

ORDINANCE NO: _____

AN ORDINANCE 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, TRAVIS COUNTY, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.

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

SECTION 1. GRANT OF AUTHORITY: The City of Pflugerville, Texas, hereinafter called "City," hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos Energy," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public utility easements, public ways and other public places ("Public Rights-of-Way"), for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment (the "System") to deliver, transport, and distribute gas in, out of, and through City for persons, firms, and corporations, including all the general public, and to sell gas to persons, firms, and corporations, including all the general public, within the City corporate limits, as such limits may be amended from time to time during the term of this franchise, said consent being granted for an initial term ending December 31, 2035.

SECTION 2. CONSTRUCTION, MAINTENANCE, OPERATION & RELOCATION OF ATMOS ENERGY FACILITIES:

- A. Atmos Energy shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment to minimize interference with traffic, place or cause to be placed appropriate barriers to mark excavations or obstructions, and promptly restore to approximate original condition all Public Rights-of-Way that it may disturb to the satisfaction of the City consistent with its existing City codes and specifications. In the event Atmos Energy fails to restore the Public Rights-of-Way to approximate original condition within a reasonable time, the City may restore or maintain same, after giving Atmos Energy thirty (30) days' written notice, provided however that if Atmos Energy is proceeding diligently to restore the property, the time for restoration shall be extended for such time as is necessary for Atmos Energy to complete the restoration. If Atmos Energy fails to restore the Public Rights-of-Way appropriately, Atmos Energy will pay the

reasonable costs of the City repairing same. Atmos within thirty (30) days after receiving an invoice for such service. In determining the location of the facilities of the City and other users of Public Right-of-Way within City, City shall minimize interference with then existing facilities of Atmos Energy and shall require other users of Public Rights-of-Way to minimize interference with existing facilities of Atmos Energy. In the event of a conflict between the location of the proposed facilities of Atmos Energy and the location of the existing facilities of City or other users of Public Rights-of-Way within Public Rights-of-Way that cannot otherwise be resolved, City or an authorized agent of City shall resolve the conflict and determine the location of the respective facilities within the Public Rights-of-Way. The City's decision is to be final.

Atmos Energy or contractors working on behalf of Atmos Energy shall not be required to pay for street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with Atmos Energy's operations in Public Rights-of-Way. City shall provide Atmos Energy with its annual capital improvements plan as well as any updates or changes as soon as the plan, update, or change becomes available. City shall notify Atmos Energy as soon as reasonably possible of any projects that will affect Atmos Energy's facilities located in the Public Rights-of-Way. When required by City to remove or relocate its mains, laterals, and/or other facilities lying within Public Rights-of-Way, Atmos Energy shall do so as soon as practically possible with respect to the scope of the project. In no event shall Atmos Energy be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to Atmos Energy by City.

- B. If City, in constructing, reconstructing, reconfiguring, maintaining, or repairing its wastewater, drainage, water lines, streets, or utilities, should request that Atmos Energy remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way, Atmos Energy shall do so at its own expense for facilities that are in conflict, unless such work is for the primary purpose of beautification or to accommodate a private developer. Facilities are deemed to be in conflict to the extent that the proposed City facilities are determined by Atmos Energy to be inconsistent with gas distribution industry standard safe operating practices for existing facilities. Atmos Energy shall not be required to relocate facilities to a depth of greater than four (4) feet unless prior agreement is obtained from Atmos Energy.

When Atmos Energy is required by City to remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way to accommodate a request by City, and costs of utility removals

or relocations are eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Atmos Energy as a result of such removal or relocation, and such reimbursement is required to be handled through City, Atmos Energy costs and expenses shall be included in any application by City for reimbursement if Atmos Energy submits its cost and expense documentation to City prior to the filing of the application. City shall provide reasonable written notice to Atmos Energy of the deadline for Atmos Energy to submit documentation of the costs and expenses of such relocation to City. Upon receipt of reimbursement from a federal or state agency, the City shall remit to Atmos Energy, within thirty (30) days of receipt, its portion related to the relocation or removal of its System.

If Atmos Energy is required by City to remove or relocate its mains, laterals, or other facilities lying within Public Rights-of-Way for any reason other than the construction, reconstruction, , reconfiguration, maintaining, or repairing of wastewater, drainage, water lines, streets or utilities by City, Atmos Energy shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation.

