RESIDENTS.** All persons, businesses, industry, governmental agencies, and any other entity whatsoever, located, in whole or part, within the City that are or may be served by the Company under this Franchise.

(L) **REVENUE.** Those amounts of money that the Company receives from the operation of the Facilities within the City, and including, without limitation:

(1) All revenues received by the Company from the sale of Gas within the City to all customers (excluding Gas sold to another Gas utility in the City for resale to its customers within City) within the City.

(2) All revenues received by the Company from the transportation of Gas through the pipeline system of the Company within the City to commercial or industrial customers (excluding Gas sold to another Gas utility in the City for resale to its customers within City) within the City; and

(3) The value of Gas transported by the Company for Transport Customers through the pipeline system of the Company within the City (excluding the value of any gas transported to another gas utility in the City for resale to its customers within City), with the value of such gas to be established by utilizing the Company's monthly industrial Weighted

Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time as the transportation service is performed; and

(4) "Revenue" includes:

(a) other 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 customers 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; and

(c) gross receipts fees.

(5) "Revenue" does 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;

(b) sales tax;

(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 right-of-way.

(M) **TRANSPORT CUSTOMERS.** Customers who have entered into a contract with Atmos Energy's Mid-Tex division for the transportation of gas.

(N) **WEIGHTED AVERAGE COST OF GAS.** The Rider GCR (Gas Cost Recovery) monthly factor used to bill Industrial customers, based on a projected cost of gas purchased by Atmos Energy's Mid-Tex division, and which includes upstream transportation costs.

Section 2. Grant of Franchise.

(A) Pursuant to the Constitution of the State of Texas, State statutes (and the City's home rule charter), the City hereby grants to the Company, for the period specified in and subject to the conditions, terms and provisions contained in this Franchise, a non-exclusive right to furnish, transport, sell and distribute Gas to the City and its Residents. Subject to the conditions, terms and provisions contained in this Franchise, the City also hereby grants to the Company a non-exclusive right to acquire, construct, install, locate, maintain, operate and extend Facilities into, within and through the City and a non-exclusive right to make use of the public streets and public easements as may be necessary to carry out the terms of this Franchise. These rights extend to all areas of the City as it is constituted from time to time.

(B) This Franchise does not grant to the Company the right, privilege or authority to engage in any other business within the City other than the provision of Gas sales, transportation, distribution and the furnishing of Gas to the City and its Residents.

(C) The right to use and occupy the Public Rights-of-Way as set forth herein is not an exclusive Franchise, and the City reserves the right to make or grant a similar use of Public Rights-of-Way for the City and to any other person, firm, or corporation.

Section 3. Term of Franchise.

Unless terminated earlier as provided herein, the term of this Franchise is approximately 15 years, beginning on the effective date of this Ordinance and expiring on December 31, 2020.

Section 4. Franchise Fee.

(A) As consideration for the grant of this Franchise providing for the use by the Company of Public Rights-of-Way and in recognition that the grant to the Company of the use of those Public Rights-of-Way is a valuable right, the Company must pay to the City a Franchise fee in the amount 4 % of the Revenue received by the Company.

(B) If the 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, 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 to the City under this Ordinance, then Atmos must provide the City with a copy of the franchise fee provisions of such franchise within 60 days and the franchise fee to be paid by the Company to the City pursuant to this Ordinance must be increased so that the amount due and to be paid is equal to the amount that would be due and payable to the City were the franchise fee provisions of that other franchise ordinance applied to City.

Section 5. Payment Schedule.

