



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Administration	Christy Doon - City Administrator	February 18, 2025

AGENDA ITEM

Ordinance 2025 - 4, An Ordinance of the City Council of the City of Salida, Colorado, Granting a Non-Exclusive Franchise to Atmos Energy Corporation for the Purpose of Providing, Selling, and Delivering Natural Gas to the City and its Residents, and Approving a Gas Utility Franchise Agreement Concerning the Same, first reading and setting the public hearing.

BACKGROUND

The current franchise agreement with Atmos Energy expired on October 1, 2023. The new agreement is attached. This document updates the terms of the agreement, including the new expiration date of April 3, 2040. The Fee of 5% of revenues derived annually is consistent with prior agreements.

STAFF RECOMMENDATION

Staff recommends Council approve the Ordinance on first reading and schedule a public hearing for March 4, 2025.

FISCAL IMPACT

Historically the City received between \$234,408 and \$158,134 annually from Atmos.

MOTION

A City Councilmember should state "I move to _____ Ordinance 2025 - 4, An Ordinance of the City Council of the City of Salida, Colorado, Granting a Non-Exclusive Franchise to Atmos Energy Corporation for the Purpose of Providing, Selling, and Delivering Natural Gas to the City and its Residents, and Approving a Gas Utility Franchise Agreement Concerning the Same, first reading and setting the public hearing. March 4, 2025, followed by a second and a roll call vote.

CITY OF SALIDA, COLORADO
ORDINANCE NO. 04
(Series of 2025)

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO
GRANTING A NON-EXCLUSIVE FRANCHISE TO ATMOS ENERGY CORPORATION
FOR THE PURPOSE OF PROVIDING, SELLING, AND DELIVERING NATURAL GAS
TO THE CITY AND ITS RESIDENTS, AND APPROVING A GAS UTILITY FRANCHISE
AGREEMENT CONCERNING THE SAME**

WHEREAS, the City of Salida, Colorado (the “City”) is a statutory city, duly organized and existing under the laws of the state of Colorado;

WHEREAS, consistent with C.R.S. §§ 31-32-101, *et seq.*, the City has the authority to grant franchises for use of the public right-of-way by ordinance;

WHEREAS, the Atmos Energy Corporation (the “Company”) has previously been granted a non-exclusive franchise granting the Company the right to erect, construct, operate, and maintain a natural gas distribution system within the corporate boundaries of the City to provide natural gas service to persons, businesses, industries, governmental agencies, and the residents of the City;

WHEREAS, the Company seeks renewal of its non-exclusive franchise to continue providing natural gas distribution service within the City;

WHEREAS, the City and Company have negotiated a Utility Franchise Agreement, attached hereto as **Exhibit A** and incorporated herein by this reference (the “Franchise Agreement”) that outlines the terms, conditions, and mutual covenants concerning the Company’s provision of natural gas distribution service within the City, including the Company’s use of public rights-of-way and dedicated public utility easements;

WHEREAS, the City Council for the City of Salida, Colorado (the “Council”) desires to grant to Company, and Company desires to accept, the terms and conditions set forth in the Franchise Agreement;

WHEREAS, the public has had adequate notice and opportunity to comment on the Company’s proposal to continue to provided electricity service within the City and a public hearing on approval of the Franchise Agreement was lawfully noticed and held before the Council; and

WHEREAS, consistent with State law the Council has determined that it is in the best interest of the City and its residents to grant a non-exclusive franchise to Company for the term provided in the Franchise Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF SALIDA, COLORADO AS FOLLOWS:

Section 1. The foregoing recitals are hereby incorporated as conclusions, facts, determinations, and findings by the City Council.

Section 2. The City Council hereby approves the Franchise Agreement attached hereto as **Exhibit A**. The Mayor and other City officials are hereby authorized to execute the Franchise Agreement by and on behalf of the City.

Section 3. Severability: The provisions of this Ordinance are severable and the invalidity of any section, phrase, clause, or portion of this Ordinance as determined by a Court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the Ordinance.

Section 4. City officials are hereby authorized to take such action as appropriate to implement the Franchise Agreement.

Section 5. The City Council finds and declares that this Ordinance is promulgated and adopted pursuant to the City's police power to preserve and protect the public health, safety, and welfare of the City and its residents, and bears a rational relation to the legislative objects sought to be obtained.

INTRODUCED ON FIRST READING on this 18th day of February, 2025, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this 18th day of February, 2025, and set for second reading and public hearing on the 4th day of March, 2025.

INTRODUCED ON SECOND READING, FINALLY ADOPTED and ORDERED PUBLISHED BY TITLE ONLY, by the City Council on the ____ day of _____, 20__.

