

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

ORDINANCE NO.

AN ORDINANCE GRANTING A FRANCHISE TO ATMOS ENERGY CORPORATION, RELATING TO THE DISTRIBUTION AND SALE OF GAS IN THE CITY THROUGH THE USE OF PUBLIC RIGHTS-OF-WAY; AND PROVIDING FOR THE REPEAL OF GAS FRANCHISE ORDINANCE NO. 870917-A.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The council grants a franchise to Atmos Energy Corporation, under the following terms and conditions:

SECTION 1. Definitions.

1.1. For the purpose of this Ordinance the following terms, phrases, words and their derivatives shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. Words not defined shall be given their common and ordinary meaning.

1.2. “City Manager” shall mean the City Manager of the City, or his or her duly authorized representative.

1.3. “City Parks” shall mean and include all areas dedicated or used as a public park, recreation area, scientific area, wildlife refuge or historic site.

1.4. “Company” shall mean Atmos Energy Corporation, a corporation organized and existing under and by virtue of the laws of the States of Texas and Virginia, authorized to transact and actually transacting business in the State of Texas, acting by and through its duly authorized legal representatives.

1.5. “Consumer” shall mean any person or organization within the corporate limits of the City of Austin receiving and using gas from the Company for his or her own use, including primary heating and cooking appliances or equipment, or commercial or industrial purposes whether or not the gas is billed directly to him or her, or to another party. (For example, in the case of a rental unit where the utilities are part of the rent, the landlord is a Customer and the tenant is a Consumer.)

1 1.6. "City" shall mean the City of Austin, Texas, a municipal corporation in the
2 State of Texas.

3
4 1.7. "Corporate limits" shall mean all areas lying within the City limits and full
5 purpose annexed adjacent areas, as they may change from time to time.

6
7 1.8. "Council" shall mean the governing body of the City of Austin.

8
9 1.9. "Customer" shall mean any person or organization being billed for gas
10 services, including transportation, whether used by him or her, or by others.

11
12 1.10. "Director of Public Works" shall mean the Director of the Public Works
13 Department of the City, or successor in function.

14
15 1.11. "Distribution System" shall mean, in its entirety, all pipes, equipment and
16 other appurtenances and any portion thereof, used or necessary for the transporting and
17 delivery of gas to customers and consumers within the corporate limits of the City.

18
19 1.12. "Emergency" is defined as sudden and unforeseeable damage or malfunction
20 of a portion of the Company's Austin Distribution System that creates a threat to life,
21 health or property.

22
23 1.13. "Franchise" shall mean this Ordinance, and all rights and obligations
24 established herein.

25
26 1.14. "Gas" shall mean natural gas and any synthetic gas distributed by the
27 Company through its Distribution System.

28
29 1.15. "Gross Revenues" shall mean all revenue derived or received, directly or
30 indirectly, from the sale of gas to all classes of customers and consumers (excluding gas
31 sold to another gas utility in the City for resale to its customers within the City) within
32 the corporate limits of the City.

33
34 (1) "Gross Revenues" shall include:

35 (a) revenues derived from the following 'miscellaneous charges';

36 i. charges to connect, disconnect, or reconnect gas within the
37 City;

38 ii. charges to handle returned checks from consumers within the
39 City;
40
41
42

1 iii. such other service charges and charges as may, from time to
2 time, be authorized in the rates and charges on file with the
3 City;

4
5 (b) gross receipts from gas sales and gross receipts from gas
6 transportation;

7
8 (c) all revenues derived by the Company from the transportation of
9 Transport Gas through the Company's Distribution System within the
10 City to customers and consumers located within the City (excluding
11 any gas transported to another gas utility in the City for resale to its
12 customers within City);

13
14 (d) the value of gas transported by the Company for Transport Customers
15 through the System of the Company located in the City's Public
16 Rights-of-Way ("Third Party Sales") (excluding the value of any gas
17 transported to another gas utility in the City for resale to its customers
18 with the City), with the value of such gas to be established by utilizing
19 Atmos Energy's monthly Weighted Average Cost of Gas charged to
20 industrial customers in the Mid-Tex Division, as reasonably near the
21 time that the transportation service is performed; and

22
23 (2) "Gross revenues" shall not include:

24
25 (a) the revenue of any person including, without limitation, an Affiliate,
26 to the extent that such revenue is also included in Gross Revenues of
27 the Company;

28
29 (b) sales taxes;

30
31 (c) any interest income earned by the Company;

32
33 (d) all monies received from the lease or sale of real or personal property,
34 provided, however, that this exclusion does not apply to the lease of
35 facilities within the City's public rights-of-way;

36
37 (e) receipts for maintenance of appliances, machinery or equipment;

38
39 (f) receipts for compensation for damage to the Company's property;

40
41 (g) receipts for the generation of electricity;

1 (h) contributions in aid of construction; and

2
3 (i) revenues billed but not ultimately collected or received by the
4 Company.

5
6 1.16. "Public Easement" shall mean those public easements held, owned or
7 controlled by the City, the terms, conditions or limitations upon which are not
8 inconsistent with the construction or maintenance of a natural gas distribution system.

9
10 1.17. "Service Line" shall mean lines connected at or nearly at right angles to the
11 Company's mains and used to convey gas therefrom to the property line of customers
12 and/or consumers.

13
14 1.18. "Sidewalk" is that portion of a street which is not improved and maintained
15 for vehicular travel.

16
17 1.19. "Street" or "Alley" shall mean a publicly dedicated or maintained right-of-
18 way, a portion of which is open to use by the public for vehicular travel.

19
20 1.20. "Unmetered Gas" shall mean that gas being moved under pressure from the
21 Company's main lines to the customers' and/or consumers' meter.