For the franchise fee owed on Revenues, other than CIAC, accruing to the Company after the effective date of this Franchise from the sale and transportation of Gas, payment must be made in quarterly installments not more than 45 days following the close of the quarter for which

payment is to be made. For the franchise fee based on CIAC, payment must be made on April 30. The initial CIAC Franchise fee amount must be paid on or before April 30, 2007 and will be based on the calendar year January 1 through December 31, 2006. The final CIAC franchise fee amount must be paid on or before April 30, 2021 and must be based on the calendar year January 1 through December 31, 2020. If an error by the Company results in an overpayment of the franchise fee to the City and the overpayment is in excess of \$5,000.00, credit for the overpayment must be spread over the same period the error was undiscovered. If the overpayment is \$5,000.00 or less, credit must be taken against the next payment. If an error by the Company results in an underpayment of the franchise fee to the City, the Company must repay the difference between the underpayment and the correct payment within 30 days of its discovery. All payments must be made to the City and accompanied by supporting documentation that shows a breakdown of each applicable category of Revenue received by the Company within the corporate limits of the City, including Commercial Governmental Sales, Commercial Sales, Industrial Sales, Miscellaneous Service Charges Commercial, Miscellaneous Services Charges Residential and Residential Sales, if such categories are part of the Company's breakdown of Revenue, and such other categories as may be added to the Company's breakdown of Revenue and how the payment was calculated based on such Revenue.

Section 6. Accounts and Other Records and Reports and Investigations.

(A) The Company must keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation and repair of Company's Facilities, and changes in the Company's system of accounts.

(B) The Company must keep complete and accurate books of account and records of its business and operations pursuant to this Franchise. The Company must keep records or accounts that are reasonably necessary for purposes of identifying, accounting for, and reporting Revenues, uncollectibles and expenses.

(C) The Company must provide the City with access at reasonable times and for reasonable purposes, to examine, audit, review, and/or obtain copies of the papers, books, accounts, documents, maps, plans and other records of the Company pertaining to this Franchise Ordinance in accordance with a nationally recognized standard for systems of accounting. The Company must fully cooperate in making available its records and otherwise assisting in these activities. The Company must provide the City with a copy of its annual report within 30 days of filing the report with the Railroad Commission.

(D) The City may, at any time, make inquiries pertaining to the Company's operation of its Facilities within the City. The Company must respond to such inquiries on a timely basis.

Section 7. Franchise Fee in Lieu of Other Fees.

It is expressly agreed that the aforesaid payments are in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges, 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 the Company or the Company's agents, except for the usual general or special ad valorem taxes that the City is authorized to levy and impose upon real and personal property. If the City does not have the legal power to agree

that the payment of the foregoing sums of money are in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy the Company's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges.

Section 8. Contract Obligations.

This Franchise constitutes a valid and binding contract between the Company and the City. If the fees and other consideration specified in this Franchise are declared illegal, unconstitutional or void for any reason by any court or other proper authority, the Company is contractually bound to negotiate a new agreement with the City that must fairly and legally reflect the intention of the Company and the City, including the Company's intention to compensate the City for use of the Public Rights-of-Way.

Section 9. Dependable Gas Service.

(A) The Company must provide to the City an emergency contact telephone number whereby the City may obtain status reports from the Company on a 24 hour basis concerning interruptions of the supply of Gas in any portion of the City.

(B) The Company must install, repair, maintain and replace its Facilities in a good and workmanlike manner. The Company's Facilities must meet or exceed state standards for quality, redundancy and durability to provide reliable and efficient Gas service to the City and its Residents.

Section 10. Obligations Regarding Company Facilities.

(A) All work by the Company must be done:

- (1) In a good workmanlike manner;
- (2) In a timely and expeditious manner;
- (3) In a manner which minimizes inconvenience to the Residents;
- (4) In a cost-effective manner; and

(5) In accordance with all applicable codes, rules and regulations of the City and the Railroad Commission.

(B) Company Facilities must not interfere with power, telephone, cable or water facilities, sanitary or storm sewer facilities or other municipal or public use of Public Rights-of-Way. The Facilities must be installed and maintained so as to minimize interference with other property, trees, improvements and natural features.

