

ORDINANCE NO. _____

AN ORDINANCE RENEWING A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE CITY OF MANSFIELD, TARRANT COUNTY TEXAS, GRANTED TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAY; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF CERTAIN OTHER FEES AND CHARGES.

WHEREAS, Atmos Energy Corporation (“Grantee”) is engaged in the business of providing gas utility service within the City of Mansfield and is using the Public Rights-of-Way for that purpose under the terms of an ordinance granting a franchise agreement and ordinance heretofore duly passed by the governing body of the City; and

WHEREAS, the franchise expired in October of 2017 and the City and Grantee desire to enter into a new franchise agreement.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MANSFIELD, TEXAS:

SECTION 1. GRANT OF AUTHORITY.

(A) That City hereby grants to Grantee consent to use and occupy, subject to the terms hereof, the Public Rights-of-Way, for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment to deliver, transport and distribute gas in, out of, and through City for persons, firms, and corporations, including all the general public, and to sell Gas to persons, firms, and corporations, including all the general public, within City corporate limits, as such limits may be amended from time to time during the term of this Franchise.

(B) The provisions set forth in this Franchise represent the terms and conditions under which Grantee shall construct, operate, and maintain its System facilities within City. Grantee, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in City shall be in full force and effect and subject to the exercise thereof by City at any time.

(C) This Franchise does not grant to Grantee the right, privilege or authority to engage in any other activities within City other than those set forth in Section 1(A).

SECTION 2. DEFINITIONS.

For the purpose of this Franchise, the following words and phrases shall have meaning given in this section. When not inconsistent with the context, words used in the present tense

include future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is mandatory and “may” is permissive. Words not defined in this section shall be given their common and ordinary meaning.

“Affiliate” means any entity controlling, controlled by or under common control with the entity in question. As used in this definition, the term “control” means, with respect to an entity that is a corporation, the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of such entity or, with respect to an entity that is not a corporation, the power to direct the management or policies of such entity, whether by operation of law, by contract or otherwise.

“City” means the municipal corporation designated as the City of Mansfield and includes the territory as currently is or may in the future be included within the boundaries of City, with its principal office at 1200 E. Broad Street, Mansfield, Texas 76063.

“Franchise” or “Agreement” means the rights and obligations of City and Grantee set forth in this ordinance, as the same may be amended from time to time, and includes those rights and duties provided under the laws of Texas and of the United States.

“Gas” means such gaseous fuels as natural, artificial, synthetic, liquefied natural gas, liquefied petroleum, manufactured, or any mixture thereof.

“Grantee” means Atmos Energy Corporation, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest, with its principal office at 5430 LBJ Freeway, Dallas, Texas 75240.

“Gross Revenues” means all revenue derived or received, directly or indirectly, by Grantee from or in connection with the operation of the System within the corporate limits of City and including, without limitation:

(A) all revenues received by Grantee from the sale of gas to all classes of customers (excluding Gas sold to another gas utility in City for resale of Gas to its customers within City) within City;

(B) all revenues received by the Grantee from the transportation of Gas through the pipeline system of Grantee within City to customers located within City (excluding any Gas transported to another gas utility in City for the sale of Gas to its customers within City);

(C) the value of Gas transported by Grantee for transport customers through the System of Grantee within City (“Third Party Sales”), (excluding the value of any Gas transported to another gas utility in City which has executed a franchise agreement with City for the sale of Gas to its customers within City), with the value of such Gas to be established by utilizing Grantee’s monthly weighted average cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably as is possible near the time as the transportation service is performed; and

(D) “Gross Revenues” shall also include:

- (1) revenues billed but not ultimately collected or received by the Grantee;
 - (2) State gross receipts fees; and
 - (3) the following “miscellaneous charges”:
 - (a) charges to connect, disconnect, or reconnect Gas within the City;
 - (b) charges to handle returned checks from consumers within the City; and
 - (c) contributions in aid of construction (“CIAC”).
- (E) “Gross Revenues” shall not include:
- (1) the revenue of any affiliate or subsidiary of Grantee;
 - (2) sales tax paid to City;
 - (3) interest or investment income earned by Grantee;
 - (4) amounts collected from customers for fees paid to City pursuant to this Agreement; and
 - (5) monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of facilities within the Public Rights-of-Way.

