



November 21, 2011

Honorable Jeff Derouen, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
P. O. Box 615
Frankfort, Kentucky 40602

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NOV 23 2011

PUBLIC SERVICE
COMMISSION

RE: Case No. 2011-00360

Dear Mr. Derouen,

Atmos Energy Corporation (Company) herewith submits two (2) copies of the franchise agreement between the Company and the City of Franklin, Kentucky to be in compliance with the Commission's Order in the above referenced case.

Please contact myself at (270) 685-8024 if the Commission or Staff has any questions regarding the enclosed agreement.

Sincerely,

A handwritten signature in black ink that reads "Mark A. Martin".

Mark A. Martin
Vice President, Rates & Regulatory Affairs

Enclosures

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PUBLIC SERVICE
COMMISSION

GAS FRANCHISE AGREEMENT

THIS GAS FRANCHISE AGREEMENT is made and executed this ^{14th} 15th day of November 2011, by and between the City of Franklin, Kentucky (sometimes referred to herein as the "City") and Atmos Energy Corporation (referred to herein as "Franchisee").

WITNESSETH:

WHEREAS, the existing natural gas franchise between the City of Franklin, Kentucky, and Atmos Energy Corporation expires on or about midnight November ¹¹ 15, 2011; 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 Franklin hereby finds and determines that the construction, operation, maintenance and use of a natural gas franchise over, across or under public rights-of-way in the City benefits such utility and the customers it serves, and the Board further finds and determines 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 rights-of-way; and,

WHEREAS, in order to protect the health, safety and welfare of the citizens of the City, 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; and,

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 bid was the highest and best bid and pursuant to City Ordinance F.2-07-2011 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 to Franchisee 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) “*Revenues*” refer to and are those amounts of money which the Grantee receives from its customers within the Grantor’s geographical limits or boundaries for the retail sale of gas under rates, temporary or permanent, authorized by the Commission and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments. Revenues do not include miscellaneous service charges, including but not limited to turn ons, meter sets, non sufficient funds, late fees and interest, which are related to but are not a part of the actual retail sale of gas.

(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, terrorism, riots, 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.

SECTION 2. CREATION OF FRANCHISE.

(A) There is hereby created and granted unto Franchisee a non-exclusive franchise to enter upon, acquire, construct, operate, maintain and repair in the public right-of-way 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 the 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 ten (10) 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) 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, subject to the provisions of this Agreement and the provisions of the applicable City Code of Ordinances.

(C) Franchisee agrees to give prior notification to the City's Department of Public Works 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 the applicable permit from the City.

Nothing in the above provisions is intended to require Franchisee to give a notification

for any routine maintenance or repair work not involving the cutting of a public street, sidewalk, curb or gutter, or not involving an interruption of traffic flow on a City street. Nothing in the above is intended to impose on Franchisee any obligation to give notification or obtain a City permit for work on customers' service lines. However, Franchisee shall be required to give advance notification to the Department of Public Works of the installation of a new main within the City limits and provide a copy of the plans for the new main.

(D) To the extent reasonably practical, Franchisee agrees to notify the City and to schedule and coordinate installation, construction, maintenance, replacement or repairs of its gas distribution system with proposed improvements to the City's rights-of-way that have been designated (and which Franchisee has been specifically advised of) for improvement, resurfacing or repair prior to the commencement thereof. In the event Franchisee develops a written program or guidelines for the replacement or repair of its gas distribution system located in the City's rights-of-way, Franchisee shall provide a copy of that written program or those guidelines to the City's Public Works Department. Any replacement or repair program shall, to the extent reasonably practical, be developed to coincide with the City's pavement program.

(E) When a situation arises that requires immediate attention, Franchisee is authorized to disturb or cut the City's rights-of-way without first obtaining the required permit provided that notification is provided and the appropriate permit obtained as soon thereafter as is reasonably practicable under the circumstances. Any restoration of disturbed or excavated City right-of-way shall be completed in accordance with this Agreement and the applicable City ordinances.

(F) The Franchisee agrees to provide the City and other emergency response

officials on an annual basis the names, addresses and phone numbers of emergency 24-hour on-call personnel. After being notified of an emergency by the City, the Franchisee shall cooperate with the City and make every effort to respond as quickly as possible with actions to minimize damage and to protect the health and safety of the public and property.

(G) The Franchisee further agrees to cooperate in a reasonable time period with appropriate City housing and code enforcement officials in terminating service to blighted, abandoned, and/or dilapidated structures that have been determined by the City to be a danger to the public and/or structures determined by the City to be in need of demolition. Franchisee agrees to provide the City with a contact name and phone number to assist in the termination of such service.

