

ORDINANCE 16-O-68 granting a franchise to Atmos Energy Corporation, a Texas and Virginia corporation, for the distribution of natural gas and for the installation and maintenance of mains, pipes, pipelines, distribution lines, and other equipment necessary or incidental to distribution of said gas upon, across, along and under the highways, streets, avenues, roads, alleys, lanes and other public grounds of the City of Murfreesboro, Rutherford County, Tennessee in order to furnish gas service within the City to its inhabitants.

WHEREAS, Atmos Energy Corporation ("Franchisee") has requested the City of Murfreesboro, Tennessee ("City") renew its nonexclusive gas franchise to construct, install, maintain and operate a gas system in the City, which was previously granted to United Cities Gas Company, a division of Franchisee, by Ordinance No. 00-O-04 dated June 8, 2000 (the "Prior Franchise"); and

WHEREAS, the construction, installation, maintenance and operation of a gas system within the City involves the occupation of and placement of facilities in the Public Rights-of-Way; and

WHEREAS, the City has reviewed the performance of Franchisee under the Prior Franchise and the quality of service during the term of the Prior Franchise, has identified the future gas-related needs and interests of the City and its citizens, has considered the financial, technical, and legal qualifications of Franchisee, and has determined whether Franchisee's plans for constructing, operating and maintaining its gas system are reasonable to meet the future gas-related community needs and interests, in light of the costs of meeting such needs and interests, in a full public proceeding affording due process to all parties; and

WHEREAS, the City has relied on Franchisee's representations and has considered the information that Franchisee has presented to City Council; and

WHEREAS, based on Franchisee's representations and information, and in response to its request for renewal, the City Council has determined that the terms and conditions set forth herein, the grant of a new, nonexclusive renewal Franchise to Franchisee, to supersede the Prior Franchise, on the terms and conditions herein and subject to applicable law, is consistent with the public interest; and

WHEREAS, the City and Franchisee have reached agreement on the terms and conditions set forth herein;

WHEREAS, upon enactment of this Ordinance by City Council, Franchisee will sign a Natural Gas Distribution Franchise Acceptance Agreement accepting the rights, obligations, and responsibility set forth herein and agreeing to be bound thereby.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MURFREESBORO, RUTHERFORD COUNTY, TENNESSEE:

SECTION 1. Superseding Effect. Ordinance 00-O-04 is hereby superseded and replaced.

SECTION 2. Definitions. As used in this Agreement, the following words and phrases shall have the following meanings:

"Agency" refers to and is the Tennessee Regulatory Authority the state utility

regulatory agency having jurisdiction over the rates, services and operations of Franchisee within the State of Tennessee or other administrative or regulatory authority succeeding to the regulatory powers of the Agency.

"City Council" refers to and is the governing body of the City of Murfreesboro.

"City" refers to and is the City of Murfreesboro, Rutherford County, Tennessee, and includes territory as currently is or may in the future be included within the boundaries of the City of Murfreesboro.

"Franchise" means the rights and privileges granted by the City to Franchisee under the terms and provisions of this franchise Ordinance and Agreement.

"Franchise Fee" means the amounts set forth in Section 7(a).

"Franchisee" means Atmos Energy Corporation.

"Public Right-of-Way" means the surface, the airspace above the surface and area below the surface of any street, highway, alley, avenue, boulevard, sidewalk, pedestrian/bicycle lane or trail, driveway, bridge, utility easement, or any other public ways owned, dedicated by plat, occupied, or used by the public and within the City's geographical limits or boundaries established by applicable law.

"Revenues" means the gross receipts that Franchisee receives from its customers within the City's geographical boundaries for the retail sale of gas under rates, temporary or permanent, authorized by the Agency and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. Revenues do not include miscellaneous service charges, including but not limited to turn ons, meter sets, insufficient funds, late fees and interest, which are related to but are not a part of the actual retail sale of gas.

"System" means the system of works, pipes, pipelines, facilities, fixtures, apparatus, lines, machinery, equipment, structures, appliances, appurtenances, or other infrastructure reasonably necessary for the storage, transportation, distribution, or sale of natural, artificial, or mixed gas to residential and commercial customers and the public generally, within the geographical limits or boundaries of the City.

"TRA Regulations" means the regulations, rules, orders, and all similar actions, enactments or requirements of the Agency.

SECTION 3. Grant of Franchise.

