

## FRANCHISE AGREEMENT

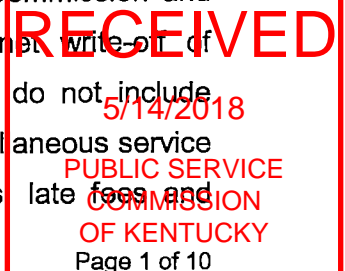
THIS **FRANCHISE AGREEMENT ("Agreement")** is made and executed this 14<sup>th</sup> day of March, 2018, by and between the City of Hopkinsville, Kentucky (sometimes referred to herein as the "City" or "Grantor"), and Atmos Energy Corporation (referred to herein as "Grantee").

### Article I

#### DEFINITIONS:

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

- (A) "*Commission*" refers to and is the Kentucky Public Service Commission, the state utility regulatory Commission having jurisdiction over the rates, services and operations of Grantee within the State of Kentucky or other administrative or regulatory authority succeeding to the regulatory powers of the Commission.
- (B) "*Council*" or "*City Council*" refers to and is the governing body of the City of Hopkinsville, Kentucky.
- (C) "*City*" refers to and is the City of Hopkinsville, Christian County, Kentucky, and includes such territory as currently is or may in the future be included within the corporate boundaries of the City of Hopkinsville, Kentucky.
- (D) "*Franchise*" shall mean the rights and privileges granted by the Grantor to Grantee under the terms and provisions of this franchise ordinance.
- (E) "*Grantee*" shall mean Atmos Energy Corporation.
- (F) "*Grantor*" shall mean the City of Hopkinsville, Kentucky.
- (G) "*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 and within Grantor's geographical limits or boundaries established by applicable law.
- (H) "*Revenues*" refer to and are those amounts of money which the Grantee receives from its customers within the corporate boundaries of the City for the retail sale or retail transportation 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 wholesale arrangements with the Hopkinsville Water Environment Authority, 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.

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

## Article II

### GRANT OF FRANCHISE:

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

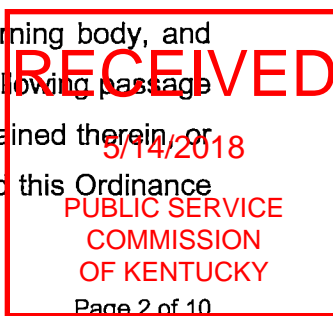
(B) The franchise granted to Grantee by the Grantor shall not be exclusive and the Grantor reserves the right to grant a similar franchise to any other person or entity at any time. In the event the Grantor shall grant to another person or entity during the term hereof a franchise for a gas distribution system within the geographical boundaries or limits of Grantor similar to the one herein granted to Grantee, it is agreed that the terms of any such franchise agreement shall be no more favorable to such new additional grantee than those terms contained herein. Additionally, it is agreed that any such new/additional grantee shall have no right to use any portion of the System without Grantee's written consent.

## Article III

### TERM, EFFECTIVE DATE, AND ACCEPTANCE OF FRANCHISE:

(A) The term of this Franchise shall be for a term of ten (10) years.

(B) The franchise created hereby shall become effective upon its final passage, and approval, by the City, in accordance with applicable laws and regulations, and upon acceptance by the Grantee by written instrument within sixty (60) days of passage by the governing body, and filed with the Clerk of the Grantor. If the Grantee does not, within sixty (60) days following passage of this Ordinance, express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, the Grantee shall be deemed to have accepted this Ordinance and all of its terms and conditions ("Effective Date").



(C) The terms and conditions of Ordinance 20-2017 are superseded by the terms and conditions hereof.

(D) On the expiration of this franchise, in the event the same is not renewed, or on the termination of any renewal of said franchise, or on termination of said franchise for any other reason, the plant and facilities of the Grantee installed, constructed and operated hereunder shall, at the option of the City become the property of the City, upon payment to the Grantee, its successors and/or assigns, of a fair valuation thereof, such fair valuation to be determined by agreement between the City and the Grantee, its successors and/or assigns. Grantor agrees that, at the time of such transfer of facilities, it shall assume Grantee's contractual and regulatory obligations maintained in connection with the system. If the City does not exercise the option hereunder, then Grantee may exercise its rights under Article XI (B).

#### Article IV

#### GRANTEE'S RIGHTS IN AND TO PUBLIC RIGHT-OF-WAY:

The Grantee 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 geographical boundaries or limits of the Grantor as it now exists or may hereafter be constructed or extended, subject to the inherent police powers conferred upon or reserved unto the Grantor and the provisions of this Agreement.

