

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, GRANTING TO ATMOS ENERGY CORPORATION, A TEXAS AND VIRGINIA CORPORATION, ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO CONSTRUCT, MAINTAIN, AND OPERATE PIPELINES AND EQUIPMENT IN THE TOWN OF PROSPER, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID TOWN FOR ALL PURPOSES; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ORDINANCE NO. 2023-02 IN ITS ENTIRETY AND ALL PREVIOUS GAS FRANCHISE ORDINANCES.

WHEREAS, the Town of Prosper and Atmos Energy Corporation have agreed to the terms of this Franchise Agreement; and

WHEREAS, this Franchise Agreement is consistent with other such Franchise Agreements between Texas municipalities and Atmos Energy Corporation.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS:

SECTION 1. GRANT OF AUTHORITY

The Town of Prosper, Texas, hereinafter called "Town," hereby grants to Atmos Energy Corporation, Mid-Tex Division, hereinafter called "Atmos Energy," its successors and assigns, consent to use and occupy the present and future streets, alleys, highways, public utility easements, public ways and other public places ("Public Rights-of-Way"), for the purpose of laying, maintaining, constructing, protecting, operating, and replacing therein and thereon pipelines and all other appurtenant equipment (the "System") to deliver, transport, and distribute gas in, out of, and through Town 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 the Town corporate limits, as such limits may be amended from time to time during the term of this franchise, said consent being granted for a term ending December 31, 2043.

**SECTION 2. CONSTRUCTION, MAINTENANCE, OPERATION & RELOCATION
OF ATMOS ENERGY FACILITIES**

- A. Atmos Energy shall lay, maintain, construct, operate, and replace its pipes, mains, laterals, and other equipment to minimize interference with traffic, place or cause to be placed appropriate barriers to mark excavations or obstructions, and restore to approximate original condition all Public Rights-of-Way that it may disturb. In determining the location of the facilities of the Town and other users of Public Right-of-Way within Town, Town shall endeavor to minimize interference with then existing facilities of Atmos Energy and shall endeavor to require other users of Public Rights-of-Way to minimize interference with existing facilities of Atmos Energy. In the event of a conflict between the location of the proposed facilities of Atmos Energy and the location of the existing facilities of Town or other users of Public Rights-of-Way within Public Rights-of-Way that cannot otherwise be resolved, Town or an authorized agent of Town

shall resolve the conflict and determine the location of the respective facilities within the Public Rights-of-Way.

Atmos Energy or contractors working on behalf of Atmos Energy shall not be required to pay for street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with Atmos Energy's operations in Public Rights-of-Way. Town shall provide Atmos Energy with its annual capital improvements plan as well as any updates or changes as soon as the plan, update, or change becomes available. Town shall notify Atmos Energy as soon as reasonably possible of any projects that will affect Atmos Energy's facilities located in the Public Rights-of-Way. When required by Town to remove or relocate its mains, laterals, and/or other facilities lying within Public Rights-of-Way, Atmos Energy shall do so as soon as practically possible with respect to the scope of the project. In no event shall Atmos Energy be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to Atmos Energy by Town; however, Atmos Energy shall promptly endeavor to remove or relocate such facilities.

- B. If Town, in constructing its sewers, drainage, water lines, streets, or utilities, should request that Atmos Energy remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way, Atmos Energy shall do so at its own expense for facilities that are in conflict, unless such work is for the primary purpose of beautification, performed solely at the request of a private developer. Facilities are deemed to be in conflict to the extent that the proposed Town facilities are determined by Atmos Energy to be inconsistent with gas distribution industry safe operating practices for existing facilities. Atmos Energy shall not be required to relocate facilities to a depth of greater than four (4) feet unless prior agreement is obtained from Atmos Energy.

When Atmos Energy is required by Town to remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way to accommodate a request by Town, and costs of utility removals or relocations are eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by Atmos Energy as a result of such removal or relocation, and such reimbursement is required to be handled through Town, Atmos Energy costs and expenses shall be included in any application by Town for reimbursement if Atmos Energy submits its cost and expense documentation to Town prior to the filing of the application. Town shall provide reasonable written notice to Atmos Energy of the deadline for Atmos Energy to submit documentation of the costs and expenses of such relocation to Town. Upon receipt of an amount of reimbursement intended for utility relocations including gas utilities, Town shall remit to Atmos Energy, within thirty (30) days of receipt, any portion of such reimbursement specifically designated as a reimbursement of Atmos Energy's costs incurred in the relocation or removal of Atmos Energy's facilities but only after Town has been fully reimbursed for its own costs of relocation or removal of utilities and related facilities.

