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OVERNIGHT DELIVERY

2010-00252

June 22, 2010

RECEIVED

JUN 23 2010

PUBLIC SERVICE
COMMISSION

Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
PO Box 615
Frankfort, Kentucky 40602

RE: Atmos Energy Corporation
Application for a Certificate of Public Convenience
And Necessity Authorizing it to Bid on a Franchise
Livermore, Kentucky

Dear Mr. Derouen:

Attached is an original, plus eleven (11) copies of Atmos Energy's Application for a Certificate of Public Convenience And Necessity Authorizing it to Bid on a Franchise Established by the City of Livermore, Kentucky. Please return a stamped filed copy to me.

Livermore currently owns and operates its own natural gas system. It has decided to sell the system, subject to voter approval in November. As shown by the attachments to the enclosed Application, the City is soliciting bids for the sale of their system and for a franchise to operate that system. The deadline for submitting the bid on the system and the franchise is 2:00 p.m., July 7, 2010.

We first learned of the City's actions late in the date on Friday, June 18, 2010. We did not actually receive a copy of the ordinance until today, June 22, 2010. We apologize for the short

notice but would request expedited review of this Application so that Atmos will be in an position to submit a bid by the July 7 deadline.

Very truly yours,



Mark R. Hutchinson

c: Mark Martin
Kevin Dobbs

RECEIVED

BEFORE THE
PUBLIC SERVICE COMMISSION OF KENTUCKY

JUN 23 2010

PUBLIC SERVICE
COMMISSION

APPLICATION OF ATMOS ENERGY)
CORPORATION, OWENSBORO)
KENTUCKY FOR A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY)
AUTHORIZING IT TO BID ON A FRANCHISE)
ESTABLISHED BY THE CITY OF LIVERMORE,)
KENTUCKY)

CASE
NO 2010-00252

APPLICATION

1

Applicant, Atmos Energy Corporation, a corporation duly qualified under the laws of the Commonwealth of Kentucky to carry on its business in the Commonwealth.

The Company is an operating public utility engaged in the business of supplying natural gas to the public in numerous cities, towns, and communities in Western and South Central Kentucky.

2

Atmos' Articles of Incorporation, together with all amendments thereto, have already been filed with the Commission in Case No. 2008-00222. There have been no changes to the Articles of Incorporation since they were filed with the Commission in Docket No. 2008-00222.

3

The City of Livermore (sometimes hereinafter called the "City") is a fifth class City situated in McLean County, Kentucky. Applicant does not currently

serve the City. The City has owned and operated a natural gas distribution system for several years thereby providing natural gas service to its residential and commercial customers within the boundaries of the City. The City currently serve 478 residential and 82 commercial customers. The City has adopted an Ordinance seeking bids for the purchase of the City's natural gas distribution system and for the purchase of a non-exclusive franchise to operate the system within the City boundaries.

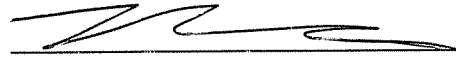
4

The City has established a natural gas franchise in connection with the sale of its distribution system and has directed that bids for the purchase thereof be received on or before 2:00 p.m., C.D.T., July 7, 2010. All bids will be conditionally accepted. Final acceptance is conditioned upon voter approval of the sale of the system, such vote being scheduled for November 2, 2010. A copy of the Ordinance establishing such franchise, directing its sale, and setting forth the type and provisions of such franchise is filed herewith as a part hereof.

There is a demand and need for continued natural gas service for the City.

WHEREFORE, Applicant respectfully requests the Commission to enter a certificate of public convenience and necessity authorizing Applicant to bid on the aforesaid natural gas franchise and, if it is awarded such franchise, to operate the natural gas distribution system pursuant to such franchise. A copy of the franchise, if awarded to Applicant, will be filed with the Commission.

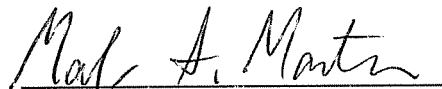
Respectfully submitted,




Mark R. Hutchinson
611 Frederica Street
Owensboro, Kentucky 42301
Attorney for Applicant

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

The undersigned Affiant, Mark A. Martin, being first duly sworn, deposes and says that he is Vice President of Rates and Regulatory Affairs of Atmos Energy Corporation, Kentucky/Mid-States Division having its principal office in Owensboro, Kentucky, which is the Applicant in this proceeding; that he has read the foregoing application and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and that as to those matters he believes them to be true; and that he is duly authorized to sign, execute, verify and file the foregoing application on behalf of Applicant.


Mark A. Martin

SUBSCRIBED AND SWORN to before me by Mark A. Martin as Vice President -- Rates and Regulatory Affairs of Atmos Energy Corporation, Kentucky/Mid-States Division, on this the 22 day of June, 2010.


