

The Law Offices of

**WILSON, HUTCHINSON & POTEAT**

611 Frederica Street  
Owensboro, Kentucky 42301  
Telephone (270) 926-5011  
Facsimile (270) 926-9394

William L. Wilson, Jr.  
Mark R. Hutchinson  
T. Steven Poteat  
T. Tommy Littlepage

[bill@whplawfirm.com](mailto:bill@whplawfirm.com)  
[randy@whplawfirm.com](mailto:randy@whplawfirm.com)  
[steve@whplawfirm.com](mailto:steve@whplawfirm.com)  
[ttommy@whplawfirm.com](mailto:ttommy@whplawfirm.com)

January 20, 2008

Michael F. Burford  
Director, Division of Filings  
Kentucky Public Service Commission  
211 Sower Blvd.  
PO Box 615  
Frankfort, Kentucky 40602

RECEIVED

JAN 31 2008

PUBLIC SERVICE  
COMMISSION

RE: Case No. 2007-00230

Dear Mr. Burford:

This is to acknowledge receipt of your status request letter of January 24, 2008 concerning the above referenced matter. I have reviewed our files on this franchise and have discovered what apparently happened.

Specifically, enclosed is a copy of my letter to you of July 23, 2007 wherein I enclosed two copies of the Franchise Agreement that was awarded to Atmos Energy Corporation by the City of Owensboro, Kentucky. However, my cover correspondence referenced the subject matter as Case No. 2007-0023; when, in fact, it should have been referenced as Case No. 2007-00230.

I am also enclosing a copy of my subsequent correspondence to the Commission dated August 3, 2007 which included two copies of the executed Franchise Agreement with a change that had been made by manual alteration and initialization by the parties appearing on page 8.

I apologize for the erroneous case number reference in my two earlier items of correspondence. I hope that this now resolves the matter. However, if I need to do anything else, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark R. Hutchinson', written in a cursive style.

Mark R. Hutchinson

c: Kevin Dobbs  
Mark Martin  
Len Methany

The Law Offices of

**WILSON, HUTCHINSON & POTEAU**

611 Frederica Street  
Owensboro, Kentucky 42301  
Telephone (270) 926-5011  
Facsimile (270) 926-9394

[bill@whplawfirm.com](mailto:bill@whplawfirm.com)  
[randy@whplawfirm.com](mailto:randy@whplawfirm.com)  
[steve@whplawfirm.com](mailto:steve@whplawfirm.com)

William L. Wilson, Jr.  
Mark R. Hutchinson  
T. Steven Poteat

July 23, 2007

Honorable Elizabeth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602

Subject: Case No. 2007-0023 – Owensboro, KY Franchise  
Atmos Energy Corporation

Dear Ms. O'Donnell:

In accordance with the Order in the above referenced Case, I have enclosed two (2) copies of the Franchise which has been awarded to Atmos Energy Corporation by the City of Owensboro, Kentucky.

If you have any questions regarding this matter, please contact me at your convenience.

Very truly yours,



Mark R. Hutchinson

MRH:bk

Enclosures

c: Kevin Dobbs  
Mark Martin

The Law Offices of

**WILSON, HUTCHINSON & POTEAU**

611 Frederica Street  
Owensboro, Kentucky 42301  
Telephone (270) 926-5011  
Facsimile (270) 926-9394

[bill@whplawfirm.com](mailto:bill@whplawfirm.com)  
[randy@whplawfirm.com](mailto:randy@whplawfirm.com)  
[steve@whplawfirm.com](mailto:steve@whplawfirm.com)

William L. Wilson, Jr.  
Mark R. Hutchinson  
T. Steven Poteat

August 3, 2007

Honorable Elizabeth O'Donnell  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40602

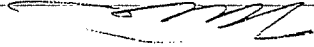
Subject: Case No. 2007-0023 – Owensboro, KY Franchise  
Atmos Energy Corporation

Dear Ms. O'Donnell:

By our prior correspondence to you of July 23, 2007 I forwarded copies of the fully executed Franchise Agreement between Atmos Energy Corporation and the City of Owensboro, Kentucky. After the parties had executed the Franchise Agreement and copies had been filed with the Commission, it was discovered that a typographical error appeared on page 8 pertaining to the franchise fee. It was the City Attorney's desire that this be corrected by making a manual alteration and both parties initialing. The initials that appear on the enclosed copy are those of the Mayor and Kevin Dobbs, an officer of Atmos Energy Corporation.

I would appreciate your filing this in the record. If there are any questions please advise.

