

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT made and entered into this ___ day of ___ 2021, by and between the, the City of Auburn, a political subdivision of the Commonwealth of Kentucky, and Atmos Energy Corporation. (hereinafter "Atmos").

WITNESSETH:

WHEREAS, by Ordinance No. 2021-03, the City of Auburn created a ten (10) year, non-exclusive franchise for a natural gas system within the confines of the City of Auburn; and

WHEREAS, the City of Auburn offered at bid a non-exclusive natural gas franchise pursuant to Ordinance No. 2021-03; and

WHEREAS, by Resolution No. 2021-02, the City of Auburn accepted the bid of Atmos to acquire said franchise; and

WHEREAS, The City of Auburn and Atmos have entered into this Franchise Agreement to memorialize the grant by the City of Auburn to Atmos of said franchise subject to the terms and conditions reflected in Ordinance No. 2021-03.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the City of Auburn and Atmos hereby agree to incorporate the foregoing recitals as if fully set forth herein and further agree as follows:

1. Ordinance No. 2021-03 which is attached hereto as Exhibit "A," is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.
2. Atmos's bid for said franchise is attached hereto as Exhibit "B," is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

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3. Resolution No. 2021- 02, which is attached hereto as Exhibit “C,” is incorporated herein by reference in its entirety and shall apply as if fully set forth herein.

4. The City of Auburn has granted unto Atmos a non-exclusive franchise for a natural gas system within the confines of the City of Auburn, for a term of ten (10) years, subject to the provisions of Ordinance No. 2021-03.

6. The franchise memorialized in this Franchise Agreement shall commence June 1, 2021 and shall expire as provided in the terms and provisions of Ordinance No. 2021-03.

7. Atmos does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as memorialized in this Franchise Agreement, and further to faithfully perform all acts required of it pursuant to said franchise.

8. This Franchise Agreement memorializes the agreement between the parties contained and embodied in Ordinance No. 2021-03 and shall be binding upon and inure to the benefit of the respective successors in interest to the parties hereto.

IN WITNESS WHEREOF, The City of Auburn and Atmos have executed this

[INTENTIONAL PAGE BREAK]



Franchise Agreement as their free and voluntary act and deed effective as of the day and year first above written.

City of Auburn

BY: Michael A. Hynes
MAYOR

ATTEST:

Bart A. [Signature]
CITY CLERK

Atmos Energy Corporation

BY: Jay Kern
GENERAL MANAGER
President KMD Division

STATE OF Kentucky)
)
COUNTY OF Warren)

The foregoing Franchise Agreement was subscribed, sworn to and acknowledged before me by Jay Kern as President, Atmos KMD Div on this the 19 day of May, 2021.
Dobbs
My commission expires: Feb 26, 2022

William B. Oost
NOTARY PUBLIC



CITY OF AUBURN
ORDINANCE NO. 2021-03

AN ORDINANCE CREATING AND ESTABLISHING FOR BID A NON-EXCLUSIVE NATURAL GAS FRANCHISE FOR THE PLACEMENT OF FACILITIES FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF NATURAL GAS WITHIN THE PUBLIC RIGHT-OF-WAY OF THE CITY OF AUBURN FOR A TEN (10) YEAR DURATION, IN RETURN FOR PAYMENT TO THE CITY OF AUBURN OF THE SUM OF TWO (2%) OF FRANCHISEE'S GROSS RECEIPTS PER YEAR FROM THE FRANCHISEE'S SALE OF NATURAL GAS TO GAS-CONSUMING ENTITIES INSIDE THE CITY OF AUBURN'S CORPORATE LIMITS AND FURTHER PROVIDING FOR COMPLIANCE WITH RELEVANT LAWS, REGULATIONS AND STANDARDS; INDEMNIFICATION; INSURANCE; CANCELLATION OR TERMINATION; AND BID REQUIREMENTS; ALL EFFECTIVE UPON PASSAGE AND PUBLICATION.

BE IT ORDAINED BY THE CITY COUNCIL OF AUBURN, KENTUCKY:

Article I

DEFINITIONS

As used in this Ordinance, 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 Auburn.
- (C) "*City*" refers to and is the City of Auburn, Logan County, Kentucky, and includes such territory as currently is or may in the future be included within the boundaries of the City of Auburn.



(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 the party that shall become the purchaser of said franchise, or any successor or assignee of such party, upon the Grantor's granting of a franchise to that party.

(F) "Grantor" shall mean the City of Auburn, 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 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.

(I) "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 geographical limits or boundaries of the Grantor.

Article II

GRANT OF FRANCHISE

(A) There is hereby created 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 Ordinance. The franchise 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) It shall be the duty of the Grantor, to offer for sale at public auction the franchise and privileges created hereunder. Said franchise and privileges shall be sold to the highest and best bidder or bidders at a time and place fixed by the Grantor, after Grantor has given due notice thereof by publication or advertisement as required by law. In awarding the franchise, the Grantor shall consider the technical, managerial, and financial qualifications of the bidder to perform its obligations under the franchise. Bids and proposals for the purchase and acquisition of the franchise and privileges hereby created shall be in writing and shall be delivered to the Grantor, upon the date(s) and at the times(s) fixed in said publication(s) or advertisement(s) for receiving same. Thereafter, the Grantor's Mayor shall report and submit to the City Council, at the time of its next regular meeting or as soon as practicable thereafter, said bids and proposals for its approval. The City Council reserves the right, for and on behalf of the Grantor, to reject any and all bids for said franchise and privileges; and, in case the bids reported by the Grantor's Mayor shall be rejected by the Council, it may direct, by resolution or ordinance, said franchise and privileges to be again offered for sale, from time to time, until a satisfactory bid therefore shall be received and approved. Upon the approval of a satisfactory bid, the City Council shall award a franchise only after the execution of a written franchise agreement between the Grantor and Grantee that incorporates the provisions of this Ordinance.