(a) There is hereby created and granted unto Franchisee a non-exclusive franchise to enter upon, acquire, construct, operate, maintain and repair in the Public Right-of-Way the System, subject to the provisions of this Agreement. The franchise granted hereunder shall be extended to territories that are annexed by the City upon the same terms and conditions herein, subject to the approval of the Agency, if any such approval is required.

(b) The franchise granted to Franchisee by the City shall not be exclusive and the City reserves the right to grant a similar franchise to any other person or entity at any time. In the event the City shall grant to another person or entity during the term hereof a franchise for a gas distribution system within the geographical boundaries or

limits of the City similar to the one herein granted to Franchisee it is agreed that any such new/additional Franchisee shall have no right to use any portion of the System without Franchisee's written consent and that the terms of any such franchise agreement shall be no more favorable to such new additional franchisee than those terms contained herein.

SECTION 4. Term, Effective Date, and Expiration or Termination.

(a) The term of this franchise shall be for an initial term of ten (10) years from the Effective Date, as defined below. This franchise and all rights and privileges herein granted shall be extended two (2) successive periods of five (5) years each unless the City by written notice given to the Franchisee not less than six (6) months before the end of such initial term, or before the end of each of the extended terms, as the case may be, shall declare such termination effective.

(b) After final passage of this Ordinance and Agreement by the City Council, the franchise created hereby shall become effective upon approval by the Agency and, pursuant to Section 25 of the Murfreesboro Charter, thirty (30) days have passed since the publication of this Ordinance and Agreement in full in a newspaper published in the City of Murfreesboro, which publication shall be made after Franchisee's written acceptance of this Ordinance and Agreement and payment to the City for the cost of such publication ("Publication Period"). Franchisee acknowledges that pending final passage of this Ordinance and Agreement and during the Publication Period, the legally qualified voters of Murfreesboro may object to such grant and file with the City Council written petitions signed by a sufficient number of the qualified voters, upon which the City Council shall order an election for or against the grant of a franchise by this Ordinance and Agreement and will Effective Date will be postponed until the election results of canvassed and the measure is approved by the voters.

(c) In the event this Ordinance and Agreement expires or is terminated, the System the Franchisee installed in the Public Right-of-Way shall: (i) at the option of the City become the property of the City upon payment to the Franchisee, its successors and/or assigns, of a fair valuation thereof, such fair valuation to be determined by agreement between the City and the Franchisee, its successors and/or assigns, and the City will assume: (a) Franchisee's contractual obligations; and (b) Franchisee's regulatory obligations with respect to the System; or (ii) if the City does not exercise its option, Franchisee may remove all or any part of its System upon the expiration or termination of the franchise and rights granted hereby or Franchisee may place the System up for sale to a qualified buyer and, upon written notification to the City, Franchisee will assign the System, contracts, and regulatory obligations to the buyer.

(d) In the event of expiration of this Ordinance and Agreement, Franchisee shall continue to operate on the same terms and conditions set forth in this Ordinance and Agreement.

SECTION 5. Operation of System.

(a) Franchisee shall have the right and privilege of constructing, erecting, laying, operating, maintaining, replacing, removing and/or repairing a gas distribution

system through, along, across and under the Public Right-of-Way as it now exists or may hereafter be constructed or extended, subject to the inherent police powers conferred upon or reserved unto the City and the provisions of this Ordinance and Agreement. The System shall at all times be installed, operated and maintained in good, safe working condition, and in compliance with all applicable federal, state, and local laws and TRA Regulations, and the System shall be maintained in accordance with all applicable engineering codes adopted or approved by the natural gas distribution industry.

(b) Franchisee agrees to attempt to utilize public property whenever practical and reasonable before resorting to any right of condemnation that Franchisee may be entitled to exercise.

(c) Franchisee will operate the System in such a manner that enables Franchisee to furnish safe, adequate, and continuous service to all of its customers.

(d) Franchisee will design, install, construct, and replace the System in locations and at depths which comply with all applicable federal and state laws and regulations regarding minimum safety standards for design, construction, maintenance, and operation of gas distribution systems.

(e) Franchisee shall use reasonable care in conducting its work and activities in order to prevent injury to any person and unnecessary damage to any real or personal property.

(f) Franchisee shall, unless otherwise approved by the City, install all pipelines underground at such depth and in such manner so as not to interfere with the existing pavement, curbs, gutters, underground wires or cables, water or sewer pipes, or other utility lines, pipes or facilities.