Very truly yours,



Mark R. Hutchinson

MRH:bkk

Enclosures

c: David Fowler  
Kevin Dobbs  
Mark Martin  
Len Matheny

**THIS FRANCHISE AGREEMENT**, is made and executed this 17<sup>th</sup> day of July, 2007 by and between the City of Owensboro, Kentucky (sometimes referred to herein as the "City") and Atmos Energy Corporation (sometimes referred to herein as "Atmos" and sometimes as "Franchisee").

**WITNESSETH:**

**WHEREAS**, the existing natural gas franchise between the City of Owensboro, Kentucky, and Atmos was extended to August 1, 2007, by agreement of the parties, and will expire on August 1, 2007; and

**WHEREAS**, the Constitution of the Commonwealth of Kentucky, Sections 163 and 164, and Chapter 96 of the Kentucky Revised Statutes, authorize municipal corporations to require public utilities, including providers of natural gas within their boundaries, to operate under franchise agreements and to grant utilities the right to use public right-of-way on such terms and conditions as are deemed reasonable and necessary; and further KRS 82.082 authorizes the City to exercise any and all powers within its boundaries that are not in conflict with the Kentucky Constitution or state statutes; and

**WHEREAS**, the Board of Commissioners of the City of Owensboro, Kentucky, has found and determined that the construction, operation, maintenance and utilization of a natural gas franchise over, across or under public right-of-way in the City of Owensboro, benefits said utility and the customers it serves and the Board has further found and determined that the construction, installation, removal, maintenance and/or repair of utility-owned facilities and other infrastructure does periodic and unavoidable disturbance that gradually results in the degradation of the City's streets and sidewalks, for which the City is entitled to reasonable compensation in order to offset and recover the costs of reconstructing, removing, repairing or resurfacing damaged public right-of-way; and

**WHEREAS**, in order to protect the health, safety and welfare of the citizens of Owensboro, Kentucky, to protect and preserve the City's public right-of-way and infrastructure and to provide for the orderly administration of the franchise contemplated herein, it is necessary and appropriate to require the

Franchisee to conduct its business and operations in a lawful manner in compliance with the terms and conditions set forth hereinbelow.

**WHEREAS**, the City duly advertised, in accordance with all applicable law, a public notice of the sale of this franchise and solicited sealed bids therefore; and,

**WHEREAS**, the City has determined that Atmos Energy Corporation's bid was the highest and best bid and pursuant to City Ordinance 25 -2007 is granting this franchise to Atmos Energy Corporation.

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:**

**Section 1. DEFINITIONS:**

As used in this Agreement, the following words and phrases shall have the following meanings:

- (a) "Franchise" shall mean the rights and privileges granted by the City of Owensboro to Atmos Energy Corporation under the terms and provisions of this Agreement.
- (b) "Franchisee" shall mean Atmos Energy Corporation.
- (c) "Public Right-of-Way" shall mean 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 for vehicular or pedestrian transportation or access.
- (d) "Gross Revenues" shall mean all gross cash receipts for Kentucky Public Service Commission regulated natural gas distribution services for domestic, commercial or industrial consumption within the corporate limits of the City.
- (e) "Gas Distribution System" shall mean 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 corporate boundaries of the City.

(f) “*Force Majeure*” shall mean any and all causes beyond the control and without the fault or negligence of Franchisee. Such causes shall include but not be limited to acts of God, acts of the public enemy, insurrections, riots, terrorism, labor disputes, boycotts, labor and material shortages, fires, explosions, flood, breakdowns of or damage to equipment of facilities, interruptions to transportation, embargoes, acts of military authorities, or other causes of a similar nature whether or not foreseen or foreseeable which wholly or partly prevent Franchisee from performing one or more of its obligations hereunder.

(g) “*New Construction*” shall mean installation of piping or other apparatus by Franchisee in a new location as opposed to repair or maintenance work on existing piping or other apparatus.

## **Section 2. CREATION OF FRANCHISE:**

(A) There is hereby created and granted to Franchisee a non-exclusive franchise to enter upon, acquire, construct, operate, maintain and repair in the public right-of-way of the City, a gas distribution system within the corporate boundaries of the City, subject to the provisions of this Agreement. The franchise granted hereunder shall be extended to territories that are annexed within the City upon the same terms and conditions herein, subject to the approval of state regulatory authorities, 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 corporate boundaries of the City, similar to the one herein granted to Franchisee, it is agreed that the terms of any such franchise agreement shall be no more favorable to such new additional Franchisee than those terms contained in this Agreement. Additionally, it is agreed that any such new/additional Franchisee

shall have no right to use any portion of the gas distribution system of this

Franchisee without this Franchisee's written consent.

**Section 3. TERM OF FRANCHISE:**

The franchise created herein shall be for a term of five (5) years from the

date of this Agreement.

**Section 4. FRANCHISEE'S RIGHTS IN AND TO PUBLIC RIGHT-OF-**

**WAY:** The 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

within the corporate boundaries of the City 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 Agreement.

