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.)

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

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

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

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

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

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

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

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

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

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

(1) "Gross Revenues" shall include:

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

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

ii. charges to handle returned checks from consumers within the City;

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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;

(b) gross receipts from gas sales and gross receipts from gas transportation;

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

(d) the value of gas transported by the Company for Transport Customers through the System of the Company located in the City's Public Rights-of-Way ("Third Party Sales") (excluding the value of any gas transported to another gas utility in the City for resale to its customers with the 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 that the transportation service is performed; and

(2) "Gross revenues" shall not include:

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

(b) sales taxes;

(c) any interest income earned by the Company;

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

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

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

(g) receipts for the generation of electricity;

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(h) contributions in aid of construction; and

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

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

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

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

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

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

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

SECTION 2. Granting of Franchise.

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

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

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

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

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

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(a) the Company is in material default under the terms of this Franchise Ordinance and written notice is given to the Company by the City; or

(b) written notice of intent to terminate this Franchise at the expiration of the initial term is given to the City by the Company; or

(c) written notice of intent to renegotiate this Franchise at the expiration of the initial term is given to the Company by the City.

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

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

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

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

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

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

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

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

SECTION 3. Acceptance by Company and Effective Date.

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

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

SECTION 4. Service.

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

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

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

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

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

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

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

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

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SECTION 5. Use of Streets and Public Easements.

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

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

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

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

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

SECTION 6. Work by the City and Others.

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

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

SECTION 7. Changes for Governmental Purposes.

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

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

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

SECTION 8. Company Rules and Regulations, Jurisdiction.

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

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

SECTION 9. Curtailments.

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

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

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

SECTION 10. Annexations by City.

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

SECTION 11. Fees, Rates.

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

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

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

(a) $100, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 12. Indemnity.

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

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

SECTION 13. Insurance.

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

SECTION 14. Equal Employment Opportunity.

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

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

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

SECTION 15. Forfeiture and Termination.

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

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

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

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

(D) 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.

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

15.3. In order for the City to declare forfeiture, the City shall 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 forty-five (45) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued to completion, the Council may take under consideration the issue of termination of the Franchise. The City shall cause to be served upon the Company, at least twenty (20) days prior to the date of such a Council meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and issue which the Council is to consider.

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

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

SECTION 16. Change of Control.

Upon the foreclosure or other judicial sale of all or a substantial part of the Distribution System within the corporate limits of the City, or upon the leasing of all or a 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

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exercise its purchase option.

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

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

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

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

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

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

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

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

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

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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

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

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

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

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

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

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

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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: _____ **ATTEST**: _____
David Allan Smith
City Attorney

Shirley A. Gentry
City Clerk

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