Notary Public

My Commission Expires: 7/30/2012

ORDINANCE NO. 10-01

AN ORDINANCE OF THE CITY OF LIVERMORE, KENTUCKY PROVIDING FOR THE PROPOSED SALE OF THE CITY'S NATURAL GAS DISTRIBUTION SYSTEM TO THE HIGHEST AND BEST BIDDER; PROVIDING FOR THE SALE OF A NONEXCLUSIVE FRANCHISE AGREEMENT FOR THE MAINTENANCE AND OPERATION OF A NATURAL GAS DISTRIBUTION SYSTEM WITHIN THE BOUNDARIES OF THE CITY OF LIVERMORE, TO THE HIGHEST AND BEST BIDDER; DESCRIBING THE CITY'S NATURAL GAS DISTRIBUTION SYSTEM; RECITING THE BENEFITS TO THE CITY AND ITS INHABITANTS WHICH WILL BE ACHIEVED THROUGH THE PROPOSED SALE OF THE CITY'S NATURAL GAS DISTRIBUTION SYSTEM AND PROPOSED FRANCHISE AGREEMENT AUTHORIZING THE PURCHASER TO OPERATE AND MAINTAIN ITS NATURAL GAS SYSTEM WITHIN THE BOUNDARIES OF THE CITY OF LIVERMORE, FOR A PERIOD OF TEN (10) YEARS; PROVIDING FOR A SPECIAL ELECTION BY THE VOTERS OF THE CITY OF LIVERMORE ON THE QUESTION OF WHETHER THE CITY COUNCIL SHOULD PROCEED TO SELL THE CITY'S NATURAL GAS DISTRIBUTION SYSTEM; PROVIDING FOR THE APPOINTMENT OF ELECTION OFFICERS FOR LIVERMORE PRECINCT 1 AND LIVERMORE PRECINCT 2 WHEREIN THE VOTERS OF THE CITY OF LIVERMORE WILL CAST THEIR VOTES IN THE NOVEMBER 2, 2010 SPECIAL ELECTION; DIRECTING THE CITY CLERK OF THE CITY OF LIVERMORE TO PUBLISH THIS ORDINANCE IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AREA WITHIN THIRTY (30) DAYS FOLLOWING ITS FINAL ADOPTION; DIRECTING THE CITY CLERK OF THE CITY OF LIVERMORE TO PREPARE THE QUESTION FOR PRESENTATION TO THE VOTERS AT THE NOVEMBER 2, 2010 SPECIAL ELECTION; DIRECTING THE CITY CLERK TO PUBLISH IN A NEWSPAPER OF GENERAL CIRCULATION IN THE AREA A NOTICE OF THE HOLDING OF A SPECIAL ELECTION TO DETERMINE WHETHER THE CITY COUNCIL SHOULD PROCEED WITH THE SALE OF THE CITY'S NATURAL GAS DISTRIBUTION SYSTEM AS SUCH NOTICE IS PRESCRIBED BY CHAPTER 424 OF THE KENTUCKY REVISED STATUTES; AND PROVIDING FOR THE TABULATION OF THE VOTES OF THE SPECIAL ELECTION BY THE CITY LEGISLATIVE BODY IN THE PRESENCE OF THE MAYOR.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LIVERMORE, KENTUCKY AS FOLLOWS:

Article 1. The City of Livermore, Kentucky is a Fifth Class City within the Commonwealth of Kentucky, located in McLean County, Kentucky.

Article 2. For a number of years, the City of Livermore has owned and operated a natural gas distribution system with which it provides natural gas to its residential and commercial customers located within the boundaries of the City. The City of Livermore presently serves 478 residential customers and 82 commercial customers.

Article 3. The City of Livermore's natural gas system consists of the following personal and real properties:

The natural gas distribution system of the City of Livermore, Kentucky serving approximately 478 residential customers and 82 commercial customers, including:

Natural gas distribution mains, service lines, regulators, meters, tools, equipment, easements and other real estate interests and contract rights, maps, plats, records and accounts for operating the natural gas system, including the following specifically identified equipment:

- 1-Surelock Line Locator, Brand Health Consultants
- 1-Porta-fid II Flame Operated Leak Detector, Brand Health Tech
- 1-Odorator (checks odorant in system)
- 1-Dual Range Combustible Gas Indicator
- 1-CPV-4 Volt Meter (for checking aniods on the steel lines)

Article 4. Pursuant to KRS 82.083 the City makes the following written determination setting forth and fully describing:

- (a) The real and personal property proposed to be sold is described in Article 3 above.

(b) The intended use of the property at the time of acquisition was to serve the residential and commercial customers situated within the boundaries of the City of Livermore with natural and/or artificial gas supplies as fuel for heating, lighting and other related purposes.

(c) The reasons why it is believed to be in the public interest to dispose of this property are as follows:

- (i) The City's gas distribution system operating alone is too small to realize the economics of scale. By having the gas system managed and operated as a part of a larger entity, the City and its inhabitants can realize cost savings.
- (ii) A larger entity that owns and operates the gas system will have greater bargaining power for more favorable terms in the purchase of natural gas for the system.
- (iii) A larger entity that owns and operates the gas system will have specialized equipment and personnel who are capable of obtaining more favorable performance of the natural gas system for its intended purposes.
- (iv) The rates and services of the purchaser and franchise holder of the natural gas system serving the City of Livermore will be subject to the jurisdiction of the Kentucky Public Service Commission as to its rates and services to its customers.
- (v) The City of Livermore will realize reasonable income in the form of franchise fees resulting from the ownership and operation of the

natural gas system by an independent company which is engaged in the natural gas distribution business.

(vi) The City of Livermore will be protected from liability through the indemnification and insurance provisions of its franchise agreement, which liability the City presently bears.

(vii) The City will devote the proceeds received from its sale of its natural gas distribution system for other projects and improvements of its public facilities.

(d) The method of disposition to be used shall be the sale of the City's natural gas distribution system by sealed bids in accordance with the procedures for sealed bids under KRS 45A.365(3) and (4). The City will also sell its proposed franchise agreement using the same procedures.

Article 5. Any compensation resulting from the disposal of this real and personal property shall be transferred to the general fund of the City of Livermore pursuant to KRS 82.083(5).

Article 6. It is hereby ordered that a special election be conducted at the regular polling places within the City of Livermore on November 2, 2010 for purpose of providing to the voters of the City of Livermore the right to vote upon the question of whether the City Council of the City of Livermore shall proceed with the proposed sale of the City's natural gas distribution system.