**Section 5. OPERATION OF FRANCHISE SYSTEM; EXCAVATION OF**

**PUBLIC RIGHT-OF-WAY:**

(A) The gas distribution system of the Franchisee shall, at all times, be

installed, operated and maintained in good working condition as will enable the

Franchisee to furnish adequate and continuous service to all of its residential,

commercial and industrial customers. The distribution system shall be designed,

installed, constructed and replaced 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.

(B) Although the Franchisee shall have the right to disturb, break, and

excavate in the public right-of-way of the City as may be reasonable and

necessary to provide the service authorized by this franchise, it agrees to give

the notice and/or obtain the cut permit as required below.

(C) Franchisee agrees to give prior notification to the City Engineer of

any construction work by Franchisee on or in any public right-of-way (including

streets, sidewalks, curbs, gutters, drainage facilities or other street installations)

that will necessarily involve the cutting of any blacktop or concrete on a public

right-of-way, or any other excavation in a public right-of-way that is reasonably



expected to interrupt the flow of traffic on the public right-of-way. In the event a street, sidewalk, curb or gutter is to be cut, the Franchisee agrees to obtain a “cut permit” from the City.

Nothing in the above provisions is intended to require Franchisee to give a notification to the City Engineer for any routine maintenance or repair work not involving the cutting of a public street, sidewalk, curb or gutter (in which event Franchisee would be required to obtain a “cut permit” from the City Engineer) or not involving an interruption of traffic flow on a city street.

Additionally, nothing herein is intended to impose on Franchisee any obligation to give notification to the City Engineer or obtain a “cut permit” for work on customers’ service lines. Provided, Franchisee, shall be required to give advance notification to the City Engineer of installation of a new main within the city limits and provide a copy of the plans to the City Engineer of the new main.

(D) To the extent reasonably practical, Franchisee agrees to schedule and coordinate installation, construction, maintenance, replacement or repairs of its gas distribution system with proposed improvements to the City public-right-of-way that have been designated (and which Franchisee has specifically been advised of) for improvement, resurfacing or repair prior to the commencement thereof. In the event Franchisee should in the future implement a written program for the systematic replacement of gas distribution system components located in the public right-of-way that have exhausted their useful life, Franchisee shall make a copy of same available to the City Engineer for inspection and shall to the extent practical, use its best efforts to follow same. Any replacement program shall, to the extent reasonably practical, be scheduled to coincide with the City’s annual right-of-way pavement program.

(E) When a situation arises that requires immediate attention, Franchisee is authorized to disturb, break or excavate public right-of-way without first obtaining written permission from the City Engineer, provided that Franchisee files for a cut permit as soon thereafter as is reasonably practicable under the circumstances. Any restoration of disturbed or excavated public right-of-way shall be completed in accordance with Section 6 below.

(A) When the Franchisee shall enter upon any public right-of-way for the purpose of constructing, erecting, installing, operating, maintaining, repairing and/or removing any part of its gas distribution system, it shall promptly and diligently prosecute the work to completion at its sole expense and shall repave, cover and restore all trenches and exposed areas as quickly as circumstances permit; and shall leave all public right-of-way in as good a condition as existed when Franchisee entered upon same for the purpose of commencing the work. Franchisee agrees to perform such restoration of public right of way work in conformity with all applicable city construction standards. Any repairs to public right of way necessitated by reason of Franchisee's failure to comply with city construction standards shall be performed by Franchisee, at its expense, for a period of twelve (12) months following the date Franchisee completed the particular restoration work. However, notwithstanding the foregoing restoration requirements, Franchisee shall upon request by the City Engineer and at its sole expense, repave all street pavement located within an entire street-block if Franchisee, its employees, contractors or agents, have undertaken an authorized excavation of street right-of-way that has been repaved within six (6) months of the excavation where Franchisee knew or should have known that it would need to excavate the new pavement within six (6) months of the City notifying Franchisee of the roads that will be repaved. Provided, however, the provisions of the foregoing sentence shall not apply to the extent the excavation was necessitated by an act of the City or by an act of God, or by an act of a third party with whom Franchisee is not in privity of contract or over whom Franchisee has no control or, in order to fix or repair a potentially, or actual, dangerous condition (e.g. an emergency) or to accommodate a request for service by a new customer. In the event Franchisee is required to repave an entire street-block of pavement right-of-way, the City shall, once the City Engineer has inspected and approved the completed project, assume responsibility for the maintenance of the improved right-of-way. All restorations or repairs of public right-of-way shall

WAY:

Section 6. DEGRADATION/RESTORATION OF PUBLIC RIGHT-OF-

be performed in accordance with the City's Public Improvement Specifications and approved by the City Engineer. All restoration or repairs performed by the Franchisee may be subject to inspection at any time by the City Engineer or his designee. In the event Franchisee fails, refuses or neglects to comply with this provision, the City shall have the right, after Franchisee is first given notice and an opportunity to comply with the foregoing provisions, to repair or restore the affected public right-of-way; and the costs and expenses incurred by the City as a result thereof, shall be paid to the City by Franchisee within ten (10) days from the date on which an itemized bill is submitted to the Franchisee.