“Public Rights-of-Way” means the public streets, medians, boulevards, roads, lanes, alleys, highways, public utility easements, viaducts, and bridges across water ways and other public places that are deeded or dedicated to City and are available for Grantee’s use.

“Railroad Commission” means the Railroad Commission of the State of Texas or other authority succeeding to the regulatory powers of the Railroad Commission.

“Residents” means all persons, businesses, industry, governmental agencies, and any other entity whatsoever, located, in whole or part, within City that are or may be served by Grantee hereunder.

“System” and/ or “System facilities” means all of Grantee’s pipes, pipelines, Gas mains, laterals, feeders, regulators, meters, fixtures, connections or other appurtenant equipment used in or incident to providing delivery, transportation, distribution, and sales of natural Gas for heating, lighting and power.

SECTION 3. USE OF RIGHT-OF-WAY.

(A) The grant to Grantee in Section 1 is subject to the terms and conditions contained herein, the Texas Constitution, City's Charter and ordinances, all as amended, and subject to applicable and controlling local, state, and federal laws, including the rules and regulations of any and all agencies thereof, whether presently in force or whether enacted or adopted at any time in the future. This Franchise Agreement shall in no way affect or impair the rights, obligations, or remedies of the parties under the Texas Public Utility Regulatory Act, other state or federal law, or the Texas Constitution. Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest, appeal, or file suit with respect to any action or decision of the other party, including ordinances adopted by City, that Grantee believes is in violation of any federal, state, or local law or regulation.

(B) All construction and work done by Grantee, and the operation of its business, under and by virtue of this Franchise, shall be in conformance with the ordinances, rules and regulations now in force and generally applicable ordinances not in conflict with this Franchise that may hereafter be adopted by City, relating to the use of the Public Right-of-Way.

(C) Grantee shall provide reasonable notice to City of planned work within the Public Right-of-Way and shall, except in cases of emergency conditions, obtain a permit if required by City's ordinances before commencing work. If so required, Grantee shall comply with permitting requirements that do not conflict with this Ordinance; provided however Grantee or contractors working on behalf of Grantee shall not be required to pay fees related to its use of the Public Right-of-Way other than in accordance with Section 7 hereof.

(D) The location of all pipes, mains, laterals, and other equipment shall be subject to approval by the City Manager or designee prior to construction; provided however, said approval shall not be unreasonably withheld. In the event of a conflict between the location of the facilities of Grantee and the location of the facilities of City or other utility franchisees within the Public Rights-of-Way that cannot be resolved, the City Manager or designee shall resolve the conflict and determine the location of the respective facilities. Grantee shall not interfere with power, telephone, cable, or water facilities, sanitary or storm sewer facilities, or other municipal or public use of the Public Right-of-Way. Grantee has the right to request City Council review of any actions concerning Grantee's use of the Public Right-of-Way. City shall provide Grantee with its annual capital improvements plan as well as any updates or changes as soon as the plan, update, or change becomes available. City shall notify Grantee as soon as reasonably possible of any projects that will affect Grantee's facilities located in the Public Rights-of-Way.

(E) The Grantee shall construct, maintain, and operate its System facilities in a manner which provides reasonable protection against injury or damage to persons or property.

(F) When Grantee is required by City to remove or relocate its mains, laterals, and other facilities to accommodate construction of streets and alleys by City, and Grantee is eligible under federal, state, county, City or other local agencies or programs for reimbursement of costs and expenses incurred by Grantee as a result of such removal or relocation, and such reimbursement is required to be handled through City, City shall include Grantee costs and expenses in an application by City for reimbursement only when City applies for a grant or program where the eligible relocation costs are delineated separately such that City has constructive notice that