City of Salida

Mayor Dan Shore

[SEAL]

ATTEST: _____
City Clerk

PUBLISHED IN FULL in the Mountain Mail after First Reading on the ____ day of _____, 20__, and BY TITLE ONLY, after final adoption on the ____ day of _____, 20__.

City Clerk/Deputy City Clerk

FRANCHISE AGREEMENT

This Franchise Agreement is entered into this __ day of _____, 2025 between the City of Salida, a Colorado statutory City and Atmos Energy Corporation, a Texas and Virginia corporation.

The parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

ARTICLE I

Definitions

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with the context, words used in the present tense include the 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 Article shall be given their common and ordinary meaning.

1.1 "City" refers to and is the City of Salida, Chaffee County, Colorado, and includes the territory as currently is or may in the future be included within the boundaries of the City of Salida.

1.2 "City Council" refers to and is the legislative body of the City of Salida.

1.3 "Company" refers to and is Atmos Energy Corporation, a Texas and Virginia corporation, and its successors and assigns.

1.4 "Distribution Facilities" refer to and are only those facilities reasonably necessary to provide gas within the City.

1.5 "Facilities" refer to and are all facilities reasonably necessary to provide gas into, within and through the City, including but not limited to, plants, works, systems, distribution lines, equipment, pipes, mains, underground links, gas

compressors, meters, meter reading devices, communication and data transfer equipment, control equipment, and gas regulator stations.

1.6 "Gas" or "Natural Gas" refers to and is such gaseous fuels as natural, artificial, synthetic, liquefied natural, liquefied petroleum, manufactured, hydrogen, or any mixture thereof.

1.7 "Other City Property" refers to the surface, the air space above the surface and the area below the surface of any property owned or hereafter owned by the City, that would not otherwise fall under the definition of Public Rights-of-Way, but which could provide a suitable location for the placement of Company facilities, as specifically provided in writing by the City as set forth in section 2.1 of this franchise. Other City Property includes parks and open space.

1.8 "Private Project" refers to any project which is not covered by the definition of public project.

1.9 "Public Project" refers to: (1) any public work or improvement within the City that is wholly or beneficially owned by the City; or (2) any public work or improvement within the City where 50 percent or more of the funding is provided by any combination of the City, the federal government, the State of Colorado, any Colorado county, or other political subdivision of the state of Colorado, but excluding all other entities established under C.R.S. tit. 32. Special District Act.

1.10 "Public Rights of Way" refer to and are streets, alleys, viaducts, bridges, roads, lanes, and easements in said City on and under which the right exists to install and maintain Facilities.

1.11 "PUC" refers to and is The Public Utilities Commission of the State of

Colorado or other authority succeeding to the regulatory authority of The Public Utilities Commission of the State of Colorado.

1.12 "Revenues" refer to and are those amounts of money which the Company receives from its customers within the City for the sale of Gas under rates, temporary or permanent, authorized by the PUC and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections, or other regulatory adjustments.

ARTICLE II

Grant of Franchise

2.1 The City hereby grants to the Company, for the period specified and subject to the conditions, terms and provisions contained in this Agreement, the non-exclusive right to furnish, transport, sell, and distribute gas to the City and to all persons, businesses and industries within the City, the non-exclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the City all facilities reasonably necessary to provide gas to the City and to all persons, businesses, and industries within the City and in the territory adjacent thereto; and the non-exclusive right to make reasonable use of all Public Rights of Way as may be necessary to carry out the terms of the Agreement.

2.2 Company Facilities in Other City Property as of the Effective Date of this Franchise. Company Facilities currently located in Other City Property shall be subject to the terms and conditions set forth in City license agreements, permits, or other written agreements granting the Company the right to place its Facilities in such Other City Property. To the extent that such Company Facilities in Other City Property are not specifically authorized by separate license agreements, permits or other written agreements, the Company may continue use of such

Company Facilities in Other City Property under the terms of this Franchise.

2.3 New Company Facilities in Other City Property. For all Other City Property, the City's grant to the Company of the right to locate Company Facilities in, on, over or across such Other City Property shall be subject to the Company's receiving from the City a revocable license, permit, or other agreement approving the location of such Company Facilities, which the City may grant or deny in its sole reasonable discretion; and (2) the terms and conditions of the use of such Other City Property shall be governed by this Franchise as may be reasonably supplemented in such revocable license, permit or other agreement to account for the unique nature of such Other City Property. Nothing in this subsection (C) shall modify or extinguish pre-existing Company property rights.