If Atmos Energy is required by Town to remove or relocate its mains, laterals, or other facilities lying within Public Rights-of-Way for any reason other than the construction or reconstruction of sewers, drainage, water lines, streets or utilities by Town, Atmos Energy shall be entitled to reimbursement from Town or others of the cost and expense of such removal or relocation.

- C. When Atmos Energy is required to remove or relocate its mains, laterals or other facilities to accommodate construction by Town without reimbursement from Town, Atmos Energy 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 Atmos Energy to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. Town shall not oppose recovery of relocation costs when Atmos Energy is required by Town to perform relocation. Town shall not require that Atmos Energy document request for reimbursement as a pre-condition to recovery of such relocation costs.
- D. If Town abandons any Public Rights-of-Way in which Atmos Energy has facilities, such abandonment shall be conditioned on Atmos Energy'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 Atmos Energy for all removal or relocation expenses if Atmos Energy 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 Atmos Energy to remove or relocate its facilities and Atmos Energy 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 3. INDEMNITY & INSURANCE

In the event of injury to any person or damage to any property by reason of Atmos Energy's construction, operation, maintenance, or replacement of Atmos Energy's pipeline system within Public Rights-of-Way, Atmos Energy shall indemnify and keep harmless Town from any and all liability in connection therewith, except to the extent such injury or damage is attributable to the fault of the Town, including, without limitation, the Town's negligent or intentional acts or omissions. Atmos Energy's insurance of its obligations and risks undertaken pursuant to this franchise may be in the form of self-insurance to the extent permitted by applicable law, under an Atmos Energy plan of self-insurance maintained in accordance with sound accounting and risk-management practices.

SECTION 4. NON-EXCLUSIVE FRANCHISE

The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and Town 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 Town and the inhabitants thereof.

SECTION 5. PAYMENTS TO TOWN

- A. Atmos Energy, its successors and assigns, agrees to pay and Town agrees to accept, on or before the 1st day of March, 2023, and on or before the same day of each succeeding year during the term of this franchise the last payment being made on the 1st day of March, 2043, a sum of money which shall be equivalent to five percent (5%) of the Gross Revenues, as defined in 5.B. below, received by Atmos Energy during the preceding calendar year.

B. "Gross Revenues" shall mean:

- (1) all revenues received by Atmos Energy from the sale of gas to all classes of customers (excluding gas sold to another gas utility in the Town for resale to its customers within Town) within the Town;
- (2) all revenues received by Atmos Energy from the transportation of gas through the System of Atmos Energy within the Town to customers located within the Town (excluding any gas transported to another gas utility in Town for resale to its customers within Town);
- (3) the value of gas transported by Atmos Energy for Transport Customers through the System of Atmos Energy within the Town ("Third Party Sales")(excluding the value of any gas transported to another gas utility in Town for resale to its customers within Town), with the value of such gas to be established by utilizing Atmos Energy's monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time as the transportation service is performed; and
- (4) "Gross Revenues" shall also include the following "miscellaneous charges": charges to connect, disconnect, or reconnect gas and charges to handle returned checks from consumers within the Town.
- (5) "Gross Revenues" shall not include:
 - (a) revenues billed but not ultimately collected or received by Atmos Energy;
 - (b) contributions in aid of construction;
 - (c) the revenue of any affiliate or subsidiary of Atmos Energy;
 - (d) sales tax and franchise fees paid to the Town;
 - (e) interest or investment income earned by Atmos Energy; and
 - (f) monies received from the lease or sale of real or personal property, provided, however, this exclusion does not apply to the lease of facilities within the Town's Right-of-Way.

C. The initial payment for the rights and privileges herein provided shall be for the privilege period January 1 through December 31, 2023, and each succeeding payment shall be for the privilege period of the calendar year in which the payment is made.

