

ORDINANCE NO: 2017-05-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING ORDINANCE NO. 2016-02-015, WHICH ORDINANCE GRANTED 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 CITY OF MCKINNEY, COLLIN COUNTY, TEXAS, FOR THE TRANSPORTATION, DELIVERY, SALE, AND DISTRIBUTION OF GAS IN, OUT OF, AND THROUGH SAID CITY FOR ALL PURPOSES TO CLARIFY CERTAIN PROVISIONS CONTAINED IN SECTIONS 1, 5 AND 8 OF SAID ORDINANCE; PROVIDING FOR THE PAYMENT OF A FEE OR CHARGE FOR THE USE OF THE PUBLIC RIGHTS-OF-WAYS; AND PROVIDING THAT SUCH FEE SHALL BE IN LIEU OF OTHER FEES AND CHARGES, EXCEPTING AD VALOREM TAXES; AND REPEALING ALL PREVIOUS GAS FRANCHISE ORDINANCES

WHEREAS, the City Council of the City of McKinney, Texas, previously held public hearings regarding the grant of a non-exclusive franchise to Atmos Energy Corporation, Mid-Tex Division, at properly posted and noticed meetings of the City Council on January 5, 2016 and February 16, 2016 in accordance with the provisions of Section 118 of the City Charter of the City of McKinney, Texas; and

WHEREAS, Atmos Energy Corporation, Mid-Tex Division, desires to amend and clarify Sections 1, 5 and 8 of Ordinance No. 2016-02-015 regarding the non-exclusive franchise awarded to Atmos Energy Corporation, Mid-Tex Division; and

WHEREAS, the City Council of the City of McKinney, Texas, finds and determines that it is in the best interest of the public health, safety and general welfare of the citizens of McKinney, Texas, to amend and clarify Sections 1, 5 and 8 of Ordinance No. 2016-02-015 regarding the non-exclusive franchise awarded to Atmos Energy Corporation, Mid-Tex Division.

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

Section 1. **FINDINGS**

All of the above premises are found to be true and correct and are incorporated into the body of this Ordinance as if set forth in their entirety.

Section 2. **AMENDMENT TO SECTION 1**

From and after the effective date of this Ordinance, Section 1 of Ordinance No. 2016-02-015 is hereby amended by deleting Section 1, "Grant of Authority," in its entirety and replacing said Section 1 with a new Section 1, also entitled "Grant of Authority," to read as follows:

"Section 1. Grant of Authority

The City of McKinney, Texas, hereinafter called "City," 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 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 the City 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 February 28, 2026. Notwithstanding the foregoing the term of this Franchise shall be automatically extended for an additional period of five (5) years from the forgoing expiration date (“Extension Period”) provided that (a) Atmos Energy provides City at least 180 days’ notice of the upcoming termination and the desire of Atmos Energy to renew the Franchise and (b) written notice of cancellation has not been given by either the City or Atmos Energy to the other party at least sixty (60) days before the expiration of the initial term of the Franchise.”

Section 3. **AMENDMENT TO PARAGRAPH A of SECTION 5, “PAYMENTS TO CITY”**

From and after the effective date of this Ordinance, Section 5, “Payments to City,” of Ordinance No. 2016-02-015 is hereby amended, in part, by amending Paragraph A thereof by deleting Paragraph A in its entirety and replacing said paragraph with a new Paragraph A to read as follows:

“A. Atmos Energy, its successors and assigns, agrees to pay and City agrees to accept, on or before the last days of May, August, and November, 2016, and February, 2017, and on or before the same days of each succeeding year during the life of this franchise, exclusive of any Extension Period, with the obligation to make the last payment surviving the termination of this Franchise should the termination date and quarterly dates vary, 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 quarter. Payments of 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 quarter of any Extension Period shall similarly be paid by Atmos Energy its successors and assigns to City on or before the last days of May, August, November and February of such subsequent years with the obligation to make the final payment, again, surviving the termination of this Franchise should the termination date and quarterly dates vary.”

Section 4. **AMENDMENT TO PARAGRAPH B(5) of SECTION 5, “PAYMENTS TO CITY”**

From and after the effective date of this Ordinance, Section 5, “Payments to City,” of Ordinance No. 2016-02-015 is hereby amended, in part, by amending Paragraph B thereof, in part by deleting Subparagraph (5) of

Paragraph B in its entirety and replacing said Subparagraph (5) with a new Subparagraph (5) to read as follows:

- “(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 paid to the City;
 - (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, that this exclusion does not apply to the lease of facilities within the City's right of way.”

Section 5. AMENDMENT TO SECTION 8, “EFFECTIVE DATE”

From and after the effective date of this Ordinance, Section 8, “Effective Date,” of Ordinance No. 2016-02-015 is hereby amended by deleting said Section in its entirety and replacing said Section with a new Section 8 that is also entitled “Effective Date” to read as follows:

“Section 8. Effective Date

If Atmos Energy accepts this ordinance, it becomes effective as of March 21, 2016.”

Section 6. REPEALER CLAUSE

This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 7. EFFECTIVE DATE

This Ordinance shall become effective from and after its adoption and is so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 16TH DAY OF MAY, 2017.

CITY OF MCKINNEY, TEXAS

BRIAN LOUGHMILLER
Mayor

CORRECTLY ENROLLED:

SANDY HART, TRMC, MMC
City Secretary
DENISE VICE, TRMC
Assistant City Secretary

DATE: _____

APPROVED AS TO FORM:

MARK S. HOUSER
City Attorney