2.4 Terms of Franchise. The term of this franchise shall be for fifteen (15) years, beginning _____, 2025, and expiring _____, 2040.

ARTICLE III

Conditions and Limitations

3.1 Scope of Franchise. This grant shall extend to all areas within the corporate boundaries of the City as it is now or hereafter constituted that are within the Company's PUC-certificated service territory; however, nothing contained in this franchise shall be construed to authorize the Company to engage in activities other than activities consistent with the provision of gas service, nor does it affect the Company's rights and obligations pursuant to any certificate of public convenience and necessity granted by the PUC.

3.2 Subject to City Usage. The right to make reasonable use of Public Rights-of-Way to provide gas service to the City and its residents under this franchise is

subject to and subordinate to any City usage of said streets and public utility easements.

3.3 Prior Grants not Revoked. This grant does not, and is not intended to revoke any prior license, grant, or right to use the Public Right-of-Way or Other City Property.

3.4 Franchise not Exclusive. The rights granted by this franchise are not, and shall not be deemed to be, granted exclusively to the Company, and the City reserves the right to make or grant a gas franchise to any other person, firm, or corporation.

3.5 Police Powers. The Company expressly acknowledges the City's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the City considers making any substantive changes in its local codes or regulations that in the City's reasonable opinion will significantly impact the rights granted pursuant to this franchise or Company's operations in the City, it will make a good faith effort to advise the Company of such consideration; provided, however, that lack of notice shall not be justification for the Company's noncompliance with any applicable local requirements. If the City makes a substantive change in its local code or regulations that significantly impacts the rights granted pursuant to this franchise or Company's operations in the City and Company may renegotiate this Agreement.

3.6 Regulation of Streets and Public Utility Easements. The Company expressly acknowledges the City's right to enforce applicable regulations concerning the Company's access to or use of the streets and public utility easements, including requirements for permits.

3.7 Compliance with Laws. The Company shall promptly and fully comply with all applicable laws, regulations, permits, and orders enacted by City.

ARTICLE IV

Franchise Fee

4.1 Franchise Fee. In consideration for the grant of this franchise, the Company shall collect and remit to the City a sum equal to five percent (5%) of the revenues derived annually from the sale of gas within the City, excluding the amount received from the City itself for gas service furnished it. Franchise fee payments shall be made in quarterly installments not more than thirty (30) days following the close of the quarter for which payment is to be made. Quarters shall end on March 31, June 30, September 30, and December 31. Payments at the beginning and end of the franchise shall be prorated. All payments shall be made to the City Finance Director.

4.2 Audit of Franchise Fee Payments.

(A) Access to Documents. The City Finance Director, or other representatives authorized by the City, shall have access to the books of the Company for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed, upon at least ten (10) business days' notice by the City. City agrees that any information marked by Company as confidential and proprietary shall be treated by the City as confidential and proprietary in accordance with applicable law, including the Colorado Open Records Act, § 24-72-203, C.R.S., to the extent that such statute applies.

(B) Company Response to Audit. If an audit contemplated by this section reveals the Company has underpaid the City, then City shall provide Company written notification regarding the existence of such underpayment, and Company shall proceed in good faith to verify the existence of the underpayment. Company shall have thirty (30) days within which to examine the City's findings. If Company agrees with the City's findings, it shall remit the amount of underpayment to City, plus interest on the past due amount computed at the rate set by the PUC for customer security deposits held by the Company within ten business (10) days after the end of the 30-day period. The cost of the audit shall be borne by the City unless the audit discloses that the Company has underpaid the franchise fee by 103% or more, in which case the reasonable costs of the audit shall be reimbursed to the City by the Company. If the Company disputes the underpayment, it shall provide the City with its formal response and make available documentation in support of its position at the end of the 30-day period. If an audit contemplated by this section reveals Company has overpaid the City, then Company shall provide City written notification regarding the existence of such overpayment, and City shall proceed in good faith to examine the Company's findings and determine if it agrees with the claim of an overpayment. The City shall have 30 days within which to examine the Company's findings. If City agrees with the Company's finding of an overpayment, it shall remit the amount of overpayment to Company within ten (10) days after the end of the 30-day period; provided however that if the overpayment exceeds \$5,000.00 the City may, in its discretion repay the overpayment in monthly installments over a period of time equal to the time period that the overpayments were made. If the parties are not able to agree on the findings of an underpayment or overpayment, each party reserves all rights it may have to collect on any

monies owed pursuant to this Franchise and/or any applicable law.