(C) The Company must promptly repair all damage caused by Company activities or Facilities. If such damage poses a threat to health, safety or welfare of the public or Residents,

the City may cause repairs to be made at the Company's expense, unless the Company makes such repairs promptly upon the City's request.

(D) The installation, repair, maintenance, and replacement of any Facilities in Public Rights-of-Way by the Company is subject to inspection and approval by the City. Such inspection and approval may include, but not be limited to, the following matters: location of Facilities in Public Rights-of-Way; cutting and trimming of trees and shrubs; and disturbance of pavements, sidewalks and surfaces of Public Rights-of-Way. The Company agrees to cooperate fully with the City in conducting the inspection. The Company must promptly perform reasonable remedial action required by the City pursuant to such an inspection.

(E) The Company must require its contractors working in Public Rights-of-Way to hold all necessary contracting licenses and permits required by the City, but the Company's contractors must not be required to pay a fee for such licenses and permits.

Section 11. Long Range Planning for Capital Improvement Projects.

(A) The Company must keep the City informed as to existing and planned system capacity, construction, maintenance and other activities of the Company within the City. Regular planning and coordination meetings will be held between the City and the Company. The City will be responsible for scheduling such planning and coordination meetings. Representatives of the Company and the City must meet at least annually to discuss long term planning for capital improvement projects contemplated by each. The Company must include within its capital improvement projects planning the plans of the City relating to same. Except for emergencies, the Company must coordinate all installations with the City's capital improvement programs. Company must not proceed with construction until the plans and drawings have been approved by the City, which approval must not be unreasonably withheld or delayed beyond 30 days after plans are submitted. Within 60 days after the City Council adopts the City budget for the following year, the City may forward, in writing, a list of the improvement projects (including street widening projects, street overlay projects, bridge improvement projects, new street construction projects, drainage improvement projects, and park improvement projects) that are included in the adopted budget. Within 60 days of receipt of a report from the City for planned improvement projects, the Company must make available information regarding these projects within the Public Rights-of-Way that identifies and generally describes the existing and anticipated Facilities that are or may be within or cross through the project boundaries. The information must: (1) identify the size, type and general location of any existing Company facility; (2) address the current condition of any existing Company facility (e.g.: capacity, integrity, expected service life, etc.); (3) identify any scheduled or anticipated upgrades, repairs or replacements of any existing Company facility; (4) identify generally what activities will be required to be performed by the Company in order to accommodate the City project and the necessary time frame for completion of such activities; and (5) provide any other reasonable information that may be pertinent.

(B) The City and the Company must designate to each other their respective officials to serve as their representative for coordination of exchange of information and planning on any such project.

Section 12. Construction and Maintenance of Facilities.

(A) Upon request of the City, the Company must remove and abate any portion of the Facilities that is dangerous to life or property, and in case the Company, after notice, fails or refuses to act, the City may remove or abate the same, at the reasonable cost and expense of the Company. The Company is not liable for damages or injuries arising from negligent acts or omissions committed by another party, not under the direction or control of the Company, during the removal or abatement of Company property.

(B) The Company must promptly restore the Public Rights-of-Way to their condition prior to Company's construction, maintenance or excavation, to the satisfaction of the City consistent with its existing City codes and specifications.

(C) The Company must excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of the Facilities.

(D) Except in an emergency, the Company must not excavate in any Public Rights-of-Way without first securing permission of the City and all applicable permits at least 24 hours prior to initiation of excavation. Such work must be performed to minimize interference with the use of Public Rights-of-Way. The City must be notified as soon as practicable regarding work performed under emergency conditions.

(E) On an annual basis, if requested by the City, the Company must supply the City with a complete set of "as built" drawings reflecting any changes made to the Company's system or Facilities for providing or transporting natural gas in the City for during the preceding year.

Section 13. Requests by City for Relocation of Company Facilities.