- C. When Atmos Energy is required to remove or relocate its mains, laterals or other facilities to accommodate construction by City without reimbursement from City, Atmos Energy shall have the right to seek recovery of relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Atmos Energy to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when Atmos Energy is required by City to perform relocation. City shall not require that Atmos Energy document request for reimbursement as a pre-condition to recovery of such relocation costs.
- D. If City abandons any Public Rights-of-Way in which Atmos Energy has facilities, such abandonment shall be conditioned on Atmos Energy's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Atmos Energy for all removal or relocation expenses if Atmos Energy agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests Atmos Energy to remove or relocate its facilities and Atmos Energy agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense

of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

E. Conditions of Occupancy

All construction and work done by Atmos Energy, 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, not in conflict with this franchise, relating to the use of its Public Rights-of-Way of the City. This franchise agreement 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. Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest or appeal any action or decision of the other party, including ordinances adopted by the City, that it believes is contrary to any federal, state or local law or regulation.

F. MAPPING OF DISTRIBUTION SYSTEM

(1) . When required for a public health or safety purpose, Atmos Energy shall identify for the City the location of its System located in the City. Any maps provided by Atmos Energy to the City shall be deemed confidential and shall be clearly identified as such by Atmos Energy 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 Atmos Energy to the extent allowed by law. If the City receives a request under the Texas Public Information Act that includes Atmos Energy'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 Atmos Energy with notice of the request, and thereafter Atmos Energy is responsible for establishing that an exception under the Texas Public Information Act allows the City to withhold the information. Atmos Energy shall provide all location and "as built" plans on a going forward basis as required through the City's permitting process.

(2) It is further agreed by City and Atmos Energy that provision of this information does not relieve the City or other third parties from an obligation to utilize all appropriate

procedures to locate underground facilities, including the obligation to notify a notification center established pursuant to Texas Utility Code Chapter 251, prior to conducting work in the right-of-way such as excavating, drilling, underground boring, jacking, or open cutting.

SECTION 3. INDEMNITY & INSURANCE: In the event of injury to any person or damage to any property by reason of Atmos Energy's construction, operation, maintenance, or replacement of Atmos Energy's pipeline system within Public Rights-of-Way, Atmos Energy shall indemnify and keep harmless City from any and all liability in connection therewith, except to the extent such injury or damage is attributable to the negligent or intentional acts or omissions of the City, its officers, agents and employees. . In the event of joint and concurrent negligence or fault of both Atmos Energy and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to the City under Texas law and without waiving any of the defenses of the parties under Texas law. It is understood that it is not the intention of the parties hereto to create liability for the benefit of third parties, but that this section shall be solely for the benefit of the parties hereto and shall not create or grant any rights, contractual or otherwise, to any person or entity. Atmos Energy'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 an Atmos Energy plan of self-insurance maintained in accordance with sound accounting and risk-management practices.

SECTION 4. NON-EXCLUSIVE FRANCHISE: The rights, privileges, and franchises 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 or corporation for the purpose of transporting, delivering, distributing, or selling gas to and for City and the inhabitants thereof.

SECTION 5. PAYMENTS TO CITY:

- A. As consideration for the grant of this franchise, Atmos Energy, its successors and assigns, agrees to pay on or before the forty-fifth (45th) day following the end of each calendar quarter with the last payment of the term being made in November, 2035, a sum of money which shall be equivalent to five percent (5%) of the Gross Revenues, as defined in 5.B below, received by Atmos Energy during the preceding calendar quarter.

B. "Gross Revenues" shall mean:

- (1) all revenues received by Atmos Energy from the sale of gas to all classes of 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 Atmos Energy from the transportation of gas through the System of Atmos Energy 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);
- (3) the value of gas transported by Atmos Energy for Transport Customers through the System of Atmos Energy within the City ("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 Atmos Energy's monthly 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) "Gross Revenues" shall also include the following "miscellaneous charges": charges to connect, disconnect, or reconnect gas and charges to handle returned checks from consumers within the City, revenues billed but not ultimately collected or received by Atmos Energy; contributions in aid of construction; and State gross receipts fees.
- (5) "Gross Revenues" shall not include:
 - (a) the revenue of any affiliate or subsidiary of Atmos Energy;
 - (b) sales tax or franchise fees paid to the City;
 - (c) interest or investment income earned by Atmos Energy; and
 - (d) 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.

The initial payment for the rights and privileges herein provided shall be made on February 15, 2021 for the privilege period January 1 through March 31, 2021, and each succeeding payment

shall be for the privilege period of the calendar quarter in which the payment is made. The franchise fee amounts based on “Contributions in aid of Construction” (“CIAC”) shall be calculated on an annual calendar year basis, i.e. from January 1 through December 31 of each calendar year. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded within the corporate limits of the City during the preceding calendar year. The final payment of franchise fee amounts based on CIAC will be April 30, 2036, for the calendar year ending December 31, 2035.