4.3 Correction of Franchise Fee Payments. In the event that either the City or the Company discovers that there has been an error in the calculation of the franchise fee payment to the City, it shall provide written notice to the other party of the error. If the party receiving written notice of error does not agree with the written notice of error, that party may challenge the written notice of error pursuant to Section 4.4 of this Article; otherwise, the error shall be corrected in the next monthly payment that has not yet been processed by the Company. However, if the error results in an overpayment of the franchise fee to the City, and said overpayment is in excess of \$5,000.00, credit for the overpayment shall be spread over the same period the error was undiscovered. All franchise fee underpayments shall be corrected in the next monthly payment, together with interest computed at the rate set by the PUC for customer security deposits held by the Company, from the date when due until the date paid. In no event shall either party be required to fund or refund any overpayment or underpayment made as a result of a Company error which occurred more than three (3) years prior to the discovery of the Company error.

4.4 Fee Disputes. Either party may challenge any written notification of error as provided for in Section 4.4 of this Article by filing a written notice to the other party within 30 days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the party's notice. The parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

4.5 Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Company is accepted by the City in lieu of any occupancy tax, license tax or similar tax, permit charge, inspection fee, assessment or excise upon the

pipes, mains, meters or other personal property of the Company or on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Company from any lawful taxation upon its real property or any other tax not related to the franchise or the physical operation thereof.

4.6. Change of Franchise Fee. Once during each calendar year of the franchise, the City Council, upon giving thirty (30) days' notice to the Company, may review and change the franchise fee that the City may be entitled to receive as a part of the franchise; provided, however, that the Council may only change the franchise fee amount such as to cause the City to receive a franchise fee under this franchise not greater than the franchise fee that the Company may pay to any other city or City in any other franchise under which the Company renders gas service in Colorado.

4.7. Contract Obligation. If the franchise fee specified in this Article is declared illegal, unconstitutional, or void for any reason by any court of proper authority, the Company is contractually bound to pay the City an amount that would be, as near as practicable, equivalent to the amount which would have been paid by the Company as a franchise fee hereunder, prior to such declaration.

ARTICLE V

Conduct of Business

5.1 The Company may establish, from time to time, such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the Company to exercise its rights and perform its obligations under this franchise; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the laws of the State of Colorado.

5.2 Tariffs on File. The Company shall keep on file in its nearest office copies of all its tariffs currently in effect and on file with the PUC. Said tariffs shall be available for inspection by the public.

5.3 Compliance with PUC Regulations. The Company shall comply with all rules and regulations adopted by the PUC.

5.4 Compliance with Company Tariffs. The Company shall furnish gas within the City to the City and to all persons, businesses, and industries within the City at the rates and under the terms and conditions set forth in its tariffs on file with the PUC.

5.5 Applicability of Company Tariffs. The City and the Company recognize that the lawful provisions of the Company's tariffs on file and in effect with the PUC are controlling over any inconsistent provision in this franchise dealing with the same subject matter. If PUC changes or voids any portion of this Agreement City and Company shall renegotiate this Agreement.

ARTICLE VI

Construction, Installation & Operation of Company Facilities

6.1 Location of Facilities. Company facilities shall not interfere with the City's water mains, sewer mains or other municipal and utility use of streets and other public places. Company facilities shall be located so as to cause minimum interference with public use of streets and other public places and shall be maintained in good repair and condition and in compliance with all federal, state and local statutes, ordinances, rules, and regulations.

6.2 Excavation and Construction. All construction, excavation, maintenance

and repair work done by the Company shall be done in a timely and expeditious manner that minimizes the inconvenience to the public and individuals. All such construction, excavation, maintenance and repair work done by the Company shall comply with all applicable local, state and federal codes including compliance with the City's standard permits applicable to work in the Public Rights-of-Way. The Company shall furnish to the City the plans for such work and shall obtain all necessary building permits and shall conform to all applicable zoning and subdivision regulations. Such plans shall be reviewed by the City to ascertain, inter alia, that the Company is in compliance with the following requirements: (1) that all applicable laws, including building and zoning codes and air and water pollution regulations, are complied with; (2) that aesthetic and good planning principles have been given due consideration and (3) that adverse impact on the environment has been minimized. The Company shall incorporate all reasonable changes requested by the City. The Company shall comply with the City's requests for reasonable and prompt action to remedy all damage to private property adjacent to streets or dedicated easements where the Company is performing construction, excavation, maintenance or repair work. The City reserves the right to restore property and remedy damages caused by Company activities at the expense of the Company in the event the Company fails to perform such work within a reasonable time after notice from the City and to charge the Company the cost of such restoration and remedial action and such charges shall be paid by the Company to the City within thirty (30) days.