Grantee relocation costs are eligible for reimbursement and only if Grantee submits a request together with its cost and expense documentation to City a reasonable time prior to the filing of the application. City shall provide reasonable notice to Grantee of the deadline for Grantee to submit documentation of the costs and expenses of such relocation to City. In the event that City receives only a portion of any reimbursement costs sought and the reimbursement received is not delineated separately such that Grantee's eligible relocation costs are clearly noted, City will reimburse Grantee only after City's costs have been paid in full. When Grantee is required to remove or relocate any System facility without reimbursement, Grantee shall have the right to seek recovery of relocation costs as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of Grantee to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when Grantee is required by City to perform relocation. City shall not require that Grantee document request for reimbursement as a pre-condition to recovery of such relocation costs. Upon receipt of reimbursement from an agency or program as outlined above, City shall remit to the Grantee, within thirty (30) days of receipt, its portion related to the relocation or removal of its facilities, only if the reimbursement received delineates separately Grantee's eligible relocation costs or City's costs have been paid in full. Notwithstanding the foregoing, City shall not be responsible for reimbursement of any relocation costs if Grantee secures or is eligible to secure reimbursement of eligible costs from any other source other than through a statutory rate mechanism or other rate mechanism adopted by City. This paragraph applies exclusively to the Grantee's recovery of its relocation costs and, except as provided in Section 7(H), nothing herein shall prohibit City from denying or opposing a request by Grantee to increase or modify its other rates, charges, fees, or tariffs.

- (G) City may request Grantee to relocate any part of its System facilities installed or maintained in the Public Right-of-Way to accommodate construction or improvement of a highway, road, street, public way, or other public work procured by City which is not undertaken primarily for beautification or to accommodate a private developer. Grantee and City agree that a project is not undertaken primarily for beautification, unless more than fifty percent (50%) of the project costs are allocated to costs unassociated with those required to meet City standards for highway, road, street, public way, or other public work including costs associated with water, sewer, drainage, paving and subgrade, curb and gutter, and sidewalk construction. Grantee shall be responsible for bearing the costs of such relocation to the extent that proposed City facilities are determined to be in conflict with Grantee's existing facilities and as permitted by local, state or federal law. Such relocation shall be made by the Grantee within a reasonable period of time not to exceed sixty (60) days after notice of request from City unless otherwise specifically agreed to by the City or unless Grantee certifies to City in writing that no conflict exists between its facilities and the proposed City facilities. Should Grantee submit evidence that it is unable to complete the relocation within said time due to no fault of Grantee, the City Manager or designee may agree with Grantee to extend such time. Grantee shall not be required to relocate facilities to a depth of greater than four (4) feet unless prior agreement is obtained from Grantee. City and Grantee shall collaborate on designs where there is the potential need for facilities to be relocated to a depth of greater than four feet (4"). Should Grantee have concerns regarding whether the requested placement of facilities is unsafe or inconsistent with the Gas distribution industry standard safe operating practices, Grantee shall provide City with information detailing and substantiating such concerns and work with City on a solution acceptable to both parties. Should Grantee certify that no conflict exists and it is later determined that Grantee's

facilities conflict with proposed City facilities resulting in a delay in the construction of City facilities, Grantee shall reimburse City for all expenses incurred as a result of the delay. Should Grantee agree to relocate any part of its System facilities and fail to perform the relocation causing a delay in the construction of City facilities, Grantee shall reimburse City for all expenses incurred as a result of the delay.

(H) Following relocation, Grantee shall repair, according to City specifications, clean up, and restore all Public Right-of-Way disturbed during construction and repair of Grantee's systems, at its own expense, to approximately the same or better condition as prior to being disturbed.

(I) The installation and replacement of any System facilities in Public Right-of-Way by Grantee shall be subject to inspection and approval by City. The repair and maintenance of any System facilities in Public Right-of-way by the Grantee shall be subject to inspection by City. Grantee agrees to cooperate fully with City in conducting the inspection. Such inspections shall be conducted within a reasonable time after completion of the project. Grantee shall promptly perform reasonable remedial action required by City pursuant to such an inspection. Notwithstanding anything in this section to the contrary, the authority to regulate and inspect Grantee's System for compliance with the provisions of Part 192 of Title 49 of the Code of Federal Regulations is hereby reserved to those federal and state authorities having jurisdiction thereunder and nothing herein is intended to confer any such authority to City unless expressly provided under applicable law.