(A) If at any time the City requests the Company to relocate any Facility installed or maintained in the Public Rights-of-Way, pursuant to this Franchise or previous franchises, in order to permit the City to construct or change Public Rights-of-Way, including streets, water lines, sewer lines and other public facilities located in the Public Rights-of-Way unless the primary purpose of such construction is beautification, such relocation shall be made by the Company in conformance with all applicable codes, rules, and regulations of the City at its sole expense within a reasonable period of time not to exceed 45 days after notice of request from the City unless otherwise specifically authorized by the City in writing.

(B) As and when reasonably requested by the City, representatives of the City and the Company must meet to share information regarding anticipated City projects that will require relocation of Facilities. Such meetings are to allow the City and the Company to coordinate the relocation of the Facilities, including an anticipated start date (within a 30 day window) with the timetable to be established by the City for completion of the City project.

(C) Whenever the City deems that changes in the grade of any street or in the location or the manner of constructing any water pipes, sewers or any other underground or overhead structure make it necessary to alter, change, adapt or conform the Facilities thereto, the Company must make such alterations or changes in a timely manner when requested by the City. If Company is not obligated to bear the expense for such changes or alterations, Company is not obligated to begin work until a reimbursement agreement is in place.

(D) If the Company has not relocated the affected Facilities that are located in a Public Right-of-Way within a reasonable length of time as determined by the City prior to the City's commencement date for Public Right-of-Way construction, the City may relocate or cause to be relocated the affected portion of the Facilities and the Company must reimburse the City for reasonable costs of relocation within 30 days of the City's billing to the Company. The Company is not liable for damages or injuries arising from negligent acts or omissions committed by another party, not under the direction or control of the Company, during the removal or relocation of Facilities by another party.

(E) Following relocation, all property must be restored to its approximate former condition by the Company at its expense when required in accordance with then existing City codes and specifications.

(F) Except as specifically provided in this Franchise, nothing in this Franchise may be construed to impose any obligation upon the City to make any payment for any relocation of the Facilities. When the Company is required to remove, relocate or change its Facilities at its own expense, Company may seek recovery of such costs systemwide as may be allowed under applicable state and/or Federal law, but not exclusively from customers inside the City. This Agreement shall not be construed as the City's approval of any proposed rate increase whether based upon relocation of facilities or other factors.

Section 14. Work by Others, Construction by Abutting Owners, Alteration to Conform with Public Improvement.

The City reserves the right to lay and permit to be laid, power, sewer, Gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over and under any Public Rights-of-Way occupied by Company, and to change any curb or sidewalk or the grade of any street. Any work done by any person or entity under the direction of the City, its officers, or employees, must be performed in a safe and workmanlike manner so as to reduce the risk of damages to the Facilities.

Section 15. Reciprocal Damage Agreement.

(A) If Company employees damage the facilities owned by the City within the Public Rights-of-Way, the City agrees to repair the damage to its facilities at no cost to the Company. The Company agrees to notify the appropriate official of the City as soon as reasonably possible after the occurrence of such damage.

(B) If City employees damage the Facilities owned by the Company within the Public Rights-of-Way of City, the Company agrees to repair the damage to its Facilities at no cost to the City. The City agrees to notify the appropriate personnel of the Company as soon as reasonably possible after the occurrence of such damage.

(C) Either party may terminate their obligation under this section by providing at least 30 days written notice to the other party. Any such termination will not affect either party's obligation to pay for any damage that occurs prior to the termination date.

Section 16. Changing Boundaries of City and Abandonment.

(A) If, during the term of this Franchise, the boundaries of the City are expanded from time to time, the Company must extend service at the earliest practicable time to Residents of the newly incorporated areas and must provide service to newly expanded areas in accordance with the terms of this Franchise, including without limitation payment of franchise fees and other fees and payments provided herein. The City must provide the Company with a copy of any annexation or de-annexation ordinance within 30 days of the final passage and approval of such action.