Article 7. The following named persons are hereby appointed by the City Council to serve as officers of the special election which has been ordered to be held on November 2, 2010:

Precinct--Livermore #1

Mary Etta Tomes
P O Box 385
Livermore, KY 42352

Diana Brown
P O Box 425
Livermore, KY 42352

Mary Atherton
2886 Barrett Hill Rd
Livermore, KY 42352

Geraldine Boyd
P O Box 385
Livermore, KY 42352

Precinct—Livermore #2

Faye Ashby
2389 US Hwy 431 N
Livermore, KY 42352

Elaine Atherton
2722 US Hwy 431 N
Livermore, KY 42352

Sandra Evans
P.O. Box 121
Livermore, KY 42352

Margaret Underwood
4734 US Hwy 431 N
Livermore, KY 42352

Article 8. The City Clerk of the City of Livermore shall, within thirty (30) days following the final adoption of this Ordinance on its second reading, cause the publication in a newspaper of general circulation in the area a full copy of this Ordinance.

Article 9. The City Clerk of the City of Livermore is hereby directed to prepare the question for presentation to the voters of the City of Livermore at the November 2, 2010 special election as to whether the City Council of the City of Livermore shall proceed with the public sale of the City's natural gas distribution system, which question prepared by the City Clerk will be approved by special counsel to the City of Livermore and such question and a copy of this Ordinance shall be delivered to the County Clerk of McLean County, Kentucky on or before the second Tuesday in August, 2010.

Article 10. The City Clerk of the City of Livermore is hereby directed to publish in a newspaper of general circulation in the area a notice of the holding of a special election on November 2, 2010 to determine whether the City Council shall proceed with the public sale of the City's natural gas distribution system, which notice shall be published not less than seven (7)

days nor more than twenty-one (21) days before the November 2, 2010 special election. If more than one (1) publication of such notice is made by the City Clerk, at least one (1) of the publications shall be not less than seven (7) nor more than twenty-one (21) days prior to November 2, 2010.

Article 11. The members of the City Council and the Mayor shall be present in the office of the McLean County Court Clerk on November 2, 2010 after the voting polls have closed and shall participate in the tabulation of the votes of the special election, which tabulation shall be conducted in the presence of the Mayor of the City of Livermore.

Article 12. This Ordinance shall become effective when adopted by a majority vote of the members of the City Council of the City of Livermore at the time of its second reading, provided that it was adopted by vote of the City Council at the time of its first reading, which two (2) readings shall not have occurred on the same day.

Introduced and given first reading at a meeting of the City Council of the City of Livermore, Kentucky held on May 13th, 2010.

On roll call the vote stood as follows:

| | |
|------------------------------------|-----------------------------|
| City Council Member Ranburger, Jr. | <u>yes</u> |
| City Council Member Martin | <u>yes</u> |
| City Council Member Baldwin | <u>absent</u> |
| City Council Member Taylor | <u>absent</u> |
| City Council Member Hopper | <u>yes</u> |
| City Council Member Shocklee | <u>yes</u> |
| Mayor Revlett | _____ (in case of tie only) |

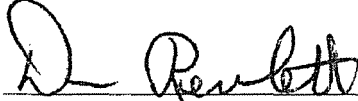
The Mayor announced that the Ordinance was approved on first reading and ordered that it be presented for second reading at the next meeting of the City Council, which shall not be held on the same day as this first meeting.

On roll call the vote stood as follows:

| | |
|------------------------------------|---------------|
| City Council Member Ranburger, Jr. | <u>yes</u> |
| City Council Member Martin | <u>yes</u> |
| City Council Member Baldwin | <u>yes</u> |
| City Council Member Taylor | <u>absent</u> |
| City Council Member Hopper | <u>yes</u> |
| City Council Member Shocklee | <u>yes</u> |

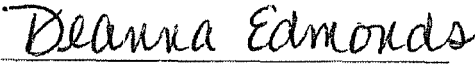
Mayor Revlett _____ (in case of tie only)

Thereupon Mayor Revlett declared that the Ordinance was adopted on second and final reading and ordered that it be published in a newspaper in compliance with the provisions of the Ordinance.



Dennis Revlett, Mayor

ATTEST:



Deanna Edmonds, City Clerk

REVIEWED BY:

John O. Hicks, III
City Attorney: May 13, 2010

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INVITATION FOR BIDS

The City of Livermore, Kentucky will receive sealed, written bids until 2:00 p.m. Central Daylight Time, on July 7, 2010, at the office of the City Clerk of the City of Livermore, 105 West Third Street, Livermore, Kentucky 42352-0279 (1) for the purchase of the City of Livermore's natural gas distribution system and (2) for the purchase of a nonexclusive Franchise Agreement for the privilege, right and authority to acquire, maintain, construct and operate a natural gas distribution system along the streets, thoroughfares, public ways and other public places of the City of Livermore. At 2:00 p.m. Central Daylight Time on July 7, 2010 the Mayor of the City of Livermore or his designated representative will publicly open all sealed written bids which the City Clerk shall have received by such time and date. Each bid, together with the name of the bidder, shall be recorded and be open to public inspection.

Bids received by the City after the time and date fixed in the Invitation for Bids for opening of bids will not be considered for acceptance or approval. Bids submitted by telephone, telefax, telegram, email or other electronic transmission methods will not be accepted for consideration at the time of bid opening.

The City of Livermore reserves the right to reject any and all bids, to waive any informalities therein and to consider exceptions and clarifications therein in order to determine the highest and best evaluated bid; to reject any or all non-conforming and non-responsive bids; to reject the bid of any bidder if the City Council determines that it would not be in the best interest of the City to make an award to that bidder, because the bid is not responsive or the bidder is unqualified or of doubtful financial ability. By submitting a bid to the City of Livermore, the bidder agrees that the procedures described in this notice are acceptable to the bidder and shall be without liability on the part of the City Council for any damage or claim brought by the bidder because of such rejections or procedures. The filing of any bid in response to this Notice shall constitute an agreement of the bidder to be bound by the terms and provisions recited in this Notice.

