ORDINANCE # 2018-13
INTRODUCED BY O'Keefe
DATE INTRODUCED 5/15/18
ITEM NUMBER 2018-05-05
PUBLIC HEARING 6/19/18
ADOPTED/TABLED 6/19/18
EFFECTIVE 7/5/18
BOOK # _____ PAGE # _____
RECORDATION # _____
AMENDED BY ORDINANCE # _____
DATE AMENDED _____

ADOPTION

INTRODUCTION

CITY OF COVINGTON
STATE OF LOUISIANA

ORDINANCE NUMBER 2018-13

AN ORDINANCE OF THE CITY OF COVINGTON AUTHORIZING THE MAYOR TO ENTER INTO A FRANCHISE AGREEMENT WITH ATMOS ENERGY CORPORATION GRANTING THE RIGHT TO USE THE PRESENT AND FUTURE STREETS, ROADS, HIGHWAYS, ALLEYS, BRIDGES, AND PUBLIC WAYS, FOR SUCH PURPOSES; UNDER THE TERMS AND CONDITIONS TO WHICH SUCH FRANCHISE AND RIGHTS ARE SUBJECT; AND PRESCRIBING THE TERM OF SUCH FRANCHISE AND RIGHTS

WHEREAS, it is in the best interest of the City of Covington to enter into a franchise agreement with Atmos Energy Corporation to permit the right to use the present and future streets, roads, highways, alleys, bridges, public ways, in Covington for the purpose of maintaining, constructing, laying, repairing, removing, replacing, installing, operating, and disposing of a gas system for the sale, transportation, and distribution of natural gas within the municipal boundaries of the City, prescribing the terms and conditions to which such franchise and rights are subject to and/or contained.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Covington, at its regular session convened, that it approves the Franchise Agreement between the City of Covington and Atmos Energy Corporation, which is attached hereto and made a part of this Ordinance; and

BE IT FURTHER ORDAINED by the City Council of the City of Covington that the Mayor of the City of Covington is hereby authorized to execute the Franchise Agreement in substantial conformance to that attached hereto; and

BE IT FURTHER ORDAINED by the City Council of the City of Covington that this Ordinance shall take effect immediately upon the signature of the Mayor of Covington; and

WHEREUPON, this ordinance having been submitted in writing, having been read by title and adopted at a public meeting of the City Council of the City of Covington, State of Louisiana, was then submitted to an official vote as a whole, the vote thereon being as follows:

MOVED FOR ADOPTION by Coner, seconded by Smith.

YEAS: 6 **ABSENT:** 1 (Roberts)

NAYS: 0 **ABSTAIN:** 0

PASSED AND ADOPTED this 19th day of June, 2018.

R.S. "SAM" O'KEEFE
COUNCIL PRESIDENT

Bonnie D. Champagne
BONNIE D. CHAMPAGNE
COUNCIL CLERK

Presented to the Mayor this 20th day of June, 2018, at 1:30 o'clock P.M.

Bonnie D. Champagne
BONNIE D. CHAMPAGNE
COUNCIL CLERK

Approved ✓ or Vetoed ___ by the Mayor on this 20th day of June, 2018.

MICHAEL B. COOPER
MAYOR

Received from the Mayor on the 20th day of June, 2018, at 1:50 o'clock P.M.

Bonnie D. Champagne
BONNIE D. CHAMPAGNE
COUNCIL CLERK

FRANCHISE AGREEMENT

THE CITY OF COVINGTON, LOUISIANA (hereinafter referred to as the "City") that, subject to the terms and conditions hereinafter set forth, ATMOS ENERGY CORPORATION, a Texas and Virginia corporation with its principal office in the City of Dallas, Dallas County, Texas (hereinafter referred to as "Atmos"), be, and hereby is, granted the non-exclusive franchise and rights to conduct in the City the business of acquiring (by purchase, lease, or otherwise), maintaining, constructing, laying, repairing, removing, replacing, installing, operating, and disposing of (by sale, lease, or otherwise) a Gas System, hereinafter defined, for the sale, transportation and distribution of natural gas within and beyond the municipal boundaries of the City and to the residents and business located therein for light, heat, power, and any other purpose during the term set forth below. Such franchise and rights shall include, but not be limited to, the right to use the present and future streets, roads, highways, alleys, bridges, public ways, and other immovable property owned by or under the control of the City for purposes of maintaining, constructing, laying, repairing, removing, replacing, installing, and operating any and all components of the Gas System, together with access, at all times and from time to time, to such streets, roads, highways, alleys, bridges, public ways, and other immovable property during the term hereof.

