

AN ORDINANCE GRANTING TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF LLANO, LLANO COUNTY, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES.

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

SECTION 1. GRANT OF AUTHORITY: The City of Llano, Texas, hereinafter called "City," hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos Energy," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public utility easements, public ways and other public places ("Public Rights-of-Way"), for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment (the "System") to deliver, transport, and distribute gas in, out of, and through City for persons, firms, and corporations, including all the general public, and to sell gas to persons, firms, and corporations, including all the general public, within the City corporate limits, as such limits may be amended from time to time during the term of this franchise, said consent being granted for a term ending December 31, 2026.

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

- A. Atmos Energy shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment to minimize interference with traffic, place or cause to be placed appropriate barriers to mark excavations or obstructions, and restore to approximate original condition all Public Rights-of-Way that it may disturb. In determining the location of the facilities of the City and other users of Public Right-of-Way within City, City shall minimize interference with then existing facilities of Atmos Energy and shall require users of Public Rights-of-Way to minimize interference with existing facilities of other users of the Public Rights-of-Way. In the event of a conflict between the location of the proposed facilities of Atmos Energy and the location of the existing facilities of City or other users of Public Rights-of-Way within Public Rights-of-Way

that cannot otherwise be resolved, City or an authorized agent of City shall resolve the conflict and determine the location of the respective facilities within the Public Rights-of-Way.

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

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

When Atmos Energy is required by City to remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way to accommodate a request by City, and costs of utility removals or relocations are eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Atmos Energy as a result of such removal or relocation, and such reimbursement is required to be handled through City, Atmos Energy costs and expenses shall be included in any application by City for reimbursement if Atmos Energy submits its cost and expense documentation to City prior to the filing of the application. City shall provide sufficient written notice to Atmos Energy of the deadline for Atmos Energy to submit documentation of the costs and expenses of such relocation to City. In the event that the City does not provide sufficient written notice to Atmos Energy as set forth in this paragraph, the

City shall be responsible for fifty percent (50%) of the cost of the removal or relocation of Atmos Energy's facilities.

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

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

SECTION 3. INDEMNITY & INSURANCE: In the event of injury to any person or damage to any property by reason of Atmos Energy's construction, operation, maintenance, or replacement of Atmos Energy's pipeline system within Public Rights-of-Way, Atmos Energy shall defend, indemnify and keep harmless City from any and all liability in connection therewith, except to the extent such injury or damage is attributable to the fault of the City, including, without limitation, the City's negligent or

intentional acts or omissions. Atmos Energy's insurance of its obligations and risks undertaken pursuant to this franchise may be in the form of self-insurance to the extent permitted by applicable law, under an Atmos Energy plan of self-insurance maintained in accordance with sound accounting and risk-management practices.

SECTION 4. NON-EXCLUSIVE FRANCHISE: The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of transporting, delivering, distributing, or selling gas to and for City and the inhabitants thereof.

SECTION 5. PAYMENTS TO CITY:

- A. Atmos Energy, its successors and assigns, agrees to pay and City agrees to accept, on or before the 1st day of March, 2013, and on or before the same day of each succeeding year during the term of this franchise the last payment being made on the 1st day of March, 2026, a sum of money which shall be equivalent to five percent (5%) of the Gross Revenues, as defined in 5.B below, received by Atmos Energy during the preceding calendar year.
- B. "Gross Revenues" shall mean:
- (1) all revenues received by Atmos Energy from the sale of gas to all classes of customers (excluding gas sold to another gas utility in the City for resale to its customers within City) within the City;
 - (2) all revenues received by Atmos Energy from the transportation of gas through the System of Atmos Energy within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City);
 - (3) the value of gas transported by Atmos Energy for Transport Customers through the System of Atmos Energy within the City ("Third Party Sales")(excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Atmos Energy's monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division,

as reasonably near the time as the transportation service is performed; and

(4) "Gross Revenues" shall also include the following "miscellaneous charges": charges to connect, disconnect, or reconnect gas and charges to handle returned checks from consumers within the City.

(5) "Gross Revenues" shall not include:

- (a) revenues billed but not ultimately collected or received by Atmos Energy;
- (b) contributions in aid of construction;
- (c) the revenue of any an affiliate or subsidiary of Atmos Energy;
- (d) sales tax and franchise fees paid to the City;
- (e) interest or investment income earned by Atmos Energy; and
- (f) monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the City's right of way.

C. The initial payment for the rights and privileges herein provided shall be for the privilege period January 1 through December 31, 2013, and each succeeding payment shall be for the privilege period of the calendar year in which the payment is made.

It is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad valorem, special, or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that City may now impose or hereafter levy and collect from Atmos Energy or Atmos Energy's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. If the City does not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or franchise taxes or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Atmos Energy's

obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

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

If Atmos Energy should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in Atmos Energy's Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public rights-of-way in a manner that, if applied to the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Atmos Energy to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City. The City acknowledges that the exercise of this right is conditioned upon the City's acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms and Company may grant, in its sole reasonable discretion, such waiver.

E. Atmos Energy Franchise Fee Recovery Tariff

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

provision shall not limit the City's ability to otherwise exercise its regulatory authority, including the ability to intervene in any proceeding in which franchise fees are at issue.

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

G. **Annexations.** City shall, within thirty (30) days of final approval, give Company notice of annexations and disannexations of territory by City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Company shall promptly initiate a process to reclassify affected customers into the City limits no later than sixty (60) days after receipt of notice from City. The annexed areas added to the City limits will be included in future franchise payments in accordance with the effective date of the annexation if notice was timely received from City. Upon request from City, Company will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise payments. In no event shall the Company be required to add premises for the purposes of calculating franchise payment prior to the earliest date that the same premises are added for purposes of collecting sales tax.