Each bid submitted for purchase of the City's natural gas distribution system shall be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank in an amount equal to five percent (5%) of the amount bid for the purchase of the City's natural gas distribution system, which check or cash shall be forfeited to the City in case the bid should be unconditionally accepted by the City and the bidder should fail for a period of thirty (30) days after receipt of written notice from the City of its unconditional acceptance of such bid to pay the price bid for the purchase of the City's natural gas distribution system. Additionally, should the successful bidder fail to pay the price for purchase of the City's natural gas distribution system within the time hereinabove specified, the bidder will not be entitled to purchase the Franchise Agreement offered for sale by the City in connection with its natural gas distribution system. The bid security deposits of unsuccessful bidders will be returned by the City after award of a conditional contract to the successful bidder.

After bid opening the Mayor shall report and submit to the City Council, at the time of its next regular meeting, said bids and proposals for the City Council's

consideration and approval. The said City Council reserves the right, for and in behalf of the City, to reject any and all bids for purchase of the said natural gas distribution system and/or for purchase of the said Franchise Agreement. In case all bids reported by the Mayor shall be rejected by the City Council, it may direct, by resolution or ordinance, that said natural gas distribution system and/or Franchise Agreement be again offered for sale, from time to time, until satisfactory bids therefore shall be received and approved, or take such other action as is permitted by KRS 82.083.

Should the City Council accept a bid for the purchase of the City's natural gas distribution system and/or for the purchase of a nonexclusive Franchise Agreement at the time the bids are presented to the City Council by the Mayor, such acceptance shall be a conditional acceptance, subject to the approval of the City's sale of its natural gas distribution system by a majority of the voters of the City of Livermore cast at a Special Election to be held on November 2, 2010. If a majority of the voters of the City of Livermore fail to approve the City Council's proposal to sell the City's natural gas distribution system, the City Council's conditional acceptance of such bid will be withdrawn and the security deposit of the successful bidder will be returned by the City and all express or implied agreements between the City and the successful bidder will become null and void.


Copies of the following documents may be obtained from the Office of the City Clerk, City of Livermore, Kentucky, 105 W. Third Street, Livermore, Kentucky 42352; telephone number (270) 278-2113:

Specifications for natural gas distribution system

Nonexclusive Franchise Agreement and Franchise Ordinance

Bid Form

All bids submitted in response to this Invitation for Bids must be submitted on the Bid Form available at the Office of the City Clerk.



Mayor, City of Livermore, Kentucky

**SPECIFICATIONS FOR THE NATURAL GAS DISTRIBUTION SYSTEM OF
THE CITY OF LIVERMORE, KENTUCKY**

The following represents a description of the natural gas distribution system of the City of Livermore, Kentucky, which is being offered for sale to the highest and best bidder pursuant to sealed written bids received in the Office of the City Clerk of the City of Livermore, Kentucky at 105 West Third Street, Livermore, Kentucky 42352:

The natural gas distribution system of the City of Livermore, Kentucky, serving approximately 478 residential customers and 82 commercial customers, including:

Natural gas distribution mains, service lines, regulators, meters, tools, equipment, easements and other real estate interests and contract rights, maps, plats, records and accounts for operating the natural gas system, including the following specifically identified equipment:

- 1-Surelock Line Locator, Brand Health Consultants
- 1-Porta-fid II Flame Operated Leak Detector, Brand Health Tech
- 1-Odorator (checks odorant in system)
- 1-Dual Range Combustible Gas Indicator
- 1-CPV-4 Volt Meter (for checking aniods on the steel lines)

/s/ Dennis Revlett
Mayor, City of Livermore

June 11, 2010
Date

**FRANCHISE AGREEMENT
CITY OF LIVERMORE, KENTUCKY
NATURAL GAS DISTRIBUTION SYSTEM**

Attached hereto is a nonexclusive Franchise Agreement to be entered into by and between the City of Livermore, Kentucky, and the successful bidder for the purchase of the City of Livermore's natural gas distribution system and a nonexclusive Franchise Agreement in connection therewith. Said Franchise Agreement shall be entered into by the parties within thirty (30) days following written notice to the successful bidder of the unconditional acceptance of its bid.

The Franchise Agreement incorporates the terms and provisions of the City of Livermore, Kentucky, Ordinance Number 10-03 adopted on June 11, 2010, the terms and provisions of which are incorporated into and made a part of the Franchise Agreement. A copy of Ordinance Number 10-03 is attached hereto and made a part hereof.

/s/ Deanna Edmonds

Deanna Edmonds, City Clerk
City of Livermore, Kentucky

June 11, 2010

Date

CITY OF LIVERMORE, KENTUCKY
ORDINANCE NO. _____

**AN ORDINANCE AWARDING A TEN (10) YEAR GAS DISTRIBUTION
FRANCHISE TO _____ (NAME OF PURCHASER)
FOR THE OPERATION OF A NATURAL AND ARTIFICIAL GAS
DISTRIBUTION SYSTEM WITHIN THE CONFINES OF THE CITY OF
LIVERMORE, KENTUCKY, BASED UPON AND SUBJECT TO THE
CONDITIONS OF ORDINANCE NO. 10-03**