(J) City reserves the right to lay and permit to be laid, power, sewer, Gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by City in, across, along, over, and under any Public Right-of-Way occupied by Grantee, and to change any curb or sidewalk or the grade of any street.

(K) If City abandons any Public Rights-of-Way in which Grantee has facilities, such abandonment shall be conditioned on Grantee's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse Grantee for all removal or relocation expenses, if Grantee agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests Grantee to remove or relocate its facilities and Grantee agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.

SECTION 4. INDEMNIFICATION AND INSURANCE.

(A) **IN CONSIDERATION OF THE GRANTING OF THIS FRANCHISE, GRANTEE AGREES TO INDEMNIFY AND HOLD HARMLESS CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES (THE "INDEMNITEES") FROM AND AGAINST ALL SUITS, ACTIONS, LIABILITY, OR CLAIMS OF INJURY TO ANY PERSON OR PERSONS, OR DAMAGES TO ANY PROPERTY BROUGHT OR MADE FOR OR ON ACCOUNT OF ANY DEATH, INJURIES TO, OR DAMAGES RECEIVED OR**

SUSTAINED BY ANY PERSON OR PERSONS OR FOR DAMAGE TO OR LOSS OF PROPERTY ARISING OUT OF, OR OCCASIONED BY GRANTEE'S INTENTIONAL OR NEGLIGENT ACTS OR OMISSIONS IN CONNECTION WITH GRANTEE'S OPERATIONS; THIS INDEMNIFICATION SHALL APPLY WHETHER OR NOT CITY, ITS AGENTS, OFFICERS OR EMPLOYEES WERE NEGLIGENT.

(B) IT IS THE INTENT OF THE PARTIES BY AGREEMENT TO THIS SECTION 4 THAT IF A CLAIM IS MADE IN ANY FORUM AGAINST INDEMNITEES FOR ANY OF THE REASONS REFERRED TO IN SECTION 4(A), AND UPON RESOLUTION OF THE CLAIM:

(1) THERE IS NO FINDING BY A COURT OF COMPETENT JURISDICTION THAT INDEMNITEES WERE NEGLIGENT IN CONNECTION WITH ANY OF THE REASONS REFERRED TO IN SECTION 4(A), GRANTEE SHALL HOLD INDEMNITEES HARMLESS AND INDEMNIFY THEM FOR ANY DAMAGE, LOSS, EXPENSE, OR LIABILITY RESULTING FROM THE CLAIM, INCLUDING ALL REASONABLE ATTORNEY'S FEES, COSTS, AND PENALTIES INCURRED; OR

(2) THERE IS A FINDING BY A COURT OF COMPETENT JURISDICTION THAT GRANTEE AND INDEMNITEE WERE BOTH NEGLIGENT IN CONNECTION WITH ANY OF THE REASONS REFERRED TO IN SECTION 4, INDEMNITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

(C) This section does not waive any governmental immunity available to City under Texas law. This section is not intended to create a cause of action or liability for the benefit of third parties, but is solely for the benefit of Grantee and City. This section is not intended to limit the ability of City or Grantee to settle claims through alternative dispute resolution.

(D) If any action, suit or proceeding is brought against City, its agents and employees, upon any claim arising out of Grantee's operations, City shall give notice in writing to Grantee by registered or certified mail. City agrees to reasonably cooperate with Grantee in connection with such defense.

(E) Promptly after receipt by an Indemnatee of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section 4(A) hereof may apply, the Indemnatee shall notify Grantee in writing of such fact. Grantee shall assume the defense thereof with counsel designated by Grantee and reasonably satisfactory to the Indemnatee.

(F) Should an Indemnatee be entitled to indemnification under this Section (4) hereof as a result of a claim by a third party, and Grantee fails to assume the defense of such claim, the Indemnatee will, at the expense of Grantee, contest (or, with the prior written consent of Grantee, settle) such third party claim.