(C) 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 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 in Grantee's franchise agreement. 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 be granted and become effective upon the completion of the conditions and provisions of Article II (B).



(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 Grantor become the property of the Grantor, 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 Grantor 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 Grantor 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 Ordinance.

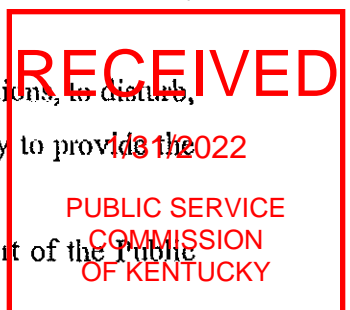
Article V

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 and state laws and regulations regarding minimum safety standards for design, construction, maintenance and operation of gas distribution systems.

(B) Grantee shall have the right, subject to all applicable laws and regulations, to disturb, break, and excavate in the Public Right-of-Way as may be reasonable and necessary to provide the service authorized hereby.

(C) 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.

(D) 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.

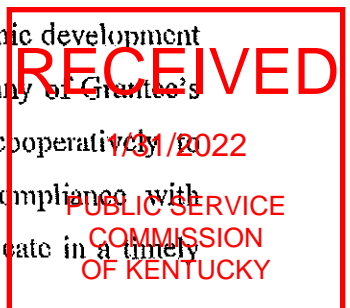
(E) Grantee shall, when reasonably practicable, install all pipelines underground at such depth and in such manner so as not to interfere with the existing pavement, curbs, gutters, underground wires or cables or water or sewer pipes owned or controlled by the Grantor.

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 Grantee 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; (ii) system facilities that are relocated in connection with sidewalk improvements (unless such sidewalk improvements are related to or associated with road widenings, the creation of new turn lanes, or the addition of acceleration/deceleration lanes); (iii) streetscape projects or other projects undertaken primarily for aesthetic purposes; or (iv) 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).

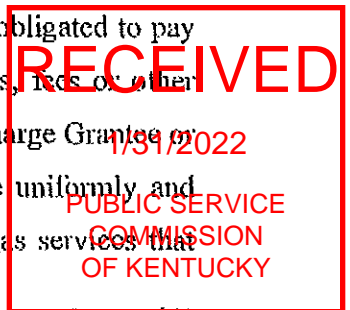
Article VII

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 Grantee of the right to make use of the Public Right-of-Way, Grantor reserves the right, upon thirty (30) days prior written notice, to require Grantee to pay to the Grantor, during the entire life of the franchise, a sum equal to two (2%) of its Revenues. The fee prescribed herein, if required by the Grantor, shall be paid to the Grantor quarterly on or before the 30th day after the end of each calendar quarter after the date the fee is first implemented, 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 geographical 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 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 natural gas utilities, of like services, or any other natural gas services 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.

(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.

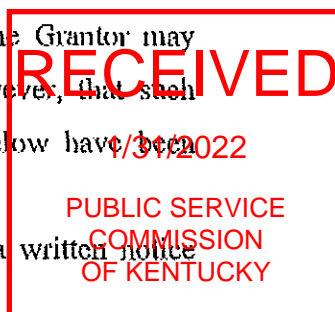
Article VIII
SERVICE TO NEW AREAS

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 Grantee'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 or other duly authorized member of Grantor's governing body, attested by the Grantor's secretary or clerk, 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 or clerk, 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

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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, temporary failures of gas supply, or necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this Ordinance.

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 none of the provisions of this paragraph shall be applicable 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 such event, any 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 (C), Grantee may remove all or any part of its System upon the expiration or termination of the franchise and rights granted hereby.

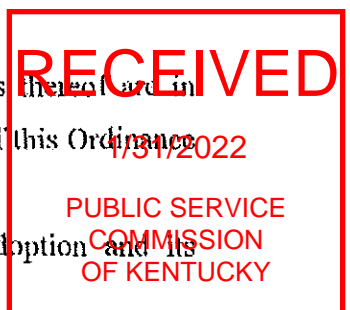
(C) Grantee may transfer or assign the franchise created by this agreement to any other person, proprietorship, partnership, firm or corporation with written notification to the Grantor.

(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 Ordinance shall extend to, be binding upon, and inure to the benefit of both the Grantor and Grantee, 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.


This Ordinance shall be in full force and effect from and after its adoption and its



publication provided by law.

Introduced, seconded, and given first reading at a duly convened meeting of the City Council of the City of Auburn, Kentucky held on the 8th day of March 2021.

Given second reading and enacted at a duly convened meeting of the City Council of the City of Auburn, Kentucky held on the 12th day of April 2021.



Mayor

ATTEST:



City Clerk

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