ARTICLE I

DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below:

Section 1.1. Gas System. The term "Gas System" shall mean any and all pipelines, as hereinafter defined, regulators, meters, valves, compressors, anti-corrosion items, facilities, structures, machinery, equipment, and appurtenances of any kind that Atmos, in its sole discretion, may deem necessary or advisable for the exercise of the franchise and rights

granted to Atmos herein. However, no part of the Gas System may be placed in a manner or location which shall interfere with the intended use of the city property or public safety.

Section 1.2. Pipelines. The term "pipelines" shall mean any and all above-ground and below-ground pipes, including but not limited to, mains, distribution lines, secondary lines, laterals, and other pipes, that have been, are being, or are intended to be used at any time in, or in connection with, the sale, transportation, or distribution of natural gas within and beyond the City limits. The rights granted in this article shall not apply to the Covington Trailhead, Bogue Falaya Park, other park or recreational property.

ARTICLE II

TERM

Section 2.1. Term. The term of the franchise and rights hereby granted to Atmos shall be for a period of twenty-five (25) years, commencing on the later of (i) thirty (30) days after the date of publication of ~~this~~ the corresponding Ordinance to this Agreement in accordance with law or (ii) the expiration of the franchise held by Atmos immediately preceding this franchise.

ARTICLE III

GRANT OF SPECIFIC RIGHTS TO ATMOS ENERGY

In addition to the franchise and rights granted herein to Atmos, the City acknowledges that Atmos has, and hereby grants to Atmos, the following rights and powers:

Section 3.l. Reconnection Charges. In addition to any and all other proper charges, Atmos may charge and collect from any consumer whose service has been discontinued by Atmos a reasonable reconnection fee or similar charge for recommencing service to such consumer.

Section 3.2. Adoption of Rules. From time to time during the term hereof, Atmos may, subject to any and all valid and applicable statutes, ordinances, rules, and regulations of any

federal or state governmental authority or agency, make and enforce reasonable rules pertaining to Atmos' business and operations, including, but not limited to, requiring payment on or before a specified day each month for all services furnished during the preceding month with the right to disconnect and discontinue service to delinquents.

Section 3.3. Removal of Gas System. Atmos may remove all or any portion of the Gas System upon the expiration or termination of the franchise and rights granted hereby.

Section 3.4. Right of Use. Atmos is hereby specifically granted a right of use on all present and future streets, roads, highways, alleys, bridges, public ways, and other immovable property owned by or under the control of the City for purposes of maintaining, constructing, laying, repairing, replacing, installing, and operating any and all components of the Gas System, together with access, at all times and from time to time, to such streets, roads, highways, alleys, bridges, public ways, and other immovable property during the term hereof. The rights granted in this article shall not apply to the Covington Trailhead, Bogue Falaya Park, other park or recreational property.

ARTICLE IV

OBLIGATIONS OF ATMOS

Section 4.1 Franchise Fee.

(a) As consideration for the grant of the franchise and rights herein and for the use by Atmos of the streets, roads, highways, alleys, bridges, public ways, and other immovable property owned or controlled by the City, Atmos shall pay to the City, within thirty (30) days after the end of each calendar quarter, a franchise fee equal to two percent (2%) of Atmos' gross receipts derived from the sale, transportation, and distribution by Atmos of natural gas at retail to residential and commercial consumers located within the City limits during the preceding calendar quarter.

(b) The franchise fee, together with any and all charges of the City for water, sewage, and garbage services provided by the City to Atmos, any and all sales taxes collected by Atmos, and any and all ad valorem taxes assessed by the City against Atmos' property, shall constitute the only amounts for which Atmos shall be obligated to pay to the City and shall be in lieu of any and all other costs, levies, assessments, fees, or other amounts, of any kind whatsoever, that the City, currently or in the future, may charge Atmos or assess against Atmos' property.