(B) If the City abandons any Public Rights-of-Way in which the Company has Facilities, such abandonment must be conditioned on the Company's right to maintain its use of the former Public Rights-of-Way and on the obligation of the party to whom the Public Rights-of-Way were abandoned to reimburse the Company for all removal or relocation expenses if the Company agrees to the removal or relocation of its facilities following abandonment of the Public Rights-of-Way. If the party to whom the Public Rights-of-Way were abandoned requests the Company to remove or relocate its facilities and the Company agrees to such removal or relocation, such removal or relocation must be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to other Public Rights-of-Way, the expense of any right-of-way acquisition is considered a relocation expense to be reimbursed by the party requesting the relocation.

Section 17. Technological Improvements.

The Company must generally introduce and install, as soon as practicable, technological advances in its equipment and service within the City when such advances are technically and economically feasible and are safe and beneficial to the City and its Residents.

Section 18. City Rules and Regulations.

(A) The City expressly reserves, and the Company expressly recognizes, the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such cost of service, cost of Gas, charter provisions, ordinances, rules and regulations as the City deems necessary.

(B) The construction, expansion, reconstruction, excavation, use, maintenance, repair and operation of the Facilities is subject to all laws, rules and regulations of the City, including without limitation police, building code, and safety code regulations as they may be amended from time to time. The Company must comply with the same.

(C) In addition to the rights herein specified, the City has full power and authority from the Company to:

- (1) inspect, or cause to be inspected, the books and records of Company;
- (2) compel the attendance of Company witnesses and the production of Company books and records; and

(3) inventory and appraise or cause to be inventoried or appraised the Facilities and the Company's business within the City using customary methods for assessing value for tax purposes.

Section 19. Toll Free Number.

The Company must provide a toll-free telephone number, which Residents may use to obtain prompt, reasonable responses from Company to Residents' service requests. Company must provide a 24-hour toll free telephone number for emergency use.

Section 20. City Use of Company Facilities.

The Company will grant to the City, use of its Facilities that it now, or in the future, owns or has an interest in within the City for purposes specified by the City, provided that the Company will not be required to make such grant in any circumstances where such use would materially interfere with the Company's use of its Facilities. Any improvements deemed appropriate by the City and consistent with the purpose it specified must be made by the City at its expense

Section 21. Information on Company Operations and Activities.

On request, but not more than annually, the Company must provide the City a list of all real property interests owned by the Company in the City. If the Company transports Gas within the City on behalf of third parties, including Affiliates, the Company must notify the City of the shipper's name, address, telephone number, volume transported, duration of transport arrangement, transport fee, value of the Gas transported and such other information requested by the City from time to time, but in no event later than ten days prior to initial deliveries.

Section 22. Held Harmless and Indemnified.

(A) The Company must construct, maintain and operate its Facilities in a manner that provides reasonable protection against injury or damage to persons or property.

(B) Notwithstanding any other provision of this Franchise, the Company acknowledges its primary responsibility for the day-to-day operation of its Facilities in full accordance with the terms of the Franchise. The Company covenants, warrants and represents that it will conduct, operate and manage its business and affairs in compliance with all federal and state laws and all rules and regulations, in addition to all of the terms, requirements and provisions of this Franchise. THE COMPANY AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES ("INDEMNITEES") FULLY HARMLESS AGAINST ANY AND ALL CLAIMS, INCLUDING ENVIRONMENTAL CLAIMS, THAT MAY ARISE FROM OR BE OCCASIONED BY ANY INTENTIONAL, WILLFUL, NEGLIGENT OR STRICTLY LIABLE VIOLATION (CIVIL OR CRIMINAL) OF A FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION BY THE COMPANY OR BY ANY PERSON OR FIRM HIRED BY OR CONTRACTING WITH THE COMPANY, OR IN THE OPERATION OR MAINTENANCE OF THE FACILITIES. THE COMPANY MUST FULLY REIMBURSE THE CITY FOR ALL PENALTIES, FINES, FEES, COSTS, EXPENSES, DAMAGE SETTLEMENTS OR JUDGEMENTS INCURRED OR

PAID BY THE CITY AS A RESULT OF ANY OF THE COMPANY'S VIOLATIONS DESCRIBED ABOVE.