WHEREAS, the City of Livermore, by virtue of Ordinance No. 10-03 enacted on June 11, 2010, has advertised for bids to award a Franchise to acquire, lay, maintain and operate in, above, under, across and along the streets, thoroughfares, alleys, avenues, roads, highways, sidewalks, bridges, public ways and other public places (as the same are now or may hereafter be laid out) (hereinafter "streets") of the City of Livermore, Kentucky (hereinafter "City"), a system of mains, pipes and connections with all the necessary or desirable appurtenances, for the purpose of transporting, distributing and vending natural and artificial gas to said City and the inhabitants thereof, and persons and corporations beyond the limits thereof, and any other purpose or purposes for which natural and artificial gas is now or may hereafter be used, and for the distribution of the same within, through and across said City; and

WHEREAS, _____ (name of Company) has been granted a Certificate of Convenience and Necessity by the Commonwealth of Kentucky Public Service Commission (case number _____) that authorizes the Company to bid on a franchise for gas distribution services offered by the City of Livermore; and

WHEREAS, the voters of the City of Livermore voting at a special election held on November 2, 2010, have approved the sale of the natural and artificial gas distribution system of the City of Livermore, and written notice thereof has been given to the Company by the City; and

WHEREAS, the Company has fully paid and discharged its obligation to pay the City of Livermore, Kentucky, the bid price for purchase of its natural and artificial gas distribution system, and for the purchase of this Franchise Agreement.

NOW, THEREFORE, be it ordained by the City Council of the City of Livermore as follows:

Section 1. That _____ (name of Company) be and is hereby awarded a ten (10) year gas distribution franchise for operation of a gas distribution system within the confines of the City of Livermore, Kentucky, based upon and subject to the terms, specifications, restrictions and obligations set forth in Ordinance No. 10-03 adopted by the City Council on June 11, 2010.

Section 2. That the Mayor of the City of Livermore is hereby authorized and directed to execute any documents pertaining thereto and the administrative staff of the City is authorized to perform any and all acts pursuant to the implementation of the gas distribution franchise.

Section 3. That if any section, sentence, clause or phrase of this Ordinance is held to be unconstitutional or otherwise invalid, such infirmity shall not affect the validity of the remainder of this Ordinance.

Section 4. That this Ordinance shall be effective on the date of its passage.

Introduced and given first reading at a meeting of the City Council of the City of Livermore, Kentucky held on _____, 2010.

On roll call the vote stood as follows:

| | |
|------------------------------------|-------|
| City Council Member Ranburger, Jr. | _____ |
| City Council Member Martin | _____ |
| City Council Member Baldwin | _____ |
| City Council Member Taylor | _____ |
| City Council Member Hopper | _____ |
| City Council Member Shocklee | _____ |

Mayor Revlett _____ (in case of tie only)

The Mayor announced that the Ordinance was approved on first reading and ordered that it be presented for second reading at the next meeting of the City Council, which shall not be held on the same day as this first meeting.

Introduced and given second reading at a meeting of the City Council of the City of Livermore, Kentucky, held on _____, 2010.

On roll call the vote stood as follows:

| | |
|------------------------------------|-------|
| City Council Member Ranburger, Jr. | _____ |
| City Council Member Martin | _____ |
| City Council Member Baldwin | _____ |
| City Council Member Taylor | _____ |
| City Council Member Hopper | _____ |
| City Council Member Shocklee | _____ |

Mayor Revlett _____ (in case of tie only)

Thereupon Mayor Revlett declared that the Ordinance was adopted on second and final reading and ordered that it be published in a newspaper in compliance with the provisions of the Ordinance.

Dennis Revlett, Mayor

Date

ATTEST:

Deanna Edmonds, City Clerk

REVIEWED BY:

John O. Hicks, III
City Attorney: _____, 2010

THIS TEN (10) YEAR NONEXCLUSIVE GAS DISTRIBUTION FRANCHISE GIVEN BY THE CITY OF LIVERMORE, KENTUCKY, TOGETHER WITH ORDINANCE NO. 10-03 PROVIDING THE TERMS AND CONDITIONS BY WHICH THE FRANCHISE SHALL BE GOVERNED IS HEREBY ACCEPTED IN ITS ENTIRETY BY THE UNDERSIGNED RECIPIENT.

(Name of Purchaser)

(Mailing Address)

Telephone Number

Authorized Representative

Date

CITY OF LIVERMORE, KENTUCKY

ORDINANCE NO. 10-03

**AN ORDINANCE CREATING A GAS DISTRIBUTION
FRANCHISE, DEFINING THE TERMS AND CONDITIONS
THEREOF AND PROVIDING FOR BID PROCEDURE**

BE IT ORDAINED by the City of Livermore, Kentucky as follows:

SECTION I. FRANCHISE CREATED. There is hereby created a franchise to acquire, lay, maintain and operate in, above, under, across and along the streets, thoroughfares, alleys, avenues, roads, highways, sidewalks, bridges, public ways and other public places (as the same now exist or may hereafter be laid out) (hereinafter "streets") of the City of Livermore, Kentucky (hereinafter "City"), a system of mains, pipes and connections, with all the necessary or desirable appurtenances, for the purpose of transporting, distributing and vending natural and artificial gas to said City and the inhabitants thereof, and persons and corporations beyond the limits thereof, and any other purpose or purposes for which natural and artificial gas is now or may hereafter be used, and for the distribution of the same within, through or across said City.

SECTION II. TERM OF FRANCHISE. The franchise herein created shall be for a term of ten (10) years.

SECTION III. FRANCHISEE. The person, firm or corporation which shall become the purchaser of said franchise, or any successor or assignee of such person, shall for brevity hereinafter be referred to as the "Franchisee."