(B) In the construction, installation, maintenance, repair or removal of any of its gas distribution system, or any part thereof, Franchisee shall exercise due regard for the rights of the City of Owensboro, pedestrians and motorists, and shall not unreasonably or unnecessarily interfere with or injure, City property, or the private property of others, under, on, over, across or above the ground. Franchisee shall comply with all applicable laws with respect to signalization, placement of lights, danger signals or warning signs. All work performed by Franchisee hereunder shall be done in a workmanlike manner and shall not unnecessarily interfere with public use of the City's right-of-way or property.

(C) Franchisee shall, upon request by the City, remove, move, modify, relocate, reconstruct or adjust any of its gas distribution system located within public right-of-way, at its own expense, if the City of Owensboro, in its sole discretion, constructs, reconstructs, widens, alters, excavates, paves, repaves, repairs, changes or improves any public right-of-way as part of any public improvement project, and such work requested by the City shall be accomplished by Franchisee within thirty (30) days after notice thereof by the City; provided, however, if the work requested of Franchisee cannot be reasonably completed within the said thirty (30) day period, Franchisee shall have such additional time to complete its work as may mutually be agreed upon between Franchisee and the City Engineer.

(D) If the City requires the Franchisee to adapt or conform its gas distribution system or to in any way construct, reconstruct, remove, alter,



prior to commencement of the performance of this Agreement. Such policy or policies shall be in the minimum amount of Two Million Dollars (\$2,000,000) for bodily injury or death to one person, and Two Million Dollars (\$2,000,000) for bodily injury or death of any two or more persons resulting from one occurrence, Two Million Dollars (\$2,000,000) for property damage resulting from one accident, Two Million Dollars (\$2,000,000) for excess commercial liability and Two Million Dollars (\$2,000,000) for worker's compensation employer liability. Franchisee shall provide any additional workers' compensation coverage in accordance with applicable law.

(B) **Indemnification:** Franchisee shall at all times indemnify and hold harmless the City from and against any and all lawful claims for injury to any person or property by reason of Franchisee's or its employees' failure to exercise reasonable care in installing, maintaining and operating Franchisee' natural gas system within the City. Provided, none of the provisions of this paragraph shall be applicable 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 the damages sued upon. That is to say, any judgment and all of the costs of defense, including attorney fees, provided for above shall be apportioned between the City and the Franchisee based upon the percentage of fault assigned to each by a court of competent jurisdiction.

**Section 9. TRANSFER OR ASSIGNMENT OF FRANCHISE:**

Franchisee may transfer or assign the franchise created by this ordinance to any other person, proprietorship, partnership, firm or corporation without the consent of the City, upon approval of the Kentucky Public Service Commission.

**Section 10. CITY'S RIGHT OF INSPECTION AND ACCESS TO**

**FACILITIES OF FRANCHISEE:**

The City, through its City Commission, City Manager, City Engineer, City Attorney, or such other assistants as it may employ or designate, at all times reasonable, shall have access to, and the right to inspect, Franchisee's gas distribution system installed under this franchise and may inspect, examine or verify all or any of Franchisee's non-confidential (as determined from time to time

by the Kentucky Public Service Commission) books and records that are necessary to confirm the accuracy of the amount of franchise fee being paid to the City.

**Section 11. BREACH OF FRANCHISE; REMEDIES:**

If the Franchisee materially breaches any of the substantive terms or conditions of this franchise and fails to cure same within a reasonable time (not less than 30 days) after written notice from the City describing the default and the actions the City believes the Franchisee must take to correct same, the City shall have the right to terminate the franchise on the basis of non-performance by the Franchisee. Provided, however, the termination by the City shall not become effective until the parties have endeavored to resolve any differences between them through a mediator who will be selected by the mutual agreement of City and Franchisee. The provisions of this Section shall not impair or abrogate the statutory or common law rights Franchisee as owner has as to its gas distribution system.

**Section 12. FORCE MAJEURE:**

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Franchisee is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of Force Majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Franchisee is so prevented shall not be counted against it for any reason.

**Section 13. SEVERABILITY:**

If any section, subsection or provision of this ordinance or any part thereof is for any reason found unconstitutional 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, which shall remain in full force and effect.