22
23 1.21. "Transport gas" or "transported gas" shall mean gas owned or controlled by a
24 customer or its designee (i.e., gas that is purchased or otherwise acquired by a customer
25 from someone other than the Company) and delivered by such customer or its designee to
26 the Company at a point on the Company's Distribution System, such point of delivery to
27 be defined by the Company, and carried, delivered or transported through the Company's
28 system at a point of redelivery in the City by the Company to the customer, for a fee.
29 The terms and conditions of the transportation arrangement, including but not limited to
30 the delivery point(s) of redelivery, measurement and location of title transfer, shall be as
31 set forth in the contract entered into between the Company and the customer and/or the
32 Company's transportation tariffs on file with the Railroad Commission of Texas or other
33 appropriate regulatory authority.

34
35 SECTION 2. Granting of Franchise.

36
37 2.1. There is hereby granted to the Company a non-exclusive Franchise to
38 maintain, construct, equip, extend, alter and otherwise establish and operate in the City,
39 as now or hereafter constituted, works, systems, plants, lines and all related facilities
40 (including those now in service) necessary or appropriate to sell, manufacture and store,
41 distribute, transport, convey or otherwise conduct, serve, supply and furnish the
42 inhabitants of the City and others, and to the City, whenever the City may desire to

1 contract therefore, gas for light, fuel, power, heat and any and all other useful purposes,
2 and the said Company is hereby granted passage, right-of-way in, under, along and
3 across, the right to occupy and use in any and all lawful way during the life of this
4 Franchise any and all streets, avenues, public easements, rights-of-way, alleys, highways,
5 sidewalks and bridges, of the City, beneath the surface of the same, as said streets,
6 avenues, public easements, rights-of-ways, alleys, highways, sidewalks, and bridges of
7 the City, now or may hereafter exist, and lawful purpose as herein mentioned.
8

9 2.2. The Company shall be allowed to operate and maintain all lines existing on
10 the effective date of this Franchise within City Parks, or then existing on land hereinafter
11 designated or used as a City Park, but shall not undertake a major replacement of such
12 lines or lay new lines within said City Park. In the event that the Company has no
13 feasible and prudent alternative to laying a new line or replacing a line which avoids a
14 City Park, and the cost associated therewith exceeds the cost of laying said line in whole
15 or in part within a City Park by 15% or more, then the Company may directly petition the
16 City Council for permission to cross City Park lands. The petition must include the
17 Company's grounds for its assertion that there is no prudent or reasonable alternative to
18 replacing or laying a line in a City Park. Within ninety (90) days of the filing of said
19 petition, the City Council shall, in accordance with applicable law, including without
20 limitation, Texas Parks and Wildlife Code Chapter 26, either permit the Company to use
21 City Park land, or authorize the Company to, immediately upon completion of such
22 project, adjust its rates for gas service to permit recovery of such total excess costs plus
23 applicable financing charges at the then current prime rate over a period of three (3)
24 years, by surcharge.
25

26 2.3. The construction, maintenance, and operation of the Company's Distribution
27 System and property of the Company subject to this Franchise shall be subject to
28 ordinances and regulations passed or approved by the City Council, to the extent that
29 such ordinances and regulations are not in conflict with the laws of the United States, the
30 State of Texas, or the orders, rules or regulations of the Railroad Commission of Texas or
31 other regulatory authority where such authorities have pre-emptive jurisdiction over the
32 subject matter of such City ordinances or regulations.
33

34 2.4. The initial term of this Franchise shall expire ten (10) years from the
35 effective date of this Franchise Ordinance, and shall include any period between
36 November 15, 2007 and the effective date of this Franchise Ordinance. The Company
37 agrees to provide, no less than one (1) year before the expiration of the initial term,
38 written notice of its intent to renew this Franchise for the second ten (10) year term. At
39 the end of the initial ten (10) year term, the term shall be automatically renewed for one
40 additional ten (10) year term, unless:
41
42

- 1 (a) the Company is in material default under the terms of this Franchise
2 Ordinance and written notice is given to the Company by the City; or
3
4 (b) written notice of intent to terminate this Franchise at the expiration of the
5 initial term is given to the City by the Company; or
6
7 (c) written notice of intent to renegotiate this Franchise at the expiration of the
8 initial term is given to the Company by the City.
9

10 2.4.1. Written notices specified in Section 2.4, above, must be provided one
11 (1) year before the expiration of the initial term. The notice shall specify either the desire
12 to renegotiate or the desire to terminate this Franchise, in which event this Franchise shall
13 either be renegotiated or terminated at the end of the initial term. After renegotiation, this
14 Franchise may be extended for an additional ten (10) year term, which will include ten
15 (10) years from the date of the expiration of the initial term. The party that has been
16 provided notice of its intent to seek to renegotiate the terms of this Franchise may
17 withdraw its request prior to the expiration of the initial term of the Franchise, in which
18 event the Franchise shall be renewed automatically.
19

20 2.5. (A)(1) The Company shall not transfer this Franchise, as part of a sale of
21 stock or assets involving the Company and some or all of its divisions and subsidiaries
22 without the written approval of the Council expressed by ordinance, and such approval
23 shall not be unreasonably withheld.
24

25 (2) The Council may revoke this Franchise if the Company sells,
26 transfers, conveys or otherwise disposes of its rights or interests under this Franchise, or
27 attempts to do so, without the Council's prior written consent. All rights and interests of
28 the Company shall cease if this Franchise is revoked.
29