SECTION IV. RIGHTS AND PRIVILEGES. The Franchisee shall possess the franchise, privilege, right and authority to acquire, maintain, construct and operate in, above, under, across and along the streets, thoroughfares, alleys, sidewalks, bridges, public ways and other public places (as the same now exist or may hereafter be laid out) of the City mains, pipes and connections, with all the necessary or desirable appurtenances, for the purpose of transporting, distributing and vending natural and artificial gas to said City and the inhabitants thereof, and persons and corporations beyond the limits thereof, and any other purpose or purposes for which natural and artificial gas is now or may hereafter be used, and for the distribution of the same within, through or across said City.

**SECTION V. CONSTRUCTION AND MAINTENANCE OF PIPELINES OR
OTHER INSTALLATIONS.**

A. No pavement, sidewalks, curbs, gutters or other street installations shall be disturbed and no excavations in any of the said streets shall be made, except with the written permission of the Mayor or the Assistant to the Mayor, and such work shall be done under the supervision of the Assistant to the Mayor; all pipelines, apparatus or appurtenances shall be located in such portion of said streets as may be designated by the Assistant to the Mayor.

B. When an emergency arises which requires immediate repair, the Franchisee may disturb or excavate a street without first obtaining written permission from the Mayor or the Assistant to the Mayor, provided that the Mayor is notified in writing of said repair within five (5) days. The said notification shall include at least the time, date, location and extent of excavation or other work performed.

C. When the Franchisee shall enter upon any street for the purpose of constructing, erecting, operating, maintaining or removing pipelines, apparatus, or appurtenances, it shall prosecute the work at its own cost or expense with due diligence and shall dig and close up all trenches and exposed places as rapidly as possible; it shall leave the streets in the same condition as when it entered for said purpose or purposes. All such repairs shall be maintained by the Franchisee for one (1) year in as good condition as the remainder of said street; in the event the Franchisee fails, refuses or neglects to comply with the above provisions, the City shall have the right, after notice in writing having first been given to the Franchisee or any officer or agent representing it, to do said work or make said repairs, and the cost or expense thereof shall be paid by the Franchisee to the City within thirty (30) days from the date on which an itemized bill is presented to the Franchisee.

D. During the construction, reconstruction, maintenance or removal of any of said pipeline, apparatus, or appurtenances, the Franchisee shall have due regard for the rights of the City and others, and shall not interfere with or in any way injure the property of the City or others under, on or above the ground. Said Franchisee shall comply with all of the laws of the Commonwealth of Kentucky and ordinances of the City as to placing lights, danger signals or warning signs, and shall be liable for any and all damage that may arise by reason of its failure or neglect to comply with such laws and ordinances. Work by the Franchisee hereunder shall be done in a workmanlike manner so as not to interfere unnecessarily with the public use of any of said streets.

SECTION VI. DUTY OF FRANCHISEE TO RELOCATE PIPELINE, APPARATUS OR APPURTENANCES.

A. Whenever the City or any of its departments, agencies or agents, servants or employees shall grade, regrade, construct, reconstruct, widen or alter any street, or shall construct, reconstruct, repair, maintain or alter any other municipal public works (including but not limited to storm sewers, sanitary sewers and water pipelines or fire hydrants) therein, it shall be the duty of the Franchisee, if so ordered by the City, to change or relocate its pipelines, apparatus or appurtenances at its own expense so as to conform to the new or revised City construction and so as not to interfere with such municipal public works so constructed, reconstructed or altered.

B. The Franchisee shall be given access to street plans and specifications in the possession of the City.

SECTION VII. DUTY OF FRANCHISEE WITH RESPECT TO PLANNED CONSTRUCTION OR RECONSTRUCTION. If any street is about to be constructed, reconstructed, widened, altered, paved or repaved by the City, the Franchisee shall on notice by the Assistant to the Mayor make at its own expense any extensions or changes in pipelines, apparatus or appurtenances prior to paving; provided that, if the Franchisee deems it unnecessary

to make extensions or changes, it may refrain from doing so, but thereafter it shall be precluded for a period of one (1) year from disturbing such paving, except in an emergency. If the Franchisee makes any extensions or changes in pipelines, apparatus or appurtenances, including connections to property lines, within such one year period, the same shall be made in the unpaved portion of the street and shall not disturb the pavement unless permission is granted by the Assistant to the Mayor.

SECTION VIII. QUANTITY AND QUALITY OF GAS TO BE SUPPLIED; TESTING OF METERS. The quantity, quality and pressure of gas supplied, customer service standards, and the accuracy of meters shall at all times be in accordance with the standards, rules and regulations of the Public Service Commission of the Commonwealth of Kentucky, from time to time in effect. The City reserves the right to make such tests of gas meters, pressure, specific gravity and heat value of the gas furnished by the Franchisee as it shall deem necessary and advisable.

SECTION IX. SAFETY STANDARDS TO BE MAINTAINED. The Franchisee shall conform to all standards provided by law which relate to the safe operation of its equipment and apparatus.

SECTION X. LIABILITY OF FRANCHISEE; INSURANCE.

A. The Franchisee shall indemnify and keep and save the City free and harmless from liability on account of injuries or damages to persons or property arising out of the construction, maintenance, or repair or operation of its gas system. In the event that suit shall be brought against the City, either independently or jointly with the Franchisee, on account thereof, said Franchisee, upon notice by the City, shall defend the City in any such suit at the cost of the Franchisee, and in the event of final judgment being obtained against the City, either independently or jointly with the Franchisee, the Franchisee shall pay such judgment with all costs and hold the City harmless therefrom. References in this Section X. to City shall be construed to include City, its officers, agents, servants and employees.