(G) Grantee shall insure its obligations and risks undertaken pursuant to this Franchise in the form of a formal plan of self-insurance maintained in accordance with sound accounting and risk-management practices, or, at its option, maintain the following insurance coverages throughout the term of this Franchise:

(1) Commercial general or excess liability with minimum limits of five million dollars (\$5,000,000). To the extent that coverage is maintained on a claim made form, the minimum limits are ten million dollars (\$10,000,000) per occurrence and twenty million dollars (\$20,000,000) aggregate. This coverage shall include the following:

- (a) Completed operations to be maintained for one (1) year.
- (b) Personal and advertising injury.
- (c) Contractual liability.
- (d) Explosion, collapse, or underground (XCU) hazards.

(2) Automobile liability coverage with a minimum policy limit of one million dollars (\$1,000,000) combined single limit. This coverage shall include all owned, hired, and non-owned automobiles. Pollution liability insurance, with a minimum coverage of ten million dollars (\$10,000,000) per occurrence shall be provided for bodily injury and property damage resulting from pollutants which are discharged suddenly and accidentally. Such insurance shall provide coverage for clean-up costs.

(H) Prior to commencement of operations pursuant to this Agreement, Grantee shall furnish City with proof of insurance.

(I) Grantee will require its self-insurance to respond to the same extent as if City was an additional insured and waive subrogation rights against City.

SECTION 5. GAS SERVICE.

(A) Grantee shall furnish reasonably adequate service to the public at reasonable rates and charges therefore; and Grantee shall maintain its System in good order and condition. Such rates shall be established in accordance with all applicable statutes and ordinances. Grantee shall maintain on file with City copies of its current tariff, schedules or rates and charges, customer service provisions, and line extension policies. The rates and charges collected from its customers in City shall be subject to revision and change by either City or Grantee in the manner provided by law.

(B) Grantee hereby agrees that it will not arbitrarily refuse to provide service to any Person that it is economically feasible for Grantee to serve. In the event that a Person is refused service, said Person may request a hearing before the City Council of City or its designee, said hearing to be held within forty-five (45) days from the date of the request for hearing. City Council of City may order Grantee to provide service or take any other action necessary to bring Grantee into compliance with the intent of the City Council in granting this Franchise, including

termination of this Franchise in accordance with Section 12. The City Council of City shall render its opinion at the next regular meeting but in no event shall it be required to act in less than seven (7) days.

(C) Grantee shall keep and maintain its books, records, contracts, accounts, documents, and papers in any way related to this Franchise Ordinance and shall make them available for inspection by City officials and employees upon reasonable notice.

(D) Grantee shall install, repair, maintain, and replace its System facilities in a good and workmanlike manner.

(E) If Grantee determines to install a meter in or near the Public Right-of-Way, Grantee agrees to discuss with City the aesthetics of the meter placement. Grantee shall not place a meter within City sidewalks. If City requires a meter upgrade, Grantee will comply so long as City reimburses Grantee for the reasonable costs incurred by Grantee in changing meters; provided, however, that in no event shall underground meters be required.

(F) Grantee shall take such measures which will result in its System facilities meeting the standards required by applicable federal, state, and environmental laws.

(G) Nothing in this Franchise shall impair the right of City to fix, within constitutional and statutory limits, a reasonable price to be charged for natural gas, or to provide and fix a scale of prices for natural gas, and other charges, to be charged by Grantee to residential consumers, commercial consumers, industrial consumers, or to any combination of such consumers, within the territorial limits of City as same now exists or as such limits may be extended from time to time hereafter.

SECTION 6. NON-EXCLUSIVE FRANCHISE.

(A) The rights, privileges, and franchises granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of transporting, delivering, distributing, or selling Gas to and for City and the inhabitants thereof.

(B) City reserves the right to own and/or operate its own system for the purpose of transporting, delivering, distributing, or selling gas to and for City and inhabitants thereof.

SECTION 7. CONSIDERATION AND METHOD OF PAYMENT.