30 (3) A transfer in violation of this section is void.
31

32 (4) The Company may not assign this Franchise to evade fee
33 payment.
34

35 (B) In the event the Company expresses its intent by letter or contract to
36 sell its Distribution System located within the City of Austin, separate and apart from the
37 other assets of the Company, then the City shall have prior to the completion of such sale
38 of the Company's Distribution System, ninety (90) days to provide notice to the
39 Company of its intent to exercise its option to commence purchasing the Company's
40 Austin Distribution System in the manner provided in Section 18 of this Franchise. The
41 Company shall provide the City with any information about the transferee of its
42 Distribution System that is within its possession within seven (7) consecutive days of a

1 written request from the City. If at the end of ninety (90) days the City has not notified
2 the Company of its intent to exercise its option to purchase the Company's Distribution
3 System, the Company may proceed with its negotiations to transfer its Distribution
4 System. The Company agrees that no transfer of its Distribution System to any transferee
5 shall be completed prior to the City's approval of the transfer of the Franchise to a
6 transferee.

7
8 2.6. The reorganization of the Company, after notice to the City which maintains
9 the same personnel and management under the reorganization, shall not operate to trigger
10 the requirements of this section.

11
12 SECTION 3. Acceptance by Company and Effective Date.

13
14 3.1. This Franchise shall be accepted by the Company in writing, which
15 acceptance shall be filed with the City within sixty (60) days after the passage of this
16 Ordinance by the City Council, and when so accepted this Ordinance shall be a contract
17 duly executed by and between the City and the Company.

18
19 3.2. The City, by the granting of this Franchise, does not surrender or to any
20 extent lose, waive, imperil or lessen the lawful powers and rights now or hereinafter
21 vested in the City under the Constitution and Statutes of the State of Texas and under the
22 Charter of the City to regulate the rates for services of the Company; and the Company,
23 by its acceptance of this Franchise, agrees that all such lawful regulatory power and
24 rights as the same may from time to time be vested in the City shall be in full force and
25 effect and subject to the exercise thereof by the City at any time and from time to time.

26
27 SECTION 4. Service.

28
29 4.1. Service shall be provided by means of the use of streets, alleys, Public
30 Easements, and other public rights-of-way. If additional Public Easements are necessary,
31 they shall be the responsibility of the property owner requesting such service. All future
32 locations shall be in a space designated by the City. The Company shall not place its
33 facilities where the same will interfere with any existing cable television, electric, water,
34 street lights, fire lanes or communications lines, or obstruct or hinder in any manner the
35 various utilities serving the residents of the City.

36
37 4.2. The Company shall, as specified in its "Rules of Service," as are now, or as
38 shall in the future be approved by the City Council, or other regulatory authority having
39 jurisdiction, furnish service without unreasonable discrimination to all areas of the City.
40 The Company shall not deny service, or otherwise discriminate against applicants for
41 service, customers or consumers on the basis of race, religion, national origin, sex or
42 sexual orientation. The Company, and its successors and assigns, shall have the right to

1 adopt and enforce Rules of Service hereunder not inconsistent with the law of this
2 Franchise Ordinance.

3
4 4.3. The City may require the Company to maintain a Termination of Service
5 Policy in its Rules of Service that is identical to or consistent with that applied to
6 Company's similarly situated gas utility customers. The City shall, commensurate with
7 approval of any such change in the Company's Rules of Service, provide for the recovery
8 of the prospective cost impact associated with the change or changes.
9

10 4.4. The Company shall maintain its property and equipment in good order and
11 condition consistent with the needs of the service to be rendered therefrom, but may not
12 be compelled to extend its facilities beyond the consumer's property line. It is
13 recognized that the Company shall retain full title in and right to its personal property
14 whether or not same is incorporated in real estate. The Company shall be required to
15 extend distribution mains in any Public Rights-of-Way up to one hundred feet (100'), at
16 its own cost and without expense, for any one Customer only if such Customer uses gas
17 for unsupplemented space heating and water heating. The Company shall not be required
18 to extend transmission mains in any Public Right-of-Way or to make a tap on any
19 transmission main within the City unless Company agrees to such extension by a written
20 agreement between the Company and a Customer. The Company shall in every instance
21 install all necessary lines moving unmetered gas.
22

23 4.5. The Company's system and appurtenances shall be located, installed and
24 maintained so that, to the extent reasonably practicable, the facilities do not unreasonably
25 interfere with any improvements the City may deem proper to make, or unnecessarily
26 obstruct the free use of the streets, alleys, bridges, Public Easements or public property.
27

28 4.6. The City Council may, in its discretion, pursuant to the authority of the City
29 Charter, require a management audit of the Company's operations in the City. The costs
30 of such audit shall be borne by the Company but recoverable through its rates and by a
31 line item surcharge to Customers within the City.
32

33 4.7. The Company shall actively support the conservation of natural gas by
34 designing, implementing, monitoring, and evaluating a conservation program. The extent
35 of the Company's specific participation in the conservation of natural gas shall be
36 determined by Ordinances that the Council may adopt, from time to time, during the term
37 of this Franchise. The Company shall work with the City to coordinate conservation
38 programs in a manner which will avoid unnecessary duplication and enhance benefits to
39 the Community.
40
41
42

1 SECTION 5. Use of Streets and Public Easements.

2
3 5.1. The Company is hereby authorized, licensed and empowered to do any and all
4 things necessary and proper to be done and performed in executing the powers and
5 utilizing the privileges herein mentioned and granted by this Franchise, provided the
6 same do not conflict with existing water pipes, sewers, electric power lines, telephone
7 lines, cable television lines and other authorized installations, and provided that all work
8 done in said streets, avenues, Public Easements, Rights-of-Way, alleys, highways,
9 sidewalks, and bridges by the Company shall be done with the utmost diligence and
10 without unnecessary inconvenience to the public or individuals. Further, the Company's
11 use of the foregoing shall be in accordance with all City Ordinances and the "Standard
12 Specifications for Cuts in Public Rights-of-Way."