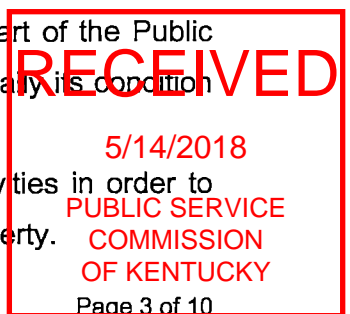
#### Article V

#### OPERATION OF SYSTEM; EXCAVATION OF PUBLIC RIGHT-OF-WAY:

(A) The System shall at all times be installed, operated and maintained in good working condition as will enable the Grantee to furnish adequate and continuous service to all of its residential, commercial and industrial customers. The System shall be designed, installed, constructed and replaced in locations and at depths which comply with all applicable federal, state, and local laws and regulations regarding minimum safety standards for design, construction, maintenance and operation of gas distribution systems.

(B) Grantee will repair any damage caused solely by Grantee to any part of the Public Right of Way and will restore, as nearly as practicable, such property to substantially its condition immediately prior to such damage.

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



(D) Grantee 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 Grantor.

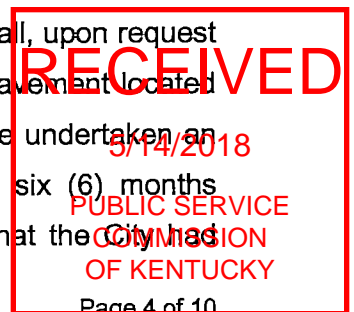
**Article VI**

**DEGRADATION/RESTORATION OF PUBLIC RIGHT-OF-WAY:**

(A) In the event that Grantor or any other entity acting on behalf of Grantor requests or demands that Grantee remove, move, modify, relocate, reconstruct or adjust any part of the system from their then-current locations within the streets, alleys, and public places of Grantor in connection with a public project or improvement, then Grantee shall relocate, at its expense, the system facilities affected by such project or improvement. Grantee's obligations under this paragraph shall apply without regard to whether Grantee has acquired, or claims to have acquired, an easement or other property right with respect to such system facilities and shall not affect the amounts paid or to be paid to Grantor under the provisions of this Ordinance. Notwithstanding the foregoing provisions of this paragraph, Grantee shall not be obligated to relocate, at its expense, any of the following: (i) system facilities that are located on private property at the time relocation is requested or demanded; or (ii) system facilities that are converted from an overhead configuration or installation to an underground configuration or installation.

(B) Grantor and Grantee recognize that both parties benefit from economic development within the boundaries of Grantor. Accordingly, when it is necessary to relocate any of Grantee's facilities within the boundaries of Grantor, Grantor and Grantee shall work cooperatively to minimize costs, delays, and inconvenience to both parties while ensuring compliance with applicable laws and regulations. In addition, Grantor and Grantee shall communicate in a timely fashion to coordinate projects included in Grantor's five-year capital improvement plan, Grantor's short-term work program, or Grantor's annual budget in an effort to minimize relocation of Grantee's facilities. Such communication may include, but is not limited to, (i) both parties' participation in a local utility's coordinating council (or any successor organization) and (ii) both parties' use of the National Joint Utility Notification System (or any alternative comparable systems or successor to such system mutually acceptable to both parties).

(C) Notwithstanding the foregoing restoration requirements, Grantee shall, upon request by the Public Works Director, and at Grantee's sole expense, repave all street pavement located within an entire street-block if Grantee, its employees, contractors or agents, have undertaken an authorized excavation of street right-of-way that has been repaved within the six (6) months preceding the excavation, provided that Grantee knew or should have known that the City has



such repaving plans, provided however, that the provisions of this sentence shall not apply to the extent that the excavation was necessitated by an actual or reasonably perceived emergency, an act of the City, by an act of God, or by an act of a third-party with whom Grantee is not in contractual privity or over whom Grantee has no effective control, or to accommodate a request for service by a new customer.

**Article VII**

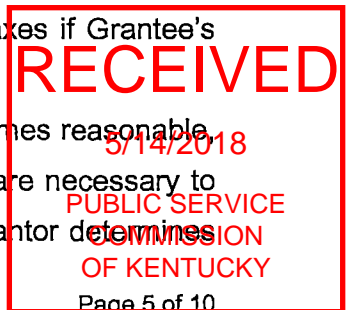
**COMPENSATION FOR USE OF PUBLIC RIGHT-OF-WAY AND  
CONSIDERATION FOR FRANCHISE:**

**(A)** In consideration for the granting and exercise of the rights and privileges created hereunder, and in further consideration of the grant to the Franchisee of the right to make use of Public Right-of-Way, Grantee shall pay to the Grantor, during the entire life of the franchise, a sum equal to two percent (2%) of its Revenues. The fee prescribed herein shall be paid to the Grantor quarterly on or before the 30th day after the end of each calendar quarter after the effective date hereof, and the Grantee shall furnish to the Grantor quarterly a statement of Grantee's Revenues.