(A) Grantee shall make initial payment on or before the 31st day of January, 2019 based on revenues for the preceding calendar quarter October 1, 2018 through December 31, 2018. Grantee shall pay City quarterly on or before the last days of April, July, and October, 2019, and on or before the same days of each succeeding year during the term of this franchise, the final payment under the initial term being made on the 31st day of October, 2028, five percent (5%) of the Gross Revenues received by Grantee during the preceding calendar quarter.

(B) The franchise fee amounts based on Contributions in Aid of Construction (CIAC)

shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee payment under this ordinance shall be due on or before April 30, 2019, and will be based on CIAC revenues for the year January 1 through December 31, 2018 in accordance with the terms of the previous agreement. All subsequent CIAC franchise fee payments shall be due on or before April 30 of each succeeding year during the term of this franchise with the final payment under the initial term being made on or before April 30, 2029.

(C) If Grantee fails to pay when due any payment provided for in this Section, Grantee shall pay such amount plus interest at the current prime rate per annum from such date until payment is received by City.

(D) Grantee agrees that at the time of each payment, Grantee shall also submit to City a statement showing its Gross Revenues for the calendar year in which payment is made from the sale of gas to its customers, including but not limited to residential, commercial, and industrial customers, within said corporate limits, including the amount of revenues received by Grantee for the transportation of Gas.

(E) City may, if it sees fit, upon reasonable notice to Grantee, have the books and records of Grantee examined by a representative of City to ascertain the correctness of the reports agreed to be filed herein. Grantee shall make available to the auditor such personnel and records as City may in its reasonable discretion request in order to complete such audit, and shall make no charge to City therefore. Grantee shall assist City in its review by providing all requested information no later than fifteen (15) days after receipt of a request. The cost of the audit shall be borne by City unless the audit discloses that Grantee has underpaid the franchise fee by 10% or more, in which case the reasonable costs of the audit shall be reimbursed to City by Grantee. If such an examination reveals that Grantee has underpaid City, then upon receipt of written notification from City regarding the existence of such underpayment, Grantee shall undertake a review of City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section 7(C). Should Grantee determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Grantee regarding the existence of such overpayment, City shall review Grantee's claim and if said overpayment is confirmed, remit the amount of overpayment to Grantee.

(F) If, after receiving reasonable notice from City of City's intent to perform an audit as provided herein, Grantee fails to provide data, documents, reports, or information required to be furnished hereunder to City, or fails to reasonably cooperate with City during an audit conducted under the terms hereunder, City may elect to terminate this Franchise in accordance with Section 12.

(G) City shall within thirty (30) days of final approval, give Grantee notice of annexations and disannexations of territory by City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Grantee shall promptly initiate a process to reclassify affected customers into the city limits no later than sixty (60) days after receipt of notice from City. The annexed areas added to the city limits will be included in future franchise fee

payments in accordance with the effective date of the annexation. Upon request from City, Grantee will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise fee payments. In no event shall Grantee be required to add premises for the purposes of calculating franchise payment prior to the earliest date that the same premises are added for purposes of collecting sales taxes.

(H) Grantee may file with City a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this Agreement. City agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for one hundred percent (100%) recovery of such franchise fees as part of Grantee's rates; (ii) if City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Grantee's franchise fees is an issue, City will take an affirmative position supporting one hundred percent (100%) recovery of such franchise fees by Grantee and; (iii) in the event of an appeal of any such regulatory proceeding in which City has intervened, City will take an affirmative position in any such appeals in support of the one hundred percent (100%) recovery of such franchise fees by Grantee. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Grantee. This paragraph applies exclusively to City's franchise fees and nothing herein shall prohibit City from denying or opposing a request by Grantee to increase or modify its other rates, charges, fees, or tariffs.

SECTION 8. OTHER TAXES.

(A) It is expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, Franchise taxes or charges, municipal license, permit and inspection fees, bonds, street taxes, and street or alley rentals or charges except as provided in this section. Payment of the fees and other consideration due hereunder by Grantee is not accepted by City in lieu of any reimbursement of regulatory costs, payment of taxes that are uniform and generally applicable to other persons conducting business within City, such as property, sales and use taxes or the costs to repair damages to the Public Right-of-way or to indemnify City as required herein. If City does not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of taxes, licenses, fees, street or alley rentals or charges, easement or Franchise taxes or charges as aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Grantee's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or Franchise taxes or charges as aforesaid.