13
14 5.2. The mainlines of the Company shall be laid in alleys, streets, and avenues,
15 and other Public Easements, and when in streets and avenues, shall be laid parallel with
16 the curb line thereof, or in such locations as shall be most practical. The Company's main
17 lines shall be installed or replaced at depths which comply with all applicable state and
18 federal rules and regulations establishing minimum safety standards for the design,
19 construction, maintenance and operation of pipelines, provided, however, that in no case
20 shall any main be laid less than 18 inches below the established street grade, without
21 permission of the Director of Public Works.

22
23 5.3. When the Company shall desire to lay any mains hereunder, and before
24 commencing its construction work, it shall submit to the Director of Public Works or
25 other proper authority an application for permit, and a map or plan showing the streets,
26 avenues, alleys, and other Public Easements wherein it proposes to construct its facilities.
27 The Director of Public Works or other proper authority, shall respond in writing to the
28 Company within ten (10) calendar days of the Company's submission either approving or
29 rejecting the plan and if a rejection, listing the reasons for such rejection. Actual
30 approval by the Director of Public Works or other proper authority shall constitute a
31 permit to the Company for the opening of all of the streets, avenues, alleys and other
32 public places shown on the map or plan, and for the construction or laying of the
33 mainlines and other facilities or equipment by the Company. Provided, however, that it
34 shall not be necessary for the Company to secure a permit for the laying of service lines
35 from the mainline pipes of the Company to its customers and/or consumers. Nor shall the
36 Company be required to secure a permit in advance of excavation in the event of an
37 emergency, as defined herein, provided that the Company shall file with the Director of
38 Public Works no later than ten (10) days after the last day of such an emergency, the
39 information that the Company would have been required to pre-file had there not been an
40 emergency and detailed information that describes the circumstances of said emergency.
41
42

1 5.4. In furtherance of the public interest in safety, health and public welfare and
2 to facilitate the safe management of public right of way, the construction, expansion,
3 reconstruction, excavation, use, maintenance and operation of the Company's
4 Distribution System and property is subject to all generally applicable City requirements.
5 In addition to any other City requirements, the Company shall provide the City's Office
6 of Right of Way Management, or such other officials as the City may designate,
7 construction plans and maps showing the routing of any new construction and
8 construction plans, forty- five (45) days prior to the commencement of construction
9 which involves an alteration to the surface or beneath the surface of the public right-of-
10 way, to the extent generally required. The Company shall not begin construction until the
11 plans and drawings have been approved in writing by the Office of Right of Way
12 Management; this approval shall not be unreasonably delayed. The Company shall
13 participate in the Austin Utility Location Coordination Committee ("AULCC") meetings
14 and coordinate new construction with the AULCC. The Company's facilities shall bear
15 the identification marks, established by the AULCC, if the facilities are installed after the
16 AULCC establishes identification marks.
17

18 5.5. In the event of a conflict between the provisions of this Section 5 and those
19 of City Code Chapter 14-11 or other ordinance of general applicability that regulates the
20 use of City public rights-of-way, the provisions of the City Code shall govern.
21

22 SECTION 6. Work by the City and Others.

23

24 6.1. City reserves the right to lay, and permit to be laid, sewer, cable television,
25 water, telephone and other pipelines, cables and conduits, and to perform and permit to
26 be performed any underground or overhead work that may be necessary or proper in,
27 across, along, over, or under any street, alley, highway, Public Easement, or public place
28 occupied by the Company. The City shall be liable to the Company only for any damage
29 to the facilities of the Company, the producing cause of which is the negligence of the
30 City or its employees.
31

32 6.2. If the City requires the Company to adapt or conform its Distribution System,
33 or in any way alter, relocate or change its property to enable any person, firm, corporation
34 or entity (whether public or private), other than the City, to use the public ways, the
35 Company shall be entitled to reimbursement from the person, firm, corporation or entity
36 desiring or occasioning such change for any and all loss, cost or expense occasioned
37 thereby.
38

39 SECTION 7. Changes for Governmental Purposes.

40

41 7.1. If, during the period of this Franchise, the City shall elect to alter or change
42 the grade or alignment of any street, alley or other Public Easement, or any water pipe,

1 wastewater pipe, or any overhead or underground structure within the corporate limits of
2 the City, so as to conflict with the facilities of the Company, the Company shall remove
3 or relocate, as necessary, all of its facilities at its own expense. Schedules for this work
4 shall be developed by designated representatives of the Company and the City. If such
5 representatives cannot agree on the schedule, the City Manager, after consultation with
6 the Company, shall establish a schedule. This schedule shall provide for a minimum of
7 thirty (30) days to exist between the time the schedule is furnished to the Company and
8 the time that any specific work to be done by the Company covered in the schedule is to
9 begin.

10
11 7.2. Whenever any such project is funded, in whole or in part, with federal or state
12 highway monies, if the federal or state government provides compensation for utility
13 adjustments, the City shall request that compensation be provided to the Company by the
14 funding authority. If the City receives such requested utility adjustment compensation, it
15 shall deliver same to the Company. When the Company is required to remove or relocate
16 its mains, laterals or other facilities to accommodate work by City without reimbursement
17 from City, the Company shall have the right to seek recovery of relocations costs as
18 provided for in applicable state and/or federal law.

19
20 SECTION 8. Company Rules and Regulations, Jurisdiction.