**Section 14. EFFECTIVE DATE OF FRANCHISE; MUTUAL**

**CANCELLATION OF PRIOR FRANCHISE:**

The franchise created by this Agreement shall become effective on August 1, 2007. The existing franchise between the City and Atmos Energy, which expired by its terms on January 31, 2007, and which was thereafter extended to August 1, 2007, by agreement of the parties, is hereby terminated by the parties effective as of the date of execution of this new franchise agreement.

**Section 15. GENERAL PROVISIONS**

(A) Franchisee may remove all or any part of its Gas Distribution System upon the expiration or termination of the franchise and rights granted hereby.

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

(C) In the event of a conflict between the provisions of any Ordinances of the City or portions thereof, and any of the terms and provisions of this Agreement, the terms of this Agreement shall prevail.

(D) The City, by granting of this franchise, does not surrender to any extent, lose, waiver, imperil, or lessen the lawful powers and rights now or hereinafter vested in the City under the constitution and statutes of the Commonwealth of Kentucky; provided, however, that no ordinance, law, regulation or rule adopted or enacted by the City shall in any way impair, alter, lessen, modify or restrict the rights of the Franchisee under and established by this Agreement including, but not limited to, the use of the Public-Rights-of-way in connection with Franchisee's acquisition, construction, ownership, installation, laying, operation, maintenance, repair or removal of the Gas Distribution System.

IN TESTIMONY WHEREOF, witness the signatures of the parties on this the day and date first above written.

**CITY OF OWENSBORO, KENTUCKY**



Mayor

ATTEST:

Catal Blake  
City Clerk

ATMOS ENERGY CORPORATION

Kevin Akers  
Kevin Akers, President



**THIS FRANCHISE AGREEMENT**, is made and executed this 17<sup>th</sup> day of July, 2007 by and between the City of Owensboro, Kentucky (sometimes referred to herein as the "City") and Atmos Energy Corporation (sometimes referred to herein as "Atmos" and sometimes as "Franchisee").

**WITNESSETH:**

**WHEREAS**, the existing natural gas franchise between the City of Owensboro, Kentucky, and Atmos was extended to August 1, 2007, by agreement of the parties, and will expire on August 1, 2007; and

**WHEREAS**, the Constitution of the Commonwealth of Kentucky, Sections 163 and 164, and Chapter 96 of the Kentucky Revised Statutes, authorize municipal corporations to require public utilities, including providers of natural gas within their boundaries, to operate under franchise agreements and to grant utilities the right to use public right-of-way on such terms and conditions as are deemed reasonable and necessary; and further KRS 82.082 authorizes the City to exercise any and all powers within its boundaries that are not in conflict with the Kentucky Constitution or state statutes; and

**WHEREAS**, the Board of Commissioners of the City of Owensboro, Kentucky, has found and determined that the construction, operation, maintenance and utilization of a natural gas franchise over, across or under public right-of-way in the City of Owensboro, benefits said utility and the customers it serves and the Board has further found and determined that the construction, installation, removal, maintenance and/or repair of utility-owned facilities and other infrastructure does periodic and unavoidable disturbance that gradually results in the degradation of the City's streets and sidewalks, for which the City is entitled to reasonable compensation in order to offset and recover the costs of reconstructing, removing, repairing or resurfacing damaged public right-of-way; and

**WHEREAS**, in order to protect the health, safety and welfare of the citizens of Owensboro, Kentucky, to protect and preserve the City's public right-of-way and infrastructure and to provide for the orderly administration of the franchise contemplated herein, it is necessary and appropriate to require the

Franchisee to conduct its business and operations in a lawful manner in compliance with the terms and conditions set forth hereinbelow.

**WHEREAS**, the City duly advertised, in accordance with all applicable law, a public notice of the sale of this franchise and solicited sealed bids therefore; and,

**WHEREAS**, the City has determined that Atmos Energy Corporation's bid was the highest and best bid and pursuant to City Ordinance 25 -2007 is granting this franchise to Atmos Energy Corporation.

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:**

**Section 1. DEFINITIONS:**

As used in this Agreement, the following words and phrases shall have the following meanings:

- (a) "Franchise" shall mean the rights and privileges granted by the City of Owensboro to Atmos Energy Corporation under the terms and provisions of this Agreement.
- (b) "Franchisee" shall mean Atmos Energy Corporation.
- (c) "Public Right-of-Way" shall mean 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 for vehicular or pedestrian transportation or access.
- (d) "Gross Revenues" shall mean all gross cash receipts for Kentucky Public Service Commission regulated natural gas distribution services for domestic, commercial or industrial consumption within the corporate limits of the City.
- (e) "Gas Distribution System" shall mean 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 corporate boundaries of the City.