(B) Payment of the fees and other consideration due hereunder shall not in any way limit or inhibit any of the privileges of City whether under this Franchise Ordinance or otherwise.

SECTION 9. TERM.

The initial term of this Franchise shall expire at midnight on December 31, 2028. Unless written notice of its intent to renegotiate is provided by either City or Grantee at least ninety (90) days prior to the expiration of the term, the Franchise shall be extended for up to two (2) additional terms of five (5) years each on the same terms and conditions as set forth herein.

SECTION 10. OTHER FRANCHISES.

If Grantee should at any time after the effective date of this Ordinance agree to a new municipal franchise ordinance, or renew an existing municipal franchise ordinance, with another municipality in the Mid-Tex Division, as it exists on the effective date of this Agreement, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its Public Right-of-way in a manner that, if applied to City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Grantee to City pursuant to this Ordinance may, at the election of City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City. City acknowledges that the exercise of this right is conditioned upon City's acceptance of all terms and conditions of the other municipal franchise *in toto*. City may request waiver of certain terms and Grantee may grant, in its sole reasonable discretion, such waiver.

SECTION 11. CITY RULES AND REGULATION, DOCUMENTS AND REPORTS.

(A) City expressly reserves, and Grantee expressly recognizes, City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such cost of service, cost of Gas, charter provisions, ordinances, rules, and regulations as City deems necessary.

(B) Grantee shall file with City, those documents required by law to be filed with City, and otherwise, upon City's request, all tariffs, rules, regulations and policies under consideration with the Railroad Commission relating to the facilities and operations, any matters relating to the System facilities and operations, any matters affecting the use of Public Right-of-Way or this Franchise. Upon request, Grantee shall provide City with a copy of filings it makes with the Railroad Commission affecting the same. In addition, upon request, Grantee will provide City copies of Grantee's most recent annual report, all petitions, communication reports, advice letters, audits, complaints, and applications together with supporting pre-filed testimony and exhibits filed by Grantee or third parties with the Railroad Commission.

SECTION 12. DEFAULT, REMEDIES, TERMINATION.

(A) In addition to all other rights and powers retained by City under this Franchise or otherwise, City reserves the right to forfeit and terminate the Franchise and all rights and privileges of Grantee hereunder in the event of a breach of its terms and conditions. A breach by Grantee shall include, but shall not be limited to, the following:

- (1) Violation of any provision of the Franchise or any rule, order, regulation or determination of City made pursuant to the Franchise;
- (2) Attempt to evade any provision of the Franchise or to practice any fraud or deceit upon City or its Residents;
- (3) Failure to begin or complete Gas facility construction or extension as agreed to with City;

- (4) Failure to provide the services set forth in the Franchise; or
- (5) Material misrepresentation of fact in the application for or negotiation of the Franchise.

(B) The foregoing shall not constitute a breach if the violation occurs without fault of Grantee or occurs as a result of circumstances beyond its control which could not have been avoided as a result of the exercise of reasonable care. Grantee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers or employees.

(C) City may make a written demand that Grantee comply with any such provision, rule, order, or determination under or pursuant to this Franchise. If the violation by Grantee continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, City may take under consideration the issue of termination of the Franchise.

(D) If Grantee does not cure the default within such time frame, City shall notify Grantee in writing of its right to have a hearing before the City Council to present any objections or defenses Grantee may have that are relevant to the proposed termination. The notice shall specify a hearing date which shall be at least thirty (30) days from the date of the notice. After such hearing, City may determine whether to continue or to terminate the Franchise. The final decision of the City Council may be appealed to any court or regulatory authority having jurisdiction. Upon timely appeal by Grantee of the City Council's decision terminating the Franchise, the effective date of such termination shall be either when such appeal is withdrawn or a court order upholding the termination becomes final and unappealable, and until the termination becomes effective, the provisions of this Franchise shall remain in effect for all purposes.