6.3 Restoration. When the Company does any work in or affecting the Public Rights-of-Way or Other City Property, it shall, at its own expense, promptly remove any obstructions placed thereon or therein by the Company and restore such Public Rights-of-Way or Other City Property, to a condition that is substantially the same as existed before the work and meets applicable City standards for restoration contained within the City's standard Public Rights-of-Way permits. If

weather or other conditions do not permit the complete restoration required by this section, the Company may, with the approval of the City, temporarily restore the affected Public Rights-of-Way or Other City Property, provided that such temporary restoration is not at the City's expense, and provided further that the Company promptly undertakes and completes the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Upon the request of the City, the Company shall restore the Public Rights-of-Way or Other City Property to a better condition than existed before the work was undertaken, provided that the City shall be responsible for any incremental costs of such restoration if not required by then-current City standards and provided that the City seeks or grants, as applicable, any additional required approvals. If the Company fails to promptly restore the Public Rights-of-Way or Other City Property as required by this section, and if, in the reasonable discretion of the City immediate action is required for the protection of public health and safety, the City may restore such Public Rights-of-Way or Other City Property, or remove the obstruction therefrom; provided however, City actions do not interfere unreasonably with Company Facilities. The Company shall be responsible for the reasonable cost incurred by the City to restore such Public Rights-of-Way or Other City Property, or to remove any obstructions therefrom. In the course of its restoration of the Public Rights-of-Way or Other City Property under this section, the City shall not perform work on Company facilities unless specifically authorized by the Company in writing on a project-by-project basis and subject to the terms and conditions agreed to in such authorization.

6.4 Relocation of Company Facilities.

(A) *Relocation Obligation.* The Company shall temporarily or permanently remove, relocate, change, or alter the position of any Company facility (collectively, "relocate(s)," "relocation(s)," or "relocated") in Public Rights-of-Way at no cost or expense to the City whenever the City

determines such relocation is necessary for the completion of any Public Project. In the case of relocation that is necessary for the completion of any Public Project in an easement held by the Company or other third-party for the benefit of the Company (excluding City streets and public utility easements), the Company shall not be responsible for any relocation costs. For all relocations, the Company and the City agree to cooperate on the location and relocation of the Company facilities in the Public Rights-of-Way or Other City Property in order to achieve relocation in the most efficient and cost-effective manner possible. Notwithstanding the foregoing, once the Company has relocated any Company Facility at the City's direction, if the City requests that the same Company Facility be relocated within one year, the subsequent relocation shall not be at the Company's expense. Nothing provided herein shall prevent the Company from recovering its relocation costs and expenses from third parties.

(B) *Private Projects.* The Company shall not be responsible for the expenses of any relocation required by Private Projects, and the Company has the right to require the payment of estimated relocation expenses from the affected private party before undertaking the relocation.

(C) *Relocation performance.* The relocations set forth in 6.6(A) above shall be completed within a reasonable time with respect to the scope of the project, not to exceed ninety (90) days from the later of the date on which the City requests, in writing, that the relocation commence, or the date when the Company is provided all supporting documentation, subject to the parties' ability to negotiate a longer period given specific circumstances affecting the project. The Company shall notify the City within twenty (20) days of receipt of the request if the supporting documentation is insufficient to complete the project. The Company shall

receive an extension of time to complete a relocation where the Company's performance was delayed due to force majeure, the actions of a third party that is not a contractor or subcontractor or otherwise working on behalf of the Company, or the failure of the City to provide adequate supporting documentation. The Company has the burden of presenting evidence to reasonably demonstrate the basis for the delay. Upon written request of the Company, the City may also grant the Company reasonable extensions of time for good cause shown and the City shall not unreasonably withhold any such extension.

(D) Completion. Each relocation shall be complete only when the Company actually relocates the Company Facilities, restores the relocation site in accordance with Section 6.3 of this Article or as otherwise agreed with the City, and removes from the site or properly abandons on-site (with City permission which shall not be unreasonably withheld or delayed) all unused facilities, equipment, material and other impediments.

(E) Scope of obligation. Notwithstanding anything to the contrary in this franchise, the Company shall not be required to relocate any Company Facilities from property: (a) owned by the Company in fee; or (b) in which the Company has a property right, grant, or interest, including without limitation an easement, but excluding public utility easements.

(F) Coordination. When requested in writing, the City and the Company shall meet to share information regarding coordination of anticipated projects that will require relocation of Company Facilities in the City. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any reasonable timetable established by the City for any public project. The City shall provide the

Company with one year's advance notice of any planned street repaving to the extent the City has such information. The Company shall make reasonable best efforts to complete any necessary or anticipated repairs or upgrades to Company Facilities that are located underneath the street within the one-year period if practicable.