(f) “*Force Majeure*” shall mean any and all causes beyond the control and without the fault or negligence of Franchisee. Such causes shall include but not be limited to acts of God, acts of the public enemy, insurrections, riots, terrorism, labor disputes, boycotts, labor and material shortages, fires, explosions, flood, breakdowns of or damage to equipment of facilities, interruptions to transportation, embargoes, acts of military authorities, or other causes of a similar nature whether or not foreseen or foreseeable which wholly or partly prevent Franchisee from performing one or more of its obligations hereunder.

(g) “*New Construction*” shall mean installation of piping or other apparatus by Franchisee in a new location as opposed to repair or maintenance work on existing piping or other apparatus.

## **Section 2. CREATION OF FRANCHISE:**

(A) There is hereby created and granted to Franchisee a non-exclusive franchise to enter upon, acquire, construct, operate, maintain and repair in the public right-of-way of the City, a gas distribution system within the corporate boundaries of the City, subject to the provisions of this Agreement. The franchise granted hereunder shall be extended to territories that are annexed within the City upon the same terms and conditions herein, subject to the approval of state regulatory authorities, 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 corporate boundaries of the City, similar to the one herein granted to Franchisee, it is agreed that the terms of any such franchise agreement shall be no more favorable to such new additional Franchisee than those terms contained in this Agreement. Additionally, it is agreed that any such new/additional Franchisee

shall have no right to use any portion of the gas distribution system of this Franchisee without this Franchisee's written consent.

**Section 3. TERM OF FRANCHISE:**

The franchise created herein shall be for a term of five (5) years from the date of this Agreement.

**Section 4. FRANCHISEE'S RIGHTS IN AND TO PUBLIC RIGHT-OF-**

**WAY:** The 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 within the corporate boundaries of the City 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 Agreement.

**Section 5. OPERATION OF FRANCHISE SYSTEM; EXCAVATION OF**

**PUBLIC RIGHT-OF-WAY:**

(A) The gas distribution system of the Franchisee shall, at all times, be installed, operated and maintained in good working condition as will enable the Franchisee to furnish adequate and continuous service to all of its residential, commercial and industrial customers. The distribution system shall be designed, installed, constructed and replaced 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.

(B) Although the Franchisee shall have the right to disturb, break, and excavate in the public right-of-way of the City as may be reasonable and necessary to provide the service authorized by this franchise, it agrees to give the notice and/or obtain the cut permit as required below.

(C) Franchisee agrees to give prior notification to the City Engineer of any construction work by Franchisee on or in any public right-of-way (including streets, sidewalks, curbs, gutters, drainage facilities or other street installations) that will necessarily involve the cutting of any blacktop or concrete on a public right-of-way, or any other excavation in a public right-of-way that is reasonably

expected to interrupt the flow of traffic on the public right-of-way. In the event a street, sidewalk, curb or gutter is to be cut, the Franchisee agrees to obtain a "cut permit" from the City.

Nothing in the above provisions is intended to require Franchisee to give a notification to the City Engineer for any routine maintenance or repair work not involving the cutting of a public street, sidewalk, curb or gutter (in which event Franchisee would be required to obtain a "cut permit" from the City Engineer) or not involving an interruption of traffic flow on a city street.

Additionally, nothing herein is intended to impose on Franchisee any obligation to give notification to the City Engineer or obtain a "cut permit" for work on customers' service lines. Provided, Franchisee, shall be required to give advance notification to the City Engineer of installation of a new main within the city limits and provide a copy of the plans to the City Engineer of the new main.

(D) To the extent reasonably practical, Franchisee agrees to schedule and coordinate installation, construction, maintenance, replacement or repairs of its gas distribution system with proposed improvements to the City public-right-of-way that have been designated (and which Franchisee has specifically been advised of) for improvement, resurfacing or repair prior to the commencement thereof. In the event Franchisee should in the future implement a written program for the systematic replacement of gas distribution system components located in the public right-of-way that have exhausted their useful life, Franchisee shall make a copy of same available to the City Engineer for inspection and shall to the extent practical, use its best efforts to follow same. Any replacement program shall, to the extent reasonably practical, be scheduled to coincide with the City's annual right-of-way pavement program.

(E) When a situation arises that requires immediate attention, Franchisee is authorized to disturb, break or excavate public right-of-way without first obtaining written permission from the City Engineer, provided that Franchisee files for a cut permit as soon thereafter as is reasonably practicable under the circumstances. Any restoration of disturbed or excavated public right-of-way shall be completed in accordance with Section 6 below.