(E) Notwithstanding the foregoing, the rights and remedies of City set forth in this section shall be in addition to, and not in limitation of, any other rights and remedies provided by law or in equity. City and Grantee understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by City of any one or more of such remedies shall not preclude the exercise by City, at the same or different times, of any other such remedies for the same breach of this Agreement.

(F) The prevailing party in the adjudication of any proceeding relating to this Agreement shall be authorized to recover its reasonable and necessary attorney's fees pursuant to Section 271.159 of the Texas Local Government Code.

SECTION 13. MISCELLANEOUS PROVISIONS.

(A) This Franchise is made for the exclusive benefit of City and Grantee, and nothing herein is intended to, or shall confer any right, claim, or benefit in favor of any third party.

(B) No assignment or transfer of this Franchise shall be made, in whole or in part, without approval of the City Council of City unless otherwise superseded by state laws, rules, or regulations or Railroad Commission of Texas action and such approval shall not be unreasonably withheld or delayed; provided however that Grantee may assign this Agreement to an Affiliate without City's consent or approval, upon thirty (30) days' notice to City. City will grant such

approval unless assignee is materially weaker than Grantee. For the purpose of this section, "materially weaker" means that the long term unsecured debt rating of the assignee is less than investment grade as rated by both S&P and Moody's. If the assignee is materially weaker, City may request additional documents and information reasonably related to the transaction and the legal, financial, and technical qualifications of the assignee. Upon approval or assignment to an Affiliate without approval as provided herein, the rights, privileges, and franchise herein granted to Grantee shall extend to and include its successors and assigns. The assignment shall not become effective until assignee agrees in writing to be bound by the terms, conditions, provisions, requirements and agreements contained in this Franchise.

(C) If either City or Grantee requests renegotiation of any term of this Franchise, Grantee and City agree to renegotiate in good faith revisions to any and all terms of this Franchise. If the parties cannot come to agreement upon any provisions being renegotiated, then the existing provisions of this Franchise will continue in effect for the remaining term of the Franchise.

(D) Any notices required or desired to be given from one party to the other party to this Franchise shall be in writing and shall be given and shall be deemed to have been served and received (whether actually received or not) if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY
City Manager
City of Mansfield
1200 E. Broad Street
Mansfield, Texas 76063

GRANTEE
Manager of Public Affairs
Atmos Energy
1550 Tech Centre Pkwy.
Arlington, Texas 76014

With a copy to:
Mr. Allen E. Taylor
Taylor Olson Adkins Sralla & Elam LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

(E) Nothing contained herein shall limit or restrict any legal rights that City may possess arising from any alleged violation of this Franchise.

(F) Neither City nor Grantee shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its officers, employers, or agents, upon any one or more occasions to insist upon or seek compliance with any such terms and conditions.

(G) The paragraph headings contained in this Franchise are for convenience only and shall in no way enlarge or limit the scope or meaning of the various paragraphs hereof. Both parties have participated in the preparation of this Franchise and this Franchise shall not be construed either more or less strongly against or for either party.

SECTION 14. SEVERABILITY

This Franchise and every provision hereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision, or portion of this Franchise shall not affect the validity or constitutionality of any other portion of this Franchise. If any term or provision of this Franchise is held to be illegal, invalid or unenforceable, the legality, validity or unenforceability of the remaining terms or provisions of this Franchise shall not be affected thereby.

SECTION 15. ACCEPTANCE AND EFFECTIVE DATE.

To accept this Franchise, Grantee must file with the City Secretary its written acceptance of this Franchise within sixty (60) days after its final passage and approval by City. If such written acceptance of this Franchise is not filed by Grantee, this Franchise shall be rendered null and void. If Grantee accepts this Franchise, this Franchise shall become effective as of the date of approval by City. When this Franchise becomes effective and Grantee makes its first payments due hereunder, any and all previous ordinances of City granting franchises for Gas delivery purposes that were held by Grantee shall be cancelled.

PASSED AND APPROVED this _ day of _____, 2018.

ATTEST:

Tracy Norr, City Secretary

David Cook, Mayor