B. During the term of this Agreement, Franchisee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance, insuring against personal injury or death in the minimum amount of \$2,000,000.00; property damage in the minimum amount of \$1,000,000.00; Automobile Liability Insurance for personal injury or death in the minimum amount of \$2,000,000.00 and for property damage in the minimum amount of \$500,000.00; Workers' Compensation Insurance and Employer's General Liability Insurance in the minimum amount of \$1,000,000.00; Umbrella Insurance Coverage in the minimum amount of \$5,000,000.00. Franchisee shall cause such insurance policies to name the City, its officers, agents, servants and employees as additional insureds under such policies of insurance (except for workers' compensation and employers general liability insurance) insuring the City, its officers, agents, servants and employees against their negligence and/or misconduct arising out of the terms and provisions of this Franchise Agreement.

C. Franchisee shall at all times provide certificates of the existence of such insurance to City.

SECTION XI. ACCESS TO PROPERTY OF FRANCHISEE. The City, through such agents or employees as it may designate for the purposes set forth in this Section, shall at all reasonable times have access to all or any of the property owned or used in part or in whole by the Franchisee in its operation and maintenance of the gas system under this franchise for the purpose of examining or inspecting said property and may inspect, examine or verify all or any of the accounts, books, records, contracts, documents or other papers of the Franchisee reasonably necessary to the administration of this franchise.

SECTION XII. NOTICE OF APPLICATION TO PUBLIC SERVICE COMMISSION. The Franchisee shall furnish the City with written notice of the filing of an application with the Kentucky Public Service Commission for the establishment of and/or for a change in its general rates and charges, which notice shall be given concurrently with such filing. The City shall be given access, on request, to records related to such application. From the time of commencement of gas service to the City and its residential and commercial gas customers by Franchisee until the effective date of the establishment by the Kentucky Public Service Commission of a tariff to be charged by the Franchisee, the rates for services to the Franchisee's gas customers will remain the same as they were established by the City prior to the effective date of this Franchise Agreement.

SECTION XIII. ASSIGNMENT. Whenever in this franchise either the City or the Franchisee is referred to, it shall be deemed to include the respective successors and assigns, of either, and all rights, privileges and obligations contained in this franchise shall be binding upon, and inure to the benefit of, the respective successors and assigns, of the City and Franchisee, whether so expressed or not. This franchise may not be assigned by the Franchisee without the prior written consent of the City.

SECTION XIV. BID PROCEDURE.

A. It shall be the duty of the Mayor or his designated representative as soon as practicable after the enactment of this Ordinance to establish a date and time at which the Mayor or his designated representative will open sealed written bids for the purchase of the City's natural gas distribution system and a nonexclusive Franchise Agreement for the operation and maintenance of such natural gas distribution system within the boundaries of the City. The Mayor or his designated representative shall cause a public notice to be published in at least one (1) issue of the *McLean County News*, a newspaper of general circulation published in Calhoun, Kentucky, notifying the general public that the City proposes to sell its natural gas distribution system and a nonexclusive Franchise Agreement in connection therewith, specifying the date and time at which sealed written bids will be opened by the Mayor or his designated representative, and specifying the terms and conditions which will govern the City's receipt and consideration of such sealed written bids. The Mayor may publish more than one (1) notice in the *McLean County News* or any other newspaper of general circulation chosen by the Mayor, provided however that at least one (1) such publication will appear in a newspaper more than seven (7) days and less than twenty-one (21) days prior to the date established for bid opening. Such notice shall include the provisions of subparagraphs, B and C of this Section XIV:

B. Sealed bids and proposals for the purchase and acquisition of the natural gas distribution system of the City, and for the purchase and acquisition of a nonexclusive Franchise

Agreement created pursuant to the provisions of this Ordinance shall be in writing and shall be delivered to the office of the Mayor or his designated representative on or before the date and time for bid opening fixed by the Mayor in said advertisement for bids. Bids received by the Mayor after the time and date fixed in said advertisement for opening of bids shall not be considered for acceptance or approval. Bids submitted by telephone, telefax, telegram, email or other electronic transmission methods shall not be accepted for consideration at the time of bid opening.

C. Each bid submitted for purchase of the City's natural gas distribution system shall be accompanied by cash or a certified check drawn on a bank of the Commonwealth of Kentucky, or a national bank in an amount equal to five percent (5%) of the amount bid for the purchase of the City's natural gas distribution system, which check or cash shall be forfeited to the City in case the bid should be unconditionally accepted by the City and the bidder should fail for a period of thirty (30) days after receipt of written notice from the City of its unconditional acceptance of such bid to pay the price bid for the purchase of the City's natural gas distribution system. Additionally, should the successful bidder fail to pay the price for purchase of the City's natural gas distribution system within the time hereinabove specified, the bidder will not be entitled to purchase the Franchise Agreement offered for sale by the City in connection with its natural gas distribution system. The bid security deposits of unsuccessful bidders will be returned by the City after award of a conditional contract to the successful bidder.

D. After bid opening the Mayor shall report and submit to the City Council, at the time of its next regular meeting, said bids and proposals for the City Council's consideration and approval. The said City Council reserves the right, for and in behalf of the City, to reject any and all bids for purchase of the said natural gas distribution system and/or for purchase of the said Franchise Agreement. In case all bids reported by the Mayor shall be rejected by the City Council, it may direct, by resolution or ordinance, that said natural gas distribution system and/or Franchise Agreement be again offered for sale, from time to time, until satisfactory bids therefor shall be received and approved, or take such other action as is permitted by KRS 82.083.

E. Should the City Council accept a bid for the purchase of the City's natural gas distribution system and/or for the purchase of a nonexclusive Franchise Agreement at the time the bids are presented to the City Council by the Mayor, such acceptance shall be a conditional acceptance, subject to the approval of the City's sale of its natural gas distribution system by a majority of the voters of the City of Livermore cast at a Special Election to be held on November 2, 2010. If a majority of the voters of the City of Livermore fail to approve the City Council's proposal to sell the City's natural gas distribution system, the City Council's acceptance of such bid will be withdrawn and the security deposit of the successful bidder will be returned by the City and all express or implied agreements between the City and the successful bidder will become null and void.