SECTION 6. DEGRADATION/RESTORATION OF PUBLIC RIGHT-OF-WAY.

(A) In the event Franchisee enters upon any public right-of-way for the purposes 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 rights-of-way in as good a condition as existed when Franchisee entered upon them. Franchisee agrees to perform such restoration work in compliance with all applicable City standards. Any repairs to public right-of-way necessitated by reason of Franchisee's initial failure to comply with City standards shall be performed by Franchisee, at its expense, no later than twelve (12) months following the date Franchisee completed the particular restoration work. Further, any restoration work performed by Franchisee shall be required to be approved and accepted by the Street Superintendent and/or City Manager. However, notwithstanding any of the foregoing

requirements, Franchisee shall upon the request of the City and at its sole expense, repave all street pavement located within an entire street block if Franchisee, its employees, contractors or agents undertook an authorized excavation of street right-of-way that has been paved or 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 streets that will be paved or repaved. The above provisions 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 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 or right-of-way and the work by the Franchisee is determined to be in compliance with the applicable City requirements, the City shall assume responsibility for the maintenance of the improved right-of-way. All restorations or repairs of public right-of-way shall be performed in compliance with applicable City requirements and may be subject to inspection by the city at any time. In the event Franchisee fails, refuses or neglects to comply with these provisions, the City shall have the right, after providing Franchisee notice and an opportunity to comply with the applicable City provisions, to repair or restore the affected public right-of-way and the costs and expenses incurred by the City shall be paid to the City by the 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, pedestrians and motorists and shall not unreasonably or unnecessarily interfere

with or injure City property or the private property of others. Franchisee shall comply with all applicable laws with respect to signalization, placement of lights, danger signals or warning signs. All work performed by Franchisee shall be done in a workmanlike manner and shall not unnecessarily interfere with the 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, in its sole discretion, constructs, reconstructs, widens, alters, excavates, 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 by the City; provided, however, if the work requested of Franchisee cannot be reasonably completed with that time period, Franchisee shall have such additional time to complete its work as may mutually be agreed upon between Franchisee and the City.

(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.**

(A) In consideration for the granting and exercise of the rights and privileges created under this franchise, and in further consideration of the grant to the Franchisee of the right to make use of public right-of-way and other property of the City, Franchisee shall pay to the City during the first year of the franchise, a sum equal to one percent (1%) of its Revenues as defined above. The Franchisee fee prescribed herein shall be paid to the City quarterly on or before the 30th day after the end of each calendar quarter after the effective date of the franchise, and the Franchisee shall furnish to the City quarterly a certified copy of Franchisee's revenues received during the previous quarter.

(B) Franchisee may add a line-item surcharge to the monthly bills of each of its customers located within the City, which surcharge may be designated as a franchise fee, in an amount that is sufficient to recover the portion of the franchise fee paid by the Franchisee to the City in the manner authorized by the Kentucky Public Service Commission. Any fee not paid when due shall bear interest at the rate of one and one-half percent (1.5%) per month from the date due. The acceptance of any payment shall not be construed as an accord that the amount paid is the correct amount; nor shall such acceptance of payment be construed as a release of any claim the City may have for additional sums payable by Franchisee, nor a release of any other obligation of the franchisee. All amounts paid shall be subject to audit and recomputation by the City.

(C) The franchise 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 amounts for which Franchisee shall be obligated to pay to the City and shall be in lieu of any and all other costs, levies, assessments, fees or other amounts, of any kind whatsoever, that

the City, currently or in the future, may charge Franchisee or assess against Franchisee's property.

SECTION 8. SERVICE TO NEW AREAS.

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

**SECTION 9. ADDITIONAL REQUIREMENTS;
INSURANCE AND INDEMNIFICATION.**

(A) Insurance. During the term of this Agreement, Franchisee shall, at its own cost and expense, maintain Comprehensive General Liability Insurance. A certificate of

insurance, evidencing said coverage, shall be provided to the City prior to commencement of the performance of this Agreement. Such policies or policies shall be in the minimum amount of Two Million Dollars (\$2,000,000.00) for bodily injury or death to one person; Two Million Dollars (\$2,000,000.00) for bodily injury or death of any two or more persons resulting from one occurrence; Two Million Dollars (\$2,000,000.00) for property damage resulting from one accident; Two Million Dollars (\$2,000,000.00) for excess commercial liability; and Two Million Dollars (\$2,000,000.00) for workers' 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's 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 and/or being sought. In that event, 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 10. TRANSFER OR ASSIGNMENT OF FRANCHISE.