It is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad valorem, 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 Atmos Energy or Atmos Energy’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. If the City does not have the legal power to agree that the payment of the foregoing sums of money shall be 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 Atmos Energy’s obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

D. Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Atmos Energy

If Atmos Energy 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 Atmos Energy’s 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 Atmos Energy to City pursuant to this Ordinance may, at the election of the City, 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. The City acknowledges that the exercise of this right is conditioned upon the City’s acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms and Company may grant, in its sole reasonable discretion, such waiver.

E. Atmos Energy Franchise Fee Recovery Tariff

- (1) Atmos Energy may file with the City a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this agreement.
- (2) City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Atmos Energy's rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Atmos Energy's franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by Atmos Energy and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Atmos Energy.
- (3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Atmos Energy.

F. Lease of Facilities Within City's Rights-of-Way. Atmos Energy shall have the right to lease, license or otherwise grant to a party other than Atmos Energy the use of its facilities within the City's public rights-of-way provided: (i) Atmos Energy first notifies the City of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) Atmos Energy makes the franchise fee payment due on the revenues from such lease pursuant to Section 5 of this Ordinance. This authority to Lease Facilities within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees.

SECTION 6. ACCEPTANCE OF FRANCHISE: In order to accept this franchise, Atmos Energy must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Atmos Energy, the franchise ordinance shall be rendered null and void.

When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes that were held by Atmos Energy shall be automatically canceled and annulled and shall be of no further force and effect.

SECTION 7. 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 Atmos Energy 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 Atmos Energy of any of the substantial terms hereof. In such event, the City shall give Atmos Energy written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to Atmos Energy at the address set forth in Section 12 hereof. Atmos Energy shall have sixty (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 Atmos Energy fails to cease such violation or otherwise comply with the terms hereof, then Atmos Energy's franchise is subject to termination under the following provisions. Provided, however, that, if Atmos Energy commences work or other efforts to cure such violations within thirty (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 Atmos Energy is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. Atmos Energy shall be provided at least fifteen (15) business days prior written notice of any public hearing concerning the termination of the franchise. In addition, ten (10) days' notice by one-time 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 Atmos Energy.

(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 Atmos Energy 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 Atmos Energy from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction. The effective date of such termination shall be either when the appeal is dismissed, withdrawn or when a court order upholding the termination becomes final and unappealable. Until the termination becomes effective the provisions of this franchise shall remain in effect for all purposes.

(5) Nothing herein stated shall prevent the City from seeking to compel compliance by suit in any court of competent jurisdiction if Atmos Energy fails to comply with the terms of this franchise after due notice and the providing of adequate time for Atmos Energy to comply with said terms.

SECTION 8. DUTY TO SERVE

Atmos Energy hereby agrees that it will not arbitrarily refuse to provide service to any residential or commercial customer that it is economically feasible for Atmos Energy to serve if the customer to be benefited will pay the cost thereof or if it can be shown that the revenue resulting from such extension will, within a reasonable time after same is made, pay a reasonable return on Atmos Energy's investment, after making the customary allowance for depreciation.

SECTION 9. RATES

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

SECTION 10. AUDIT AND ANNUAL REPORT

The City Manager, or his/her designee, shall, upon five (5) business days written notice, have the right to examine and audit, at any time during regular business hours, the accounts and records of Atmos Energy.

Atmos shall provide a quarterly report detailing Gross Revenues and the calculation of the franchise fee payment.

SECTION 11. 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 Pflugerville City Charter, as amended, and all other applicable ordinances of the City of Pflugerville, not inconsistent herewith.

SECTION 12. 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 (whether actually received or not) 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 Pflugerville

100 E. Main St.

Pflugerville, Texas 78660

ATMOS ENERGY:

Manager of Public Affairs

Atmos Energy Corporation

3110 I 35 N

Round Rock, Texas 78681

SECTION 13. 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 14. EFFECTIVE DATE: If Atmos Energy accepts this ordinance, it becomes effective as of January 1, 2021.

READ by the City Council of the City of Pflugerville on the following days:

__ day of _____, 2020

__ day of _____, 2020

READ, PASSED, ADOPTED AND APPROVED by the City Council of the City of Pflugerville, Texas, this ____ day of _____, 2020.

Victor Gonzales
Mayor

ATTEST:

Karen Thompson
City Secretary

Approved as to form:

Charles E. Zech, City Attorney
DENTON NAVARRO ROCHA BERNAL & ZECH, P.C.

STATE OF TEXAS §
COUNTY OF TRAVIS §
CITY OF PFLUGERVILLE §

I, Karen Thompson, City Secretary of the City of Pflugerville, Travis County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of the City of Pflugerville, Texas, at a _____ session, held on the _____ day of _____, 2020, as it appears of record in the Minutes in Book _____, page _____.

WITNESS MY HAND AND SEAL OF SAID CITY, this the ____ day of _____,
2020.

Karen Thompson, City Secretary
City of Pflugerville, Texas