21
22 8.1. The Company and its successors and assigns shall have the right to adopt and
23 enforce Rules of Service for service hereunder not inconsistent with the law or this
24 Franchise, and shall be subject to the original jurisdiction of the City or other regulatory
25 authorities having jurisdiction from time to time.

26
27 8.2. This Franchise shall be governed in accordance with and construed by the
28 laws of the State of Texas. If there is a dispute between the City and the Company on any
29 issue arising under this Franchise Ordinance or the operation of the Franchise created
30 hereunder, other than where an appeal is subject to the Texas Gas Utility Regulatory Act
31 or subsequent regulatory authority, as it may be amended from time to time, the parties
32 agree that trial of such action shall be vested exclusively in the Travis County State
33 District Courts or in the United States District Court for the Western District of Texas.

34
35 SECTION 9. Curtailments.

36
37 9.1. The Company agrees to actively seek to provide the best mix of gas supply at
38 the lowest prices consistent with its duty to provide safe and reliable services to its
39 customers. The Company shall either make an annual report to the City of its gas supply
40 activities relating to Austin, or submit to the City a copy of the triennial report pertaining
41 to its cost of gas that it currently submits to the Railroad Commission of Texas.
42

1 9.2. The Company shall exercise its best efforts under reasonable terms and
2 conditions, to maintain an adequate supply of natural gas to meet the requirements of
3 residential consumers, hospitals and essential governmental services within the municipal
4 limits of the City of Austin.
5

6 9.3. The Company's undertakings shall be subject to its ability, by use of due
7 diligence and normal business methods, to obtain and place in service the necessary
8 materials and facilities. Moreover, the Company shall be excused from failure or delay in
9 performing such obligations if and to the extent occasioned by an act of God, fire,
10 explosion, flood, act of a public enemy, contagion or contamination hazardous to human
11 life or health, legal restraints, labor difficulties, material shortages, interruption or
12 deficiency of gas supply not attributable to default of the Company or, without
13 limitations, any other cause or combination of causes not reasonably within the
14 Company's ability to anticipate or control. The Company shall notify the City promptly
15 and in no case less than thirty (30) days of its intent to utilize this provision of this
16 Franchise. In any case of shortage of gas supply due to any cause where the Company,
17 by reason thereof, is unable to furnish gas for all purposes, preference shall be as
18 specified in the curtailment procedure set forth in its Rules of Service.
19

20 SECTION 10. Annexations by City.
21

22 The City shall notify the Company in writing of the annexation of any new
23 territory into the city limits of the City, which notice shall include a map and addresses, if
24 known. Upon receipt of notice of annexation from the City, the Company shall have
25 sixty (60) days to begin collecting and paying the Franchise Fee for any revenues
26 received from the Company's customers and/or consumers residing in the newly annexed
27 territories.
28

29 SECTION 11. Fees, Rates.
30

31 11.1. Since the streets, rights-of-way, and Public Easements to be used by the
32 Company in the operation of its system within the boundaries of the City are valuable
33 public properties acquired and maintained by the City at great expense to its taxpayers,
34 and since the grant to the Company of the use of said streets, rights-of-way, and Public
35 Easements is a valuable property right without which the Company would be required to
36 invest substantial capital in right-of-way costs and acquisitions, and since the City will
37 incur costs in regulating and administering the Franchise, the Company shall, throughout
38 the term of this Franchise, pay the City the aggregate sum of five percent (5%) of the
39 Company's total gross revenues (exclusive of the Texas Limited Sales Tax), collected for
40 gas utility or transportation service to consumers and customers within the corporate
41 limits of the City under the Company's rates, effective from time to time, excepting
42 therefrom, however, the gross receipts from gas sold to the City for its own use.

1
2 11.2. The Franchise Fee shall be paid quarterly to the City on or before the 15th
3 day of the second month following the end of the quarterly period for which said
4 payment is due. The Franchise Fee payment shall be made via electronic funds transfer.
5 At the time said payment is made, the Company shall deliver to the City's Office of
6 Telecommunications and Regulatory Affairs or successor in function, a summary
7 statement indicating the derivation and calculation of such electronic funds transfer
8 payment. For purposes of determining such fee, the books of the Company shall at all
9 reasonable times be subject to inspection by the duly authorized representatives of the
10 City, subject to the City providing twenty (20) days written notice to the Company of its
11 intent to conduct such inspection. The inspection and audit shall be limited to the three
12 (3) years immediately preceding the date of the written notice. The expense of all audits
13 and reviews of all Company records for the purpose of the operation of this Franchise
14 shall be paid by the Company and recovered in tariff on file for this Franchise.
15

16 11.2.1. In the event any quarterly payment is made after 5:00 p.m. on the
17 date due, the Company shall pay to the City a late payment charge of the greater of:
18

19 (a) \$100, or
20

21 (b) Simple interest at 10% annual percentage rate of the total amount
22 past due.
23

24 11.3. The Franchise Fee shall be in lieu of any and all other rentals or
25 compensation or Franchise, license, privilege, instrument, occupation, excise or revenue
26 taxes or fees and all other exactions or charges (except ad valorem property taxes, permit
27 fees prescribed by the City's Department of Public Works, special assessments for local
28 improvements, and such other charges imposed uniformly upon persons, firms or
29 corporations then engaged in business with the City), or permits upon or relating to the
30 business, revenue, Franchise, gas lines, installations and systems, conduits, storage tanks,
31 pipes, fixtures and other facilities of the Company and all other property of the Company
32 and its activities, or any part thereof, in the City which relate to the operations of the
33 Company's gas distribution system.
34