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

City with appropriate advance notice of such a proposed transfer.

**SECTION 11. 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 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 12. BREACH OF FRANCHISE; REMEDIES.

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

(A) The City must deliver to Franchisee, by certified or registered mail, a written notice signed by the City Manager. Such notice must (i) set forth each of the alleged acts or omissions of Franchisee that the City contends constitutes a material breach of any substantive provision hereof, and (ii) designate which of the terms and conditions hereof the City contends Franchisee breached.

(B) The City agrees to permit Franchisee the opportunity to correct all of the breaches hereof set forth in the written notice described in subsection 12(A) above within thirty (30) days after Franchisee's receipt of such notice.

SECTION 13. 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 14. 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 15. EFFECTIVE DATE OF FRANCHISE;
MUTUAL CANCELLATION OF PRIOR FRANCHISE.**

The franchise created by this Agreement shall become effective on November ~~15~~¹¹, 2011. The existing franchise between the City and Atmos Energy Corporation which is scheduled to expire by its terms on midnight November ~~15~~¹¹th is hereby mutually terminated by the parties effective as of November ~~15~~¹¹, 2011.

SECTION 16: GENERAL PROVISIONS.

(A) Franchisee shall, when reasonably practicable, install all pipelines underground at such depth and in such manner so as not to interfere with the existing pavement, curbs, gutters, underground wires or cables or water or sewer pipes owned or controlled by the City.

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

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

(D) In the event of a conflict between the provisions of any ordinances of the City and any of the terms and provisions of this Agreement, the terms of this Agreement shall prevail.

(E) The City, by granting of this franchise, does not surrender or to any extent, lose, waive, imperil, or lessen the lawful powers and rights now or hereinafter vested in the City under the constitution and statutes of the Commonwealth of Kentucky and under the Charter of the City; 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.

(F) All notices and other communications under this agreement shall be properly given only if made in writing and mailed by certified mail, return receipt requested, postage prepaid, or delivered by hand (including messenger or recognized delivery, courier or air express service), or by facsimile (accompanied by telephonic notice), to the party at the address set forth hereinbelow, or such other address as such party may designate by notice to the other party. Such notices and other communications shall be effective on the date of receipt (evidenced by the certified mail receipt) if mailed or on the date of such hand delivery or facsimile, if hand delivered or faxed. If any such notice or other communication is not received or cannot be delivered due to a change in the address of the receiving party of which

notice was not previously given to the sending party, or due to a refusal to accept by the receiving party, such notice or other communication shall be effective on the date delivery was attempted. Any notice or other communication under this agreement may be given on behalf of a party by the attorney for such party.

- (a) The address and contact person for Franchisee is:

Atmos Energy Corporation
ATTN: Ronnie Benningfield
2850 Russellville Road
Bowling Green, Kentucky 42101
Fax No. (270) 842-0228

With copy to:

Mark Martin
VP Rates & Reg. Affairs
3275 Highland Pointe Dr
Owensboro, Kentucky 42303
Fax No. (270)685-8052

- (b) The address and contact person for City is:

City of Franklin, Kentucky
ATTN: City Manager
P. O. Box 2805, 117 West Cedar Street
Franklin, Kentucky 42135
Fax No. (270) 586-9419

With copy to:

W. Scott Crabtree
212 South College Street
P. O. Box 615
Franklin, Kentucky 42135-0615
Fax No. (270) 586-9605

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

CITY OF FRANKLIN, KENTUCKY

By: *Ronnie Clark*
Ronnie Clark, Mayor

ATTEST:

Kathy Stradtner
Kathy Stradtner, City Clerk

Atmos Energy Corporation (Franchisee)
By: *John Kevin Akers*
John Kevin Akers, President

COMMONWEALTH OF KENTUCKY

COUNTY OF SIMPSON

SUBSCRIBED AND SWORN TO before me by Ronnie Clark, Mayor of the City of Franklin, Kentucky, and Kathy Stradtner, City Clerk of the City of Franklin, Kentucky, on this 4th day of November, 2011.

Jessica S. Watwood
Notary Public

My commission expires: 4-23-11

COMMONWEALTH OF KENTUCKY

COUNTY OF SIMPSON

SUBSCRIBED AND SWORN TO before me by John Kevin Akers, the President of Atmos Energy Corporation, on this _____ day of _____, 2011.

Notary Public

My commission expires: _____