SECTION XV. CONSIDERATION.

A. In consideration of the granting of this franchise to distribute gas within the City, the Franchisee shall pay the City, a franchise fee equal to one percent (1%) of the gross revenues received by the Franchisee from the sale of gas within the corporate limits of the City. The Franchise Agreement shall be effective fourteen (14) days from and after the execution of the Franchise Agreement between the City and the Franchisee, and calculation of amounts payable

shall commence with all bills tendered to customers by the Franchisee in the first billing period following the effective date of the franchise.

B. The Franchisee may, if authorized by the Kentucky Public Service Commission, add to the customer's bill, as a separate item, an amount equal to the proportionate part of the franchise fee applicable to the bill. Such amount shall be added exclusively to bills of customers receiving gas service within the corporate limits of the City.

SECTION XVI. PAYMENT. Payment of any amount due to the City under the Franchise Agreement shall be made quarterly within thirty (30) days of the end of the preceding quarter (March 31, June 30, September 30 and December 31). If any amount paid pursuant to the provisions of this Ordinance is stated by the Franchisee at the time of such payment to be based in whole or in part on revenues which are subject to refund by the Franchisee, and if any of such revenues thereafter is required to be refunded by the Franchisee, the Franchisee shall credit same against the payment next coming due hereunder.

SECTION XVII. VIOLATION/FORFEITURE. Any violation by the Franchisee, its vendee, lessee or successor, of the provisions of this Ordinance, or the failure to perform promptly the provisions hereof, shall be cause for the forfeiture of this franchise and all rights hereunder at the option of the City. Failure of the City to declare a forfeiture shall not constitute a waiver of the right so to do.

SECTION XVIII. REPURCHASE OF GAS DISTRIBUTION SYSTEM. If the Franchise Agreement issued by the City in compliance with this Ordinance is at any time terminated by the City pursuant to the terms and provisions of this Ordinance, is terminated by the Franchisee through any method available to the Franchisee, or is not renewed by the City at or before the expiration of its term, the City shall have, and does hereby retain, the first right to repurchase its natural gas distribution system from the Franchisee, its successors or assigns, at a price equal to (a) the original purchase price at the time of its sale to the Franchisee, (b) plus the fair market value of any additions or extensions made to the natural gas distribution system during the tenure of this Franchise Agreement, (c) minus the fair market value of any portions of the natural gas distribution system which have been removed, damaged or destroyed and (d) less the depreciation of the natural gas distribution system during its ownership by the Franchisee pursuant to the accounting principles and procedures directed by the rules and regulations of the Kentucky Public Service Commission.

SECTION XIX. REPEALER. Any Ordinance or parts of Ordinances in conflict herewith are, to the extent of such conflict, herewith repealed.

SECTION XX. SEVERABILITY. If any portion of this Ordinance shall be held to be invalid, the balance hereof shall remain in full force and effect.

SECTION XXI. EFFECTIVE DATE. This Ordinance shall become effective upon publication as required by law.

Introduced and given first reading at a meeting of the City Council of the City of Livermore, Kentucky held on June 10, 2010.

On roll call the vote stood as follows:

| | |
|------------------------------------|---------------|
| City Council Member Ranburger, Jr. | <u>yes</u> |
| City Council Member Martin | <u>yes</u> |
| City Council Member Baldwin | <u>yes</u> |
| City Council Member Taylor | <u>yes</u> |
| City Council Member Hopper | <u>yes</u> |
| City Council Member Shocklee | <u>absent</u> |

Mayor Revlett _____ (in case of tie only)

The Mayor announced that the Ordinance was approved on first reading and ordered that it be presented for second reading at the next meeting of the City Council, which shall not be held on the same day as this first meeting.


Introduced and given second reading at a special meeting of the City Council of the City of Livermore, Kentucky, held on June 11, 2010.

On roll call the vote stood as follows:

| | |
|------------------------------------|------------|
| City Council Member Ranburger, Jr. | <u>yes</u> |
| City Council Member Martin | <u>yes</u> |
| City Council Member Baldwin | <u>yes</u> |
| City Council Member Taylor | <u>yes</u> |
| City Council Member Hopper | <u>yes</u> |
| City Council Member Shocklee | <u>yes</u> |

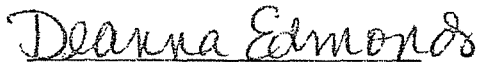
Mayor Revlett _____ (in case of tie only)

Thereupon Mayor Revlett declared that the Ordinance was adopted on second and final reading and ordered that it be published in a newspaper in compliance with the provisions of the Ordinance.



 Dennis Revlett, Mayor

ATTEST:


 Deanna Edmonds, City Clerk

REVIEWED BY:

John O. Hicks, III
City Attorney: June 10, 2010

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**CITY OF LIVERMORE, KENTUCKY
NATURAL GAS DISTRIBUTION SYSTEM AND
NONEXCLUSIVE FRANCHISE AGREEMENT**

BID FORM

To the Mayor
City of Livermore, Kentucky
105 West Third Street
Livermore, Kentucky 42352-0279

Dear Mayor Revlett:

This document will represent the bid of _____
(Company) whose address is _____
and telephone number is _____ for the following:

(a) Purchase of the natural gas distribution system of the City of Livermore,
Kentucky \$ _____;

(b) Purchase of a nonexclusive Franchise Agreement providing for the
operation and maintenance of a natural gas distribution system within the boundaries of
the City of Livermore, Kentucky \$ _____.

Name of Bidder

Authorized Representative

Five percent (5%) bid security enclosed