**Section 6. DEGRADATION/RESTORATION OF PUBLIC RIGHT-OF-**

**WAY:**

(A) When the Franchisee shall enter upon any public right-of-way for the purpose of constructing, erecting, installing, operating, maintaining, repairing and/or removing any part of its gas distribution system, it shall promptly and diligently prosecute the work to completion at its sole expense and shall repave, cover and restore all trenches and exposed areas as quickly as circumstances permit; and shall leave all public right-of-way in as good a condition as existed when Franchisee entered upon same for the purpose of commencing the work. Franchisee agrees to perform such restoration of public right of way work in conformity with all applicable city construction standards. Any repairs to public right of way necessitated by reason of Franchisee's failure to comply with city construction standards shall be performed by Franchisee, at its expense, for a period of twelve (12) months following the date Franchisee completed the particular restoration work. However, notwithstanding the foregoing restoration requirements, Franchisee shall upon request by the City Engineer and at its sole expense, repave all street pavement located within an entire street-block if Franchisee, its employees, contractors or agents, have undertaken an authorized excavation of street right-of-way that has been repaved within six (6) months of the excavation where Franchisee knew or should have known that it would need to excavate the new pavement within six (6) months of the City notifying Franchisee of the roads that will be repaved. Provided, however, the provisions of the foregoing sentence shall not apply to the extent the excavation was necessitated by an act of the City or by an act of God, or by an act of a third party with whom Franchisee is not in privity of contract or over whom Franchisee has no control or, in order to fix or repair a potentially, or actual, dangerous condition (e.g. an emergency) or to accommodate a request for service by a new customer. In the event Franchisee is required to repave an entire street-block of pavement right-of-way, the City shall, once the City Engineer has inspected and approved the completed project, assume responsibility for the maintenance of the improved right-of-way. All restorations or repairs of public right-of-way shall

be performed in accordance with the City's Public Improvement Specifications and approved by the City Engineer. All restoration or repairs performed by the Franchisee may be subject to inspection at any time by the City Engineer or his designee. In the event Franchisee fails, refuses or neglects to comply with this provision, the City shall have the right, after Franchisee is first given notice and an opportunity to comply with the foregoing provisions, to repair or restore the affected public right-of-way; and the costs and expenses incurred by the City as a result thereof, shall be paid to the City by Franchisee within ten (10) days from the date on which an itemized bill is submitted to the Franchisee.

(B) In the construction, installation, maintenance, repair or removal of any of its gas distribution system, or any part thereof, Franchisee shall exercise due regard for the rights of the City of Owensboro, pedestrians and motorists, and shall not unreasonably or unnecessarily interfere with or injure, City property, or the private property of others, under, on, over, across or above the ground. Franchisee shall comply with all applicable laws with respect to signalization, placement of lights, danger signals or warning signs. All work performed by Franchisee hereunder shall be done in a workmanlike manner and shall not unnecessarily interfere with public use of the City's right-of-way or property.

(C) Franchisee shall, upon request by the City, remove, move, modify, relocate, reconstruct or adjust any of its gas distribution system located within public right-of-way, at its own expense, if the City of Owensboro, in its sole discretion, constructs, reconstructs, widens, alters, excavates, paves, repaves, repairs, changes or improves any public right-of-way as part of any public improvement project, and such work requested by the City shall be accomplished by Franchisee within thirty (30) days after notice thereof by the City; provided, however, if the work requested of Franchisee cannot be reasonably completed within the said thirty (30) day period, Franchisee shall have such additional time to complete its work as may mutually be agreed upon between Franchisee and the City Engineer.

(D) If the City requires the Franchisee to adapt or conform its gas distribution system or to in any way construct, reconstruct, remove, alter,

relocate, adjust or change its system to enable any other person, firm, corporation or entity, whether public or private, other than the City, to utilize public right-of-way, Franchisee shall be reimbursed for all costs incurred by the Franchisee from the person, firm, Franchisee, corporation or entity requesting or required by the City to perform such change, construction, removal, repair, maintenance, alteration or relocation.

**Section 7. COMPENSATION FOR USE OF PUBLIC RIGHT-OF-WAY**

**AND CONSIDERATION FOR FRANCHISE:** As consideration for the grant of the franchise and rights herein and for the use by Franchisee of the streets, roads, highways, alleys, public ways, and other real property owned or controlled by the City, franchisee shall pay to the City, within thirty (30) days after the end of each calendar quarter, a franchise fee equal to ~~one~~ <sup>two</sup> percent (2%) <sup>of</sup> Franchisee's Gross Revenues for the preceding calendar quarter.. Franchisee may add a line-item surcharge to the monthly bills of customers located within the City, which surcharge may be designated as a City franchise fee in an amount sufficient to recover the franchise fee paid by the Franchisee to the City, in the manner authorized by Franchisee's tariffs on file with the Kentucky Public Service Commission.

The Franchisee fee provided herein, together with any charges of the City for water, sewage, and garbage services provided by the City to Franchisee, and any occupational license fees or property tax payable to the City by the Franchisee, shall constitute the only amount 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, currently or in the future, may charge Franchisee or assess against Franchisee's property.