(C) Nothing herein contained may be construed as an acknowledgment by the parties that the Company, in exercising its rights and obligations under this Franchise, is an entity controlled by, subject to the control of or acting on behalf of the City.

(D) If the City institutes litigation against the Company for a breach of this Franchise or for an interpretation of the Franchise and the City is the prevailing party in a court of competent jurisdiction or appropriate regulatory authority, the Company must reimburse the City for all costs related thereto, including without limitation court costs and reasonable attorney's fees upon the decision or judgment becoming final. None of the City's costs reimbursed by the Company under this section may be charged by the company exclusively to the City or the customers inside the City.

Section 23. Notice to Company.

(A) Promptly after receipt by an Indemnitee of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 22(b) hereof may apply, the Indemnitee must notify the Company in writing of such fact. The Company must assume the defense thereof with counsel designated by the Company and satisfactory to the Indemnitee, such approval not to be unreasonably withheld; provided, however, that if the defendants in any such action include both the Indemnitee and Company and if the Indemnitee has reasonably concluded that there may be legal defenses available to it that are inconsistent with those available to the Company, the Indemnitee may select separate counsel to participate in the defense of such action on behalf of such Indemnitee and the cost for separate counsel must be paid by Company.

(B) Should an Indemnitee be entitled to indemnification under Section 22(b) hereof as a result of a claim by a third party, and the Company fails to assume the defense of such claim, the Indemnitee will, at the expense of the Company, contest (or, with the prior written consent of the Company, settle) such third party claim.

Section 24. Insurance.

(A) The Company's insurance of its obligations and risks undertaken pursuant to this Franchise may be in the form of self-insurance to the extent permitted by applicable law, under a formal Company plan of self-insurance maintained in accordance with sound accounting and risk-management practices, or by obtaining insurance as follows:

(1) Commercial general or excess liability on a claims made basis with minimum limits of five million dollars (\$5,000,000) per occurrence and ten million dollars (\$10,000,000) aggregate. This coverage must include the following:

- (a) Completed operations to be maintained for one (1) year;
- (b) Personal and advertising injury;
- (c) Contractual liability; and

(d) Explosion, collapse, or underground (XCU) hazards.

(2) Automobile liability coverage with a minimum policy limit of one million dollars (\$1,000,000) combined single limit. This coverage must include all owned, hired and non-owned automobiles.

(B) Workers compensation and employer's liability coverage must be maintained in accordance with state law.

(C) The Company agrees that with respect to the above required insurance, all insurance contracts will provide for at least 30 days written notice to the City for cancellation, non-renewal, or material change.

(D) The Company agrees to waive subrogation against the City, its officers and employees for personal injuries (including death), property damage or any other loss, unless City is at fault. When the City is at fault, the Company does not waive subrogation.

(E) The Company must notify the City in the event of any changes in coverage and give such notices not less than 30 days prior to the change, which notice must be accompanied by a replacement Certificate of Insurance.

(F) The Company must timely advise the City Manager of any actual or potential litigation that may develop that would affect this insurance.

(G) Companies issuing the insurance policies have no recourse against the City for payment of any premiums or assessments which are the sole responsibility of the Company.

(H) Subcontractors. Without limiting any of the other obligations or liabilities of the Company, the Company must require each subcontractor performing work under the Franchise to maintain, at the subcontractor's own expense, during the term of the Franchise, the minimum insurance required in this section for the Company. As an alternative, the Company may include its subcontractors as additional insureds on its own coverage as prescribed under these requirements (except for worker's compensation insurance, which the subcontractors must separately obtain), in which case the Company's certificate of insurance must note that the subcontractors are included as addition insureds.