(G) City revision of supporting documentation. Any revision by the City of supporting documentation provided to the Company that causes the Company to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under this franchise.

(H) Delays. Should the City believe that the Company has failed to comply with any of its obligations contained in this Section, where the alleged delay has caused damages to be incurred by the City, the City will pursue its claim through the Company's internal claims process in an attempt to resolve the issues. The Company will process the claim in accordance with its policies and pay any amount the parties agree is due pursuant to the terms of a written settlement agreement. If the parties are unable to resolve the disputed issues through the Company's internal claims process, the City reserves all rights to seek compensation from the Company for any alleged damages and the Company reserves the right to assert no damages are owed to the City.

(I) Underground relocation. Underground facilities shall be relocated underground unless underground location is no longer the accepted standard for gas utilities. Above ground facilities shall be relocated above ground. Service to new areas shall be performed with Distribution Facilities located below ground, unless otherwise approved by the City.

6.5 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, or may be personally delivered in writing to Atmos and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Atmos may reasonably require in order to ascertain 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.

6.6 Restoration of Service. In the event the Company's gas system, or any part thereof, is partially or wholly destroyed or incapacitated, the Company shall use due diligence to restore its system to satisfactory service within the shortest practicable time.

6.7 Supply and Quality of Service. The Company shall take all reasonable steps to make available an adequate supply of gas to provide service in the City. The Company's facilities shall be of sufficient quality, durability and redundancy to provide adequate and efficient gas service to the City.

6.8 Safety Regulations by the City. The City reserves the right to adopt, from time to time, reasonable regulations in the exercise of its police power which are necessary to ensure the health, safety, and welfare of the public, provided that such regulations are not in conflict of the rights granted herein. The Company agrees to comply with all such regulations, in the construction, maintenance and operation of its facilities and in the provision of gas within the City.

6.9 Inspection, Audit and Quality Control. The City shall have the right to inspect, at all reasonable times, any portion of the Company's system used to serve the City and its residents. The City also shall have the right to inspect and conduct an audit of Company records relevant to compliance with any terms of this Agreement at all reasonable times. The Company agrees to cooperate with the City in conducting the inspection and/or audit and to correct any discrepancies affecting the City's interest in a prompt and efficient manner.

6.10 City Not Required to Advance Funds. Upon receipt of the City's authorization for billing and construction, the Company shall extend its facilities to provide gas service to the City for municipal uses within the City limits or for any major municipal facility outside the City limits, without requiring the City to advance funds prior to construction.

ARTICLE VII

Purchase or Condemnation

7.1 City's Right to Purchase or Condemn. The right of City to construct, purchase or condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved.

7.2 Continued Cooperation by Company. In the event the City exercises its option to purchase or condemn, the Company agrees that, at the City's request, it will continue to supply any service it supplies under this franchise, for the duration of the term of this franchise pursuant to terms and conditions negotiated for such continued operation.

ARTICLE VIII

Removal of Company Facilities at End of Franchise

8.1. Limitations of Company Removal. In the event this franchise is not renewed at the expiration of its term or the Company terminates any service provided herein for any reason whatsoever, the City has not purchased or condemned the system and has not provided for alternative gas service, the Company shall not be required nor shall it have the right to remove said system pending resolution of the disposition of the system. The Company further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount than it would have been entitled to were such services provided during the term of this franchise. However, in the event the obligation to maintain the facilities continues beyond the expiration of the franchise agreement, the Company and City shall negotiate the terms and conditions for such continued operation. Only upon receipt of written notice from the City stating that the City has adequate alternative gas sources to provide for the people of the City shall the Company be entitled to remove any or all of said systems in use under the terms of this franchise.

ARTICLE IX

Small Gas Production

9.1 Company to Purchase. The City expressly reserves the right to engage in

the production of gas. The Company agrees to negotiate for the purchase of City-produced gas in accordance with its tariffs and applicable Public Utilities Commission Rules and Regulations, provided that such gas is of equal quality, its source is reliable, it is produced in commercially marketable quantities, and its composition is compatible with other gas being purchased by the Company.