35 11.4. The Franchise Fee shall accrue to the City only so long as the City, after
36 notice and the opportunity to cure in the instance of disagreement between the parties,
37 does not charge, levy, require or collect any other rentals or compensation of franchise,
38 license, privilege, instrument, occupation, inspection, excise or revenue taxes, fees or
39 other exactions or charges relating to the operation of the Company's gas Distribution
40 System in the City as aforesaid.
41

42 11.5. The Franchise Fees, defined in the Franchise Ordinance, are a reasonable

1 and necessary operating expense of Company and may be fully recovered by Company
2 by collection from its customers in the City, whether asserted retroactively or
3 prospectively, by revising its rate schedules, and/or assessing an additional charge to the
4 monthly bills of its customers within the City, adding an additional charge to the
5 Company's purchased gas adjustment clause for the City or in any legal manner approved
6 by the City.
7

8 11.6. Each transportation customer of the Company shall pay a franchise fee on
9 the value of transported gas that is based on Atmos Energy's monthly Weighted Average
10 Cost of Gas charged to industrial customers in the Mid-Tex Division.
11

12 11.8. The Company shall use all due diligence in collecting from customers any
13 and all fees required by this Franchise agreement, but shall not be responsible for paying
14 same to City if the Company's customer refuses to pay the fee imposed on the purchase
15 price of the gas transported, and remains delinquent in payment of such fee for a period
16 greater than thirty days. The Company shall be responsible for the uncollected fee on any
17 gas thereafter transported through the rights of way of the City to the Company's
18 transportation customer, but in no event shall the customer be relieved.
19

20 11.9. (A) The City Council hereby expressly reserves the right, power, and
21 authority to fully regulate and fix the rates and charges for the services of the Company
22 as provided by State law including, but not limited to, Title 3 of the Texas Utilities Code,
23 and the City Charter.
24

25 (B) The Company may, from time to time, propose changes in its general
26 rates by filing an application with the City Secretary for the consideration of the City
27 Council. Within a reasonable time consistent with law, the City Council shall afford the
28 Company a fair hearing with reference to the application and shall either approve or
29 disapprove the proposed changes or make such order as may be reasonable.
30

31 (C) In order to ascertain any and all facts, the City Council or its designate
32 shall have full power and authority to inspect, or cause to be inspected, the books of the
33 Company, and to inventory and appraise, or cause to be inventoried, and appraised, the
34 property of the Company, and to compel the attendance of witnesses and the production
35 of books and records.
36

37 (D) The City shall not allow as to rates or services an unreasonable
38 preference or advantage to anyone within a service classification, nor allow the Company
39 to subject anyone within a service classification to any unreasonable prejudice or
40 discrimination. Neither shall the Company grant, directly or indirectly, any rebate, in the
41 form of money or any other thing of value, to any customer or consumer in order to
42 circumvent the rate schedules filed with the City pursuant to this Franchise Ordinance.

1
2 (E) The City Council has authority to require the Company to allocate costs
3 of facilities, revenues, expenses, taxes, and reserves between the City and other
4 municipalities or unincorporated areas, consistent with State Law.
5

6 11.10. The Company agrees that the City may, at any time during the term of this
7 Agreement, at the expense of the Company, obtain expert assistance and advice in
8 determining fair, just, and reasonable rates to be charged by the Company to its
9 customers in the corporate limits of the City, and in determining the extent to which the
10 Company is complying with the terms and conditions of this Ordinance. The Company
11 agrees to pay reasonable expenses in connection therewith, or reimburse the City for the
12 same, which expense the Company shall be entitled to recover through rates and tariffs.
13

14 11.11. So long as the Company is publicly traded and subject to the filing
15 requirements of the Securities and Exchange Commission, the Company shall file
16 annually with the City's Chief Financial Officer, or his designate, no later than four (4)
17 months after the end of the Company's fiscal year, annual audited statements of the
18 Company. The certified public accountant preparing the statement shall certify that the
19 statement is in accordance with applicable generally accepted accounting principles.
20

21 SECTION 12. Indemnity. 22

23 The Company shall indemnify, defend, and save harmless the City, its agents,
24 officers and employees, against and from any and all claims by or on behalf of any
25 person, firm, corporation, or other entity, arising from the Company's construction,
26 operation or management of its transmission or Distribution System, or arising from any
27 act of negligence of the Company, or any of its agents, contractors, servants, employees,
28 or licenses, including a breach of the Company's obligation under this Franchise
29 Agreement to provide the City information contained in written reports that is free of
30 material misrepresentation, and from and against all costs, counsel fees, expenses and
31 liabilities incurred in or about any such claim or proceeding brought thereon; except that
32 the indemnity provided for in this paragraph shall not apply to any liability resulting from
33 the negligence or intentional acts or omissions of the City, its officers and employees. In
34 the event a claim allegedly arises from the concurrent fault of both the City and the
35 Company, the Company must indemnify the City to the full proportionate extent to which
36 the Company is found to be responsible. The City shall promptly notify the Company of
37 any claim or cause of action which may be asserted against the City relating to or
38 covering any matter against which the Company has agreed, as set forth above, to
39 indemnify, defend and save harmless the City. The Company reserves the right, but not
40 the obligation, to employ such attorneys, expert witnesses and consultants as it deems
41 necessary to defend against the claim or cause of action. The Company shall have the
42 right to investigate, defend and compromise all claims referred to herein after conferring

1 with the City's Law Department. It is understood that it is not the intention of either the
2 City or the Company to create any liability, right or claim for the benefit of third parties
3 and this franchise ordinance is intended and shall be construed for the sole benefit of the
4 City and the Company.

5
6 SECTION 13. Insurance.