(I) Approval, disapproval or failure to act by the City regarding any insurance supplied by the Company or its subcontractors does not relieve the Company of full responsibility or liability for damages and accidents as set forth in this Franchise. Bankruptcy, insolvency or denial of liability by the insurance company does not exonerate the Company from liability.

(J) If the Company chooses to self-insure against risks described in this section to the extent permitted by applicable law under any plan of self- insurance maintained in accordance with sound accounting practices, the Company may not be required to maintain insurance; provided that, the Company must furnish the City with satisfactory evidence of the existence of an insurance reserve adequate for the risks covered by such plan of self-insurance.

(K) The Company must provide the City with evidence of the form and basis for insurance coverages or self insurance prior to the effective date of this Franchise ordinance. Should the Company elect to change the form or basis of insurance during the term of this Franchise, the Company must notify the City. Company must provide all documentation necessary for review by the City of the changed circumstances of the Company.

Section 25. City's Rights of Condemnation.

Nothing in this Franchise limits any right City may have to acquire by eminent domain any property of the Company.

Section 26. Limitations of Company Removal of Facilities.

(A) If this Franchise is not renewed at the expiration of its term, is forfeited, or the Company terminates any service provided herein for any reason whatsoever, and the City has not purchased or condemned the Facilities and has not provided for alternative Gas service, the Company may not remove the Facilities pending resolution of the disposition of the Facilities. The Company further agrees it will not withhold any temporary services necessary to protect the public and is entitled only to monetary compensation in no greater amount than that to which it would have been entitled were such services provided during the term of this Franchise.

(B) Upon request from the City and within a reasonable time, the Company must remove from the Public Rights-Of-Way the distribution Facilities belonging to the Company that are not otherwise purchased by the City at the termination of the Franchise. All property affected by such removal must be restored by the Company to substantially its former condition after said removal. City is liable for the expense of removal of the Facilities and restoration of the Public Rights-of-Way.

Section 27. Transportation and Procurement of Gas by City.

The City expressly reserves the right to procure, transport and resell Gas. If requested by the City, the Company must, when operationally and economically feasible, transport Gas purchased by the City through its Facilities for use by the City in its Facilities and/or by its Residents pursuant to separate transportation contracts with the City.

Section 28. Curtailment.

The Company may not curtail Gas deliveries except in compliance with the Company's curtailment plan approved by the Railroad Commission.

Section 29. Compliance.

If the Company fails to provide data, documents, reports, or information required to be furnished to the City under this Franchise, fails to reasonably cooperate with the City during an audit conducted under the Franchise, or repeated or unreasonably fails to provide service under the terms of this Franchise, the Company is liable for a fee of \$100.00 per day for each day that such noncompliance continues.. The City must give the Company written notice of its intent to impose such a fee and a period not to exceed five working days after providing notice to pay the

fees or correct the problem. Once the five working days have passed, the Company is liable for each day of violations from and including the 6th day forward.

Section 30. Forfeiture and Termination.

(A) In addition to all other rights and powers retained by the City under this Franchise or otherwise, the City reserves the right to forfeit and terminate the Franchise and all rights and privileges of the Company hereunder in the event of a material breach of its substantive terms and conditions. A breach by Company includes, but is not be limited to, the following:

- (1) Violation of any material provision of the Franchise or any rule, order, regulation or determination of the City made pursuant to the Franchise;
- (2) Attempt to evade any provision of the Franchise or to practice any fraud or deceit upon the City or its Residents;
- (3) Failure to provide the services set forth in the Franchise;
- (4) Material misrepresentation of fact in the application for or negotiation of the Franchise; or
- (5) Conviction of any director, officer, employee, or agent of the Company of the offense of bribery or fraud connected with or resulting from the awarding of this Franchise to the Company.