**Section 8. ADDITIONAL REQUIREMENTS; INSURANCE AND INDEMNIFICATION:**

(A) During the term of this Agreement, Franchisee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance. A certificate of insurance, evidencing same coverage, shall be provided to the City



prior to commencement of the performance of this Agreement. Such policy or policies shall be in the minimum amount of Two Million Dollars (\$2,000,000) for bodily injury or death to one person, and Two Million Dollars (\$2,000,000) for bodily injury or death of any two or more persons resulting from one occurrence, Two Million Dollars (\$2,000,000) for property damage resulting from one accident, Two Million Dollars (\$2,000,000) for excess commercial liability and Two Million Dollars (\$2,000,000) for worker's compensation employer liability. Franchisee shall provide any additional workers' compensation coverage in accordance with applicable law.

(B) **Indemnification:** Franchisee shall at all times indemnify and hold harmless the City from and against any and all lawful claims for injury to any person or property by reason of Franchisee's or its employees' failure to exercise reasonable care in installing, maintaining and operating Franchisee' natural gas system within the City. Provided, none of the provisions of this paragraph shall be applicable 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 the damages sued upon. That is to say, any judgment and all of the costs of defense, including attorney fees, provided for above shall be apportioned between the City and the Franchisee based upon the percentage of fault assigned to each by a court of competent jurisdiction.

**Section 9. TRANSFER OR ASSIGNMENT OF FRANCHISE:**

Franchisee may transfer or assign the franchise created by this ordinance to any other person, proprietorship, partnership, firm or corporation without the consent of the City, upon approval of the Kentucky Public Service Commission.

**Section 10. CITY'S RIGHT OF INSPECTION AND ACCESS TO FACILITIES OF FRANCHISEE:**

The City, through its City Commission, City Manager, City Engineer, City Attorney, or such other assistants as it may employ or designate, at all times reasonable, shall have access to, and the right to inspect, Franchisee's gas distribution system installed under this franchise and may inspect, examine or verify all or any of Franchisee's non-confidential (as determined from time to time

by the Kentucky Public Service Commission) books and records that are necessary to confirm the accuracy of the amount of franchise fee being paid to the City.

**Section 11. BREACH OF FRANCHISE; REMEDIES:**

If the Franchisee materially breaches any of the substantive terms or conditions of this franchise and fails to cure same within a reasonable time (not less than 30 days) after written notice from the City describing the default and the actions the City believes the Franchisee must take to correct same, the City shall have the right to terminate the franchise on the basis of non-performance by the Franchisee. Provided, however, the termination by the City shall not become effective until the parties have endeavored to resolve any differences between them through a mediator who will be selected by the mutual agreement of City and Franchisee. The provisions of this Section shall not impair or abrogate the statutory or common law rights Franchisee as owner has as to its gas distribution system.

**Section 12. FORCE MAJEURE:**

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Franchisee is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of Force Majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Franchisee is so prevented shall not be counted against it for any reason.

**Section 13. SEVERABILITY:**

If any section, subsection or provision of this ordinance or any part thereof is for any reason found unconstitutional 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, which shall remain in full force and effect.

**Section 14. EFFECTIVE DATE OF FRANCHISE; MUTUAL**

**CANCELLATION OF PRIOR FRANCHISE:**

The franchise created by this Agreement shall become effective on August 1, 2007. The existing franchise between the City and Atmos Energy, which expired by its terms on January 31, 2007, and which was thereafter extended to August 1, 2007, by agreement of the parties, is hereby terminated by the parties effective as of the date of execution of this new franchise agreement.

**Section 15. GENERAL PROVISIONS**

(A) Franchisee may remove all or any part of its Gas Distribution System upon the expiration or termination of the franchise and rights granted hereby.

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

(C) In the event of a conflict between the provisions of any Ordinances of the City or portions thereof, and any of the terms and provisions of this Agreement, the terms of this Agreement shall prevail.

(D) The City, by granting of this franchise, does not surrender to any extent, lose, waiver, imperil, or lessen the lawful powers and rights now or hereinafter vested in the City under the constitution and statutes of the Commonwealth of Kentucky; provided, however, that no ordinance, law, regulation or rule adopted or enacted by the City shall in any way impair, alter, lessen, modify or restrict the rights of the Franchisee under and established by this Agreement including, but not limited to, the use of the Public-Rights-of-way in connection with Franchisee's acquisition, construction, ownership, installation, laying, operation, maintenance, repair or removal of the Gas Distribution System.


IN TESTIMONY WHEREOF, witness the signatures of the parties on this the day and date first above written.

**CITY OF OWENSBORO, KENTUCKY**




Mayor

ATTEST:

  
City Clerk

ATMOS ENERGY CORPORATION

  
Kevin Akers, President