**(B)** To the extent and in the manner authorized by Grantee's filed and approved Kentucky Public Service Commission tariff(s), Grantee may add a line-item surcharge to the monthly bills of each of its customers located within the geographical boundaries or limits of Grantor, which surcharge shall be designated as a franchise fee, in an amount that is sufficient to recover the portion of the franchise fee paid by the Grantee to the Grantor that is attributable to the Revenue derived by Grantee from such customer.

**(C)** The franchise fee provided herein, together with any charges of the Grantor for water, sewage and garbage services provided by the Grantor to Grantee, and any applicable occupational license fees or sales, ad valorem or other taxes payable to the Grantor by the Grantee under applicable law, shall constitute the only amounts for which Grantee shall be obligated to pay to the Grantor and shall be in lieu of any and all other costs, levies, assessments, fees or other amounts, of any kind whatsoever, that the Grantor, currently or in the future, may charge Grantee or assess against Grantee's property. The franchise fee herein contemplated shall be uniformly and equally applied to all utilities that compete with the Grantee within the City, such that Grantee will be excused from collecting and paying franchise fees and/or taxes if Grantee's competitors are not also required to do so.

**(D)** The Grantor, through its duly authorized representative and at all times reasonable, shall have access to, and the right to inspect Grantee's books and records that are necessary to confirm the accuracy of the amount of franchise fee being paid to the City. If Grantor determines



that Grantee has underpaid its franchise fees due hereunder by more than ten (10%) percent in any six (6) month period, then – in addition to making full payment of the relevant franchise fee obligation – it shall reimburse the City for all reasonable costs and expenses associated with the audit or review not to exceed 50% of the amount of the underpayment.

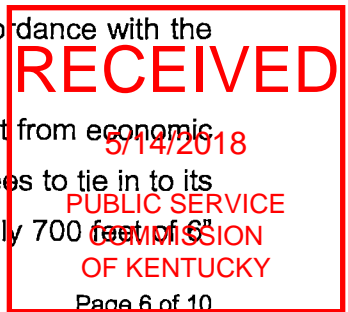
(E) The parties acknowledge and agree that the acceptance of any fees or other amounts paid by Grantee to Grantor hereunder shall not be construed as an accord and satisfaction that the amount paid is, in fact, the correct amount due; nor shall acceptance of any such fees or other amounts be deemed a release to any claim(s) Grantor may have for future or additional sums due hereunder.

(F) In the event Grantee does not timely pay all amounts due hereunder, it shall pay interest on all such amounts at the lesser of: (i) one-and-a-half percent (1.5%); or (ii) the maximum rate permitted by law. Overpayments, if any, shall be explicitly identified and adjusted without interest on the next periodic payment cycle statement.

**Article VIII**  
**SERVICE TO NEW AREAS**

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

(B) In light of Grantor and Grantee’s recognition that both parties benefit from economic development within the boundaries of the City, Grantor requests and Grantee agrees to tie in to its existing 6” high pressure steel main on John Rives Road and extend approximately 700 feet of 6”



high pressure main to Commerce Park, Phase 2 within the later of: (i) three (3) months of notice from Grantor that a tenant ("Initial Tenant") has agreed to locate in Phase 2 of Commerce Park; or (ii) such other date as the Initial Tenant may request to receive natural gas service. Grantee further agrees that, upon the request of Grantor, it will work cooperatively and in good faith to satisfy additional System expansion requests that the City may identify as being advantageous to the economic development of the City.

**Article IX**

**BREACH OF FRANCHISE; REMEDIES:**

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

**(A)** Grantor must deliver to Grantee, by certified or registered mail, a written notice signed by the mayor or other duly authorized member of Grantor's governing body, attested by the Grantor's secretary, and sealed with the official seal of the Grantor. Such notice must (i) fairly and fully set forth in detail each of the alleged acts or omissions of Grantee that the Grantor contends constitutes a substantial breach of any material provision hereof, (ii) designate which of the terms and conditions hereof the Grantor contends Grantee breached, and (iii) specify the date, time, and place at which a public hearing will be held by the governing body of the Grantor for the purpose of determining whether the allegations contained in the notice did in fact occur, provided, however, that the date of such hearing may not be less than thirty (30) days after the date of such notice.

**(B)** Within thirty (30) days following the adjournment of the public hearing described in Subsection (A) above, the Grantor must deliver to Grantee, by certified or registered mail, a written notice signed by the mayor or other duly authorized member of Grantor's governing body, attested by the Grantor's secretary, and sealed with the official seal of the Grantor, setting forth (i) the acts and omissions of Grantee described in the first notice that the governing body of the Grantor determines to have in fact occurred and (ii) the specific terms and conditions hereof listed in the first notice that the governing body of the Grantor determines to have in fact been breached by such acts or omissions of Grantee.