(g) When any public or private property is dug upon, trenched, or otherwise opened in any manner by Franchisee, whether the same be made for the purpose of laying, constructing, replacing, or repairing the System, Franchisee shall place and maintain applicable industry standard safety devices, barriers, lights and warnings to properly notify persons of any dangers resulting from such opening, and shall comply with applicable safety regulations required by federal, state and local laws, including the currently adopted Manual on Uniform Traffic Control Devices.

(h) In the event that the City or any other entity acting on behalf of the City requests or demands that Franchisee remove, move, modify, relocate, reconstruct, or adjust any part of the System from their then-current locations on or within public property in connection with a public project or improvement, then Franchisee shall relocate, at its expense, the system facilities affected by such project or improvement. Franchisee's obligations under this paragraph shall not affect the amounts paid or to be paid by Franchisee under the provisions of this Ordinance and Agreement. If the Franchisee is required to relocate part of the System facilities in connection with: (i) sidewalk improvements (unless such sidewalk improvements are related to or associated with road widenings, the creation of new turn lanes, or the addition of acceleration/deceleration lanes); (ii) streetscape projects or other projects undertaken

primarily for aesthetic purposes; or (iii) System facilities are required to be converted from an overhead configuration or installation to an underground configuration or installation solely for aesthetic purposes, the City will reimburse Franchisee for the costs of such relocation. Notwithstanding the foregoing provisions of this paragraph, Franchisee shall not be obligated to relocate, at its expense, any part of the System that is located on private property until such time as the City obtains possession of the private property and Franchisee's easements thereon at which time relocation is required and Franchisee will work cooperatively with the City on project planning anticipating possession of the private property. When necessary to relocate any part of the System, the City and Franchisee shall work cooperatively to minimize costs, delays, and inconvenience to both parties while always ensuring safety and compliance with applicable laws, TRA Regulations and existing easement obligations.

(i) The City and Franchisee shall communicate in a timely fashion to coordinate projects included in the City's five-year capital improvement plan, the City's short-term work program, or the City's annual budget in an effort to minimize relocation of Franchisee's facilities, provided however, the parties' mutual expressed desire for cooperation shall not limit the City's right to required relocation of System components per subsection (h). Such communication may include, but is not limited to, (i) both parties' participation in a local utility's coordinating council (or any successor organization) and (ii) both parties' use of the National Joint Utility Notification System (or any alternative comparable systems or successor to such system mutually acceptable to both parties).

(j) Franchisee shall have trained personnel available on a 24 hour, 365 days per year basis who can timely respond to emergency calls.

SECTION 6. Restoration of Public Right-of-Way.

Franchisee shall have the right to disturb, break, and excavate in the Public Right-of-Way as may be reasonable and necessary to provide the service authorized hereby provided Franchisee repairs any damage caused solely by the Franchisee to any part of the Public Right-of-Way and will restore, as nearly as practicable, such property to good, suitable, and safe condition that is not less than substantially the same condition immediately prior to such damage.

SECTION 7. Compensation.

(a) In consideration for the granting and exercise of the rights and privileges created hereunder, and in further consideration of the grant to Franchisee of, among other things, the right to make use of Public Right-of-Way or other public property, Franchisee shall pay to the City, during the entire life of the franchise, the Franchise Fee, which shall be a sum equal to five percent (5%) of its Revenues; and one and seven-tenths cents per one hundred cubic feet (\$0.017/ccf) of natural gas transported by Franchisee within the City limits to each customer of Franchisee who has elected to receive gas transportation service from Franchisee.

(b) The Franchise Fee prescribed herein shall be paid to the City quarterly on or before the 30th day after the end of each calendar quarter after the effective date

hereof, and Franchisee shall furnish to the City quarterly a statement of Franchisee's Revenues. In the event any amount due is not made on or before the due date, Franchisee shall pay additional compensation and charges computed from such due date at a per annum rate equal to the prime bank lending rate as published in The Wall Street Journal for the last business day of the preceding calendar year on any portion thereof of the unpaid amount.

(c) Franchisee may add a line-item surcharge to the monthly bills of each of its customers located within the geographical boundaries or limits of City, which surcharge may be designated as a franchise fee, in an amount that is sufficient to recover the portion of the Franchise Fee paid by the Franchisee to the City that is attributable to the Revenue derived by Franchisee from such customer.

(d) The City, through its duly authorized representative and at all times reasonable, shall have access to, and the right to inspect Franchisee's books and records that are necessary to confirm the accuracy of the amount of Franchise Fee being paid to the City.