7
8 The Company will maintain a level of insurance in consideration of the Company's
9 obligations and risks undertaken pursuant to this Franchise that is consistent with best
10 industry practices. Such insurance may be in the form of self-insurance to the extent
11 permitted by applicable law, under an approved formal plan of self-insurance maintained
12 by the Company in accordance with sound accounting and risk-management practices. A
13 current certificate shall be provided to the City. The Company shall be responsible for
14 paying all self-insurance retention and insurance deductibles associated with the payment
15 of any claim arising from activities conducted under this Franchise.

16
17 SECTION 14. Equal Employment Opportunity.

18
19 14.1. The Company shall adhere to equal employment practices within the City of
20 Austin, and to all federal, state and local rules and laws pertaining to discrimination,
21 equal employment and affirmative action.

22
23 14.2. The Company shall provide equal employment opportunity to minorities,
24 women and the physically disabled at all levels and in all phases of operation.

25
26 14.3. Company shall make all reasonable efforts to comply with any applicable
27 affirmative action requirements.

28
29 SECTION 15. Forfeiture and Termination.

30
31 15.1. In addition to all other rights and powers retained by the City under this
32 Franchise or otherwise, the City reserves the right to declare this Franchise forfeited and
33 to terminate the Franchise and all rights and privileges of the Company hereunder in the
34 event of a material breach of its terms and conditions. A material breach by the
35 Company shall include, but shall not be limited to, the following:

36
37 (A) Failure on more than three (3) occasions to pay when due the Franchise
38 Fee prescribed by Section 11 hereof. Failure to pay a single installment of the Franchise
39 Fee in full (including late payment charges in accordance with §11.2.1) within thirty (30)
40 days after the due date, in the absence of a bona fide dispute communicated to the City in
41 writing on or before the due date of the applicable Franchise Fee installment, is a material
42 breach.

1
2 (B) Failure to materially provide the services provided for in this Franchise
3 Ordinance;

4
5 (C) Material misrepresentation of fact in the application for or negotiation of
6 the Franchise; and
7

8 (D) Conviction of any director, officer, employee or agent of the Company
9 of the offense of bribery or fraud connected with or resulting from the awarding of this
10 Franchise to the Company.
11

12 15.2. The foregoing shall not constitute a material breach if the violation occurs
13 without fault of the Company or of its employees or occurs as a result of circumstances
14 beyond its control. Company shall not be excused by mere economic hardship or by
15 malfeasance or the malfeasance of its directors, officers, or employees.
16

17 15.3. In order for the City to declare forfeiture, the City shall make a written
18 demand that the Company comply with any such provision, rule, order, or determination
19 under or pursuant to this Franchise. If the violation by the Company continues for a
20 period of forty-five (45) days following such written demand without written proof that
21 the corrective action has been taken or is being actively and expeditiously pursued to
22 completion, the Council may take under consideration the issue of termination of the
23 Franchise. The City shall cause to be served upon the Company, at least twenty (20) days
24 prior to the date of such a Council meeting, a written notice of intent to request such
25 termination and the time and place of the meeting. Public notice shall be given of the
26 meeting and issue which the Council is to consider.
27

28 15.4. The Council shall hear and consider the issue, shall hear any person
29 interested therein, and shall determine, in its discretion, whether or not any violation by
30 the Company has occurred.
31

32 15.5. If the Council shall determine that the violation by the Company was the
33 fault of the Company and within its control, the Council may declare the Franchise of the
34 Company forfeited and terminated, or the Council may grant to Company a period of
35 time for compliance. Nothing herein shall be deemed a waiver of the Company's right to
36 pursue all available legal remedies.
37

38 SECTION 16. Change of Control.
39

40 Upon the foreclosure or other judicial sale of all or a substantial part of the
41 Distribution System within the corporate limits of the City, or upon the leasing of all or a
42 substantial part of the Distribution System, the Company shall notify the City of such

fact, and such notification shall be treated as a notification that a change in control of the Company has taken place and the provisions of this Franchise governing the consent of the Council to such changes in control of the Company shall apply.

SECTION 17. Receivership and Bankruptcy.

17.1. The Council shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy or other action in proceeding, whether voluntary or involuntary, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless;

17.2. Within one hundred twenty (120) days after his or her election or appointment, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults thereunder; or

17.3. Such receiver or trustee, within one hundred twenty (120) days, shall have executed an Agreement, duly approved by the court having jurisdiction, whereby the receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise granted to the Company.

SECTION 18. Purchase.

18.1. Pursuant to Article XI of the City Charter, the City shall have the option to purchase the Company's Distribution System within the City of Austin according to the method outlined in this Section 18.

18.2. The following are conditions precedent to the exercise of City's option to purchase:

18.2.1. The City must provide the Company with written notice of the City's intention to exercise its option to purchase the Company's property devoted to the Distribution System.

18.2.2. Within thirty (30) days after receipt of the notice of intention to exercise its option, the Company shall make a written offer ("Offer") stating the cash price at which the Company is willing to close the purchase and sale of the Distribution System. Within ninety (90) days of the receipt of the Offer, the City must give written notice to the Company (a) that the Offer is rejected and the appraisal procedures set forth in Section 18.3 are to be initiated, (b) that the City agrees to purchase the Distribution System for cash at the cash price stated in the Offer, or (c) withdraw its notice of intent to

1 exercise its purchase option.
2

3 18.2.3 If the City agrees to purchase the Distribution System at the price
4 stated in Company's Offer, the parties shall negotiate the terms of a definitive purchase
5 agreement in good faith. Closing shall take place within thirty days after satisfaction of
6 all conditions precedent to the sale in the purchase agreement are satisfied, or at such
7 other time upon which the parties may mutually agree.
8