(B) The foregoing do not constitute a breach if the violation occurs without fault of the Company or occurs as a result of circumstances beyond Company's control that could not have been avoided as a result of the exercise of reasonable care. The Company is not excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.

(C) The City may make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this Franchise. If the violation by the Company continues for a period of 30 days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the City may take under consideration the issue of termination of the Franchise. The City must provide the Company a written notice of intent to request such termination and the time and place of the meeting at least 15 business days prior to the date of such a meeting. The City must provide public notice of the meeting and the issue that the City is to consider.

(D) The City must hear and consider the issue and hear any person interested therein. The City Council thereafter may determine, in its sole discretion, whether or not any material violation by the Company has occurred.

(E) If the City determines that the material violation by the Company was the fault of the Company, within Company's control and could have been avoided with exercise of reasonable care, the City may declare the Franchise of the Company forfeited and terminated, or the City Council may grant to the Company a period for compliance and correction.

(F) Nothing herein contained limits or restricts any legal right of the Company to appeal such decision of the City to any appropriate agency or court of jurisdiction.

Section 31. Other Legal Remedies.

Nothing herein contained limits or restricts any legal rights that the City or the Company may possess arising from any alleged violation of this Franchise.

Section 32. No Waiver.

Neither the City nor the Company are excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employers, or agents, upon any one or more occasions to insist upon or seek compliance with any such terms and conditions.

Section 33. Successors and Assigns.

The rights, privileges, and obligations granted and contained in this Franchise inure to the benefit of and are binding upon the Company, its successors and assigns.

Section 34. Representatives and Notices.

(A) Upon request by the City, Company must provide contact information regarding the Company's public liaison.

(B) All notices, including communications and statements which are required or permitted under the terms of this Franchise, must be in writing, and evidenced by receipt. Service of a notice may be accomplished by personal service, registered or certified mail (postage prepaid) or reputable overnight courier service.

Notices must be sent to the parties at the following addresses:

(C) City:

City Manager
City of Pflugerville
P.O. Box 589
Pflugerville, Texas 78691

(D) Company:

Manager of Public Affairs
Atmos Energy Corporation
3110 North IH 35
Round Rock, Texas 78681

From time to time the City and Company may each designate a new address for itself for purpose of notice hereunder by written notice to the other duly given as provided herein.

Section 35. Severability.

Should any one or more provisions of this Franchise be determined to be illegal or unenforceable, all other provisions nevertheless remain effective: provided, however, the parties must promptly enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties under this Franchise.

Section 36. Entire Agreement.

This Franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this Franchise.

Section 37. Company Approval.

The Company must file written acceptance of this Franchise and of all of its terms and provisions with the City Secretary within 30 days from the City Council meeting at which the ordinance granting the Franchise is approved on third reading.

Section 38. Third Parties.

Nothing contained in this Franchise may be construed to provide rights to third parties.

Section 39. Compliance with City Charter.

Company recognizes, accepts and agrees that the terms, conditions and provisions of this Franchise are subject to the applicable provisions of the City Charter. Any request by Company for a modification to this Franchise is subject to a review by the City Attorney for compliance with the applicable provisions of the City Charter.

Section 40. Effective Date.

This Ordinance will be in effect from and after its passage by the City Council, publication of notice of its adoption in a newspaper of general circulation in the City as required by the City Charter and the filing of written acceptance pursuant to Section 36 by the Company with the City Secretary.

PASSED AND APPROVED on the First Reading on July 25th, 2006, 2006.

PASSED AND APPROVED on the Second Reading on August 8th, 2006, 2006.

PASSED AND APPROVED on the Third Reading on August 22, 2006, 2006.

DATE OF PUBLICATION **Thursday, August 3rd, 2006**

DATE OF AUTHORIZATION **Monday, September 11, 2006**

CITY OF PFLUGERVILLE, TEXAS

By: 
Catherine T. Callen, Mayor

ATTEST:


Karen Thompson, City Secretary