(c) The City may, upon sixty (60) days written notification to Atmos, increase such fee in any amount up to four (4%) percent.

Section 4.2. No Obstruction of Public Property. Atmos shall not unnecessarily or for any unreasonable period of time obstruct or interfere with the public use of any of the streets, roads, highways, alleys, bridges, public ways, or other immovable property owned or controlled by the City.

Section 4.3. Repair of Damages. Atmos shall repair any and all damages caused solely by Atmos to any streets, roads, highways, alleys, bridges, public ways, or other immovable property owned or controlled by the City and shall restore, as nearly as practicable, such property to substantially its condition immediately prior to the incident causing such damage. Atmos shall commence such repairs immediately upon completion of the work or activity in which Atmos was involved at the time the damage occurred and shall complete such repairs as promptly as possible.

Section 4.4. Conduct of Work and Activities. Atmos shall use reasonable care in conducting its work and activities in order to prevent injury to any person and unnecessary damage to any immovable or personal property. Atmos, its successors and assigns, shall at all times maintain its natural and/or artificial gas systems in a safe and good condition and shall

comply with all necessary and reasonable safety regulation in the operation thereof, and shall protect and hold harmless the City from all claims and damages due to its negligence, or its failure to comply with any obligations of this franchise.

Section 4.5. Extension of Gas System. Atmos shall, at its sole expense, extend its Gas System in order to serve additional consumers in accordance with the Standard Terms and Conditions for Natural Gas Service as now approved or as may hereafter be approved by the Louisiana Public Service Commission.

Section 4.6. Service to New Areas. If during the term of this franchise the boundaries of the City are expanded, the City will promptly notify Atmos in writing of any geographic areas annexed by the City during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Atmos 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 Atmos may reasonably require in ascertaining whether there exist any customers of Atmos receiving natural gas service in said annexed area. To the extent there are such Atmos customers therein, then the gross revenues of Atmos derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Atmos' billing cycle immediately following Atmos' receipt of the Annexation Notice. The failure by the City to advise Atmos in writing through proper Annexation Notice of any geographic areas which are annexed by the City shall relieve Atmos from any obligation to remit any franchise fees to City based upon gross revenues derived by Atmos from the sale and distribution of natural gas to customers within the annexed area until City delivers an Annexation Notice to Atmos in accordance with the terms hereof.

ARTICLE V

GENERAL PROVISIONS

Section 5.1. Force Majeure. Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Atmos 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. The term "force majeure," as used herein, shall mean any cause not reasonably within Atmos' control and includes, but is not limited to, acts of God, strikes, lock-outs, wars, terrorism, riots, orders or decrees of any lawfully constituted federal, state, or local body, contagions or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe, inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits, temporary failures of gas supply, or necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this Agreement.

Section 5.2. Amendments. This Agreement and the franchise and rights granted herein may be amended only by written agreement of the City and Atmos to such amendment.

Section 5.3. Repeal of Conflicting Agreements. All other agreements of the City or portions thereof that are in conflict or inconsistent with any of the terms or provisions of this Agreement are hereby repealed to the extent of such conflict or inconsistency.

Section 5.4. Severability. In the event any part of this Agreement is determined to be invalid or illegal for any reason whatsoever, such invalidity or illegality shall not affect the validity or legality of this Agreement as a whole or of any parts hereof.

Section 5.5. Binding Effect. This Agreement shall extend to, be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

Section 5.6. Section and Other Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

This Agreement and the terms herein have been read and agreed upon by the duly authorized parties below on the _____ day of _____, 2018.

CITY OF COVINGTON, LOUISIANA

By: _____
Michael B. Cooper
Mayor

ACCEPTED:

ATMOS ENERGY CORPORATION

By: _____
Tom Hawkins
President (Louisiana Division)

Date: 7-16-18

Mailing Address and Phone Number of City:

317 N. Jefferson Avenue
Covington, LA 70433
(985)892-1811