It is also expressly agreed that the aforesaid payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as an ad valorem, special, or other character of tax or charge), municipal license, permit, and inspection fees, bonds, street taxes, and street or alley rentals or charges, and all other and additional municipal taxes, charges, levies, fees, and rentals of whatsoever kind and character that Town may now impose or hereafter levy and collect from Atmos Energy or Atmos Energy's agents, excepting only the usual general or special ad valorem taxes that Town is authorized to levy and impose upon real and personal property. If the Town 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 aforesaid, then Town agrees

that it will apply so much of said sums of money paid as may be necessary to satisfy Atmos Energy's obligations, if any, to pay any such taxes, licenses, charges, fees, rentals, easement or franchise taxes or charges aforesaid.

D. Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Atmos Energy

If Atmos Energy 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 Atmos Energy's Mid-Tex Division, which municipal franchise ordinance determines the franchise fee owed to that municipality for the use of its public Rights-of-Way in a manner that, if applied to Town, would result in a franchise fee greater than the amount otherwise due Town under this Ordinance, then the franchise fee to be paid by Atmos Energy to Town pursuant to this Ordinance may, at the election of Town, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to Town were the franchise fee provisions of that other franchise ordinance applied to Town. Town acknowledges that the exercise of this right is conditioned upon Town's acceptance of all terms and conditions of the other municipal franchise *in toto*. Town may request waiver of certain terms and Atmos Energy may grant, in its sole reasonable discretion, such waiver.

E. Atmos Energy Franchise Fee Recovery Tariff

- (1) Atmos Energy may file with Town a tariff or tariff amendment(s) to provide for the recovery of the franchise fees under this agreement.
- (2) Town agrees that (i) as regulatory authority, it will adopt and approve the ordinance, rates or tariff which provide for 100% recovery of such franchise fees as part of Atmos Energy's rates; (ii) if Town intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Atmos Energy's franchise fees is an issue, Town will take an affirmative position supporting 100% recovery of such franchise fees by Atmos Energy and; (iii) in the event of an appeal of any such regulatory proceeding in which Town has intervened, Town will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Atmos Energy.
- (3) Town 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 Atmos Energy.

F. Lease of Facilities Within Town's Rights-of-Way. Atmos Energy shall have the right to lease, license or otherwise grant to a party other than Atmos Energy the use of its facilities within Town's public rights-of-way provided: (i) Atmos Energy first notifies Town of the name of the lessee, licensee or user; the type of service(s) intended to be provided through the facilities; and the name and telephone number of a contact person associated with such lessee, licensee or user and (ii) Atmos Energy makes the franchise fee payment due on the revenues from such lease pursuant to Section 5 of this Ordinance. This authority to Lease Facilities within Town's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees.

G. Town shall within thirty (30) days of final approval, give Atmos Energy notice of annexations and disannexations of territory by Town, which notice shall include a map

and addresses, if known. Upon receipt of said notice, Atmos Energy shall promptly initiate a process to reclassify affected customers into Town limits no later than sixty (60) days after receipt of notice from Town. The annexed areas added to Town limits will be included in future franchise fee payments in accordance with the sales tax effective date of the annexation if notice was timely received from Town. Upon request from Town, Atmos Energy will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise fee payments. In no event shall the Atmos Energy 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 tax.

SECTION 6. ACCEPTANCE OF FRANCHISE

In order to accept this franchise, Atmos Energy must file with the Town Secretary its written acceptance of this franchise ordinance within sixty (60) days after its final passage and approval by Town. If such written acceptance of this franchise ordinance is not filed by Atmos Energy, the franchise ordinance shall be rendered null and void.

When this franchise ordinance becomes effective, all previous ordinances of Town granting franchises for gas delivery purposes that were held by Atmos Energy, and specifically including Ordinance No. 2023-02, shall be automatically repealed, canceled and annulled, and shall be of no further force and effect.

SECTION 7. PARAGRAPH HEADINGS. CONSTRUCTION

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

SECTION 8. EFFECTIVE DATE

If Atmos Energy accepts this ordinance, it becomes effective as of February 14, 2023.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS, ON THIS 14TH DAY OF FEBRUARY, 2023.

APPROVED:

David F. Bristol, Mayor

ATTEST:

Michelle Lewis Sirianni, Town Secretary

APPROVED AS TO FORM AND LEGALITY:

Terrence S. Welch, Town Attorney

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