(e) The Franchise Fee, together with any charges of the City for water, sewage, and garbage services that are provided by the City to Franchisee, and any applicable occupational license fees or sales, ad valorem, or other taxes payable to the City by Franchisee under applicable law, shall constitute the only amounts for which Franchisee shall be obligated to pay to the City and shall be in lieu of any and all other costs, levies, assessments, fees, or other amounts, of any kind whatsoever, that the City may charge Franchisee or assess against the System during the term of this Ordinance and Agreement. The Franchise Fee shall be uniformly and equally applied to all natural gas and electric public utilities of like services or any other natural gas service that compete with the Franchisee, such that the Franchise Fee shall be excused from collecting and paying franchise fees or taxes if Franchisee's competitors are not also required to do so.

SECTION 8. Service to New Areas.

(a) If during the term of this franchise the boundaries of the City are expanded, the City will promptly notify Franchisee in writing of any geographic areas annexed by the City during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Franchisee by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area, addresses when known, and such other information as Franchisee may reasonably require in ascertaining whether there exist any customers of Franchisee receiving natural gas service in said annexed area. To the extent there are such customers therein, then the revenue of Franchisee derived from the retail sale of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Franchisee's billing cycle immediately following Franchisee's receipt of the Annexation Notice. The failure by the City to advise Franchisee in writing through proper Annexation Notice of any geographic areas which are annexed by the City shall relieve Franchisee from any obligation to remit any franchise fees to City based upon

revenues derived by Franchisee from the retail sale of natural gas to customers within the annexed area prior to City delivering an Annexation Notice to Franchisee in accordance with the terms hereof.

(b) Franchisee shall extend its distribution mains and/or service lines in accordance with the TRA Regulations. In the event Franchisee is required to extend its distribution mains pursuant to TRA Regulations in new subdivision developments or Franchisee elects to extend its distribution mains in new subdivision developments, Franchisee shall coordinate, to the extent practicable, the installation of the distribution mains with the installation of other utilities so that the installation occurs prior to the pavement of the streets.

SECTION 9. Breach; Remedies. In the event of a breach by Franchisee of any material provision of this Ordinance and Agreement, the City may terminate the franchise and rights granted to Franchisee hereunder, provided, however, that such termination shall not be effective unless and until the procedures described below have been followed:

(a) The City shall deliver to Franchisee, by hand delivery or by certified or registered mail, a written termination notice signed by the mayor or other duly authorized member of City's governing body, attested by the City's secretary, and sealed with the official seal of the City. Such notice must: (i) fairly and fully set forth in detail each of the alleged acts or omissions of Franchisee that the City contends constitutes a substantial breach of any material provision hereof; (ii) designate the terms and conditions the City contends Franchisee breached; and (iii) specify the date, time, and place at which a public hearing will be held by the governing body of the City for the purpose of determining whether the allegations contained in the notice did in fact occur. The date of such hearing may not be less than fifteen (15) business days after the date of such notice.

(b) Within thirty (30) days following the adjournment of the public hearing described in above, the City shall deliver to Franchisee, by hand delivery or by certified or registered mail, a written final determination signed by the mayor or other duly authorized member of City's governing body setting forth: (i) which acts and omissions of Franchisee the City determines to have in fact occurred and which therefore constitute a breach; and (ii) any additional facts discovered during the hearing that constitute grounds for termination and about which Franchisee was given the opportunity to address at the hearing

(c) The City must permit Franchisee the opportunity to substantially correct all of the breaches hereof set forth in the written notice described in Subsection (b) above within thirty (30) days after the date of the notice of final determination; provided, however, that any issues found critical to public safety, which shall be remedied within forty-eight hours, and any non-payment of money, which shall be remedied within three business days.

(d) Nothing herein shall preclude (i) Franchisee from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction; provided,

however, that any critical safety issues shall be remedied in accordance with subsection (c) of this Section; or (ii) City from seeking compensation for damages incurred as a result of Franchisee's breach.

SECTION 10. Insurance and Indemnification.

(a) Franchisee at all times during the Term or extension thereof carry, and upon request of the City provide verification thereof, liability insurance with a minimum annual coverage amounts of \$10,000,000 per occurrence and \$25,000,000 in the aggregate, and property insurance with a minimum annual coverage amounts of \$5,000,000 and \$10,000,000 aggregate, or such additional coverage limits as required by law. Should Franchisee purchase an insurance policy solely for the purpose of insuring its operations subject of this Franchise, the Franchisee shall endorse the City as an additional insured provided that it is permitted by the insurance carrier. Failure to comply with the insurance requirements herein shall be deemed a material violation of this Ordinance and Agreement. Franchisee may provide the foregoing insurance through self-insurance or through an affiliated captive insurance carrier.