H. **Reports and Audits**

(1) No later than March 1 of each year during the life of this agreement, Atmos Energy shall file with the City a statement showing in reasonable detail the Gross Revenues collected during the preceding calendar year. If Atmos Energy fails to pay when due any payment provided for in this Section, then Atmos Energy shall pay such amount plus interest from such due date until payment is received by City. Interest shall be calculated in accordance with the interest rate for customer deposits established by the Public Utility Commission of Texas in accordance with Texas Utilities Code Section 183.003 for the time period involved.

- (2) The City shall have the right to inspect and audit the books and financial records of Atmos Energy compiled in the ordinary course of business necessary to verify the accuracy of franchise fee payments made pursuant to this agreement. Upon reasonable notice, books and records shall be made available at Atmos Energy's principal business office during normal business hours. The cost of the audit shall be borne by the City unless the audit discloses that Atmos Energy has underpaid the franchise fee by ten percent (10%) or more, in which case the reasonable costs of the audit shall be reimbursed to the City by Atmos Energy. If such an examination reveals that Atmos Energy has underpaid the City, then upon receipt of written notification from City regarding the existence of such underpayment, Grantee shall undertake a review of the City's claim and if said underpayment is confirmed, remit the amount of underpayment to City. Should Atmos Energy determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Grantee regarding the existence of such overpayment, City shall review Atmos Energy's claim and if said overpayment is confirmed, remit the amount of overpayment to Atmos Energy.
- (3) Absent any written agreement to the contrary, acceptance of any franchise fee payment shall not waive City's right to audit or release any claim City may have for additional sums due under this franchise. Notwithstanding the foregoing, all franchise fee payments shall be deemed final and correct unless challenged by the City or Atmos Energy within in two (2) years of the date of payment.

SECTION 6. TERMINATION:

- A. City reserves the right to terminate the franchise in the event that Atmos Energy violates any material provision of the Franchise.
- B. Procedures for Termination.
- (1) City may terminate this franchise for a continuing material violation by Atmos Energy of any of the substantial terms hereof. In such event, City shall give to Atmos Energy written notice, specifying all grounds on which termination or forfeiture is claimed. Atmos Energy shall have sixty (60) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Atmos Energy fails to cease such violation or otherwise comply with the terms hereof, then this franchise is subject to termination under the following provisions. Provided, however, that if Atmos Energy commences work or other efforts to cure such violations

within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the franchise will not be terminated.

- (2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby Atmos Energy is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. Company shall be provided at least fifteen business (15) days prior written notice of any public hearing concerning the termination of the franchise. In addition, ten (10) days notice by publication shall be given of the date, time and place of any public hearing to interested members of the public.
- (3) City, after full public hearing, and upon finding material violation or failure to comply, may terminate the franchise or excuse the violation or failure to comply, upon a showing by Atmos Energy of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.
- (4) Nothing herein stated shall preclude Atmos Energy from appealing the final decision of the City Council or to a court or regulatory authority having jurisdiction.
- (5) Nothing herein stated shall prevent City from seeking to compel compliance by suit in any court of competent jurisdiction if Atmos Energy fails to comply with the terms of this franchise after due notice and the providing of adequate time for Atmos Energy to comply with said terms.

SECTION 7. WRITTEN NOTICE: Any written notices required or desired to be given from one party to the other party to this franchise shall be given and shall be deemed to have been served and received if delivered in person to the person designated at the address set forth below or upon the date actually received as evidenced by registered or certified mail receipt addressed to:

CITY

Mayor
City of Llano
301 W. Main St.
Llano, Texas 78643-1935

COMPANY

Manager of Public Affairs
Atmos Energy, Mid-Tex Division
3110 N. I-35
Round Rock, Texas 78681

SECTION 8. SEVERABILITY: It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this franchise be severable, and if any phrase,

clause, sentence, paragraph or section of this franchise shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this franchise, and the remainder of this franchise shall be enforced as written.

SECTION 9. ACCEPTANCE OF FRANCHISE: In order to accept this franchise, Atmos Energy must file with the City Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by City. If such written acceptance of this franchise ordinance is not filed by Atmos Energy, the franchise ordinance shall be rendered null and void.

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

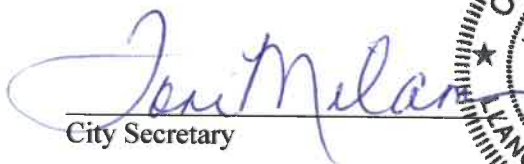
SECTION 10. PARAGRAPH HEADINGS. CONSTRUCTION: The paragraph headings contained in this ordinance are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof. Both parties have participated in the preparation of this ordinance and this ordinance shall not be construed either more or less strongly against or for either party.

SECTION 11. EFFECTIVE DATE: If Atmos Energy accepts this ordinance, it becomes effective as of June 1, 2012.

It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.


PASSED AND APPROVED on this the 7th day of May, 2012.

ATTEST:



City Secretary





Mayor
City of Llano, Texas

STATE OF TEXAS
COUNTY OF LLANO
CITY OF LLANO

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I, Toni Milam, City Secretary of the City of Llano, Llano County, Texas, do hereby certify that the above and foregoing is a true and correct copy of an ordinance passed by the City Council of the City of Llano, Texas, at a City Council session, held on the 7th day of MAY, 2012, as it appears of record in the Minutes in Book _____, page _____.

WITNESS MY HAND AND SEAL OF SAID CITY, this the 7th day of MAY, 2012.



Toni Milam
City Secretary
City of Llano, Texas