ARTICLE X

Termination and Cure

10.1 Notice / Cure / Remedies. Except as otherwise provided in this franchise, if a party (the "breaching party") to this franchise fails or refuses to perform any of the terms or conditions of this franchise (a "breach"), the other party (the "nonbreaching party") may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach, or, if such breach cannot be remedied in thirty (30) days, such additional time as reasonably needed to remedy the breach, but not exceeding an additional thirty (30) day period, or such other time as the parties may agree. If the breaching party does not remedy the breach within the time allowed in the notice, the nonbreaching party may exercise the following remedies for such breach:

- (A) Specific performance of the applicable term or condition; and
- (B) Recovery of actual damages (excluding special or consequential damages) from the date of such breach incurred by the nonbreaching party in connection with the breach.

10.2 Termination of Franchise by City. In addition to the foregoing remedies, if

the Company fails or refuses to perform any material term or condition of this franchise (a "material breach"), the City may provide written notice to the Company of such material breach. Upon receipt of such notice, the Company shall be given a reasonable time, not to exceed ninety (90) days, in which to remedy the material breach or, if such material breach cannot be remedied in ninety (90) days, such additional time as reasonably needed to remedy the material breach, but not exceeding an additional ninety (90) day period, or such other time as the parties may agree. If the Company does not remedy the material breach within the time allowed in the notice, the City may, at its sole option, terminate this franchise. This remedy shall be in addition to the City's right to exercise any of the remedies provided for elsewhere in this franchise. Upon such termination, the Company shall continue to provide utility service to the City and its residents (and shall continue to have associated rights and grants needed to provide such service) until the City makes alternative arrangements for such service and until otherwise ordered by the PUC and the Company shall be entitled to collect from residents and shall be obligated to pay the City, at the same times and in the same manner as provided in this franchise, an aggregate amount equal to the amount which the Company would have paid as a franchise fee as consideration for use of the Public Rights-of-Way.

10.3 Judicial Review. Any such termination shall be subject to judicial review as provided by law.

10.4 No Limitation. Except as provided herein, nothing in this franchise shall limit or restrict any legal rights or remedies that either party may possess arising from any alleged breach of this franchise.

ARTICLE XI

Indemnification of the City

11.1. City Held Harmless. The Company shall indemnify, defend, and save the City harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Company within the City pursuant to this franchise and the securing of and the exercise by the Company of the franchise rights granted in this Agreement and shall pay all reasonable expenses, including any reasonable attorney fees incurred by City in defense of any such claim or demand, arising therefrom. In fulfilling its obligation to defend and indemnify City, Company shall have the right to select defense counsel, subject to City's approval, which will not be unreasonably withheld. The City will provide prompt written notice to the Company of the pendency of any claim or action against the City arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision to the contrary, neither the City nor the Company shall be obligated to indemnify, defend or hold the other party harmless to the extent any claim, demand or lien arises out of or in connection with any negligent act or failure to act of the other party or any of its officers or employees. In the event of joint and concurrent negligence or fault of both the Company and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Colorado without, however, waiving any governmental immunity available to the City under Colorado law and without waiving any of the defenses of the parties under Colorado law. If litigation arises between the parties, the substantially prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

11.2. Payment of Expenses Incurred by City in Relation to Agreement. At the

City's option, the Company shall pay in advance or reimburse the City for actual expenses incurred in the publication of notices and ordinances, and for photocopying of documents arising out of the negotiations or the process of obtaining the franchise.

11.3. Financial Responsibility. At the time of the execution of this Agreement, and from time to time at the City's request, not more frequently than annually, the Company shall submit to the City, as a confidential document, proof of its ability to meet its obligations under this Agreement, including its ability to indemnify the City as a required by this article. This proof may take the form of proof of insurance coverage, adequate funding of self-insurance, or the provision of a bond. The Company shall supply the City with a list of its insurance companies with the types of coverage, but not maximum levels of insurance. However, Company shall certify that such insurance provides a minimum of coverage equal to \$5,000,000. Said list shall be kept current by annual revisions during the term of the franchise and given to the City when requested. The City may require, from time to time, and the Company agrees to provide, additional reasonable proof of funding of the Company's indemnification obligations as a self-insured, if Company is acting as a self-insurer. Company shall cause its insurer to be required to notify City of any lapse or reduction in insurance coverage and Company shall produce to City evidence that it has completed this obligation.

11.4 Governmental Immunity. Nothing in this section or any other provision of this franchise shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the City may have under the Colorado Governmental Immunity Act (C.R.S. § 4-10-101 et seq.) or of any other defenses, immunities, or limitations of liability available to the City by law.