**(C)** The Grantor must permit Grantee the opportunity to substantially correct all of the breaches hereof set forth in the written notice described in Subsection (B) above within sixty (60) days after Grantee's receipt of such notice.



**Article X**  
**FORCE MAJEURE**

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Grantee 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 Grantee is so prevented shall not be counted against it for any reason. The term "force majeure", as used herein, shall mean any cause not reasonably within Grantee's control and includes, but is not limited to, acts of God, strikes, lockouts, wars, terrorism, riots, orders or decrees of any lawfully constituted federal, state or local body, contagions or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe, inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits, or unplanned temporary failures of gas supply or unplanned necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this Agreement.

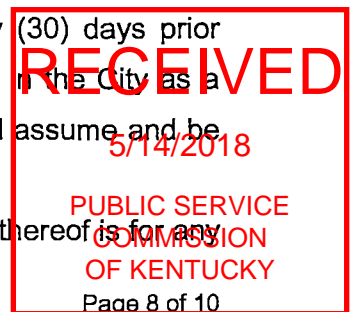
**Article XI**  
**ADDITIONAL REQUIREMENTS; MISCELLANEOUS PROVISIONS**

(A) Grantee shall at all times indemnify and hold harmless the Grantor from and against any and all lawful claims for injury to any person or property by reason of Grantee's or its employees' failure to exercise reasonable care in installing, maintaining and operating the System. Provided, however, that Grantee's indemnity obligations hereunder shall be limited to the extent the Grantor, its officials, officers, employees, contractors, or agents, were negligent and such negligence was the sole or contributing factor in bringing about injury to any person or property, in which case, liability shall be apportioned between the Grantor and the Grantee based upon the percentage of fault assigned to each by a court of competent jurisdiction.

(B) Subject to the City's option under Article III (D), Grantee may remove all or any part of its System upon the expiration or termination of the franchise and rights granted hereby.

(C) Grantee may transfer or assign the franchise created by this agreement to any other person, proprietorship, partnership, firm or corporation upon no less than thirty (30) days prior written notification to the Grantor, provided that any entity operating the System in the City as a result of an assignment of this Agreement or a transfer of control of Grantee shall assume and be responsible for all obligations and liabilities under this Agreement;

(D) If any section, subsection or provision of this ordinance or any part thereof is for any





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

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

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

(G) Grantee agrees to have and maintain a physical location within the City to accept payments from customers and to have sufficient personnel to reasonably provide customer services and emergency response to Hopkinsville customers.

(H) At all times during the term of this Agreement, Grantee shall keep in force and effect (whether through Grantee's commercially reasonable self-insurance program, or through an insurance carrier with an A.M. Best rating of at least A-, or through any combination of the two) insurance coverage for general liability and auto liability insurance and workers compensation, in accordance with all applicable laws and regulations. Notwithstanding the foregoing, Grantee shall maintain general liability and auto liability coverage with a minimum limit of \$2,000,000 per occurrence. The Grantee may elect to self-insure all or part of this requirement. No later than the Effective Date of this Agreement, Grantee shall provide Grantor with written evidence of such coverage. Grantor shall further provide Grantor with such written evidence of coverage upon the renewal of coverage and shall also provide Grantor with no less than thirty (30) calendar days

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5/14/2018

PUBLIC SERVICE  
COMMISSION  
OF KENTUCKY

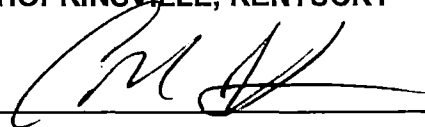
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notice of cancellation of such coverage for any reason. Grantee shall be fully responsible for any deductible or self-insured retention amounts contained in or applicable to its insurance program.

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

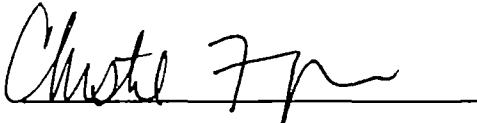
**CITY OF HOPKINSVILLE, KENTUCKY**

BY: \_\_\_\_\_



**Mayor**

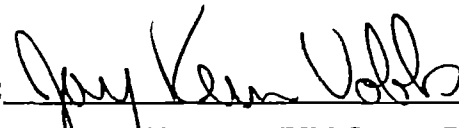
**ATTEST:**



**City Clerk**

**Atmos Energy Corporation**

BY: \_\_\_\_\_



**President-Kentucky/Mid-States Division**

City's Mailing Address and Phone Number:

City of Hopkinsville

715 South Virginia Street

P.O. Box 707

Hopkinsville, KY 42241-0707

(270) 890-0210

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5/14/2018

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COMMISSION  
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