

**FRANCHISE AGREEMENT**

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COMMISSION

THIS **FRANCHISE AGREEMENT** is made and executed this 17 day of August 2010 by and between the City of Russellville, Kentucky, a municipality of the fourth class, duly organized and existing under the laws of the Commonwealth of Kentucky (sometimes referred to herein as the "City" or "Grantor") and Atmos Energy (referred to herein as "Grantee" or "Franchisee").

**WITNESSETH:**

**WHEREAS**, the existing natural gas franchise between the City of Russellville, Kentucky and Western Kentucky Gas, hereinafter acquired by Atmos Energy Corporation expires August 20, 2010; 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 City Council in and for the City of Russellville, Kentucky, 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 City Council 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,

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**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 herein below; 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's bid was the highest and best bid and pursuant to City Ordinance No. 2010-08 is granting this franchise to Atmos Energy.

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

**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 Russellville.
- (C) "*City*" refers to and is the City of Russellville, Logan County, Kentucky, and includes such territory as currently is or may in the future be included within the boundaries of the City of Russellville.
- (D) "*Force Majeure*" shall mean any and all causes beyond the control and without the fault or negligence of Grantee. 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 Grantee from performing one or more of its obligations hereunder.

(E) "*Franchise*" shall mean the rights and privileges granted by the Grantor to Grantee under the terms and provisions of this franchise agreement.

(F) "*Grantee*" shall mean Atmos Energy.

(G) "*Grantor*" shall mean the City of Russellville, Kentucky.

(H) "*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 and within Grantor's corporate limits or boundaries established by applicable law.

(I) "*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.

(J) "*Gas Distribution System*" shall mean the Gas Distribution 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 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 Gas Distribution 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 Gas Distribution System within the corporate 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 Gas Distribution 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 final passage and publication of the City of Russellville's enabling Ordinance 2010-08 in awarding the Franchise to Grantee.

(C) 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 Gas Distribution System. If the City does not exercise the option therein, then Grantee may exercise its rights under Article X (C) and, if Grantee elects to exercise its rights under Article X (C), Grantee shall be bound by the terms of Article VI in removing the Gas Distribution System.

#### **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 Gas Distribution System through, along, across and under the public right-of-way within the corporate 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 GAS DISTRIBUTION SYSTEM; EXCAVATION OF PUBLIC RIGHT-OF-WAY:**

(A) The Gas Distribution 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 Gas 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 Gas Distribution Systems.

(B) Grantee shall have the right to disturb, break, and excavate in the Public Right-of-Way as may be reasonable and necessary to provide the service authorized by this franchise subject to the provisions of this Agreement and the provisions of the applicable City Code of Ordinances.

(C) 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. Pursuant to the applicable provisions of the City's Code of Ordinances, Franchisee agrees to give prior written notification to the Mayor 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 written notification to the Mayor or Mayor's designee 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 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 to the Mayor. 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 structures that have been determined by the City to be a danger to the public and 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.

#### Article VI

#### 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 failure to comply with City standards shall be performed by Franchisee, at its expense, within a nine (9) month period following the date Franchisee completed the particular restoration work. However, notwithstanding 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 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 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 forty-five (45) 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.

## 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 one and one-half percent (1½%) of its Revenues as defined above. 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) Grantee may add a line-item surcharge to the monthly bills of each of its customers located within the corporate boundaries or limits of Grantor, 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 Grantee to the Grantor 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 (1½%) 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 re-computation by the City.

(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 natural gas and electric utilities, of like services or any other natural gas service that compete with the Grantee, 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.



**Article VIII**

**SERVICE TO NEW AREAS**

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.

**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. 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 material breach of any substantive provision hereof, (ii) designate which of the terms and conditions hereof the Grantor



contends Grantee breached.

(B) The Grantor agrees to permit Grantee the opportunity to correct all of the breaches hereof set forth in the written notice described in Subsection (A) above within forty-five (45) days after Grantee's receipt of such notice.

#### Article X

#### ADDITIONAL REQUIREMENTS; MISCELLANEOUS PROVISIONS

(A) Insurance: During the term of this Agreement, Franchisee shall, at its own cost and expense, self insure for and/or maintain Liability Insurance. A certificate of insurance, evidencing said coverage, or self-insurance letters signed by an authorized representative of Grantee shall be provided to the City prior to commencement of the performance of this Agreement. Such self-insurance and/or insurance policy or policies shall be in the minimum amount of Two Million Dollars (\$2,000,000.00) for bodily injury or death to one person, and 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. That is to say, any judgment and all of the costs of defense, including attorney fees, provided for above shall be apportioned between the City and the Franchisee based upon the percentage of fault assigned to each by a court of competent jurisdiction.



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

(D) The City, through its City Council, Mayor, City Clerk, 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.

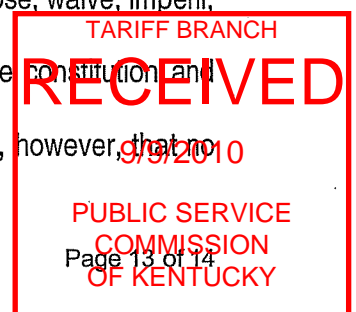
(E) Grantee may transfer or assign the franchise created by this agreement to any other person, proprietorship, partnership, firm or corporation with written notification to the Grantor upon approval of the Kentucky Public Service Commission. Grantee agrees to provide the City with appropriate advance notice of such a proposed transfer.

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

(G) 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 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 Franchise shall control.

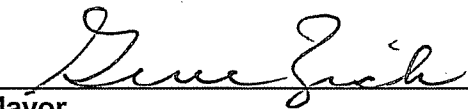
(H) The City, by granting of this franchise, does not surrender or to any extent, lose, waive, imperil, or lessen the lawful powers and rights now or hereinafter vested in the City under the constitution and statutes of the Commonwealth of Kentucky and under the Charter of the City; provided, however, that no



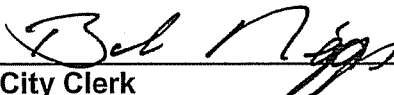
ordinance, law, regulation or rule adopted or enacted by the City shall in any way impair, alter, lessen, modify or restrict the rights of the Franchisee under and established by this Agreement including, but not limited to, the use of the Public Rights-of-Way in connection with Franchisee's acquisition, construction, ownership, installation, laying, operation, maintenance, repair or removal of the Gas Distribution System

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

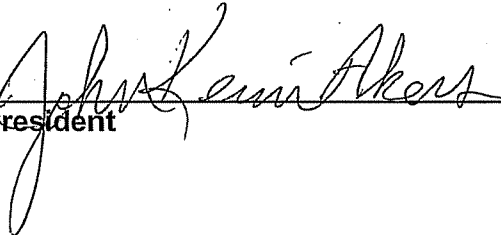
**CITY OF RUSSELLVILLE, KENTUCKY**

BY:   
Mayor

**ATTEST:**

  
City Clerk

**ATMOS ENERGY CORPORATION**

BY:   
President

City's Mailing Address and Phone Number:

168 South Main Street  
Russellville, KY 42276  
270-726-5000