ARTICLE XII

Assignment; Saving Clause

12.1 **Assignment**. The Company shall not transfer or assign any rights under this franchise to a third party, excepting only corporate reorganizations of the company not including a third party, unless the City shall approve such transfer or assignment as required by law. Approval of the franchise or assignment shall not be unreasonably withheld by the City. However, City shall not be obligated to approve any assignment if Company is in default of any of its material obligations hereunder or if the Assignee is materially weaker than Company. 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, the City may request additional documents and information reasonably related to the transaction and the legal, financial, and technical qualifications of the Assignee. Any such assignment or transfer shall require that said Assignee assume all obligations of Company be bound to the same extent as Company hereunder. If within the first 90 days after assignment to Assignee, City identifies a failure to comply with a material provision of this Franchise Agreement, City shall have the right to terminate this Franchise Agreement in accordance with the provisions of Article X.

11.2 **Saving Clause**. If a court of competent jurisdiction declares any portion of this franchise to be illegal or void, the remainder of the Agreement shall survive and not be affected thereby.

ARTICLE XIII

Force Majeure

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Company 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 Company is so prevented shall not be counted against Company for any reason. The term "force majeure," as used herein, shall mean any cause not reasonably within Company control and includes, but is not limited to, acts of God, strikes, lockouts, wars, terrorism, riots, orders, or decrees of any lawfully constituted federal, state or local body (other than the City); 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; and temporary failures of gas supply.

ARTICLE XIV

Amendments

14.1 **Proposed Amendments.** At any time during the term of this franchise, the City or the Company may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendment(s) desired, and both parties thereafter will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). However, nothing contained in this section shall be deemed to require either party to consent to any amendment proposed by the other party.

14.2 **Effective Amendments.** No alterations, amendments or modifications to this

franchise shall be valid unless executed by an instrument in writing by the parties, adopted with the same formality used in adopting this franchise, to the extent required by law. Neither this franchise, nor any term hereof, may be changed, modified or abandoned, in whole or in part, except by an instrument in writing, and no subsequent oral agreement shall have any validity whatsoever.

ARTICLE XV

Miscellaneous

15.1 **No Waiver**. Neither the City, nor the Company 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, employees, or agents, upon any one or more occasions, to insist upon or to seek compliance with any such terms and conditions.

15.2 **Successors and Assigns**. The rights, privileges, and obligations, in whole or in part, granted and contained in this franchise shall inure to the benefit of and be binding upon the Company, its successors and assigns, to the extent that such successors or assigns have succeeded to or been assigned the rights of the Company pursuant to Article XII of this franchise. Upon a transfer or assignment pursuant to Article XII, the Company shall be relieved from all liability from and after the date of such transfer.

15.3 **Third Parties**. Nothing contained in this franchise shall be construed to provide rights to third parties.

15.4 **Conflict of Interest**. The parties agree that no official, officer, or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Company further agrees not to hire or

contract for services any official, officer or employee of the City to the extent prohibited by law, including ordinances and regulations of the City.

15.5 Certificate of Public Convenience and Necessity. The City agrees to support the Company's application to the PUC to obtain a certificate of public convenience and necessity to exercise its rights and obligations under this franchise.

15.6 Authority. Each party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable law, to legally authorize the undersigned signatories to execute this franchise on behalf of the parties and to bind the parties to its terms. The persons executing this franchise on behalf of each of the parties warrant that they have full authorization to execute this franchise. The City acknowledges that notwithstanding the foregoing, the Company requires a certificate of public convenience and necessity from the PUC in order to operate under the terms of this franchise.

15.7 Representatives. Both parties shall designate from time to time in writing representatives for the Company and the City who will be the persons to whom notices shall be sent regarding any action to be taken under this franchise. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the City Administrator and to the Atmos Energy Manager of Public Affairs.

15.8 Parks and Open Space. The Company shall offer to grant to the City use of transmission right-of-way which it now, or in the future, owns or has an interest in within the City for the purposes set forth in and pursuant to the provisions of the

Park and Open Space Act of 1984, provided that the Company shall not be required to make such an offer in any circumstance where such offer would interfere with public safety or the Company's use of the transmission right-of-way. The Company's standard easement document shall be used. If the Company's offer is accepted by the City, then any improvements deemed appropriate by the City, approved by the Company, and consistent with the purpose of the Park and Open Space Act of 1984 shall be made by the City at its expense.

15.9 Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court in Colorado.

THE CITY OF SALIDA, COLORADO

By:

Mayor

ATTEST:

City Clerk

DATE: _____, 2025.

ACCEPTED AND AGREED TO:

ATMOS ENERGY CORPORATION

By:

Kathleen Ocanas
Vice President (Colorado-Kansas
Division)

City's Mailing Address and Phone Number:

City of Salida
448 E 1st St #112,
Salida, CO 81201

(719) 539-4555