(b) Franchisee shall at all times indemnify, defend, and hold harmless the City from and against any and all lawful claims for injury to any person or property by reason of Franchisee or its employees' installing, operating, or maintaining the System within the Public Right-of-Way, in any form or manner, including, but not limited to, guarding trenches, excavation and blasting work. Provided, however, Franchisee's indemnification does not extend to the extent the City, its officials, officers, employees, contractors, or agents, were negligent and such negligence was the sole or contributing factor in bringing about injury to any person or property. In such event, any liability shall be apportioned between the City and the Franchisee based upon the percentage of fault assigned to each by a court of competent jurisdiction. This right of indemnification includes any claim for personal injury, wrongful death, property damage, or any failure of Franchisee to maintain its equipment or appurtenances on public or private property, or claims otherwise arising from Franchisee's operations. This right of indemnification includes City's out of pocket expenses reasonably incurred by the City in defending same, including but not limited to, attorney's fees, the costs of engineers, expert witness fees, and court reporters. This right of indemnification applies to any pending claims and those that arise in the future.

(c) The City shall be notified in writing by Franchisee of any claim against the City related to Franchisee's operations under this Agreement and be afforded the opportunity to fully defend the claim. If Franchisee fails or refuses to voluntarily assume the full tender of defense, then the City may select its own attorney to defend the City and proceed with the defense, and the cost and expense of such defense shall be apportioned pursuant to Section 10(b) above.

SECTION 11. Sale or Assignment.

(a) Franchisee may transfer or assign the franchise created by this agreement to any other person, proprietorship, partnership, firm or corporation with written notification to the City.

(b) In the event Franchisee desires to sell or transfer the System that is the subject of this Ordinance and Agreement, the City may elect to terminate this Ordinance and Agreement and purchase the System. The City will have up to sixty (60) days to make this determination to terminate and purchase the System and must close the transaction within an additional one hundred fifty (150) days from the date of acceptance to agree on a fair valuation and close said transaction. Provided, however, that such option to purchase does not apply in cases where Franchisee seeks to sell, assign, or transfer the System as part of a larger transaction including additional assets.

(c) A statutory merger, consolidation, recapitalization or sale or transfer of the common stock of Franchisee does not constitute a sale or transfer of assets for purposes of this section.

SECTION 12. All notices required by this Ordinance and Agreement shall be sent by certificated mail to the following:

If to the City: City Manager
 City of Murfreesboro
 111 West Vine Street
 Murfreesboro, TN 37130

If to Franchisee: Manager of Public Affairs
 Atmos Energy Corporation
 810 Crescent Centre Drive, Suite 600
 Franklin, TN 37067

SECTION 13. Miscellaneous Provisions.

(a) If any section, subsection or provision of this Ordinance and Agreement or any part thereof is for any reason found or held to be in conflict with any applicable statute or rule of law, or is otherwise held to be unenforceable, the invalidity of any such section, subsection or provision shall not affect any or all other remaining sections and provisions of this Ordinance and Agreement, which shall remain in full force and effect.

(b) To the extent that any other ordinances of the City or portions thereof are in conflict or inconsistent with any of the terms or provisions hereof, then the terms of this Ordinance and Agreement shall control.

(c) This agreement shall extend to, be binding upon, and inure to the benefit of, the parties hereto, and their respective successors and assigns.

SECTION 14. Regulatory Approval. This franchise is subject to the approval of the Agency. A copy of written approval of the Agency shall be furnished to the City Recorder by Franchisee and a copy of same filed with this Ordinance and Agreement.

Passed:

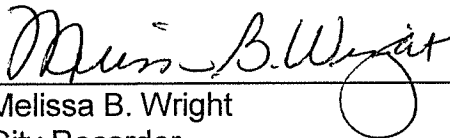
1st reading January 5, 2017

2nd reading January 12, 2017



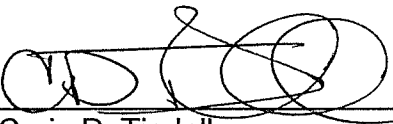
Shane McFarland, Mayor

ATTEST:



Melissa B. Wright
City Recorder

APPROVED AS TO FORM:



Craig D. Tindall
City Attorney

SEAL