9 18.3. Upon initiation of the appraisal procedures set forth in this section, the
10 Company and the City shall each appoint an appraiser within thirty (30) days after
11 delivery of the written election for appraisal under Section 18.2. The appraisers shall be
12 experienced in the evaluation of gas distribution systems, and neither appraiser shall have
13 worked for either the City or the Company within five (5) years of the date of
14 appointment or be otherwise disqualified from rendering independent judgment. The
15 City and the Company shall each immediately provide the name, mailing address and
16 telephone number of its appointee to the other party. The appointed appraisers shall
17 agree on the appointment of a third appraiser with like qualifications.
18

19 18.3.1. Within thirty (30) days after appointment of the third appraiser and
20 after no less than least fifteen (15) days written notice to the parties, the appraisers shall
21 commence their determination of the appraisal value of the Distribution System.
22

23 18.3.2. Within ninety (90) days after the commencement of the appraisal
24 process, the appraisers shall each file with the City and the Company a written proposed
25 decision on the appraised value, including detailed written findings explaining the basis
26 of the proposed valuation. The factors for the appraisers to consider in arriving at a fair
27 market value for the Company's facilities shall include, but not be limited to, the
28 following:
29

30 (A) the book value of the assets constituting the Company's Distribution
31 System within the City of Austin;
32

33 (B) the age and condition of the physical plant and equipment;
34

35 (C) the discounted future revenue stream generated from the customer base;
36 and
37

38 (D) the remaining useful life of the Company's distribution system within
39 the City of Austin.
40

41 18.4. Closing shall be held at a mutually agreeable location one hundred twenty
42 (120) days after the City's receipt of the Offer ninety (90) days after the final decision of

the appraisers becomes final. At the closing, the City shall pay in the case the cash price stated in the Offer or the final appraisal value, as appropriate.

18.5. The time periods specified in this section may be modified or extended only by a writing duly authorized and executed by both the City and the Company. Such authorization shall not be unreasonably withheld, provided that any such request shall be made in writing and received by the other party within a reasonable time prior to the expiration of the time period sought to be extended.

18.6. In the event the City decides not to purchase the Company's Distribution System or the City is financially unable to close the purchase of the Company's Distribution System within the time set forth herein, the City's purchase right shall be deemed waived and the City shall reimburse the Company for all the Company's costs and expenses expended in preparing for the purchase transaction.

SECTION 19. Severability.

19.1. If any word, phrase or one or more provisions of this Franchise are held to be void, voidable, or unenforceable by a court of competent jurisdiction in a final judicial action, the word(s), phrase(s), or provision(s) are severed from the remaining provisions of the Franchise. Such a word, phrase, or provision shall not affect the legality, validity, or constitutionality of the remaining portions of this Franchise. The City and the Company enter into this Franchise and each of its provisions regardless of any provision that is held to be illegal, invalid, or unconstitutional, provided, however, that the City and the Company each reserves the right to terminate the Agreement authorized by this Franchise Ordinance if any provision set out herein is held to be illegal, invalid or unconstitutional.

19.2 Nothing herein contained shall be construed as granting any exclusive Franchise or right.

SECTION 20. Interpretation.

The use of captions or headings for the various sections of this Ordinance are for convenience of parties only and do not reflect the intent of the parties. The rule of interpretation to resolve ambiguities in a contract against the party drafting such contract shall not apply to this Franchise.

SECTION 21. Dispute Resolution.

21.1. If a dispute arises out of or related to the Franchise, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section

1 does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to
2 seek injunctive relief. Either party may make a written request for a meeting between
3 representatives of each party within fourteen (14) calendar days after receipt of the
4 request or such later period as agreed by the parties. Each party shall include, at a
5 minimum, one (1) senior level individual with decision-making authority regarding the
6 dispute. The purpose of this and any subsequent meeting is to attempt, in good faith, to
7 negotiate resolution of the dispute. If within thirty (30) calendar days after such meeting,
8 the parties have not succeeded in negotiating a resolution of the dispute, they will
9 proceed directly to mediation as described below. Negotiation may be waived by a
10 written Agreement signed by both parties, in which event the parties may proceed
11 directly to mediation as described below.
12

13 21.2. If the efforts to resolve the dispute through negotiation fail, or the parties
14 waive the negotiation process, the parties may select, within thirty (30) calendar days, a
15 mediator trained in mediation skills to assist with resolution of the dispute. Should they
16 choose this option, the City and the Company agree to act in good faith in the selection of
17 the mediator and to give consideration to qualified individuals nominated to act as
18 mediator. Nothing in the Franchise prevents the parties from relying on the skills of a
19 person who is trained in the subject matter of the dispute or a contract interpretation
20 expert. If the parties fail to agree on a mediator within thirty (30) calendar days of
21 initiation of the mediation process, the mediator shall be selected by the Travis County
22 Dispute Resolution Center (DRC).
23

24 21.3. The parties agree to participate in mediation in good faith for up to thirty
25 (30) calendar days from the date of the first mediation session. The City and the
26 Company will share costs of the mediator selected to mediate the dispute, equally.
27

28 **PART 2.** In compliance with Article XI (Franchises and Public Utilities), Section 3
29 (Ordinance Granting Franchise) of the City Charter, the Company shall bear the expense
30 of publishing the full text of this ordinance in a newspaper of general circulation in the
31 City within five days after each of the three readings of this ordinance.

32 **PART 3.** If any of the terms of this ordinance conflict with the City Charter, the terms of
33 the Charter prevail.

34 **PART 4.** Ordinance 870917-A is repealed on the effective date of this ordinance.

PART 5. This ordinance shall not take effect until the expiration of sixty (60) days following the date of its final adoption by the City Council, or on _____, 2007.

PASSED AND APPROVED

_____, 2007 § _____
§ _____

Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk