Ordinances Governing

UTILITIES

in the

CITY OF ARLINGTON

TEXAS

Amended by Ordinance No. 15-064

(December 15, 2015)

(Chapter Designator: UTILITIES)

ORDINANCE HISTORY

Number	Date of Adoption	Comments
88-78	05/24/88	
88-116	08/16/88	
88-141	10/18/88	
93-85	08/10/93	Amend **Article IV,** Electricity, by the addition of **Section 4.16**, 1993 Amendment, relative to the amendment of the existing franchise between the City and Texas Utilities Electric Company to provide for a different consideration.
97-44	04/01/97	Addition of **Article VII**, establishing rules governing the use of city rights-of-way by providers of telecommunications services, setting fees for the use of city rights-of-way, creating offenses and providing a penalty.
99-96	08/10/99	Repeal Ordinance No. 98-49 and **Article II**, Telephone, and adopt new **Article II**, Certificated Telecommunications Providers, relative to establishing rules and regulations governing the use of City public rights-of-way by providers of telecommunications services, setting fees for the use of City public rights-of-way, providing for municipal consent procedures and construction obligations.
02-007	01/15/02	Addition of **Article VIII**, Electric Provider Registration; providing for the registration of retail electric providers pursuant to the Texas Utilities Code; providing for a registration fee; and providing for the suspension or revocation of registration for noncompliance with this Ordinance or the Texas Utilities Code.

02-118	10/15/02	Amend **Article III**, Gas, by the addition of **Section 3.13**, 2002 Amendment, relative to the amendment of the existing gas franchise between the City and TXU Gas Company, to provide for a different consideration and to authorize the lease of facilities within the City's rights-of-way.
02-119	10/15/02	Amend **Article IV**, Electricity, by the addition of **Section 4.17**, 2002 Amendment, relative to the amendment of the existing electric franchise between the City of Arlington and Oncor Electric Delivery Company to provide for a different consideration.
03-046	04/22/03	Repeal of **Article VIII**, Electric Provider Registration, and addition of new **Article VIII**, Registration of Retail Electric Providers, to provide for the registration of retail electric providers, requiring local registration of retail electric providers pursuant to Section 39.358 of the Texas Utilities Code, registration fee, suspension or revocation of registration for significant violations of Chapter 39 of the Texas Utilities Code.
03-069	06/10/03	Repeal of paragraphs 2, 3, and 6 of **Ordinance No. 03-046** regarding the penalties for violation of any of the provisions of this ordinance (paragraph 2), the declaration to be cumulative of all other ordinances of the City of Arlington (paragraph 3), and enjoining suit for any violation of this ordinance (paragraph 6).
05-112	12/20/05	Amend **Article III**, Gas, relative to granting to Atmos Energy Corporation, a Texas and Virginia corporation, its successors and assigns, a franchise to furnish, transport and supply gas to the general public in the City of Arlington, Tarrant County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all previous Atmos Energy gas franchise ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; prescribing the terms, conditions, obligations and limitations under

		which such franchise shall be exercised; and providing a most favored nations clause.
08-087	09/16/08	Amend **Article III**, Gas, by the addition of **Section 3.28**, 2008 Amendment, relative to amending the existing gas franchise between the City and Atmos Energy Corporation to provide for a different compensation; providing for acceptance by Atmos Energy Corporation.
13-053	11/19/13	Amend **Article IV**, Electricity, **Section 4.10**, Period of Time of this Ordinance-Expiration-Renewal, by extending the initial term.
14-040	08/05/14	Amend **Article IV**, Electricity, in its entirety, relative to the City granting to Oncor Electric Delivery Company LLC a franchise for the purpose of constructing, maintaining and operating an electric delivery system in the City; prescribing compensation to the City from the Company for the franchise privilege; and prescribing the term and effective date of said franchise.
15-064	12/15/15	Amend **Article III**, Gas, relative to granting to Atmos Energy Corporation, a Texas and Virginia corporation, its successors and assigns, a franchise to furnish, transport and supply gas to the general public in the City of Arlington, Tarrant County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all previous Atmos Energy gas franchise ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; and prescribing the terms, conditions, obligations and limitations under which such franchise shall be exercised.

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ARTICLE I

General Provisions

Section 1.01 Definitions

As used in this Article, unless the context requires otherwise, the following words shall have the following meanings:

A. Adjusted Value: A reasonable balance between:

1. Original cost of the property, less depreciation;

2. Current cost, less an adjustment for both present age and condition; and

3. Construction works in progress at original cost as recorded on the books of the utility where necessary to the financial integrity of the utility.

The City shall have the discretion to determine a reasonable balance that reflects not less than sixty percent (60%) nor more than seventy-five percent (75%) original cost, less depreciation, and not less than twenty-five percent (25%) nor more than forty percent (40%) current cost, less an adjustment for both present age and condition. The City may consider inflation, deflation, quality of service being provided, the growth rate of the service area and the need for the utility to attract new capital in determining a reasonable balance.

B. City: The City of Arlington, Texas.

C. Current Cost: The cost of replacing existing utility plant at current prices. The methods for determining current cost shall be as provided by the rules of the Public Utility Commission of Texas for electric utilities and as provided by the rules of the Railroad Commission of Texas for gas utilities.

D. Customer: Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency or other form of legal entity provided with services by any utility.

E. Director: The Finance Director of the City of Arlington.

F. Electric Utility: Any person, corporation, river authority, cooperative, corporation or any combination
thereof, other than a municipal corporation, or their lessees, trustees and receivers, now or hereafter owning or operating for compensation equipment or facilities for producing, generating, transmitting, distributing, selling or furnishing electricity.

G. Gas Utility: Any person, corporation, river authority, cooperative, corporation or any combination thereof, other than a municipal corporation, or their lessees, trustees and receivers, now or hereafter owning or operating for compensation equipment or facilities for transmitting or distributing combustible hydrocarbon natural or synthetic natural gas for sale or resale in a manner which is not subject to the Federal Power Commission under the Natural Gas Act (15 U.S.C.A., Section 717, et seq.) provided that the production and gathering of natural gas, the sale of natural gas in or within the vicinity of the field where produced, the distribution or sale of liquified petroleum gas and the transportation, delivery or sale of natural gas for fuel for irrigation wells or any other direct use in agricultural activities is not included.

H. Gross Utility Plant in Service: Cost of plant in service, not reduced by accumulated depreciation or adjustment for present age and condition.

I. Incremental Gross Revenue Conversion Factor: Factor to increase recommended or proposed income to compensate for federal income taxes and other income and revenue related taxes.

J. Major Change in Rates: An increase in rates which would increase the aggregate revenues of the utility more than the greater of One Hundred Thousand Dollars and No Cents ($100,000.00), or two and one-half percent (2½%) of the amount the utility is collecting from customers in the City, but shall not include changes in rates allowed to go into effect by the City or made by the utility pursuant to an order of the City after hearings held upon notice to the public.

K. Original Cost: The actual cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor.

L. PUR Act: The Public Utility Regulatory Act of Texas, Article 1446c, Vernon's Annotated Civil Statutes of Texas, as it may be amended from time to time.

M. Rate: Every compensation, tariff, charge, fare and classification, or any of them demanded, observed, charged or collected whether directly or indirectly by any public utility for producing, generating, transmitting, distributing, selling or furnishing electricity, or for transmitting or distributing combustible hydrocarbon natural or synthetic natural gas for sale or resale in a manner which is not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act (but excluding the production and gathering of natural gas, the sale of natural gas in or within the vicinity of the field where produced, the distribution or sale of liquefied petroleum gas and the transportation, delivery or sale of natural gas for fuel for irrigation wells or any other direct use in agricultural activities) and any rules, regulations, practices or contracts affecting such compensation, tariff, charge, fare or classification.

N. Rate Base: The same as defined by the Public Utility Commission of Texas Substantive Rule 052.02.03.031.

O. Tariff: The schedules of a utility containing all rates charged for utility service to all classes of customers, including all industrial customers.

P. Test Year: The most recent twelve (12) months for which operating data for the utility are available, commencing with a calendar quarter.

Section 1.02 Uniform Accounts

Every electric utility shall keep uniform accounts as prescribed from time to time by the Public Utility Commission of Texas. Every gas utility shall keep uniform accounts as prescribed from time to time by the Railroad Commission of Texas.

Section 1.03 Rate Filing Package

A. All statements of intent to change rates filed with the City, pursuant to Section 43 of the PUR Act shall be filed with the City Secretary and shall be reviewed by the Director and shall include the information specified in this Section. A utility may submit such additional information as it considers relevant and appropriate, but such information shall be clearly separated from that required by this Section.

B. For purposes of the time limits set forth in Section 43 of the PUR Act, no statement of intent shall be deemed
filed with the City unless and until it contains substantially all information called for in this Article. However, a statement of intent shall be deemed to be sufficiently complete to state the time limits of Section 43 running, unless the City Council, within ten (10) days of the time the statement is filed in the case of non-major changes in rates, and within thirty (30) days of the time the statement is filed in the case of major changes in rates, notifies the utility of the claimed insufficiency of the statement. Each notice shall be in writing and shall point out each claimed insufficiency with particularity. In such event, the time limits of Section 43 shall start running as of the time that all of such insufficiencies are corrected. Nothing in this Section shall limit the right and duty of the City to reasonably require information in addition to that in a statement of intent, provided, however, any such requirement for additional information shall not affect the running of the time limits of Section 43.

C. Statements of intent to increase rates in a manner which would not constitute major changes in rates shall include the following information:

1. A complete set of proposed revised tariffs;

2. A statement specifying in detail each proposed tariff revision, the classes and number of utility customers affected and the change in gross revenues (in absolute dollar amounts and in percentage terms,

by customer class and by total) that the utility expects the revised tariffs to furnish as opposed to those furnished by existing tariffs;

3. All other information, if any, required by the PUR Act;

4. A sworn statement by a responsible official of the utility that the proposed change of rates is not a major change as that term is defined, and that the information is accurate.

D. Statements of intent to increase rates in a manner which would constitute major changes in rates shall include all information required by the City's major rate filing package described below, as well as all additional information, if any, that may be required by the PUR Act. The City's major rate filing package shall consist of the elements listed below. The required information shall be for the utilities operations within the municipal boundaries of the City and/or the entire utility system, as specified below. Any schedule requiring information on a City basis shall include a detailed statement of the allocation methods and factors used in making any allocation that may have been made in such schedule. The major rate filing package shall be sworn to as being accurate by a responsible official of the utility. The City Council from time to time may prescribe specific forms for the schedules described below. The elements comprising the rate filing package are the following:

1. <u>Summary Information</u> (on both a City and system basis):

a. A complete set of proposed revised tariffs.

b. A statement specifying in detail each proposed tariff revision, the classes and numbers of utility customers affected and the change in gross revenues (in absolute dollar amounts and in percentage terms, by customer class and by total) that the utility expects the revised tariffs to furnish as opposed to those furnished by existing tariffs.

c. A schedule comparing under current tariffs, the actual or allocated income statements or cost of service for the test year, including all proposed pro forma adjustments to the test year.

d. A schedule comparing the actual capital structure of the consolidated company for the test year, including all proposed pro forma adjustments to the test year.

e. A schedule showing gross plant in service and a breakdown by functional classification of construction work in progress for the test year.

f. A schedule showing forecasted construction expenditures for the year immediately following the test year, showing

expenditures on major projects separately, to the extent possible.

g. A schedule showing the rates of return (on actual and adjusted basis) for the test year on the original cost rate base and the book common equity, together with an explanation of the basis on which those rates of return were calculated.

h. A schedule setting forth, in the same format as reported to stockholders, the balance sheet of the utility, consolidated and unconsolidated, at the end of the test year and at the end of the twelve (12) month period immediately previous to the test year.

2. Rate Base and Rate of Return Information (on a City and/or system basis as indicated)

a. A schedule showing for the test year the components of the original cost rate base, current cost rate base and adjusted value rate base for the City and system calculated in accordance with those weighting factors set forth in Paragraph "b" below.

b. A schedule showing the weighting factors which the utility suggests should be used in determining the adjusted value rate base and setting forth the rationale for the use of such weighting factors.

c. A schedule setting forth the following elements of the plant in service accounts for the City and system:

(1) The book dollar amount of plant in service, classified by major accounts of the applicable uniform system of accounts as of the beginning of the test year;

(2) The book additions and reductions during the test year to such major accounts; and

(3) The balance of such accounts at the end of the test year.

d. A schedule showing for each of the twelve (12) months in the test year the monthly book balances of all of the plan in service for the City and system, classified by production, transmission, distribution and general, in the case of electric utilities; and classified by distribution and general, in the case of gas utilities.

e. A schedule showing gross plant in service for the City and system and a breakdown by functional classification of construction work in progress for the test year, together with a description of all administrative and general

expenses related to construction (including the methods and procedures followed in capitalizing interest during construction).

f. A schedule showing for the City and system:

(1) The accumulated provisions, as of the beginning of the test year, for depreciation and amortization of plant in service, classified by production, transmission, distribution and general, in the case of electric utilities; and classified by distribution and general, in the case of gas utilities;

(2) The book additions and reductions to such provisions during the test year;

(3) The balances of such provisions at the end of the test year.

g. A schedule showing the determination of current cost of the plant in service for the City and system, including an explanation of the methods and calculations used in arriving at such cost.

h. A schedule showing the determination of the adjustment for both age and condition of the plant in service for the City and system, including an explanation of the methods and calculations used.

i. A schedule showing the computation of the working capital allowance required for the City and system. This schedule shall include for each of the twelve (12) months in the test year the monthly book balances during the test year for materials and supplies (excluding appliances), prepayments and (in the case of electric utilities only) fuel.

j. A schedule showing on a City and system basis the rates of return (on an actual and adjusted basis) for the test year on the original cost rate base and the book common equity, together with an explanation of the basis on which those rates of return were calculated.

k. A schedule showing the percentage overall rate of return requested by the utility for the City and system on the original cost rate base and adjusted value rate base and general reasons and justifications for the requested rate of return in narrative form.

l. A schedule showing the balance of the amortized investment tax credit, showing remaining balances generated before 1971 and since 1971 for the City and system.

3. Cost of Capital Information (on a system basis only): If any component of the capital of the filing utility is not primarily obtained through its own financing and primarily obtained from a company by which the filing utility is controller, then the data required by this statement and supporting schedules shall be submitted with respect to the debt capital, preferred stock capital and common stock capital of such controlling company or any intermediate company through which such funds have been secured.

   a. A schedule showing the capitalization of the utility at the end of the test year (broken down by the following components: short term debt, long term debt, preferred equity and common equity), all pro forma adjustments of the capitalization (with supporting details), the cost of each component of capitalization and the weighted overall cost of capital.

   b. A schedule showing for each series of the utility's long-term debt outstanding at the end of the test year the following information:

      (1) Title of the debt issue.

      (2) Date of issuance and debt of maturity.

      (3) Interest rate.

      (4) Principal amount of issue.
            Gross proceeds.
          Underwriters' discount or commission:
            Amount.
            Percent gross proceeds.
          Issuance expense:
            Amount.
            Percent gross proceeds.
            Net proceeds.
            Net proceeds per unit.

(5) Cost of money:
Yield to maturity based on the interest rate and net proceeds per unit outstanding determined by reference to any generally accepted table of bond yields.

(6) If the issue is owned by an affiliate of the utility, state the name of the affiliate and its relationship to the utility.

(7) If the utility has acquired at a discount or premium some part of the outstanding debt which could be used in meeting sinking fund requirements or for other reasons, it shall show the annual amortization of the discount or premium for each series of debt from the date of acquisition over the remaining life of the debt being retired and separately show the total discount and premium, as a result of such amortization, applicable to the test year.

c. For each class and series of preferred and preference stock of the utility outstanding at the end of the test year, give the following information:

(1) Title of the stock issue.

(2) Date of issuance.

(3) If callable, call price.

(4) If convertible, terms of conversion.

(5) Par or stated amount of issue:
Gross proceeds.

(6) Underwriters' discount or commission:
Amount.
Percent gross proceeds.

(7) Issuance expenses:
Amount.
Percent gross proceeds.
Net proceeds.
Net proceeds per unit.

(8) Cost of money:
Dividend rate divided by net proceeds per unit.

(9) Whether the issue was offered to stockholders through subscription right or to the public.

(10) If the issue is owned by an affiliate and its relationship to the utility.

d. A schedule showing the computation of the utility's time interest earned ratio and fixed charge coverage ratio (by Securities and Exchange Commission method) before and after taxes for the actual test year and for the test year adjusted to take into account all pro forma adjustments and the requested revenue increase.

e. A schedule providing a summary of the utility's debt instrument fixed charge requirements, plus any other pertinent information (such as restrictions) pertaining to the issuance of the debt.

4. Income Information (on a City and/or system basis as indicated):

a. A schedule setting forth for the City and system the test year income statement or cost of service, all pro forma adjustments to the test year income statement or cost of service, and an adjusted test year income statement or cost of service taking into account such pro forma adjustments.

b. A schedule showing the details of all pro forma adjustments to the test year income statements or cost of service referred to in (a) above, with a full explanation of the methods and calculations on which said pro forma adjustments are based.

c. A schedule setting forth monthly detailed net income statements of the system for the test year, showing revenues by customer class and showing detailed operating expenses.

d. A schedule showing revenues by customer class for the City.

e. A schedule showing the following listed expenses actually incurred and claimed adjustments, if any, for each of the twelve (12) months of the test year for the system and directly assigned or allocated to the City:

(1) Advertising expense.

(2) Contributions and donations.

(3) Expenditures for influencing legislation or in support of political candidates or political movements.

(4) Expenditures in support of or membership in social, recreational, fraternal or religious clubs or organizations.

f. A schedule reconciling book net income of the utility with taxable net income as reported to the Internal Revenue Service for the most recent year for which a tax return was filed and the previous three years.

g. A schedule showing the net income or loss for the City and system resulting from the sale or lease by the utility of appliances, fixtures, equipment or other merchandise.

5. Rate Design Information:

a. A schedule showing for the City and system, the following test year information for each customer class:

(1) The designation of the class.

(2) The total number of customers of the class.

(3) The total consumption in kilowatt hours or thousand cubic feet of gas of customers of the class.

(4) The total revenues derived from customers of the class.

b. A detailed cost of service study for the City and system showing for each customer class the total expenses attributable to the class, the original cost rate base attributable to the class and the rate of return of the class, with a full explanation of all allocations and assumptions on which the study is based.

c. A schedule showing for the test year a bill frequency or other analysis showing consumption and number of bills at each rate and for each customer class for the City and system.

Section 1.04 Rate Setting

In setting the rates of utilities, the City shall comply with the PUR Act, and other relevant laws of the State of Texas, as interpreted by the Courts of the State of Texas.

Section 1.05 Waiver

The City Council may waiver the filing of any schedule or item of information required by this Article, so long as such filing is not required by other ordinance or by the laws of the State of Texas, if the City Council determines that such filing is either impractical or unduly burdensome upon the utility which otherwise would be required to file the schedule. Such waiver shall be effective only if requested in writing and granted in writing.

Section 1.06 Hearings

No major change in rates shall be granted without public hearings at which the utility shall have the burden of proving, through clear and convincing evidence, the necessity for such change. All hearings shall be before the City Council. A record shall be made of all hearings at the expense of the utility.

Section 1.07 Evidence

All testimony at such public hearings shall be under oath and all exhibits or documentary evidence introduced at such hearings shall be supported by sworn testimony. For this purpose, oath may be administered by appropriate parties conducting the hearing.

Section 1.08 Rate Review by the City

By resolution of the City Council, City may institute a review of the rates of a utility. Notice of any such review shall be given to the utility by sending a copy of such resolution by U.S. mail to the utility at its home or local office. Within the time as may be specified by the City Council, the utility shall file with the City Secretary all information that may be reasonably requested by the City Council.

Section 1.09 Communication with City Councilmembers and Members of the Regulatory Chain

A. After filing a statement of intent to make a major rate change, no officer, employee, agent or representative of the utility shall have any contact or discussion, verbal or written, with any members of the regulatory chain regarding an increase in rates, or directly or indirectly through others, seek to influence any City Councilmember regarding any such increase, except as herein provided.

1. Records to be made: Each utility shall maintain a permanent record of all contracts, oral or written, initiated by employees or representatives of the utility or its affiliates with any member of the City Council, any City employee in the regulatory chain or any other City employee when the subject matter of the communication pertains to the regulation of rates and services.

2. Form and Approval: The record shall be maintained as a log, and the form thereof shall be subject to the approval of the Director.

3. Content: At a minimum, such records shall contain the name of the person contacting the City Council, the person contacted, the date of the contact or communication, a brief description of the subject matter of the communication, and the action, if any, requested by the utility, affiliate or representative, and whether the communication was oral or written.

4. Copy Submitted to City: Each utility shall submit a copy of its log by the 10th day of each month to the Director, providing the required information for all contacts or communications occurring in the preceding calendar month. The Director shall maintain a cumulative file of all such log entries, and such file shall be made available for public inspection at all times during regular business hours.

5. Inspection by City: The Director or his authorized representative shall be entitled to inspect the logs maintained by any utility at any time during regular business hours.

6. Contacts Not Required to be Logged: The following are exempt from the logging requirements set forth above:

   a. Casual social contacts.

   b. Contacts by the utility with City employees not in the regulatory chain when such contacts do not pertain to the regulation of rates and services. Examples include (but not limited to) liaison with the City regarding street cuts or easements, use of property by the Parks and Recreation Department, payment of taxes, settlement of tort claims and private (non-business) contacts with the City by utility employees acting in their personal capacity.

c. Routine inquiries initiated by the Director, or others in the regulatory chain.

7. The Regulatory Chain: All members of the City Council, all employees of the Department of Finance, the City Manager, the City Attorney and the Finance Director are members of the regulatory chain. Staff members employed by the persons enumerated above are in the regulatory chain when their assigned duties relate to the regulation of the public utility rates and services.

Section 1.10 Penalty

Any "public utility" or "utility", as that term is defined in Article 1, Section 3(c), of the Public Utility Regulatory Act of the State of Texas, or any officer, agent, affiliate or employee thereof willfully and knowingly violating any provision of this Chapter, or the amendment of the Arlington City Code of 1987 hereby made, or any lawful rate schedule being a part of or hereafter made a part of this Chapter, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding Five Hundred Dollars and No Cents ($500.00), as provided in Section 1.05, "General Provisions" Chapter, Arlington City Code of 1987, which Chapter is adopted by reference and made a part hereof. Each day that a violation is continued shall constitute a separate offense.

ARTICLE II

CERTIFICATED TELECOMMUNICATIONS PROVIDERS

Section 2.01 Findings and Purpose

The purpose of this Article is to:

A. Assist in the management of the Public Rights-of-Way in order to minimize the congestion, inconvenience, visual impact and other adverse effects, and the costs to the citizens resulting from the placement of telecommunications facilities within the Public Rights-of-Way;

B. Govern the Provider's use and occupancy of the Public Rights-of-Way;

C. Compensate the City for the private, commercial use and occupancy of the Public Rights-of-Way by Telecommunications Providers in a non-discriminatory, competitively neutral manner;

D. Assist the City in its efforts to protect the public health, safety and welfare;

E. Facilitate competition among Telecommunications Service Providers and encourage the universal availability of advanced Telecommunications Services to all residents and businesses of the City;

F. Conserve the limited physical capacity of the Public Rights-of-Way held in public trust by the City; and

G. Comply with the provisions of Chapter 283.

This Article may be referred to as the "Certificated Telecommunications Providers" Ordinance.

Section 2.02 Granting Clause

Subject to applicable State and Federal law and to the restrictions set forth herein, the City may consent to the non-exclusive right and privilege to use the Public Rights-of-Way in the City by a Provider for the operation of Access Lines in a telecommunications system, consisting of both telecommunications Facilities and Transmission Media. The

terms of this Ordinance shall apply throughout the City and to all operations of the Provider within the City Public Rights-of-Way, and in the Public Rights-of-Way in any newly annexed areas in accordance with Section 2.22 herein.

Section 2.03 <u>Authority; Scope</u>

A. This Article applies to all Telecommunications Service Providers under Title 47, Chapter 5, Subchapter II of the United States Code (47 U.S.C. § 201 *et seq*.) ("Title 47") that place Transmission Media in, on or over Public Rights-of-Way, excluding services provided solely by means of a wireless transmission. No Municipal Consent granted under this Article authorizes the provision of any services not covered by Title 47. Cable service and open video systems as defined in Title VI of the Communications Act of 1934 [Title 47, Chapter 5, Subchapter V-A of the United States Code (47 U.S.C. § 521, *et seq*.)] and any other content service are expressly excluded.

B. The right of a Person to apply for or to use City utility infrastructure, such as City owned utility poles and conduit ("City Utility infrastructure"), shall be governed by other provisions of the City Code. The granting of a Municipal Consent under this Article does not grant attachment rights or authorize the use of City utility infrastructure.

Section 2.04 <u>Definitions</u>

In this Article:

Access Line means a unit of measurement representing: (1) each switched transmission path of the Transmission Media within the Public Rights-of-Way extended to the end-user customer's network interface within the City that allows delivery of Telecommunications Service; (2) each separate transmission path of the Transmission Media within the City's Public Rights-of-Way that terminates at an end user customer's network interface of each loop provided as an unbundled network element to a Person pursuant to an Agreement under Section 252 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 252); or (3) each termination point of a non-switched Transmission Media consisting of Transmission Media connecting specific locations identified

by, and provided to, the end-user for the delivery of non-switched Telecommunications Service within the City.

Access Line Fee means the amount in Section 2.11 to be applied to each Access Line on a monthly basis for the calculation of the total amount to be paid to the City by the Provider and/or any Person using the facilities of Provider for the creation of Telecommunications Service.

Affiliate means a Person who controls, is controlled by, or is under common control with a Provider. Affiliate does not include a Person who serves end user customers by means of a wireless transmission. There is a rebuttable presumption of control if a Provider owns 25% or more of the Affiliate's stock or assets.

Certificated Telecommunications Utility means any entity that has been granted or applied for a certificate under Chapter 54 of Tex. Utility Code or other successor authorizing certificate to provide local exchange telephone service.

Chapter 283 means Chapter 283 of Subtitle A of Title 9 of the Local Government Code of the State of Texas, as added by H.B. No. 1777 of the 1999 Regular Session of the 76th Legislature.

City means The City Of Arlington, Texas. As used throughout, the term City also includes the designated agent of the City.

City Manager means the City Manager of the City or the City Manager's designee.

Direction of the City means all ordinances, laws, rules, resolutions, and regulations of the City that are not inconsistent with this Ordinance and that are now in force or may hereafter be passed and adopted.

Facilities means any and all of the Provider's duct spaces, manholes, poles, conduits, underground and overhead passageways and other equipment, structures, plant and appurtenances and all associated Transmission Media.

Municipal Consent means the individual grant to use the Public Rights-of-Way issued by the City and executed by the individual Providers under this Article governing the Provider's use of the Public Rights-of-Way and the payment of compensation.

Person means a natural Person (an individual), corporation, company, association, partnership, firm, limited liability

company, joint venture, joint stock company or association, and other such entity.

Provider means a Person, including any Certificated Telecommunications Utility, that delivers Telecommunications Service within the City to Person(s) by way of a Network, and that places Facilities in, on or over the Public Rights-of-Way. A Provider does not include Persons who are authorized by the City to occupy the Public Rights-of-Way in specifically approved routes within the City, unless they also have a Municipal Consent under this Article. To the extent allowed by law, Provider also means a Person that does not deliver Telecommunications Service within the City, but who uses, constructs or maintains Facilities or Transmission Media within the Public Rights-of-Way.

Public Rights-of-Way means all present and future public streets, highways, lanes, paths, alleys, sidewalks, boulevards, drives, tunnels, easements or similar property in the City limits in which the City holds a property interest or exercises rights of management or control.

PUC Determination Date means the date the Public Utility Commission of Texas makes the determination required under Section 283.055(b)(1) of the Local Government Code (as amended by H.B. No. 1777), which date will not be later than March 1, 2000.

Telecommunications Network or Network means all Facilities placed in the Public Rights-of-Way and used to provide Telecommunications Service to the public.

Telecommunications Service means the providing or offering to provide transmissions between or among points identified by the user, of information of the user' s choosing, including voice, video or data, without change in content of the information as sent and received, if the transmissions are accomplished through a Telecommunications Network. Telecommunications Service include ancillary or adjunct switching services and signal conversions rendered as a function of underlying transmission services, but excludes long distance transmissions (inter-LATA [Local Access Transport Area] and intra-LATA toll transmissions). Telecommunications Service includes all communications services capable of being provided over a telephone system and certificated to telecommunications Providers under the Tex. Utility Code, Title 2, Public Utility Regulatory Act, as amended, and Title II of the Communications Act of 1934, as amended, expressly excluding cable services or open video

systems as defined in Title VI of the Communications Act of 1934, as amended. Also excluded are "wireless services" as defined by law.

Transmission Media means any and all of the Provider's cables, fibers, wires or other physical devices used to transmit and/or receive communication signals, whether analog, digital or of other characteristic, and whether for voice, data or other purposes.

Section 2.05 <u>Municipal Consent Required</u>

A. Prior to placing, reconstructing, or altering Facilities in, on or over the Public Rights-of-Way, a Provider must obtain a Municipal Consent from the City.

B. The use of Public Rights-of-Way for the delivery of any service not covered by this Article is subject to all other applicable City requirements.

C. Any Provider with a current, unexpired consent, franchise, agreement or other authorization from the City ("Grant") to use the Public Rights-of-Way that is in effect at the time this Article takes effect shall continue to operate under and comply with that Grant until the Grant expires or until it is terminated by mutual agreement of the City and the Provider and a Municipal Consent under this Ordinance is granted and in effect.

Section 2.06 <u>Application For Municipal Consent</u>

A. A Person must submit an application to the City Manager to initiate the process to obtain a Municipal Consent.

B. The application must be on a form prescribed by the City Manager, and it must include the following:

1. The identity of the applicant, including all Affiliates of the applicant that may have physical control of the Network, to the extent known at the time of the application,

2. A general description of the services to be provided initially,

3. With respect to post-application construction a route map of the applicant's proposed Network, if any, and

4. A description of the effect on the rights-of-way, of any post-application construction to the extent known, but not including routine maintenance and construction for additions to existing Networks, except as may be required in Section 2.17, including:

   a. The location and route required for applicant's proposed Telecommunications Network.

   b. The location of all overhead and underground public utility, telecommunication, cable, water, sewer, drainage and other Facilities in the rights-of-way along the proposed route.

   c. The specific trees, structures, improvements, Facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.

5. While not a requirement for the issuance of a Municipal Consent, if applicable, the Applicant shall provide:

   a. Evidence that the applicant holds or has applied for a Public Utility Commission of Texas Certificate and information to establish that the applicant will obtain all other governmental approvals and permits prior to construction.

   b. Certification or other documentation to evidence the Public Utility Commission of Texas or any other required governmental approval showing compliance with E911 requirements of Chapters 771 and 772 of the Texas Health and Safety Code on Emergency Communication, and the Texas Public Utility Council Substantive Rules on interconnection, particularly Section 23.97(a), (d) and (e), as amended.

6. Such other and further information as may be reasonably requested by the City Manager as it relates to the use of the Public Rights-of-Way.

C. Each applicant that shall submit a non-refundable application fee of $850.00 with the application, with a credit in the amount of $850.00 on its first quarterly payment due under Section 2.12.

D. The City Manager shall review an application submitted under this Article and shall recommend to the City Council that it grant or deny the application. The City Manager shall make recommendation to the City Council as soon as practicable, but no later than the 90th day after a completed application has been filed. Upon mutual written agreement between the City and the Provider, action on an application may be postponed for one or more periods not exceeding 30 days each.

E. Except for delay caused by the applicant, the City Council must take an initial action on the City Manager's recommendation within forty-five (45) days after receipt by the Council of the City Manager's recommendation or the City Manager's recommendation to grant an application shall be deemed approved. No City Council action is required to confirm a denial recommendation, except acknowledgment of receipt of the recommendation.

Section 2.07 <u>Municipal Consent Ordinance</u>

A. If the City Manager finds that the application meets the requirements of this Article, the City Manager shall request the City Attorney or Designee to prepare a Municipal Consent ordinance for the City Council's consideration.

B. A Municipal Consent ordinance submitted to the City Council must include the following provisions:

1. a term of not more than five (5) years for the Municipal Consent;

2. a requirement that the Provider substantially comply with this Article;

3. a requirement that the Provider's Municipal Consent is subject to termination by the City Council,

after notice and hearing, for the Provider's failure to comply with this Article or in accordance with Section 2.25;

4. a provision that incorporates the requirements of Section 2.14 [Transfer] of this Article;

5. a provision that incorporates the requirements of Sections 2.17 [Construction Obligations], 2.18 [Conditions of Public Rights-of-Way Occupancy], and 2.19 [Insurance Requirements] of this Article, if applicable;

C. Review and approval by the City does not constitute a guarantee of sufficiency of the design of the Telecommunications Network. The applicant retains full responsibility for the adequacy of the design of the Telecommunications Network.

Section 2.08 <u>Petition for Reconsideration</u>

A Person whose application for a Municipal Consent is denied, or whose application is not considered by the City Council within a reasonable time after the City Manager submits a recommendation under Section 2.07 or whose Municipal Consent is terminated may petition the City Council for reconsideration before seeking judicial remedies. A petition for reconsideration is considered denied if the City Council does not act within 60 days after the petition is filed with the City Secretary.

Section 2.09 <u>Administration and Enforcement</u>

A. The City Manager shall administer this Article and enforce compliance with a Municipal Consent conveyed under this Article.

B. A Provider shall report information related to the use of the Public Rights-of-Way that the City Manager requires in the form and manner prescribed by the City Manager.

C. The City Manager shall report to the City Council upon the determination that a Provider has failed to comply with this Article.

Section 2.10 Applicability

A. Sections 2.17 [Construction Obligations], 2.18 [Conditions of Public Rights-of-Way Occupancy] and 2.19 [Insurance Requirements] of this Article apply only to a Provider that constructs, operates, maintains, owns or controls Facilities in the Public Rights-of-Way.

B. Section 2.20 [Indemnity] of this Article applies to a Provider that has a property interest in a Network.

C. For all periods of time as to which the provisions of Chapter 283 validly apply to any matter also covered hereby, then to the extent of any conflict, the provisions of Chapter 283 apply and corresponding provisions hereof shall be disregarded.

Section 2.11 Compensation to City

A Provider shall compensate the City by payment of the fees as provided below:

A. Access Line Fee Calculation. To compensate the City for the use of the rights-of-way, a Provider whose Telecommunications Network is used to serve customers in the City shall pay the City a monthly fee to be calculated as provided below for each Access Line owned or used by the Provider, as calculated as of month-end, that is activated for use by an end user customer of the Provider or of another Person as a Certificated Telecommunications Utility, by lease or otherwise, subject to Subsection (F) below or of any other Person;

1. Access Line Fee Calculation Amount:

a. Following the effective date of the Municipal Consent, a Provider shall submit to the City Manager on a quarterly basis, a certified statement together with the Access Line Fee payment under Section 2.12, indicating the number of Access Lines used to provide Telecommunications Service at month end, for each month of the quarter and for each customer class identified herein. The statement shall be provided on a form prescribed by the City Manager.

b. For each month of the quarter following the effective date of the Municipal Consent, a Provider shall pay an Access Line Fee which is based upon its number of Access Lines calculated as follows:

Access Line Fee Calculation Amount	Monthly Amount Per Access Line From Effective Date through PUC Determination Date
TYPE (1) or (2):	
Residential	$2.35
Non-Residential	$6.10
TYPE (3)	
Private Line Termination Point(s)	$6.10

The City reserves the right to make reasonable adjustments to the Access Line Fee, with 180 days notice, but not to exceed ten percent (10%) in any one year, subject to the continuing effect of Texas Utilities Code, §§ 54.204 - 54.206

Amounts appearing above are used to calculate the total compensation due the City and are not to be construed as the setting of a charge for end-users.

(For purposes of this Section only, lines terminating at customers with "Lifeline," "Tel-Assistance," or other service that is required to be similarly discounted pursuant to state or federal law or regulation for the purpose of advancing universal service to the economically disadvantaged shall not be included in the lines upon which the fee is calculated, but Provider shall provide information on the number of such lines upon request by the City.)

2. Number of Access Lines. Subject to City's agreement not to disclose this information unless required by law, Provider will provide annually or as requested by the City, within a reasonable time

after receipt of the City's written request, a report certifying as to the number of Access Lines being maintained or operated by Provider that are serving premises within the City, as of the date used in calculating the payment. The report shall be used solely for the purposes of verifying the number of Provider's Access Lines serving premises within the City. Upon written request, Provider shall verify the information in the report and, upon reasonable advance notice, all non-customer specific records and other documents required for such verification shall be subject to inspection by the City expressly excluding any records, documents or other writings the disclosure of which is prohibited by state or federal law, including the Electronic Communications Privacy Act, 18 U.S.C. § 2701 *et seq*.

B. Minimum Annual Fee. Notwithstanding any other provision in this Ordinance, for all new installations of Facilities placed in, on or under the Public Rights-of-Way from the Effective Date of the Municipal Consent, and for each calendar year period thereafter, the Provider shall pay the City a minimum annual fee ("Minimum Fee") of $250.00, in the event the Access Line Fee paid in the preceding twelve (12) months does not exceed $250.00, with a credit against such Minimum Fee for any Access Line Fees paid to the City in the preceding twelve (12) months.

Each Municipal Consent shall provide that the Minimum Fee of (B) above may be adjusted once every three (3) years by the City, but such adjustment shall not exceed $100 in any one three (3) year period.

C. Confidential Records. If the Provider notifies the City by a conspicuous written notation of the confidential nature of any information (including, but not limited to the information in paragraph (B) of this section), reports, documents, or writings, the City will maintain the confidentiality of the information, reports, documents, and writings to the extent permitted by law. Upon receipt by the City of requests for the Provider's confidential information, reports, documents, or writings, the City shall notify the Provider of the request in writing by facsimile transmission. The City shall furnish the Provider with copies of all requests for Attorney General opinions pertaining to the Provider's confidential information, reports, documents

or writings. The City shall request an Attorney General's Opinion before disclosing any confidential information, reports, documents or writings, and shall furnish the Provider with copies of Attorney General Opinion Requests as soon as practicable that it may pertain to the Provider's Confidential Information, reports, documents or writings.

D. No other fees. The payments due hereunder shall be in lieu of any construction, building or other permit, approval, inspection, or other similar fees or charges, including, but not limited to, all general business permit fees customarily assessed by the City for the use of the Public Rights-of-Way against Persons operating businesses similar to that of a Provider. Further, such Access Line Fee shall constitute full compensation to the City for all Provider's Facilities located within the Public Rights-of-Way, including interoffice-transport and other Transmission Media that do not terminate at an end-user customer's network interface device, even though those types of lines are not used in the calculation of the Public Rights-of-Way fee. The compensation paid herein is not in lieu of any generally applicable ad valorem taxes, sales taxes or other generally applicable taxes, fees, development impact fees or charges, or other statutory charges or expenses recoverable under the Texas Public Utility Regulatory Act, or successor statutes.

E. Uncollectibles. Any other provision of this agreement notwithstanding, Provider shall not be obligated to pay the City for any Access Lines or private line termination points the revenues for which remain uncollectible. Upon request, Provider shall provide a written report on the number of access lines for which revenues are uncollected, to include number of lines and number excluded, and a general description of the collection efforts.

F. Payments by or Use of the Network by Other Telecommunications Carriers and Providers.

1. Direct Payment-Facilities Provided to Other Telecommunications Service Providers: To the extent allowed by applicable state and federal law, any Telecommunications Service Providers who purchase Unbundled Network Elements or other Facilities or services for the purpose of rebundling those Facilities and/or Services to create Telecommuni-

cations Service for sale to Persons within the City ("Rebundler"), must pay to the City the Access Line Fee that is calculated as of month-end by applying the appropriate Access Line Fee, as specified in Section 2.11 above, to each Access Line created by rebundling Telecommunications Service or Facilities. Direct payment further ensures that the Access Line Fee imposed herein can be applied on a non-discriminatory basis to all Telecommunications Service Providers that sell Telecommunications Service within the City. Other provisions of this Ordinance notwithstanding, the Provider shall not include in its monthly count of Access Lines any Facilities or services provided to other Telecommunications Service Providers for rebundling into Telecommunications Service, if the Telecommunications Service Provider who is rebundling those Facilities for resale has provided a signed statement to the Provider that the Telecommunications Service Provider is paying the Access Line Fees applicable to those rebundled services directly to the City. If Provider provides a copy of the signed statement to the City from the Rebundler which is acceptable to the City, then Provider is absolved of all responsibility for the Access Line Fees payable on the Services, Unbundled Network Facilities, and other Facilities rebundled for the creation of Telecommunications Service for sale within the City by each such Rebundler.

2. Indirect Payments - Public Rights-of-Way Fee Application to Use of Network by Others: With respect to any Person leasing, reselling, or otherwise using a Provider's Access Lines, if a Provider believes it does not have sufficient information to determine the appropriate rate to apply, then the higher Access Line Fee may be applied until such time as the Person using the Access Lines provides to the Provider sufficient written information to determine the correct Access Line Fee. If a Person provides sufficient written information for the application of the Access Line Fee, Provider may, at its discretion and not at the City's request, bill the Person on the basis of the information provided. Upon request, and to the extent allowed by law, Provider shall forward to the City a written report on a quarterly basis of the entities that have use of network elements for rebundling purposes. Provider shall provide to the

City any information regarding the locations to which it is providing service or Facilities for use by another Person for the provision of Telecommunications Service to end-user customers, so long as City first obtains written permission of such other Person for Provider to provide the information to the City. Any other provision of this Ordinance notwithstanding, however, a Provider shall not be liable for underpayment of Access Line Fees resulting from the Provider's reliance upon the written information provided by any Person who uses Provider's services or Facilities for the provision of Telecommunications Service to end-user customers.

Section 2.12 <u>City Payment Due Dates</u>

A. Access Line Fee:

A Provider shall remit the Access Line Fee on a quarterly basis together with the Certified Statement in the format required in Section 2.11(A)(1)(a). Payment shall be made on or before the 45th day following the close of each calendar quarter for which the payment is calculated and shall be paid by wire transfer to an account designated by the City Manager.

B. Minimum Fee Payment.

This fee per Section 2.11(B), if applicable, shall be due on January 31 of every year of the Consent Agreement.

Section 2.13 <u>Audits</u>

A. On 30 days notice to a Provider the City may audit a Provider for a period of five (5) years, or the term of the Municipal Consent, whichever is longer. The Provider shall furnish information to demonstrate its compliance with the Municipal Consent and/or other provisions of this Article.

B. A Provider shall keep complete and accurate books of accounts and records of business and operations that cumulatively reflect the monthly count of all Access Lines for a period of seven (7) years. The City Manager may require the keeping of additional records or

accounts that are reasonably necessary for purposes of identifying, accounting for, and reporting the number of Access Lines used to deliver telecommunication services or for calculation of the payments due hereunder. The City may examine the Provider's books and records referred to above, expressly excluding any records, documents or other writings the disclosure of which is prohibited by state or federal law, including the Electronic Communications Privacy Act, 18 U.S.C. §2701, *et seq*, to the extent such records reasonably relate to providing information to verify compliance with this Article and the Municipal Consent.

C. A Provider shall make available to the City or the City's designated agent (hereinafter "agent"), for the City or it's agent to examine, audit, review and copy, in the City, on the City Manager's written request, its books and records referred to above, including papers, books, accounts, documents, maps, plans and other Provider records that pertain to Municipal Consent conditions and requirements obtained under this Article. A Provider shall fully cooperate in making records available and otherwise assist the City examiner. The City examiner shall not inspect or copy or otherwise demand production of customer specific information or any records, documents or other writings the disclosure of which is prohibited by state or federal law, including the Electronic Communications Privacy Act, 18 U.S.C. §2701, *et seq*. Provider will use its best efforts to retain records in such a manner that allows retrieval of all lawful information.

D. The City Manager may, at any time, make inquiries pertaining to Providers' performance of the terms and conditions of a Municipal Consent conveyed under this Article. Providers shall respond to such inquiries on a timely basis.

E. Upon written request by the City Manager, to the extent the documents are reasonably identified, Providers shall furnish to the City within 30 business days from the date of the written request copies of all public petitions, applications, written communications and reports submitted by Providers, to the FCC and/or to the PUC or their successor agencies, relating to any matters affecting the physical use of City Public Rights-of-Way.

F. The provisions of this Section shall be continuing and shall survive the termination of a Municipal Consent

granted under this Article and shall extend beyond the term of the Municipal Consent granted to the Provider and the City shall have all the rights described in this Section for so long as Provider is providing any Telecommunications Service within the City, unless waived, in writing, by the City.

Section 2.14 <u>Transfer</u>

A. No Municipal Consent nor any rights or privileges that a Provider has under a Municipal Consent, or the Facilities held by a Provider for use under such Municipal Consent which are in the Public Rights-of-Way, shall be sold, resold, assigned, transferred or conveyed by the Provider, either separately or collectively, to any other Person, without the prior written approval of the City by ordinance or resolution. The City's approval shall be based upon the transferee providing adequate information to the City that it has the ability to perform and comply with the obligations and requirements of the Municipal Consent. Such approval shall not be unreasonably withheld. Should a Provider sell, assign, transfer, convey or otherwise dispose of any of its rights or interests under its Municipal Consent, including such Provider's Telecommunications Network, or attempt to do so, without the City's prior consent, the City may revoke the Provider's Municipal Consent for default, in which event all rights and interest of the Provider under the Municipal Consent shall cease.

B. Any transfer in violation of this Section shall be null and void and unenforceable. Any change of control of a Provider shall constitute a transfer under this Section. However, such a change in control shall not void the Municipal Consent as to the transferee, unless and until the City has given notice that such a change in control necessitates compliance with Section 2.14. If the Provider does not initiate compliance with Section 2.14 by a request for Municipal Consent within thirty (30) days after the above notice has been given by the City, the Municipal Consent shall be null and unenforceable as to the transferee.

C. There shall be a rebuttable presumption of a change of control of a Provider upon a change of 15% or greater in the ownership of such Provider. Such a change in

control shall be deemed a transfer which requires consent of the City.

D. A mortgage or other pledge of assets to a bank or lending institution in a bona fide lending transaction shall not be considered an assignment or transfer.

E. Every Municipal Consent granted under this Section 2.14 shall specify that any transfer or other disposition of rights which has the effect of circumventing payment of required Access Line Fees or Minimum Fees and/or evasion of payment of such fees by failure to accurately count or report the number of Access Lines by a Provider is prohibited.

F. Notwithstanding anything else in this Section 2.14, if the City has not approved or denied a request to transfer under this Section within 120 days of written notice of such request from the Provider to the City, it shall be deemed approved. Such time frame may be extended by mutual agreement of the parties.

G. Notwithstanding any other provision in this Section 2.14, a Provider may transfer, without City approval, the Facilities in the Public Rights-of-Way under a Municipal Consent to another Provider who has a Municipal Consent under this Article. The Provider transferring the Facilities remains subject to all applicable obligations and provisions of the Municipal Consent unless the Provider to which the Facilities are transferred is also subject to the same, as applicable, obligations and provisions. The Provider transferring the Facilities must give written notice of the transfer to the City Manager.

Section 2.15 <u>Notices to City</u>

A. A Provider shall notify the City Manager as is provided in the Consent Agreement.

B. A Provider shall give written notice to the City not later than 15 days before a transfer or change in operations that may affect the applicability of Sections 2.18 [Conditions of Public Rights-of-Way Occupancy], 2.19 [Insurance Requirements], 2.20 [Indemnity], and 2.21 [Renewal of Municipal Consent], to the Provider.

Section 2.16 <u>Circumvention of Fee Prohibited</u>

A Person may not circumvent payment of Access Line Fees or evade payment of such fees by bartering, transfer of rights, or by any other means that result in undercounting a Provider's number of lines. Capacity or services may be bartered if the imputed lines are reported in accordance with Section 2.11.

Section 2.17 <u>Construction Obligations</u>

A. A Provider is subject to the reasonable regulation of the City to manage its Public Rights-of-Way pursuant to the City' s rights as a custodian of public property under state and federal laws. A Provider is subject to City ordinances and requirements and federal and state laws and regulations in connection with the construction, expansion, reconstruction, maintenance or repair of Facilities in the Public Rights-of-Way.

B. At the City's request, a Provider shall furnish the City accurate and complete information relating to the construction, reconstruction, removal, maintenance, operation and repair of Facilities performed by the Provider in the Public Rights-of-Way. Such request may include up to three copies of such documents.

C. The construction, expansion, reconstruction, excavation, use, maintenance and operation of a Provider's Facilities within the Public Rights-of-Way are subject to applicable City requirements.

1. A Provider may be required to place certain Facilities within the Public Rights-of-Way underground according to applicable City requirements absent a compelling demonstration by the Provider that, in any specific instance, this requirement is not reasonable or feasible nor is it equally applicable to other similar users of the Public Rights-of-Way.

2. A Provider shall perform operations, excavations and other construction in the Public Rights-of-Way in accordance with all applicable City requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the Public

Rights-of-Way. The City shall waive the requirement of trenchless technology if it determines that the field conditions warrant the waiver, based upon information obtained by the City as well as information provided to the City by the Provider. All excavations and other construction in the Public Rights-of-Way shall be conducted so as to minimize interference with the use of public and private property. A Provider shall follow all reasonable construction directions given by the City in order to minimize any such interference.

3. A Provider must obtain a permit, as reasonably required by applicable City codes, prior to any excavation, construction, installation, expansion, repair, removal, relocation or maintenance of the Provider's Facilities. Once a permit is issued, Provider shall give to the City a minimum of forty-eight (48) hours notice (which could be at the time of application for the issuance of the permit) prior to undertaking any of the above listed activities on its Network in, on or under the Public Rights-of-Way. The failure of the Provider to request and obtain a permit from the City prior to performing any of the above listed activities in, on or over any Public Right-of-Way, except in an emergency as provided for in Subsection (10) below, will subject the Provider to a stop-work order from the City and enforcement action pursuant to the City's Code of Ordinances. If the Provider fails to act upon any permit within 90 calendar days of issuance, the permit shall become invalid, and the Provider will be required to obtain another permit.

4. When a Provider completes construction, expansion, reconstruction, removal, excavation or other work ("Work"), the Provider shall promptly restore to the same condition as prior to the work the Public Rights-of-Way in accordance with applicable City requirements. A Provider shall replace and properly relay and repair the surface, base, underground infrastructure (i.e., gas, water, sewer, and the like), irrigation system and landscape treatment of any Public Rights-of-Way that may be excavated or damaged by reason of the erection, construction, maintenance, or repair of the Provider's Facilities within thirty (30) calendar days after completion of the work in

accordance with existing standards of the City in effect at the time of the work.

5. Upon failure of a Provider to perform any such repair or replacement work, and five (5) days after written notice has been given by the City to the Provider, the City may repair such portion of the Public Rights-of-Way as may have been disturbed by the Provider, its contractors or agents. Upon receipt of a invoice from the City, the Provider will reimburse the City for the costs so incurred within thirty (30) calendar days from the date of the City invoice.

6. Should the City reasonably determine, within two (2) years from the date of the completion of the repair work on streets that the surface, base, underground infrastructure, irrigation system or landscape treatment requires additional restoration work to meet existing standards of the City, a Provider shall perform such additional restoration work to the satisfaction of the City, subject to all City remedies as provided herein.

7. Notwithstanding the foregoing, if the City determines that the failure of a Provider to properly repair or restore the Public Rights-of-Way constitutes a safety hazard to the public, the City may undertake emergency repairs and restoration efforts. A Provider shall promptly reimburse the City for all costs incurred by the City within thirty (30) calendar days from the date of the City invoice.

8. A Provider shall furnish the Engineering Services Department or the department as designated by the City Manager, with construction plans and maps (and up to three copies) showing the location and proposed routing of new construction or reconstruction at least fifteen (15) days [subject to Subsection (D)], before beginning construction or reconstruction that involves an alteration to the surface or subsurface of the Public Rights-of-Way. A Provider may not begin construction until the location of new Facilities and proposed routing of the new construction or reconstruction and all required plans and drawings have been approved in writing by the City, which approval will not be unreasonably withheld, taking

due consideration of the surrounding area and alternative locations for the Facilities and routing.

9. If the City Manager declares an emergency with regard to the health and safety of the citizens and requests by written notice the removal or abatement of Facilities, a Provider shall remove or abate the Provider's Facilities by the deadline provided in the City Manager's request. The Provider and the City shall cooperate to the extent possible to assure continuity of service. If the Provider, after notice, fails or refuses to act, the City may remove or abate the facility, at the sole cost and expense of the Provider, without paying compensation to the Provider and without the City incurring liability for damages.

10. Except in the case of customer service interruptions and imminent harm to property or Person ("Emergency Conditions"), a Provider may not excavate the pavement of a street or public rights-of-way without first complying with City requirements. The City Manager or designee shall be notified immediately regarding work performed under such Emergency Conditions, and the Provider shall comply with the requirements of City standards for the restoration of the Public Rights-of-Way.

11. Within sixty (60) days of completion of each new permitted section of a Provider's Facilities, the Provider shall supply the City with a complete set of "as built" drawings for the segment in a format used in the ordinary course of the Provider's business and as reasonably prescribed by the City, and as allowed by law.

12. The City may require reasonable bonding requirements of a Provider, as are required of other entities that place Facilities in the Public Rights-of-Way.

D. In determining whether any requirement under this section is unreasonable or unfeasible, the City Manager or his/her designee shall consider, among other things, whether the requirement would subject the Provider or Providers to an unreasonable increase in risk of service interruption, or to an unreasonable increase in liability for accidents, or to an unreasonable delay in

construction or in availability of its services, or to any other unreasonable technical or economic burden.

Section 2.18 <u>Conditions of Public Rights-Of-Way Occupancy</u>

A. In the exercise of governmental functions, the City has first priority over all other uses of the Public Rights-of-Way. The City reserves the right to lay sewer, gas, water, and other pipe lines or cables and conduits, and to do underground and overhead work, and attachments, restructuring or changes in aerial Facilities in, across, along, over or under a public street, alley or Public Rights-of-Way occupied by a Provider, and to change the curb, sidewalks or the grade of streets.

B. The City shall assign the location in or over the Public Rights-of-Way among competing users of the Public Rights-of-Way with due consideration to the public health and safety considerations of each user type, and to the extent there is limited space available for additional users, may limit new users, as allowed under state or federal law.

C. If, during the term of a Municipal Consent, the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or Public Rights-of-Way, the grant to an abutting landowner shall be subject to the rights of the Provider. If the City closes or abandons a Public Right-of-Way that contains a portion of a Provider's Facilities, the City shall close or abandon such Public Right-of-Way subject to the rights conveyed in the Municipal Consent.

D. If the City gives written notice, a Provider shall, at its own expense, temporarily or permanently, remove, relocate, change or alter the position of Provider's Facilities that are in the Public Rights-of-Way within 120 days, except in circumstances that require additional time as reasonably determined by the City based upon information provided by the Provider. For projects expected to take longer than 120 days to remove, change or relocate, the City will confer with Provider before determining the alterations to be required and the timing thereof. The City shall give notice whenever the City has determined that removal, relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or

installation of a City or other governmental public improvement in the Public Rights-of-Way. This section shall not be construed to prevent a Provider's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal, nor shall it be required if improvements are solely for beautification purposes without prior joint deliberation and agreement with Provider.

If the Provider fails to relocate Facilities in the time allowed by the City in this Section, the Provider may be subject to liability to the City for such delay and as set forth in the City Codes or Ordinance, now or hereafter enacted.

Notwithstanding anything in this Subsection (D), the City Manager and a Provider may agree in writing to different time frames than those provided above if circumstances reasonably warrant such a change.

E. During the term of its Municipal Consent, a Provider may trim trees in or over the Public Rights-of-Way for the safe and reliable operation, use and maintenance of its Network. All tree trimming shall be performed in accordance with standards promulgated by the City. Should the Provider, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours , the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the Provider shall promptly reimburse the City for all costs incurred within thirty (30) working days.

F. Providers shall temporarily remove, raise or lower its aerial Facilities to permit the moving of houses or other bulky structures, if the City gives written notice of no less than 48 hours. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefiting from the temporary rearrangements. Provider may require prepayment or prior posting of a bond from the party requesting temporary move.

Section 2.19 <u>Insurance Requirements</u>

A. A Provider shall obtain and maintain insurance in the amounts reasonably prescribed by the City with an insurance company licensed to do business in the State of Texas acceptable to the City throughout the term of a

Municipal Consent conveyed under this Article. A Provider shall furnish the City with proof of insurance at the time of filing the acceptance of a Municipal Consent. The City reserves the right to review the insurance requirements during the effective period of a Municipal Consent, and to reasonably adjust insurance coverage and limits when the City Manager determines that changes in statutory law, court decisions, or the claims history of the industry or the Provider require adjustment of the coverage. For purposes of this section, the City will accept certificates of self-insurance issued by the State of Texas or letters written by the Provider in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, for the City to accept such letters the Provider must demonstrate by written information that it has adequate financial resources to be a self-insured entity as reasonably determined by the City, based on financial information requested by and furnished to the City. The City's current insurance requirements are described in Exhibit "A" attached hereto.

B. Provider shall furnish, at no cost to the City, copies of certificates of insurance evidencing the coverage required by this Section to the City. The City may request the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, unless the policy provisions are established by a law or regulation binding the City, the Provider, or the underwriter. If the City requests a deletion, revision or modification, a Provider shall exercise reasonable efforts to pay for and to accomplish the change.

C. An insurance certificate shall contain the following required provisions:

1. name the City of and its officers, employees, board members and elected representatives as additional insureds for all applicable coverage;

2. provide for 30 days notice to the City for cancellation, non-renewal, or material change;

3. provide that notice of claims shall be provided to the City Manager by certified mail; and

4. provide that the terms of the Municipal Consent which impose obligations on the Provider concerning liability, duty, and standard of care, including the indemnity section, are included in the policy and that the risks are insured within the policy terms and conditions.

D. Provider shall file and maintain proof of insurance with the City Manager during the term of a Municipal Consent or an extension or renewal. An insurance certificate obtained in compliance with this section is subject to City approval. The City may require the certificate to be changed to reflect changing liability limits. A Provider shall immediately advise the City Attorney of actual or potential litigation that may develop may affect an existing carrier's obligation to defend and indemnify.

E. An insurer has no right of recovery against the City. The required insurance policies shall protect the Provider and the City. The insurance shall be primary coverage for losses covered by the policies.

F. The policy clause "Other Insurance" shall not apply to the City if the City is an insured under the policy.

G. The Provider shall pay premiums and assessments. A company which issues an insurance policy has no recourse against the City for payment of a premium or assessment. Insurance policies obtained by a Provider must provide that the issuing company waives all right of recovery by way of subrogation against the City in connection with damage covered by the policy.

Section 2.20 <u>Indemnity</u>

A. Each Municipal Consent granted under this Article shall contain provisions whereby the Provider shall promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses or expenses:

1. for the repair, replacement, or restoration of City's property, equipment, materials, structures and Facilities which are damaged, destroyed or found to be defective as a result of the Provider's acts or omissions; and

2. from and against any and all claims, demands, suits, causes of action, and judgments for:

   a. damage to or loss of the property of any Person (including, but not limited to the Provider, its agents, officers, employees and subcontractors, City's agents, officers and employees, and third parties); and/or

   b. death, bodily injury, illness, disease, loss of services, or loss of income or wages to any Person (including, but not limited to the agents, officers and employees of the Provider, Provider's subcontractors and City, and third parties), arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the Provider, its agents, employees, and/or subcontractors, in the performance of activities pursuant to such Municipal Consent.

B. No Municipal Consent indemnity provision shall apply to any liability resulting from the negligence of the City, its officers, employees, agents, contractors, or subcontractors.

C. The provisions of the required indemnity provision set forth in an individual Municipal Consent shall provide that:

   1. It is solely for the benefit of the parties to the Municipal Consent and is not intended to create or grant any rights, contractual or otherwise, to any other Person or entity;

   2. To the extent permitted by law, any payments made to, or on behalf of the City under the provisions of this section are subject to the rights granted to Providers under Sections 54.204-54.206 of the Texas Utilities Code; and

   3. Subject to the continued applicability of the provisions of Sections 54.204-54.206 of the Texas Utilities Code, as set forth in (2) above, the provisions of the indemnity shall survive the expiration of the Municipal Consent.

Section 2.21 Renewal of Municipal Consent

A Provider shall request a renewal of a Municipal Consent by making written application to the City Manager at least 90 days before the expiration of the consent.

Section 2.22 Annexation; Disannexation

Within thirty (30) days following the date of the passage of any action affecting the annexation of any property to or the disannexation of any property from the City's corporate boundaries, the City agrees to furnish Provider written notice of the action and an accurate map of the City's corporate boundaries showing, if available, street names and number details. For the purpose of compensating the City under this Ordinance, a Provider shall start including or excluding Access Lines within the affected area in the Provider's count of Access Lines on the effective date designated by the Comptroller of Public Accounts - Texas for the imposition of State local sales and use taxes; but in no case less than thirty (30) days from the date the Provider is notified by the City of the annexation or disannexation.

Section 2.23 Severability

The provisions of this ordinance are severable. However, in the event this Ordinance or any tariff that authorizes the Provider to recover the fee(s) provided for this Ordinance or any procedure provided in this Ordinance or any compensation due the City under this Ordinance becomes unlawful, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, illegal or otherwise inapplicable, in whole or in part, or is exchanged for another means of compensation under higher authority, the City shall adopt a new ordinance that is in compliance with the authority's decision or enactment. Unless explicitly prohibited, the new ordinance shall provide the City with a level of compensation comparable to that set forth in this Ordinance as long as the compensation is recoverable by the Provider in a manner permitted by law for the unexpired portion of the term of this Ordinance.

Section 2.24 <u>Governing Law</u>

This Ordinance shall be construed in accordance with the City Code(s) in effect on the date of passage of this Ordinance to the extent that such Code(s) are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas, subject to the City's ongoing authority to adopt reasonable regulations to manage its Public Rights-of-Way, pursuant to Sections 2.17 and 2.18 or as otherwise provided by law. Municipal Consents entered into pursuant to this Ordinance are performable in Tarrant County, Texas.

Section 2.25 <u>Termination</u>

A. The City shall reserve the right to terminate any Municipal Consent and any rights or privileges conveyed under this Article in the event of a material breach of the terms and conditions of the Municipal Consent or of this Article, subject to a thirty day written notice and the opportunity to cure the breach during that thirty (30) day period.

B. Material breaches of a Municipal Consent specifically include, but are not limited to, continuing violations of Sections 2.11 [Compensation to City], 2.17 [Construction Obligations] and/or 2.18 [Conditions of Public Rights-of-Way Occupancy], and the furnishing of service of any kind that requires municipal authorization but that is not authorized by Section 2.03(A).

C. A material breach shall not be deemed to have occurred if the violation occurs without the fault of a Provider or occurs as a result of circumstances beyond its control. Providers shall not be excused from performance of any of their obligations under this Article by economic hardship, nor misfeasance or malfeasance of their City Managers, officers or employees.

D. A termination shall be declared only by a written decision by motion, resolution or ordinance of the City Council after an appropriate public proceeding before the City Council, which shall accord the Provider due process and full opportunity to be heard and to respond to any notice of grounds to terminate. All notice

requirements shall be met by giving the Provider at least fifteen (15) days prior written notice of any public hearing concerning the proposed termination of its consent. Such notice shall state the grounds for termination alleged by City.

Section 2.26 <u>Unauthorized Use of Public Rights-Of-Way</u>

A. Any Person seeking to place Facilities on, in or over the Public Rights-of-Way, City property, City structures, or Utility infrastructure shall first file an application for a Municipal Consent with the City and shall abide by the terms and provisions of this Ordinance pertaining to use of the Public Rights-of-Way and pay the fees specified herein.

B. The City may institute all appropriate legal action to prohibit any Person from knowingly using the Public Rights-of-Way unless the City has consented to such use in accordance with the terms of this Article and with a Municipal Consent.

C. Any Person using the Public Rights-of-Way without a Municipal Consent shall be liable for the same fees and charges as provided for herein. (Amend Ord 99-96, 8/10/99)

ARTICLE III

GAS

Section 3.01 Grant of Authority

A. The City of Arlington, Texas, hereinafter called "City," hereby grants to Atmos Energy Corporation, hereinafter called "Atmos Energy" or "Company," its successors and assigns, privilege and license to use and occupy the present and future Public Rights-of-Way of the City for the purpose of laying, maintaining, constructing, protecting, operating, and replacing the System needed and necessary to deliver, transport and distribute gas in, out of, and through City and to sell gas to persons, firms, and corporations, including all the general public, within the City's corporate limits.

B. Said privilege and license being granted by this Ordinance is for a term ending December 31, 2025. Unless written notice of its intent to renegotiate is provided by either the City or Atmos Energy at least 180 days prior to the expiration of any term, the franchise shall be extended for two (2) additional terms of five (5) years on the same terms and conditions as set forth herein.

C. The provisions set forth in this Ordinance represent the terms and conditions under which the Company shall construct, operate, and maintain the System within the City, hereinafter sometimes referred to as the "Franchise." In granting this Franchise, the City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future generally applicable ordinances of the City. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time.

Section 3.02 Definitions

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Affiliate" shall mean in relation to the Company, a Person that controls, is controlled by, or is under common control with the Company. As used in this definition, the term "control" means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such Person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract or otherwise.

B. "City" shall mean the City of Arlington, Texas.

C. "Company" shall mean Atmos Energy Corporation, its successors and assigns, but does not include an Affiliate, which shall have no right or privilege granted hereunder except through succession or assignment in accordance with Section 3.06.

D. "City Manager" means City's manager, or his or her designee.

E. "Gross Revenues" shall mean:

(1) all revenues received from the sale of gas to all classes of customers (excluding gas sold to another gas utility in City for resale to its customers within City) within the corporate limits of City;

(2) all revenues received by Atmos Energy from the transportation of gas through the System of Atmos Energy within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City);

(3) the value of gas transported by Atmos Energy for Transport Customers through the System of Atmos Energy within the City ("Third Party Sales") (excluding the value of any gas transported to another gas utility in City for resale to its customers within City), 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 fees paid pursuant to this agreement, revenues billed but not ultimately collected or received by Company, and the following 'miscellaneous charges': charges to connect, disconnect, or reconnect gas, contributions in aid of construction, charges to handle returned checks from consumers within the City and State gross receipts fees.

(5) "Gross revenues" shall not include:

(a) the revenue of any affiliate or subsidiary of Atmos Energy;

(b) sales taxes;

(c) any interest or investment income earned by the Company; and

(d) all 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 Public Right-of-Way.

F. "Person" shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include the City or any employee, agent, servant, representative or official of the City.

G. "Public Right-of-Way" shall mean public streets, alleys, highways, bridges, public easements, public places, public thoroughfares, grounds, and sidewalks of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.

H. "System" or "System Facilities" shall mean all of the Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections, and all other appurtenant equipment used in or incident to providing delivery, transportation, distribution, supply and sales of natural gas for heating, lighting, and power, located in the Public Right-of-Way within the corporate limits of the City.

I. "Transport Customer" shall mean any Person for which Company transports gas through the System of Company within the City's Public Rights-of-Way for delivery within the City (excluding other gas utilities in City who resell gas to their customers within the City).

Section 3.03 <u>Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Company</u>

A. If Company 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, 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 the City, would result in a franchise

fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Company to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

B. The City acknowledges that the exercise of this right is conditioned upon the City's acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms and Company may grant, in its sole reasonable discretion, such waiver.

Section 3.04 <u>Acceptance of Terms of Franchise</u>

A. The Company shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary. If the Company does not file such written acceptance of this Franchise Ordinance, the Franchise Ordinance shall be rendered null and void. The effective date shall be determined in accordance with the requirements of Section 3.26. When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes that were held by Company shall be automatically canceled and annulled, and shall be of no further force and effect except to the extent that payments due under the previous ordinance are required to be made after the effective date of this franchise ordinance.

B. At 11:59 P.M. on December 31, 2025, ALL rights, franchises and privileges herein granted, unless they have already at that time ceased or been forfeited or extended in accordance with Section 3.01 or by mutual agreement while a new franchise is being negotiated, shall at once cease and terminate.

Section 3.05 <u>No Third Party Beneficiaries</u>

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

Section 3.06 <u>Successors and Assigns</u>

No assignment or transfer of this Franchise shall be made, in whole or in part, except in the case of assignment or transfer to an Affiliate without approval of the City Council of the City. Written notice of said transfer or assignment to an Affiliate shall be

provided to the City Manager. The City will grant such approval unless assignee is materially weaker than Company. For the purposes 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. The City will grant approval to a materially weaker proposed Assignee or Transferee unless withheld for good cause such as: (1) the failure of the proposed Assignee or Transferee to agree to comply with all provisions of this Ordinance and such additional conditions as the Council may prescribe in order to remedy existing conditions of non-compliance, and (2) the failure of the proposed Assignee or Transferee to provide assurances reasonably satisfactory to the Council of its qualifications, character, the effect of the Transfer and such other matters as the Council deems relevant. City agrees that said approval shall not be unreasonably withheld or delayed. Upon approval, the rights, privileges, and Franchise herein granted to Company shall extend to and include its successors and assigns. The terms, conditions, provisions, requirements and agreements contained in this Franchise shall be binding upon the successors and assigns of the Company.

Section 3.07 <u>Compliance With Laws, Charter and Ordinances</u>

This Franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas, the Arlington City Charter, as amended, and all other generally applicable ordinances of the City of Arlington, not inconsistent herewith, including, but not limited to, ordinances regulating the use of Public Rights-of-Way.

Section 3.08 <u>Previous Ordinances</u>

When this Franchise becomes effective, all gas franchise ordinances and parts of franchise ordinances applicable to the Company or its predecessors in interest granted by the City of Arlington, Texas, are hereby repealed.

Section 3.09 <u>Notices</u>

Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter

specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY	COMPANY
City Manager City of Arlington P.O. Box 90231 101 E. Abram St. Arlington, Texas 76004-3231	Manager of Public Affairs Atmos Energy Corp. Mid-Tex Division 1550 Tech Centre Pkwy. Arlington, Texas 76014

City Attorney
City of Arlington
P.O. Box 90231
101 S. Mesquite St.
Arlington, Texas 76004-3231

Section 3.10 <u>Paragraph Headings, Construction</u>

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 3.11 <u>Conditions of Occupancy</u>

A. All construction and the work done by Company, and the operation of its business, under and by virtue of this Ordinance, shall be in conformance with the ordinances, rules and regulations now in force, including but not limited to the "Right-of-Way Management" Chapter and the Public Right-of-Way Permitting and Construction Manual, and generally applicable ordinances not in conflict with this Franchise that may hereafter be adopted by the City, relating to the use of its Public Rights-of-Way. This Franchise agreement shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code, or other state or federal Law.

B. If the City believes that Company has failed to comply with any operational or maintenance standards as required by this Franchise Ordinance, City shall give the Company written notice of such failure to comply. Company shall have the opportunity to cure such failure during a period not to exceed five (5) working days from receipt of the written notice. If the Company fails to cure the alleged failure to comply within the prescribed time period, the Company's alleged failure to comply shall be heard at a public meeting of the City Council. The Company shall be given written notice of the public meeting no later than five (5) calendar days prior to the posting date of the agenda for the City Council meeting at which such alleged failure is scheduled to be considered by the Council. The notice to the Company shall include a list of the failures complained of. Company shall have an opportunity to address the Council at such public meeting. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with operational or maintenance standards as required by this Franchise Ordinance, the City may elect to terminate this Franchise in accordance with Section 3.22.

Section 3.12 <u>Relocation of Company Equipment</u>

A. Whenever by reason of widening or straightening of streets, water or sewer line projects, or any other public works projects in which beautification or accommodation of a private developer is not a primary purpose of the project (e.g., installing or improving storm drains, water lines, sewer lines, etc.), it shall be deemed necessary to remove, alter, change, adapt, or conform the underground or aboveground System Facilities of Company to another part of the Public Rights-of-Way, such alterations shall be made by Company at Company's expense in accordance with the Right-of-Way Management Chapter of the Code of the City of Arlington. Facilities are deemed to be in conflict to the extent that the proposed City facilities are determined by City to physically conflict with Company's facilities; or determined by Atmos Energy to be inconsistent with gas distribution industry standard safe operating practices for existing facilities. City agrees to use its best effort to provide Atmos Energy with its annual capital improvements plan as well as any material updates or changes within a reasonable time after they become available. City 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. Atmos Energy shall not be required to relocate facilities to a depth of greater than four (4) feet unless a greater depth is necessary to avoid conflict with other facilities.

If Atmos Energy is required by City 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,

or any other public works projects in which beautification or accommodation of a private developer is not a primary purpose of the project, Atmos Energy shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation. When Atmos Energy is required to remove or relocate its mains, laterals or other facilities to accommodate construction by City without reimbursement from City, 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. City shall not oppose recovery of relocation costs when Company is required by City to perform relocation. City shall not require that Company document request for reimbursement as a pre-condition to recovery of such relocation costs. Notwithstanding the foregoing, the City shall have the right to request other project documentation to the full extent provided by state law.

B. If City abandons any Public Right-of-Way in which Company has facilities, such abandonment shall be conditioned on Company'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 Company for all removal or relocation expenses if Company 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 the Company to remove or relocate its facilities and Company 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 3.13 <u>Laying of Lines in Advance of Public Improvements</u>

The City shall give written notice to the Company whenever the City shall decide to make any public improvements in any Public Right-of-Way in which mains and pipes already exist or in which Company may propose to lay its mains or pipes. The Company will be provided the opportunity, at no expense to the City, in advance of such public improvements, to renew such mains or pipes, if defective or inadequate in size, and to lay service lines, or renew same, if inadequate in size or defective, to the property lines where buildings are already located.

Section 3.14 <u>Installation of Meters</u>

If a meter is to be installed in or near the Public Rights-of-Way, Company agrees to discuss with the City the aesthetics of the meter placement. Meters shall not be placed within City sidewalks. If the City requires a meter upgrade, the Company will comply so long as the City reimburses the Company for the reasonable costs incurred by the Company in changing meters; provided, however, that in no event shall underground meters be required.

Section 3.15 <u>Duty to Serve</u>

A. The Company hereby agrees that it will not arbitrarily refuse to provide service to any Person that it is economically feasible for the Company to serve. In the event that a Person is refused service, said Person may request a hearing before the City Council of the City or its designee, said hearing to be held within forty-five (45) days from the date of the request for hearing. The Council may order the Company to provide service or take any other action necessary to bring the Company into compliance with the intent of the Council in granting this Franchise, including the adoption of an ordinance or resolution in accordance with Section 3.15(B) or termination or forfeiture of the Franchise in accordance with Section 3.22. The Council shall render its opinion at its next regular meeting but in no event shall it be required to act in less than seven (7) days.

B. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with operational or maintenance standards as required by this Franchise Ordinance, the City may elect to terminate this Franchise in accordance with Section 3.22.

Section 3.16 <u>Rates</u>

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

Section 3.17 <u>Payments to the City</u>

A. In consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business, Company, its successors and assigns, agrees to pay and City agrees to accept such franchise fees in the amount and manner described herein. Except as provided for in Section 3.17(B), such payments shall be made on a quarterly basis, on or before the forty-fifth (45th) day following the end of each calendar quarter. The franchise fee shall be a sum of money that shall be equivalent to five percent (5%) of the quarterly Gross Revenues, as defined in Section 3.02(E), for the preceding calendar quarter. The initial payment provided under this Franchise shall be due on or before May 15, 2016, based on the preceding calendar quarter (January 1 – March 31, 2016) and shall be for the right and privilege during the preceding calendar quarter (January 1 – March 31, 2016). Subsequent payments shall be made as follows during the term of the Franchise:

Payment Due	Based Upon and For Calendar Quarter
Feb. 15	Oct. 1 – Dec. 31
May 15	Jan. 1 – March 31
Aug. 15	April 1 – June 30
Nov. 15	July 1 – Sept. 30

The final payment under the initial term of this Franchise will be due on or before February 15, 2026 and will be for the calendar quarter October 1 – December 31, 2025.

B. The franchise fee amounts based on "Contributions in Aid of Construction" ("CIAC") shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee payment will be due on or before April 30, 2016 and will be based on CIAC received from the effective date of this Ordinance through December 31, 2015. The final payment of franchise fee amounts based on CIAC will be April 30, 2026, for the calendar year ending December 31, 2025.

C. It is also expressly agreed that the franchise fee payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as a 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 City may now impose or hereafter levy and collect from Company or Company's agents, excepting only the usual

general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. Except however, Company's separate obligation to reimburse the City for City's reasonable rate case expenses and for street repairs in accordance with City's ordinances are not affected by Company's payment of franchise fees hereunder. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of occupation taxes, licenses, fees, street or alley rentals or charges, easements or franchise taxes, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay such occupation taxes, licenses, charges, fees or rentals.

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

E. Company Recovery of Franchise Fees. City agrees that (i) as a regulatory authority, it will adopt and approve the ordinance, rates, or tariff which provide for 100% recovery of such franchise fees as part of Company's rates; (ii) if City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Company's franchise fees is an issue, City will take an affirmative position supporting 100% recovery of such franchise fees by Company; and (iii) in the event of an appeal of any such regulatory proceeding in which City has intervened, City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company. City further 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 Company.

F. Lease of Facilities Within City's Rights-of-Way. Company shall have the right to lease, license or otherwise grant to a party other than Company the use of its Facilities within the City's Public Rights-of-Way provided: (i) Company first notifies the City 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) Company makes the franchise fee payment due on the revenues from such lease pursuant to Sections 3.17(A) and 3.17(B) of this Ordinance. This authority to lease Facilities within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees, access line fees, or similar Public Right-of-Way user fees.

G. City shall within thirty (30) days of final approval, give Company notice of annexations and disannexations of territory by the City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Company shall promptly initiate a process to reclassify affected customers into the city limits no

later than sixty (60) days after receipt of notice from the City. The annexed areas added to the city limits will be included in future franchise fee payments in accordance with the effective date of the annexation if notice was timely received from City. Upon request from City, Company 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 Company 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 3.18 <u>Books and Records</u>

A. Company agrees that at the time of each quarterly payment, Company shall also submit to the City a statement showing its Gross Revenues for the preceding calendar quarter as defined in Section 3.02(E). City shall be entitled to treat such statement as though it were sworn and signed by an officer of Company.

B. City may, if it sees fit, upon reasonable notice to the Company, have the books and records of Company examined by a representative of City to ascertain the correctness of the reports agreed to be filed herein. The Company shall make available to the auditor such personnel and records as the City may in its reasonable discretion request in order to complete such audit, and shall make no charge to the City therefore. The Company shall assist the City in its review by providing all requested information no later than fifteen (15) days after receipt of a request. The cost of the audit shall be borne by the City unless the audit discloses that the Company has underpaid the franchise fee by 10% or more, in which case the reasonable costs of the audit shall be reimbursed to the City by the Company. If such an examination reveals that Company has underpaid the City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of the City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section 3.17(D). Should Company determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Company regarding the existence of such overpayment, City shall review Company's claim and if said overpayment is confirmed, remit the amount of overpayment to Company.

C. If, after receiving reasonable notice from the City of the City's intent to perform an audit as provided herein, the Company fails to provide data, documents, reports, or information required to be furnished hereunder to the City, or fails to reasonably cooperate with the City during an audit conducted under the terms

hereunder, the City may elect to terminate this Franchise in accordance with Section 3.22.

Section 3.19 <u>Reservation of Rights: General</u>

A. The City reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of Company's use of the Public Rights-of-Way to ensure the rendering of efficient public service, and the maintenance of Company's System in good repair throughout the term of this Franchise.

B. The rights, privileges, and Franchise granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other Person for the purpose of furnishing gas for light, heat, and power for City and the inhabitants thereof.

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

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

Section 3.20 <u>Right to Indemnification, Legal Defense and to be Held Harmless</u>

A. In consideration of the granting of this Franchise, Company agrees to indemnify, defend and hold harmless the City, its officers, agents, and employees (City and such other persons and entities being collectively referred to herein as "Indemnitees"), from and against all suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company's intentional and/or negligent acts or omissions in connection with Company's operations.

B. The Company's obligation to indemnify Indemnitees under this Franchise Ordinance shall not extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one or more Indemnitees. In such case the obligation to indemnify shall be reduced in proportion to the negligence of the Indemnitees. By entering into this Franchise Ordinance, City does not consent to suit, waive any governmental immunity available to the City under Texas law or waive any of the defenses of the parties under Texas law.

C. Except for instances of the City's own negligence, City shall not at any time be required to pay from its own funds for injury or damage occurring to any person or property from any cause whatsoever arising out of Company's construction, reconstruction, maintenance, repair, use, operation or dismantling of System or Company's provision of service.

D. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Company shall, upon notice from any of the Indemnitees, at Company's sole cost and expense, resist and defend the same with legal counsel selected by Company; provided, however, that Company shall not admit liability in any such matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Company. Company's obligation to defend shall apply regardless of whether City is solely or concurrently negligent. The Indemnitees shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 3.20. Nothing herein shall be deemed to prevent the Indemnitees at their election and at their own expense from cooperating with Company and participating in the defense of any litigation by their own counsel. If Company fails to retain defense counsel within seven (7) business days after receipt of Indemnitee's written notice that Indemnitee is invoking its right to indemnification under this Franchise, Indemnitees shall have the right to retain defense counsel on their own behalf, and Company shall be liable for all defense costs incurred by Indemnitees.

Section 3.21 <u>Insurance</u>

The Company will maintain an appropriate level of insurance in consideration of the Company's obligations and risks undertaken pursuant to this Franchise, unless a specific amount of insurance is required by the City's Right-of-Way Ordinance, in which

case said Ordinance will control. Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an approved formal plan of self-insurance maintained by Company in accordance with sound accounting and risk-management practices. A certificate of insurance shall be provided to the City. The Company will require its self-insurance to respond to the same extent as if an insurance policy had been purchased naming the City as an additional insured, and any excess coverage will name the City as an additional insured up to the amounts required by the City's Right-of-Way Ordinance.

Section 3.22 <u>Termination</u>

A. Right to Terminate. In addition to any rights set out elsewhere in this Franchise Ordinance, the City reserves the right to terminate the Franchise and all rights and privileges pertaining thereto, in the event that the Company violates any material provision of the Franchise.

B. Procedures for Termination.

(1) The City may, at any time, terminate this Franchise for a continuing material violation by the Company of any of the substantial terms hereof. In such event, the City shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to the Company at the address set forth in Section 3.09 hereof. The Company shall have sixty (60) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's Franchise is subject to termination under the following provisions. Provided, however, that, if the Company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Franchise will not be terminated.

(2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby the Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The Company shall be provided at least fifteen (15) days prior written notice of any public hearing concerning the termination of the Franchise. In addition, ten (10) days notice by publication shall be given of the date, time and place of any public hearing

to interested members of the public, which notice shall be paid for by the Company.

(3) The City, after full public hearing, and upon finding material violation or failure to comply, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by the Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.

(4) Nothing herein stated shall preclude Company from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction.

(5) Nothing herein stated shall prevent the City from seeking to compel compliance by suit in any court of competent jurisdiction if the Company fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Company to comply with said terms.

Section 3.23 <u>Renegotiation</u>

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

Section 3.24 <u>Severability</u>

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

Section 3.25 <u>No Waiver</u>

Either City or the Company shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed

by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

Section 3.26 <u>Effective Date</u>

This Franchise shall be effective on January 1, 2016, if Company has filed its acceptance as provided by Section 3.04 herein.

(Amend Ord 15-064, 12/15/15)

ARTICLE IV

ELECTRICITY

Section 4.01 Grant of Franchise

The City hereby grants to Oncor Electric Delivery Company LLC, its successors and assigns, herein called "Electric Company" or "Company," the right, privilege and franchise to use its present and future streets, avenues, alleys, highways, public ways and utility easements for the purpose of constructing, maintaining and operating in the present and future streets, avenues, alleys, highways, public ways and utility easements of the City, electric power lines together with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, and transmission lines, and communication lines for its own use) for the purpose of delivering electricity to the City, the inhabitants thereof, and persons, firms, and corporations beyond the corporate limits thereof.

Section 4.02 Placement of Facilities

The placement of Electric Company's facilities in the streets, avenues, alleys, highways, public ways and easements within the City shall interfere as little as reasonably practicable with the use of public streets, avenues, alleys, highways, drainage systems and public ways and shall comply with all pertinent requirements of the National Electric Safety Code and with City ordinances.

Section 4.03 Franchise Fee

A. In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Electric Company shall pay to the City a franchise fee as follows:

1. As authorized by Section 33.008(b) of PURA, the amount of $0.002904 multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries, in accordance with the Agreement to Resolve Outstanding Franchise Issues between Oncor and the Steering Committee of Cities Served by TXU Electric Delivery Company, dated January 27, 2006.

2. Payments to the City shall be made per the quarterly schedule as follows:

Payment Due Date	Basis Period	Privilege Period
February 28(29)	Oct. 1 – Dec. 31	Mar. 1 – May 31
May 31	Jan. 1 – Mar. 31	Jun. 1 – Aug. 31
August 31	Apr. 1 – Jun. 30	Sept. 1 – Nov. 30
November 30	Jul. 1 – Sept. 30	Dec. 1 – Feb. 28(29)

3. A sum equal to four percent (4%) of gross revenues received by Company from services identified as DD1 through DD24 in Section 6.1.2 "Discretionary Service Charges," in its Tariff for Retail Delivery Service (Tariff), effective 1/1/2002, that are for the account and benefit of an end-use retail electric consumer, pursuant to the Compromise, Settlement, and Release Agreement between the City and TXU Electric Company, effective January 1, 2002. Company will, upon request by City, provide a cross reference to Discretionary Service Charge numbering changes that are contained in Company's current approved Tariff.

4. The franchise fee amounts based on "Discretionary Service Charges" shall be calculated on an annual calendar year basis, i.e. from January through December 31 of each calendar year. The franchise fee amounts that are due based on "Discretionary Service Charges" shall be paid at least once annually on or before April 30 each year based on the total "Discretionary Service Charges," as set out in Section 4.03.A.3, received during the preceding calendar year.

B. With each payment of compensation required by Section 4.03.A.2, Electric Company shall furnish to the City a statement, executed by an authorized officer of Electric Company or designee, providing the total kWh delivered by Electric Company to each retail customer's point of delivery within the City and the amount of payment for the period covered by the payment.

C. With each payment of compensation required by Section 4.03(A)(3), Electric Company shall furnish to the City a statement, executed by an authorized officer of Electric Company or designee, reflecting the total amount of gross revenues

received by Electric Company from services identified in its "Tariff for Retail Delivery Service," Section 6.1.2, "Discretionary Service Charges," Items DD1 through DD24.

D. Pursuant to Section 33.008(e) of the Texas Utilities Code, the City may conduct an audit or other inquiry in relation to a payment made by Electric Company less than two (2) years before the commencement of such audit or inquiry. The City may audit the applicable books and records of the Electric Company to verify statements provided under this Section 4.03. Audits may be done to verify that all fees have been charged and paid according to this franchise. The Electric Company will provide adequate office space and records to accomplish each audit.

E. If either party discovers that Electric Company has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined by mutual agreement between the City and Electric Company and the City shall be paid by Electric Company within thirty (30) calendar days of such determination. Any overpayment to the City through error or otherwise will, at the sole option of the City, either be refunded to Electric Company by City within thirty (30) days of such determination or offset against the next payment due from Electric Company. Acceptance by either party of any payment due under this Section shall not be deemed to be a waiver of any claim of breach of this Franchise, nor shall the acceptance by either party of any such payments preclude the other party from later establishing that a larger amount was actually due or from collecting any balance due. Nothing in this section shall be deemed a waiver by either party of its rights under law or equity.

F. Interest on late payments shall be calculated in accordance with the interest rate for customer deposits established by the Public Utility Commission of Texas in accordance with Texas Utilities Code Section 183.003 which may be amended for the time period involved.

G. The franchise fee payable to the City pursuant to Section 4.03 hereunder, shall not be offset by any payment by Electric Company to the City relating to ad valorem taxes.

Section 4.04 <u>Period of Time of This Ordinance-Expiration</u>

A. This franchise shall be in full force and effect for a period beginning with the effective date hereof and ending ten (10) years after to expire on August 31, 2024.

B. In the event that this franchise is renewed, the quarterly payments under Section 4.03.A.2 and the annual Discretionary Service Charge payments under Section 4.03.A.3 of this ordinance shall continue uninterrupted under the terms of this Section and Section 4.03.

Section 4.05 <u>No Exclusive Privileges Conferred by This Ordinance</u>

Nothing herein contained shall be construed as giving to the Electric Company any exclusive privilege within City limits.

Section 4.06 <u>Successors and Assigns</u>

The rights, powers, limitation, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns.

Section 4.07 <u>Electric Company Subject to Other Regulations</u>

The Electric Company's property and operations within the City limits shall be subject to applicable City Charter provisions, ordinances and all rules and regulations that have been or will be promulgated by the City including but not limited to the Right-of-Way Management Chapter of the City Code unless otherwise in conflict with this Ordinance, federal or state laws, rules, or regulations. The failure of this Ordinance to include provisions that exist in other City rules, regulations, or ordinances, does not affect the enforceability of such other City rules, regulations, or ordinances against Electric Company, and such other City rules, regulations, and ordinances remain in full force and effect with regard to Electric Company, whether fully set out herein or not.

Section 4.08

In all respects, this franchise ordinance heretofore duly passed by the governing body of the City shall remain in full force and effect according to its terms until said franchise ordinance terminates as provided therein.

Section 4.09 <u>Effective Date</u>

This ordinance shall take effect upon City publication and City passage.

Section 4.10 <u>Supersede</u>

This Ordinance shall supersede any and all other Franchises granted by the City to Electric Company, its predecessors and assigns.

Section 4.11 <u>Open Meeting</u>

It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given by the City as required. (Amend Ord 14-040, 8/5/14)

ARTICLE V

Regulation of Use

Section 5.01 Improper Use of Water, Light or Gas

Whoever intentionally by any means or device prevents electric current, water or gas from passing through any meter or meters belonging to a person, corporation or company engaged in the manufacture or sale of electricity, water or gas, for lighting, power or other purpose, furnished through meters, or intentionally prevents a meter from duly registering the quantity of electricity, water or gas supplied, or in any way interferes with its proper action or registration, or without the consent of such person, corporation or company, intentionally diverts any electric current from any wire or water or gas from any pipe or pipes of such person, corporation or company, any electricity or gas manufactured, or water produced or distributed by such person, corporation or company, or any person, corporation or company who retains possession of or refuses to deliver any meter or meters, lamp or lamps or other appliances which may be or may have been loaned them by any person, corporation or company engaged in the manufacture or sale of electricity, water or gas for lighting, power or other purposes shall knowingly misread any meter or over charge any customer for such water or lights or gas furnished, shall be deemed guilty of a misdemeanor. (Code of 1920)

ARTICLE VI

Grant of Franchise to Great Southwest Railroad, Inc.

Section 6.01 Granting of Franchise

The City hereby grants to Great Southwest Railroad, Inc. the right, privilege and franchise to maintain and operate its railway over and across the following described portions of streets in the City of Arlington, Texas. The tracks of such railway are hereinafter designated by number and presently cross such streets at such places as are more particularly described as follows:

Descriptions of six (6) parcels of land out of dedicated streets in Industrial Community No. 1 and the First Installment of Industrial Community No. 2 of the Great Southwest Industrial District and within the corporate limits of the City of Arlington, Texas, said parcels of land being street crossings for Lead Track No. 4, Lead Track No. 4A, Lead Track No. 5, Lead Track No. 9 and Lead Track No. 12 of the Great Southwest Railroad; said parcels of land being described as follows:

Lead Track No. 4

Parcel "A"

BEING a 0.129 acre tract out of Avenue "H" East as dedicated on the Plat of Industrial Community No. 1 of the Great Southwest Industrial District, an addition to the City of Arlington, Texas, recorded in Volume 388-10, Page 85, Plat Records of Tarrant County, Texas; said 0.129 acre tract being more particularly described as follows:

BEGINNING at the intersection of the north line of Avenue "H" East and the east line of a 53.0 foot wide railroad strip, said point being west 287.78 feet from the intersection of the north line, extended, of said Avenue "H" East and the west line, extended of 109th Street, said point of beginning being also in a curve to the left whose center bears north 75 degrees 03 minutes 32 seconds east 543.69 feet from said point;

THENCE southeasterly, with said curve to the left, through a central angle of 11 degrees 16 minutes 28 seconds an arc distance of 106.99 feet to the end
of said curve in the south line of said Avenue "H" East;

THENCE west, with said south line, 58.45 feet to a point for corner, said point being in a curve to the right whose center bears north 66 degrees 15 minutes 53 seconds east 596.69 feet from said point;

THENCE northwesterly, with said curve to the right, through a central angle of 10 degrees 08 minutes 53 seconds, an arc distance of 105.69 feet to the end of said curve in the north line of said Avenue "H" East;

THENCE east, with said north line, 54.68 feet to the PLACE OF BEGINNING and containing 5,638.0 square feet, or 0.129 acre of land.

Lead Track No. 4A

Parcel "A"

BEING a 0.014 acre tract of land out of 109th Street as dedicated on the Plat of Industrial Community No. 1 of the Great Southwest Industrial District, an addition to the City of Arlington, Texas, recorded in Volume 388-10, Page 85, Plat Records of Tarrant County, Texas; said 0.014 acre tract being more particularly described as follows:

BEGINNING at the intersection of the west line of 109th Street and the City Corporate Limit Line of Grand Prairie and Arlington, Texas, as shown on the plat of said Industrial Community No. 1, said point being south 13 degrees 00 minutes 00 seconds east 504.96 feet from the intersection of the west line, extended of said 109th Street and the south line, extended, of Avenue "J" East;

THENCE east, with said City Corporate Limit Line 69.30 feet to a point for corner;

THENCE south 77 degrees 00 minutes 00 seconds west 12.52 feet to the beginning of a curve to the left whose radius is 355.01 feet;

THENCE with said curve to the left, through a central angle of 8 degrees 54 minutes 51 seconds an arc distance of 55.3 feet to the end of said curve in the west line of said 109th Street;

THENCE north 13 degrees 00 minutes 00 seconds west with said west line 19.88 feet to the PLACE OF BEGINNING and containing 602.66 square feet, or 0.014 acre of land.

Lead Track No. 5

Parcel "A"

BEING a 0.113 acre tract of land out of 108th Street as dedicated on the plat of Industrial Community No. 1 of the Great Southwest Industrial District an addition to the City of Arlington, Texas, recorded in Volume 388-10, Page 85, Plat Records of Tarrant County, Texas; said 0.113 acre tract being more particularly described as follows:

BEGINNING at the intersection of the southwesterly line of 108th Street and the north line of a 53.0 foot wide railroad strip, as shown on the plat of said Industrial Community No. 1;

THENCE east 92.33 feet to a point for corner in the northeasterly line of said 108th Street, said point being in a curve to the left whose center bears north 59 degrees 20 minutes 54 seconds east 1869.86 feet from said point;

THENCE southeasterly with said east line of 108th Street, and along said curve to the left through a central angle of 1 degree 54 minutes 55 seconds, an arc distance of 62.23 feet to the end of said curve;

THENCE west 94.14 feet to a point for corner in the southwesterly line of said 108th Street, said point being in a curve to the right whose center bears north 58 degrees 55 minutes 49 seconds east 1949.86 feet from said point;

THENCE northwesterly with said west line of 108th Street and along said curve to the right through a central angle of 1 degree 48 minutes 05 seconds, an arc distance of 61.30 feet to the PLACE OF BEGINNING and containing 4,940.34 square feet or 0.113 acre of land.

Lead Tract No. 5

Parcel "B"

BEING a 0.123 acre tract of land out of Avenue "H" East as dedicated on the plat of Industrial
Community No. 1 of the Great Southwest Industrial District, an addition to the City of Arlington, Texas, recorded in Volume 388-10, Page 85, Plat Records of Tarrant County, Texas; said 0.123 acre tract being more particularly described as follows:

BEGINNING at the intersection of the north line of said Avenue "H" East and the east line of a 53.0 foot wide railroad strip, as shown on the plat of said Industrial Community No. 1, said point being in a curve to the left whose center bears north 75 degrees 16 minutes 22 seconds east 1607.28 feet;

THENCE southeasterly with said curve to the left through a central angle of 3 degrees 35 minutes 57 seconds an arc distance of 100.96 feet to the end of said curve, a point for corner in the south line of Avenue "H" East, said point being in a curve to the right whose center bears north 8 degrees 50 minutes 55 seconds west 2048.69 feet;

THENCE southwesterly with said south line of Avenue "H" East and along said curve to the right, through a central angle of 1 degree 30 minutes 20 seconds, an arc distance of 53.82 feet to the end of said curve, a point for corner, said point being in a curve to the right

whose center bears north 72 degrees 00 minutes 13 seconds east 1660.28 feet from said point;

THENCE northwesterly with said curve to the right, through a central angle of 3 degrees 29 minutes 45 seconds, an arc distance of 101.30 feet to the end of said curve, a point for corner in the north line of said Avenue "H" East, said point being in a curve to the left whose center bears north 6 degrees 52 minutes 55 seconds west 1948.69 feet;

THENCE northeasterly with the north line of said Avenue "H" East, and along said curve to the left through a central angle of 1 degree 34 minutes 13 seconds, an arc distance of 53.41 feet to the PLACE OF BEGINNING and containing 5,375.41 square feet, or 0.123 acre of land.

Lead Tract No. 9

Parcel "A"

BEING a 0.122 acre tract of land out of Avenue "E" East, a 100.0 foot wide street, as dedicated on the plat of the First Installment of Industrial Community No. 2 of the Great Southwest Industrial District, an addition to the City of Arlington, Texas, recorded in Volume 388-11, Page 138, Plat Records of Tarrant County, Texas; said tract being more particularly described as follows:

BEGINNING at the intersection of the north line of Avenue "E" East and the west line of a variable width railroad strip, said point being north 50.0 feet and west 2169.77 feet from the center line intersection of Great Southwest Parkway and said Avenue "E" East;

THENCE east with the north line of said Avenue "E" East, 53.0 feet to a point for corner;

THENCE south 100.0 feet to a point for corner in the south line of said Avenue "E" East;

THENCE west with said south line 53.0 feet to a point for corner;

THENCE north 100.0 feet to the PLACE OF BEGINNING and containing 5,300.0 square feet, or 0.122 acre of land.

Lead Tract No. 12

Parcel "A"

BEING a 0.146 acre tract of land out of Randol Mill Road, a 120.0 foot wide road as dedicated on the plat of the First Installment of Industrial Community No. 2 of the Great Southwest Industrial District, an addition to the City of Arlington, Texas, recorded in Volume

388-11, Page 138, Plat Records of Tarrant County, Texas, said tract being more particularly described as follows:

BEGINNING at the intersection of the south line of said Randol Mill Road with the east line of a variable width railroad strip, said point being west 2063.77 feet from the intersection of the west line, extended, of the Great Southwest Parkway and the south line, extended, of said Randol Mill Road;

THENCE west with the south line of said Randol Mill Road 53.0 feet to a point for corner;

THENCE north 120.0 feet to a point for corner in the north line of said Randol Mill Road;

THENCE east with said north line 53.0 feet to a point for corner;

THENCE south 120.0 feet to the PLACE OF BEGINNING and containing 6,360.0 square feet or 0.146 acre of land.

(Amend Ord 1358, 10/20/60)

Section 6.02 Grant of Additional Franchise

The City of Arlington hereby grants to Great Southwest Railroad, Inc. the right, privilege and franchise to maintain and operate its railroad over and across the following described portions of streets in the City of Arlington, Texas:

Parcel "A"

BEING a 7060.41 square foot tract of land out of Industrial Community No. 1, Great Southwest Industrial District, an addition to the City of Arlington, Texas, as recorded in Volume 388-10, Page 85, Plat Records of Tarrant County, Texas; said 7060.41 square foot tract being a 53 foot wide railroad and utility easement across Great Southwest Parkway, said easement being more particularly described as follows:

BEGINNING at a point in the west line of Great Southwest Parkway, said point being 243.80 feet from the intersection of the said west line of Great Southwest Parkway with the south line of Avenue "H" East;

THENCE north 59 degrees 12 minutes east 34.83 feet to the beginning of a curve to the right whose radius is 367.03 feet;

THENCE with said curve to the right through a central angle of 15 degrees 14 minutes 13 seconds, an arc distance of 97.61 feet to the end of said curve in the east line of Great Southwest Parkway;

THENCE south with the said east line of Great Southwest Parkway 55.35 feet to the beginning of a curve to the left whose center bears south 18 degrees 15 minutes 24 seconds east 314.03 feet from said point;

THENCE with said curve to the left through a central angle of 12 degrees 32 minutes 36 seconds an arc distance of 68.75 feet to the end of said curve;

THENCE south 59 degrees 12 minutes west 53.24 feet to the beginning of a curve to the right whose radius is 367.03 feet;

THENCE with said curve to the right through a central angle of 2 degrees 01 minute 45 seconds an arc distance of 13.00 feet to the end of said curve in the said west line of Great Southwest Parkway;

THENCE north with said west line of Great Southwest Parkway 61.316 feet to the PLACE OF BEGINNING and containing 7060.41 square feet of land.

Parcel "B"

BEING a 4240.00 square foot of land out of Industrial Community No. 1 of the Great Southwest Industrial District, an addition to the City of Arlington, Texas, as recorded in Volume 388-10, Page 85, Plat Records of Tarrant County, Texas, said 4240.00 square foot tract being a 53 foot wide railroad and utility easement across 111th Street, said 53 foot wide easement being more particularly described as follows:

BEGINNING at a point in the west line of 111th Street, said point being south 303.53 feet from the intersection of the said west line of 111th Street with the south line of Avenue "H" East;

THENCE east 80.00 feet to a point for corner in the east line of 111th Street;

THENCE south with said east line 53.00 feet to a point for corner;

THENCE west 80.00 feet to a point for corner in the said west line of 111th Street;

THENCE north with said west line of 111th Street 53.00 feet to the PLACE OF BEGINNING and containing 4240.00 square feet of land.

(Amend Ord 1473, 12/4/62)

ARTICLE VII

CONSENT

Section 7.01 Findings and Purpose

A. The City Council makes the following findings:

1. It is in the public interest to promote competition in telecommunications services and the availability of broadband transmission services to all residences and businesses.

2. It is in the public interest for the City to exercise the historical right to control access of and to manage the City's rights-of-way and to obtain reasonable compensation for the use of City property.

3. This chapter establishing rules governing the use of the City's rights-of-way is authorized by the City Charter, Article 1175, V.A.C.S., and other state, federal and local law.

B. The purpose of this chapter is to establish a competitively neutral policy for use of public rights-of-way for the provision of telecommunications services and to enable the City:

1. to permit non-discriminatory access to the public rights-of-way for providers of telecommunications services;

2. to manage the public rights-of-way to minimize the effects and cost to the public of locating telecommunications facilities within the limited rights-of-way;

3. to obtain fair and reasonable compensation for the commercial use of public rights-of-way through collection of fees and charges;

4. to promote competition among telecommunications service providers and encourage the universal availability of modern telecommunications services to all residents and businesses of Arlington; and

5. to minimize congestion, inconvenience, visual blight and other adverse effects on the City's public rights-of-way.

Section 7.02 <u>Authority; Scope</u>

This chapter applies to all telecommunications service providers under Title II of the Communications Act of 1934, as amended, (47 U.S.C. 201 et seq.) ("Title II") excluding services provided solely by means of a wireless transmission. No consent granted under this chapter authorizes the provision of any services not covered by Title II. Cable service and open video systems as defined in Title VI of the Communications Act of 1934 and any other content service are expressly excluded.

Section 7.03 <u>Definitions</u>

In this chapter:

"Affiliate" means a person who controls, is controlled by, or is under common control with a provider. Affiliate does not include a person who serves end use customers by means of wireless transmission. There is a rebuttable presumption of control if a provider owns at least 25% of the affiliate's stock or assets.

"City Manager" means the City Manager of the City of Arlington, or the City Manager's designee.

"Gross Revenue" includes all revenues derived directly or indirectly by a Provider from Telecommunications Services offered through a Telecommunications Network within the City. Gross Revenue does not include revenue uncollectible from customers ("bad debt"). By way of example, but without limitation, "Gross Revenue" includes:

1. Revenue derived from cash sales, customer credit account sales, property of any kind or nature or from any service whatsoever received or accruing to Provider directly or indirectly arising from or attributable to the sale or exchange of Telecommunications and/or Network Services by Provider within the City;

2. All Telecommunication Services revenues charged on a flat rate basis;

3. All Telecommunication Services revenues charged on a usage sensitive or mileage basis;

4. All revenues from connection or disconnection fees;

5. All revenues from penalties, fees or charges to customers for checks returned from banks, net of bank costs paid;

6. All revenues from local service;

7. All revenues from authorized rental or lease of conduit space;

8. All revenues from charges for access to or from local and long distance networks;

9. All revenues from authorized rentals or leases of any portion of Provider's Telecommunications Network, including, but not limited to, plant, facilities, antenna towers or capacity leased to others;

10. All revenues from enhanced data service;

11. All interconnect and access and/or landline charges or revenues from wireless telecommunication entities, interexchange carriers and other Providers;

12. All revenues derived from co-location connection fees;

13. All revenues from subsidiary or Affiliate entities or entities renting or leasing conduit space or any other part of the Provider's Network;

14. Any fees collected from the customer, other than State sales taxes, but including all fees and charges collected pursuant to this Chapter;

15. Revenues from the lease or re-sale of lines or circuit paths to any Affiliate or third parties; and

16. All revenue from the sale, lease or access for or to Network Elements in the Public Rights-of-Way (as contemplated by 47 C.F.R. Part 51, *et seq.*).

"Municipal Consent" means the right granted by ordinance to a person to use public rights-of-way to provide telecommunications services within the city to the public or to other providers.

"Person" shall mean and extend to associations, firms, partnership and bodies political and corporate, as well as to individuals.

"Provider" means a person that delivers telecommunications services within the city to the public and either:

1. has been granted a certificate under Art. 1446c-O, Title 3 V.A.C.S. ("PURA 95") or other certificate; or

2. operates or uses a telecommunications network within the City.

Provider does not include persons who are authorized by the City to occupy the rights-of-way in specifically approved routes within the City, unless they have a consent under this Chapter.

"Public Rights-of-Way" means the surface, the air space above the surface, and the area below the surface of a public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds a property interest or exercises rights of management or control.

"Telecommunications Network" or "**Network"** means all facilities placed in the public rights-of-way and used to provide telecommunications services to the public.

"Telecommunications Services" means all transmissions between or among points identified by the user, of information of the user's choosing, including voice, video or data, without change in content of the information as sent and received, if the transmissions are accomplished through a telecommunications network. Telecommunications services includes ancillary or adjunct switching services and signal conversions rendered as a function of underlying transmission services, but excludes long distance transmissions (inter LATA and intra LATA toll transmissions) (local access and transport area). Telecommunications services only includes Title II services and expressly excludes cable services or open video systems as defined in Title VI of the Communications Act of 1934, as amended, and other content services.

Section 7.04 <u>Municipal Consent Required</u>

A. A person may not deliver telecommunications services in the city by means of a network unless the person obtains a municipal consent.

B. The use of public rights-of-way for the delivery of any service not covered by this chapter is subject to all other applicable city requirements.

Section 7.05 <u>Application For Municipal Consent</u>

A A person must submit an application to the City Manager to grant, renew, extend, amend, or transfer a municipal consent.

B. The application must be on a form prescribed by the City Manager, and it must include the following:

1. a description of the services to be provided;

2. an outline of the applicant's proposed network, if any, and

3. a description of the effect on the public rights-of-way, if any; and

4. such other information as the City Manager deems necessary to meaningfully analyze and process the application.

Section 7.06 <u>Recommendation On Application</u>

The City Manager shall review an application submitted under this Chapter and recommend to the City Council that it grant or deny the application. The City Manager shall make the recommendation to the City Council no later than the 90th day after an application is filed.

Section 7.07 <u>Municipal Consent Ordinance</u>

A. If the City Manager finds that the application meets the requirements of this Chapter, the City Manager shall request the City Attorney to prepare a municipal consent ordinance for the City Council's consideration.

B. In addition to the requirements of the City Charter and applicable City ordinances, a municipal consent ordinance submitted to the City Council must include at least the following provisions:

1. a term of no less than three (3) years and no more than ten (10) years for the consent agreement;

2. a requirement that the provider comply with this chapter and other applicable city ordinances;

3. a requirement that the provider's municipal consent is subject to termination by the City Council, after notice and hearing, for the provider's failure to comply with this Chapter or on a showing that the provider has breached the terms of the municipal consent; and

4. a provision for:

   a. reasonable compensation for the use of public rights-of-way;

   b. transfers of ownership or control;

   c. indemnification;

   d. construction obligations;

   e. insurance;

   f. annexation; and

   g. other provisions deemed beneficial to the City.

Section 7.08 <u>Petition For Reconsideration</u>

The act of granting, amending, denying or terminating a municipal consent is a legislative function within the discretion of the City Council. A person whose application for a municipal consent is denied, is not considered by the City Council on or before the 45th day after the City Manager submits a recommendation, or whose municipal consent is terminated must petition the City Council for reconsideration before seeking judicial remedies. A petition is considered denied if the City Council does not act within

forty-five (45) days after the petition is filed with the City Secretary.

Section 7.09 <u>Administration And Enforcement</u>

A provider shall report information that the City Manager requires in the form and manner prescribed by the City Manager relating to the use of public rights-of-way for the telecommunications services authorized by a municipal consent granted under this Chapter.

Section 7.10 <u>Unauthorized Use of Public Rights-of-Way</u>

A. A person commits an offense if a person uses the public rights-of-way to provide a telecommunications service that has not been authorized by the City.

B. A person commits an offense if a person places facilities on public structures or utility infrastructure to provide a service not allowed under the terms of a municipal consent or other authorization.

C. Each unauthorized use of the public rights-of-way and each unauthorized placement of facilities constitutes a separate offense. Each day a violation of this Chapter occurs shall constitute a distinct and separate offense.

D. An offense under this subsection is a class C misdemeanor, punishable by a fine of no less than Five Hundred Dollars ($500).

E. A person who delivers telecommunications services within the City by means of a telecommunications network without obtaining a municipal consent shall pay to the City as compensation for the use of the public rights-of-way five percent (5%) of gross revenue as defined in Section 7.03 or such other amount prescribed by the City Council. In addition, the City may enjoin such unauthorized use of the public rights-of-way. (Amend Ord 97-44, 4/1/97)

ARTICLE VIII

REGISTRATION OF RETAIL ELECTRIC PROVIDERS

Section 8.01 General Provisions

A. Purpose. The City of Arlington City Council finds that it is in the best interest of the public to require that a Retail Electric Provider ("REP") register as a condition of serving City residents. This ordinance establishes a "safe harbor" process for registration of REPs to standardize notice and filing procedures, deadlines, and registration information and fees. The "safe harbor" registration process provides certainty to City and REPs, thereby facilitating the development of a competitive retail electric market in Texas.

B. Repeal of Existing Ordinance Addressing REP Registration. To the extent that an existing ordinance or ordinances of the City of Arlington address REP registration, such other ordinance or ordinances are hereby repealed.

C. Definitions. The following words and terms, when used in this Article, shall have the following meanings, unless the context clearly indicates otherwise:

"Commission" or "PUC" shall mean the Public Utility Commission of Texas.

"PURA" shall mean the Texas Public Utility Regulatory Act, as amended.

"REP" shall mean Retail Electric Provider.

"Registration Form" shall mean the registration form approved by the Commission in accordance with Commission Substantive Rule §25.113 and available on the Commission's website or from the Commission's Central Records division.

"Resident" shall mean any electric customer located within the City, except the City of Arlington, regardless of customer class.

"Revocation" shall mean the cessation of all REP business operations within the City, pursuant to Commission order.

"Suspension" shall mean the cessation of all REP business operations within the City associated with obtaining new customers, pursuant to Commission order.

D. Non-discrimination in REP registration requirements. The registration requirements apply equally to all REPs and types of REPs. However, the City may exclude from its registration requirement the REP that provides service only to the City's own electric accounts as long as the REP providing service to the City does not serve any residents of the municipality.

Section 8.02 Registration

A. Standards for registration of REPs. Registrations will be processed administratively by City.

1. A REP shall register within 30 days after the effective date of this Ordinance or 30 days after providing retail electric service to any resident of City, whichever is later.

2. A REP shall register with City by completing the Registration Form approved by the Commission, and signed by an owner, partner, officer, or other authorized representative of the registering party. Forms may be submitted to City by mail or facsimile.

3. City shall review the submitted Registration Form for completeness, including the remittance of the registration fee. Within 15 business days of receipt of an incomplete registration, City shall notify the registering party in writing of the deficiencies in the registration. The registering party shall have 20 business days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within 20 business days, City shall notify the registering party that the registration is rejected without prejudice.

B. Information. City shall require a REP to provide only the information set forth in the Registration Form.

C. Registration fees. REPs shall pay a reasonable administrative fee for the purpose of registration.

1. Each retail electric provider required to register under this Article shall pay to the City a one-time registration fee in the amount of $25.

2. A REP shall pay a late fee of $15 if the REP fails to register within 30 days after this ordinance requiring registration becomes effective or 30 days after providing retail electric service to any resident of the municipality, whichever is later.

D. Post-registration requirements and re-registration.

1. A REP shall notify City within 30 days of any change in information provided in its registration. In addition, a REP shall notify City within ten days if it discontinues offering service to residents of City.

2. If a REP's registration is revoked and the REP subsequently cures its defects and resumes operations it must re-register. In that circumstance, the REP may register in the same manner as a new REP.

Section 8.03 Suspension and Revocation

City may suspend or revoke a REP's registration and authority to operate within the municipality upon a Commission finding that the REP has committed significant violations of PURA Chapter 39 or rules adopted under that chapter. City will not suspend or revoke the registration of the affiliated REP or provider of last resort ("POLR") serving residents in City. City shall not take any action against a REP other than suspension or revocation of a REP's registration and authority to operate in the municipality, or imposition of a late fee in accordance with this Article.

1. City may provide a REP with a warning prior to seeking to suspend or revoke a REP's registration.

2. City shall provide the REP with at least 30 calendar days written notice, informing the REP that its registration and authority to operate shall be suspended or revoked. The notice shall specify the reason(s) for such suspension or revocation.

3. City may order that the REP's registration be suspended or revoked only after the notice period has expired.

4. In its suspension order, City shall specify the reasons for the suspension and provide a date certain or provide conditions that a REP must satisfy to cure the suspension. Once the suspension period has expired or the reasons for the suspension have been rectified, the suspension shall be lifted.

5. In its revocation order, City shall specify the reasons for the revocation.

6. A REP may appeal a suspension or revocation order to the Commission.

Section 8.04 <u>Notice and Effective Date</u>

Upon adoption of this ordinance, the City shall file the ordinance with the Commission in a docket established by the Commission for the purpose of submitting municipal REP registration ordinances. The filing of this ordinance in such docket in accordance with Commission rules relating to the filing of pleadings, documents, and other materials shall serve as notice to all REPs of the requirement to submit a registration to the City. The ordinance will become effective 31 days after the ordinance has been filed with the Commission in accordance with this section. (Amend Ord 03-046, 4/22/03)

ORDINANCE NO. 93-85

AN ORDINANCE AMENDING THE EXISTING FRANCHISE BETWEEN THE CITY AND TEXAS UTILITIES ELECTRIC COMPANY TO PROVIDE FOR A DIFFERENT CONSIDERATION; PROVIDING AN EFFECTIVE DATE AND PROVIDING FOR ACCEPTANCE BY TEXAS UTILITIES ELECTRIC COMPANY

WHEREAS, Texas Utilities Electric Company (hereinafter called "TU Electric") is engaged in the business of providing electric utility service within the City and is using the public streets, alleys, grounds and rights-of-ways within the City for that purpose under the terms of a franchise ordinance (Ordinance No. 88-141), heretofore duly passed by the governing body of the City and duly accepted by TU Electric; and

WHEREAS, TU Electric has, pursuant to said franchise ordinance, been paying to the City a sum equal to three percent (3%) of its gross receipts from the sale of electric power and energy within the City for the rights and privileges set forth in said franchise ordinance and, in addition thereto, has reimbursed the City for its ratemaking expenses pursuant to Section 24 of the Public Utility Regulatory Act; and

WHEREAS, the City and TU Electric desire to amend said franchise ordinance to provide for a different franchise fee to consist of a sum equal to four percent (4%) of its gross receipts from the sale of electric power and energy within the City, which different consideration includes, among other things, TU Electric's obligation to reimburse the City for its ratemaking and other regulatory expenses to be incurred by the City involving the regulation of TU Electric; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

The consideration payable by TU Electric for the rights and privileges granted to TU Electric by the franchise ordinance heretofore duly passed by the governing body of this City and duly accepted by TU Electric is hereby changed to be four percent (4%) of its gross receipts from the sale of electric power and energy within the corporate limits of the City, said changed percentage to be applied to said gross receipts beginning on June 1, 1993, and being payable as specified in said franchise ordinance and based upon the same time periods as specified in said franchise ordinance and being payment for the said rights and privileges during the period specified in said franchise ordinance, said payment being in lieu of and shall be accepted as payment for all of TU Electric's obligations to pay municipal charges, fees, rentals, pole rentals, wire taxes, inspection fees, easement taxes, franchise taxes, certain regulatory expenses under Section 24 of the Public Utility Regulatory Act or any similar or successor law, or other charges and taxes of every kind, except ad valorem taxes, sales and use taxes, and special taxes and assessments for public improvements.

2.

TU Electric shall make a one-time payment hereunder for the purpose of making the changed consideration as specified in Section 1 hereof, effective on June 1, 1993, without altering the payment dates specified in said franchise ordinance heretofore duly passed by the governing body of this City and duly accepted by TU Electric, said one-time payment being due and payable thirty (30) days after TU Electric's acceptance of this ordinance as provided in Section 8 hereof, and being a sum calculated as follows: (a) TU Electric shall determine the monthly average of its gross receipts from the sale of electric power and energy within the City during the period upon which the most recent franchise payment made to the City prior to June 1, 1993, was based; (b) the said monthly average of its said gross receipts shall be multiplied by 1% (0.01); and (c) the product so calculated shall be multiplied by the number of whole months from June 1, 1993, through the last day of the last month of the period for which the most recent franchise payment made to the City prior to June 1, 1993, made.

3.

Notwithstanding anything to the contrary in Section 1 hereof, if TU Electric files general rate cases and the City incurs cumulative expenses, otherwise reimbursable by TU Electric under Section 24 of the Public Utility Regulatory Act or similar or successor law, in excess of $4 million, then in such event, TU Electric shall reimburse all of the expenses incurred by the City in connection with all general rate cases filed during the period ended fifteen (15) years from the effective date hereof in excess of said $4 million. The term “general rate case” as used in this ordinance means a rate case initiated by TU Electric in which it seeks to increase its rates charged to a substantial number of its customer classes in the City and elsewhere in its system and in which TU Electric’s overall revenues are determined in setting such rates. City agrees to exercise reasonable best efforts, considering the facts and circumstances, to keep its expenses on average to under $1,000,000 per general rate case.

4.

Notwithstanding the provisions of Section 1 hereof, TU Electric will continue to reimburse the City’s ratemaking expenses, if any, in connection with the appeal and any remand of Public Utility Commission of Texas Docket No. 9300 that are otherwise reimbursable under Section 24 of the Public Utility Regulatory Act, and will continue to reimburse the City’s ratemaking expenses, if any, in connection with the Public Utility Commission of Texas Docket No. 11735 that are otherwise reimbursable under Section 24 of the Public Utility Regulatory Act to the extent that said ratemaking expenses are incurred through the entry of the last action by the Public Utility Commission of Texas (i.e., the said Commission’s order overruling the last motion for rehearing) in said Docket No. 11735; the City hereby agrees that any ratemaking expenses incurred in connection with said Docket No. 11735 that the City incurs on appeal of said order will be the City’s sole responsibility and further agrees – in the events that the City is a participant in the joint intervention of cities managed by the Steering Committee of TU Electric Service Area Cities intervening in Docket No. 11735, that the City decides to continue to participate with the Steering Committee in such appeal of said order,

and TU Electric is required to reimburse said Steering Committee for ratemaking expenses under Section 24 of the Public Utility Regulatory Act that are incurred on appeal of said order in Docket No. 11735 – to reimburse TU Electric the City's share of reimbursable expenses related to said appeal and owed by TU Electric to said Steering Committee determined by the methodology chosen by the said Steering Committee (the City to notify TU Electric of the method so chosen by the Steering Committee prior to the submission of an invoice by the Steering Committee for the payment by TU Electric of said reimbursable expenses related to said appeal).

5.

Notwithstanding the provisions of Section 3 hereof, in the event that the City of Dallas incurs cumulative expenses in connection with general rate cases filed by TU Electric during the next fifteen (15) years in excess of $4 million and TU Electric reimburses the City of Dallas such excess, then, in that event, TU Electric will reimburse the City of Arlington its reasonable expenses actually incurred that are otherwise reimbursable under Section 24 of the Public Utility Regulatory Act, Article 1446c, V.A.T.S. (the "PURA"), limited, however, to an amount calculated in accordance with the following formula:

$$A = [(B - \$4,000,000) \div B] \times C,$$

Where:

A = The amount reimbursable to the City of Arlington;

B = The total amount of expenses incurred by the City of Dallas during the term of TU Electric's current franchise with the City of Dallas in connection with general rate cases filed by TU Electric, which expenses would be reimbursable under Section 24 of the PURA except for the terms of said franchise, but excluding all such expenses incurred in connection with Public Utility Commission of Texas (PUC) Dockets Nos. 9300 and 11735; and

C = The total amount of expenses incurred by the City of Arlington during the term of TU Electric's current franchise with the City of Dallas in connection with general rate cases filed by TU Electric, which

expenses would be reimbursable under Section 24 of the PURA except for the term of this franchise amendment, but excluding all such expenses incurred in connection with Public Utility Commission of Texas Dockets Nos. 9300 and 11735.

6.

In all respects, except as specifically and expressly amended by this ordinance, the said franchise ordinance heretofore duly passed by the governing body of this City and duly accepted by TU Electric shall remain in full force and effect according to its terms until said franchise ordinance terminates as provided therein.

7.

Nothing herein shall be construed so as to inhibit or prohibit the City's ability to join and participate with a consortium of other cities served by TU Electric in connection with any rate proceeding before the Public Utility Commission or other tribunal and appeals therefrom.

8.

This ordinance shall take effect from and after its final passage and TU Electric's acceptance. TU Electric shall, within fifteen (15) days from the passage of this ordinance, file its written acceptance of this ordinance with the Office of the City Secretary in substantially the following form:

To the Honorable Mayor and City Council:

Texas Utilities Electric Company (TU Electric), acting by and through the undersigned authorized officer, hereby accepts, on this the _____ day of _____, 1993, Ordinance No. _____, amending the current franchise between the City and TU Electric.

TEXAS UTILITIES ELECTRIC COMPANY

By _____
President

9.

If any of the provisions in Sections 1, 2, 3, 4 or 5 hereof concerning TU Electric’s reimbursement of certain rate making expenses of the City are held unconstitutional, void or unenforceable for any reason by a court of competent jurisdiction, then, in that event, the reimbursement of the City’s rate making expenses shall continue to be made as provided in Section 24 of the PURA or similar or successor law, and such unconstitutionality, voidness or unenforceability shall not affect the validity of any other provisions of this ordinance, nor the amount of the franchise fees which TU Electric is required to pay the City hereunder.

ORDINANCE NO. 97-44

AN ORDINANCE AMENDING THE "UTILITIES" CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE ADDITION OF ARTICLE VII, ENTITLED CONSENT, RELATIVE TO ESTABLISHING RULES GOVERNING THE USE OF CITY RIGHTS-OF-WAY BY PROVIDERS OF TELECOMMUNICATIONS SERVICES, SETTING FEES FOR THE USE OF CITY RIGHTS-OF-WAY, CREATING OFFENSES AND PROVIDING A PENALTY; PROVIDING FOR A FINE OF UP TO $500 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; DECLARING AN EMERGENCY AND BECOMING EFFECTIVE AFTER PASSAGE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the "Utilities" Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the addition of Article VII, Consent, so that hereafter said subsection shall be and read as follows:

ARTICLE VII

CONSENT

Section 7.01 Findings and Purpose

A. The City Council makes the following findings:

1. It is in the public interest to promote competition in telecommunications services and the availability of broadband transmission services to all residences and businesses.

2. It is in the public interest for the City to exercise the historical right to control access of and to manage the City's rights-of-way and to

obtain reasonable compensation for the use of City property.

3. This chapter establishing rules governing the use of the City's rights-of-way is authorized by the City Charter, Article 1175, V.A.C.S., and other state, federal and local law.

B. The purpose of this chapter is to establish a competitively neutral policy for use of public rights-of-way for the provision of telecommunications services and to enable the City:

1. to permit non-discriminatory access to the public rights-of-way for providers of telecommunications services;

2. to manage the public rights-of-way to minimize the effects and cost to the public of locating telecommunications facilities within the limited rights-of-way;

3. to obtain fair and reasonable compensation for the commercial use of public rights-of-way through collection of fees and charges;

4. to promote competition among telecommunications service providers and encourage the universal availability of modern telecommunications services to all residents and businesses of Arlington; and

5. to minimize congestion, inconvenience, visual blight and other adverse effects on the City's public rights-of-way.

Section 7.02 <u>Authority; Scope</u>

This chapter applies to all telecommunications service providers under Title II of the Communications Act of 1934, as amended, (47 U.S.C. 201 et seq.) ("Title II") excluding services provided solely by means of a wireless transmission. No consent granted under this chapter authorizes the provision of any services not covered by Title II. Cable service and open video systems as defined in Title VI of the Communications Act of 1934 and any other content service are expressly excluded.

Section 7.03 <u>Definitions</u>

In this chapter:

"Affiliate" means a person who controls, is controlled by, or is under common control with a provider. Affiliate does not include a person who serves end use customers by means of wireless transmission. There is a rebuttable presumption of control if a provider owns at least 25% of the affiliate's stock or assets.

"City Manager" means the City Manager of the City of Arlington, or the City Manager's designee.

"Gross Revenue" includes all revenues derived directly or indirectly by a Provider from Telecommunications Services offered through a Telecommunications Network within the City. Gross Revenue does not include revenue uncollectible from customers ("bad debt"). By way of example, but without limitation, "Gross Revenue" includes:

1. Revenue derived from cash sales, customer credit account sales, property of any kind or nature or from any service whatsoever received or accruing to Provider directly or indirectly arising from or attributable to the sale or exchange of Telecommunications and/or Network Services by Provider within the City;

2. All Telecommunication Services revenues charged on a flat rate basis;

3. All Telecommunication Services revenues charged on a usage sensitive or mileage basis;

4. All revenues from connection or disconnection fees;

5. All revenues from penalties, fees or charges to customers for checks returned from banks, net of bank costs paid;

6. All revenues from local service;

7. All revenues from authorized rental or lease of conduit space;

8. All revenues from charges for access to or from local and long distance networks;

9. All revenues from authorized rentals or leases of any portion of Provider's Telecommunications Network, including, but not limited to, plant, facilities, antenna towers or capacity leased to others;

10. All revenues from enhanced data service;

11. All interconnect and access and/or landline charges or revenues from wireless telecommunication entities, interexchange carriers and other Providers;

12. All revenues derived from co-location connection fees;

13. All revenues from subsidiary or Affiliate entities or entities renting or leasing conduit space or any other part of the Provider's Network;

14. Any fees collected from the customer, other than State sales taxes, but including all fees and charges collected pursuant to this Chapter;

15. Revenues from the lease or re-sale of lines or circuit paths to any Affiliate or third parties; and

16. All revenue from the sale, lease or access for or to Network Elements in the Public Rights-of-Way (as contemplated by 47 C.F.R. Part 51, *et seq.*).

"Municipal Consent" means the right granted by ordinance to a person to use public rights-of-way to provide telecommunications services within the city to the public or to other providers.

"Person" shall mean and extend to associations, firms, partnership and bodies political and corporate, as well as to individuals.

"Provider" means a person that delivers telecommunications services within the city to the public and either:

1. has been granted a certificate under Art. 1446c-O, Title 3 V.A.C.S. ("PURA 95") or other certificate; or

2. operates or uses a telecommunications network within the City.

Provider does not include persons who are authorized by the City to occupy the rights-of-way in specifically approved

routes within the City, unless they have a consent under this Chapter.

"Public Rights-of-Way" means the surface, the air space above the surface, and the area below the surface of a public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, tunnel, easement or similar property in which the City holds a property interest or exercises rights of management or control.

"Telecommunications Network" or **"Network"** means all facilities placed in the public rights-of-way and used to provide telecommunications services to the public.

"Telecommunications Services" means all transmissions between or among points identified by the user, of information of the user's choosing, including voice, video or data, without change in content of the information as sent and received, if the transmissions are accomplished through a telecommunications network. Telecommunications services includes ancillary or adjunct switching services and signal conversions rendered as a function of underlying transmission services, but excludes long distance transmissions (inter LATA and intra LATA toll transmissions) (local access and transport area). Telecommunications services only includes Title II services and expressly excludes cable services or open video systems as defined in Title VI of the Communications Act of 1934, as amended, and other content services.

Section 7.04 **<u>Municipal Consent Required</u>**

A. A person may not deliver telecommunications services in the city by means of a network unless the person obtains a municipal consent.

B. The use of public rights-of-way for the delivery of any service not covered by this chapter is subject to all other applicable city requirements.

Section 7.05 **<u>Application For Municipal Consent</u>**

A A person must submit an application to the City Manager to grant, renew, extend, amend, or transfer a municipal consent.

B. The application must be on a form prescribed by the City Manager, and it must include the following:

1. a description of the services to be provided;

2. an outline of the applicant's proposed network, if any, and

3. a description of the effect on the public rights-of-way, if any; and

4. such other information as the City Manager deems necessary to meaningfully analyze and process the application.

Section 7.06 <u>Recommendation On Application</u>

The City Manager shall review an application submitted under this Chapter and recommend to the City Council that it grant or deny the application. The City Manager shall make the recommendation to the City Council no later than the 90th day after an application is filed.

Section 7.07 <u>Municipal Consent Ordinance</u>

A. If the City Manager finds that the application meets the requirements of this Chapter, the City Manager shall request the City Attorney to prepare a municipal consent ordinance for the City Council's consideration.

B. In addition to the requirements of the City Charter and applicable City ordinances, a municipal consent ordinance submitted to the City Council must include at least the following provisions:

1. a term of no less than three (3) years and no more than ten (10) years for the consent agreement;

2. a requirement that the provider comply with this chapter and other applicable city ordinances;

3. a requirement that the provider's municipal consent is subject to termination by the City Council, after notice and hearing, for the provider's failure to comply with this Chapter or on a showing that the provider has breached the terms of the municipal consent; and

4. a provision for:

   a. reasonable compensation for the use of public rights-of-way;

   b. transfers of ownership or control;

   c. indemnification;

   d. construction obligations;

   e. insurance;

   f. annexation; and

   g. other provisions deemed beneficial to the City.

Section 7.08 <u>Petition For Reconsideration</u>

The act of granting, amending, denying or terminating a municipal consent is a legislative function within the discretion of the City Council. A person whose application for a municipal consent is denied, is not considered by the City Council on or before the 45th day after the City Manager submits a recommendation, or whose municipal consent is terminated must petition the City Council for reconsideration before seeking judicial remedies. A petition is considered denied if the City Council does not act within forty-five (45) days after the petition is filed with the City Secretary.

Section 7.09 <u>Administration And Enforcement</u>

A provider shall report information that the City Manager requires in the form and manner prescribed by the City Manager relating to the use of public rights-of-way for the telecommunications services authorized by a municipal consent granted under this Chapter.

Section 7.10 <u>Unauthorized Use of Public Rights-of-Way</u>

A. A person commits an offense if a person uses the public rights-of-way to provide a telecommunications service that has not been authorized by the City.

B. A person commits an offense if a person places facilities on public structures or utility infrastructure to provide a service not allowed under the terms of a municipal consent or other authorization.

C. Each unauthorized use of the public rights-of-way and each unauthorized placement of facilities constitutes a separate offense. Each day a violation of this Chapter occurs shall constitute a distant and separate offense.

D. An offense under this subsection is a class C misdemeanor, punishable by a fine of no less than Five Hundred Dollars ($500).

E. A person who delivers telecommunications services within the City by means of a telecommunications network without obtaining a municipal consent shall pay to the City as compensation for the use of the public rights-of-way five percent (5%) of gross revenue as defined in Section 7.03 or such other amount prescribed by the City Council. In addition, the City may enjoin such unauthorized use of the public rights-of-way.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Five Hundred and No/100 Dollars ($500) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

This is an ordinance for the immediate preservation of the public peace, property, health and safety, and is an emergency measure within the meaning of Article VII, Sections 11 and 12, of the City Charter; and the City Council, by the affirmative vote of all of its members present and voting, hereby declares that this ordinance is an emergency measure, and the requirement that it be read at two (2) meetings, as specified in Section 11, is hereby waived.

8.

This ordinance shall become effective from and after its passage and publication as provided by law.

PRESENTED, FINALLY PASSED AND APPROVED, AND EFFECTIVE on the

1st day of April, **1997**, by a vote of 9 ayes and

0 nays at a regular meeting of the City Council of the **City of Arlington, Texas**.

_____
RICHARD E. GREENE, Mayor

ATTEST:

_____
CINDY KEMP, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY_____

ORDINANCE NO. 99-96

AN ORDINANCE AMENDING THE **"UTILITIES"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE REPEAL OF ORDINANCE NO. 98-49 AND **ARTICLE II**, ENTITLED TELEPHONE, AND ADOPTING A NEW **ARTICLE II**, ENTITLED CERTIFICATED TELECOMMUNICATIONS PROVIDERS, RELATIVE TO ESTABLISHING RULES AND REGULATIONS GOVERNING THE USE OF CITY PUBLIC RIGHTS-OF-WAY BY PROVIDERS OF TELECOMMUNICATIONS SERVICES, SETTING FEES FOR THE USE OF CITY PUBLIC RIGHTS-OF-WAY, PROVIDING FOR MUNICIPAL CONSENT PROCEDURES AND CONSTRUCTION OBLIGATIONS; PROVIDING FOR A FINE OF UP TO $500 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; AMENDING THE **"TELECOMMUNICATIONS"** CHAPTER OF THE CODE OF ORDINANCES OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE V**, TO ADD NEW **SECTION 41**, ENTITLED NONAPPLICABILITY; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE ON AUGUST 15, 1999

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Utilities"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the repeal of Ordinance No. 98-49 and Article II, Telephone, and by the adoption of a new **Article II**, entitled Certificated Telecommunications Providers, so that said article shall be and read as follows:

ARTICLE II

CERTIFICATED TELECOMMUNICATIONS PROVIDERS

Section 2.01 Findings and Purpose

The purpose of this Article is to:

A. Assist in the management of the Public Rights-of-Way in order to minimize the congestion, inconvenience, visual impact and other adverse effects, and the costs to the citizens resulting from the placement of telecommunications facilities within the Public Rights-of-Way;

B. Govern the Provider's use and occupancy of the Public Rights-of-Way;

C. Compensate the City for the private, commercial use and occupancy of the Public Rights-of-Way by Telecommunications Providers in a non-discriminatory, competitively neutral manner;

D. Assist the City in its efforts to protect the public health, safety and welfare;

E. Facilitate competition among Telecommunications Service Providers and encourage the universal availability of advanced Telecommunications Services to all residents and businesses of the City;

F. Conserve the limited physical capacity of the Public Rights-of-Way held in public trust by the City; and

G. Comply with the provisions of Chapter 283.

This Article may be referred to as the "Certificated Telecommunications Providers" Ordinance.

Section 2.02 <u>Granting Clause</u>

Subject to applicable State and Federal law and to the restrictions set forth herein, the City may consent to the non-exclusive right and privilege to use the Public Rights-of-Way in the City by a Provider for the operation of Access Lines in a telecommunications system, consisting of both telecommunications Facilities and Transmission Media. The terms of this Ordinance shall apply throughout the City and to all operations of the Provider within the City Public Rights-of-Way, and in the Public Rights-of-Way in any newly annexed areas in accordance with Section 2.22 herein.

Section 2.03 <u>Authority; Scope</u>

A. This Article applies to all Telecommunications Service Providers under Title 47, Chapter 5, Subchapter II of the United States Code (47 U.S.C. § 201 *et seq.*) ("Title 47") that place Transmission Media in, on or over Public Rights-of-Way, excluding services provided solely by means of a wireless transmission. No Municipal Consent granted under this Article authorizes the provision of any services not covered by Title 47. Cable service and open video systems as defined in Title VI of the Communications Act of 1934 [Title 47, Chapter 5, Subchapter V-A of the United States Code (47 U.S.C. § 521, *et seq.*)] and any other content service are expressly excluded.

B. The right of a Person to apply for or to use City utility infrastructure, such as City owned utility poles and conduit ("City Utility infrastructure"), shall be governed by other provisions of the City Code. The granting of a Municipal Consent under this Article does not grant attachment rights or authorize the use of City utility infrastructure.

Section 2.04 <u>Definitions</u>

In this Article:

Access Line means a unit of measurement representing: (1) each switched transmission path of the Transmission Media within the Public Rights-of-Way extended to the end-user customer's network interface within the City that allows delivery of Telecommunications Service; (2) each separate transmission path of the Transmission Media within the City's Public Rights-of-Way that terminates at an end user customer's network interface of each loop provided as an unbundled network element to a Person pursuant to an Agreement under Section 252 of the Federal Telecommunications Act of 1996 (47 U.S.C. § 252); or (3) each termination point of a non-switched Transmission Media consisting of Transmission Media connecting specific locations identified by, and provided to, the end-user for the delivery of non-switched Telecommunications Service within the City.

Access Line Fee means the amount in Section 2.11 to be applied to each Access Line on a monthly basis for the calculation of the total amount to be paid to the City by

the Provider and/or any Person using the facilities of Provider for the creation of Telecommunications Service.

Affiliate means a Person who controls, is controlled by, or is under common control with a Provider. Affiliate does not include a Person who serves end user customers by means of a wireless transmission. There is a rebuttable presumption of control if a Provider owns 25% or more of the Affiliate's stock or assets.

Certificated Telecommunications Utility means any entity that has been granted or applied for a certificate under Chapter 54 of Tex. Utility Code or other successor authorizing certificate to provide local exchange telephone service.

Chapter 283 means Chapter 283 of Subtitle A of Title 9 of the Local Government Code of the State of Texas, as added by H.B. No. 1777 of the 1999 Regular Session of the 76th Legislature.

City means The City Of Arlington, Texas. As used throughout, the term City also includes the designated agent of the City.

City Manager means the City Manager of the City or the City Manager's designee.

Direction of the City means all ordinances, laws, rules, resolutions, and regulations of the City that are not inconsistent with this Ordinance and that are now in force or may hereafter be passed and adopted.

Facilities means any and all of the Provider's duct spaces, manholes, poles, conduits, underground and overhead passageways and other equipment, structures, plant and appurtenances and all associated Transmission Media.

Municipal Consent means the individual grant to use the Public Rights-of-Way issued by the City and executed by the individual Providers under this Article governing the Provider's use of the Public Rights-of-Way and the payment of compensation.

Person means a natural Person (an individual), corporation, company, association, partnership, firm, limited liability company, joint venture, joint stock company or association, and other such entity.

Provider means a Person, including any Certificated Telecommunications Utility, that delivers Telecommunications Service within the City to Person(s) by way of a Network, and that places Facilities in, on or over the Public Rights-of-Way. A Provider does not include Persons who are authorized by the City to occupy the Public Rights-of-Way in specifically approved routes within the City, unless they also have a Municipal Consent under this Article. To the extent allowed by law, Provider also means a Person that does not deliver Telecommunications Service within the City, but who uses, constructs or maintains Facilities or Transmission Media within the Public Rights-of-Way.

Public Rights-of-Way means all present and future public streets, highways, lanes, paths, alleys, sidewalks, boulevards, drives, tunnels, easements or similar property in the City limits in which the City holds a property interest or exercises rights of management or control.

PUC Determination Date means the date the Public Utility Commission of Texas makes the determination required under Section 283.055(b)(1) of the Local Government Code (as amended by H.B. No. 1777), which date will not be later than March 1, 2000.

Telecommunications Network or Network means all Facilities placed in the Public Rights-of-Way and used to provide Telecommunications Service to the public.

Telecommunications Service means the providing or offering to provide transmissions between or among points identified by the user, of information of the user' s choosing, including voice, video or data, without change in content of the information as sent and received, if the transmissions are accomplished through a Telecommunications Network. Telecommunications Service include ancillary or adjunct switching services and signal conversions rendered as a function of underlying transmission services, but excludes long distance transmissions (inter-LATA [Local Access Transport Area] and intra-LATA toll transmissions). Telecommunications Service includes all communications services capable of being provided over a telephone system and certificated to telecommunications Providers under the Tex. Utility Code, Title 2, Public Utility Regulatory Act, as amended, and Title II of the Communications Act of 1934, as amended, expressly excluding cable services or open video systems as defined in Title VI of the Communications Act of 1934, as amended. Also excluded are "wireless services" as defined by law.

Transmission Media means any and all of the Provider's cables, fibers, wires or other physical devices used to transmit and/or receive communication signals, whether analog, digital or of other characteristic, and whether for voice, data or other purposes.

Section 2.05 <u>Municipal Consent Required</u>

A. Prior to placing, reconstructing, or altering Facilities in, on or over the Public Rights-of-Way, a Provider must obtain a Municipal Consent from the City.

B. The use of Public Rights-of-Way for the delivery of any service not covered by this Article is subject to all other applicable City requirements.

C. Any Provider with a current, unexpired consent, franchise, agreement or other authorization from the City ("Grant") to use the Public Rights-of-Way that is in effect at the time this Article takes effect shall continue to operate under and comply with that Grant until the Grant expires or until it is terminated by mutual agreement of the City and the Provider and a Municipal Consent under this Ordinance is granted and in effect.

Section 2.06 <u>Application For Municipal Consent</u>

A. A Person must submit an application to the City Manager to initiate the process to obtain a Municipal Consent.

B. The application must be on a form prescribed by the City Manager, and it must include the following:

1. The identity of the applicant, including all Affiliates of the applicant that may have physical control of the Network, to the extent known at the time of the application,

2. A general description of the services to be provided initially,

3. With respect to post-application construction a route map of the applicant's proposed Network, if any, and

4. A description of the effect on the rights-of-way, of any post-application construction to the extent known, but not including routine maintenance and construction for additions to existing Networks, except as may be required in Section 2.17, including:

   a. The location and route required for applicant's proposed Telecommunications Network.

   b. The location of all overhead and underground public utility, telecommunication, cable, water, sewer, drainage and other Facilities in the rights-of-way along the proposed route.

   c. The specific trees, structures, improvements, Facilities and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate.

5. While not a requirement for the issuance of a Municipal Consent, if applicable, the Applicant shall provide:

   a. Evidence that the applicant holds or has applied for a Public Utility Commission of Texas Certificate and information to establish that the applicant will obtain all other governmental approvals and permits prior to construction.

   b. Certification or other documentation to evidence the Public Utility Commission of Texas or any other required governmental approval showing compliance with E911 requirements of Chapters 771 and 772 of the Texas Health and Safety Code on Emergency Communication, and the Texas Public Utility Council Substantive Rules on interconnection, particularly Section 23.97(a), (d) and (e), as amended.

6. Such other and further information as may be reasonably requested by the City Manager as it relates to the use of the Public Rights-of-Way.

C. Each applicant that shall submit a non-refundable application fee of $850.00 with the application, with a credit in the amount of $850.00 on its first quarterly payment due under Section 2.12.

D. The City Manager shall review an application submitted under this Article and shall recommend to the City Council that it grant or deny the application. The City Manager shall make recommendation to the City Council as soon as practicable, but no later than the 90th day after a completed application has been filed. Upon mutual written agreement between the City and the Provider, action on an application may be postponed for one or more periods not exceeding 30 days each.

E. Except for delay caused by the applicant, the City Council must take an initial action on the City Manager's recommendation within forty-five (45) days after receipt by the Council of the City Manager's recommendation or the City Manager's recommendation to grant an application shall be deemed approved. No City Council action is required to confirm a denial recommendation, except acknowledgment of receipt of the recommendation.

Section 2.07 <u>Municipal Consent Ordinance</u>

A. If the City Manager finds that the application meets the requirements of this Article, the City Manager shall request the City Attorney or Designee to prepare a Municipal Consent ordinance for the City Council's consideration.

B. A Municipal Consent ordinance submitted to the City Council must include the following provisions:

1. a term of not more than five (5) years for the Municipal Consent;

2. a requirement that the Provider substantially comply with this Article;

3. a requirement that the Provider's Municipal Consent is subject to termination by the City Council, after notice and hearing, for the Provider's failure to comply with this Article or in accordance with Section 2.25;

4. a provision that incorporates the requirements of Section 2.14 [Transfer] of this Article;

5. a provision that incorporates the requirements of Sections 2.17 [Construction Obligations], 2.18 [Conditions of Public Rights-of-Way Occupancy], and 2.19 [Insurance Requirements] of this Article, if applicable;

C. Review and approval by the City does not constitute a guarantee of sufficiency of the design of the Telecommunications Network. The applicant retains full responsibility for the adequacy of the design of the Telecommunications Network.

Section 2.08 <u>Petition for Reconsideration</u>

A Person whose application for a Municipal Consent is denied, or whose application is not considered by the City Council within a reasonable time after the City Manager submits a recommendation under Section 2.07 or whose Municipal Consent is terminated may petition the City Council for reconsideration before seeking judicial remedies. A petition for reconsideration is considered denied if the City Council does not act within 60 days after the petition is filed with the City Secretary.

Section 2.09 <u>Administration and Enforcement</u>

A. The City Manager shall administer this Article and enforce compliance with a Municipal Consent conveyed under this Article.

B. A Provider shall report information related to the use of the Public Rights-of-Way that the City Manager requires in the form and manner prescribed by the City Manager.

C. The City Manager shall report to the City Council upon the determination that a Provider has failed to comply with this Article.

Section 2.10 <u>Applicability</u>

A. Sections 2.17 [Construction Obligations], 2.18 [Conditions of Public Rights-of-Way Occupancy] and 2.19

[Insurance Requirements] of this Article apply only to a Provider that constructs, operates, maintains, owns or controls Facilities in the Public Rights-of-Way.

B. Section 2.20 [Indemnity] of this Article applies to a Provider that has a property interest in a Network.

C. For all periods of time as to which the provisions of Chapter 283 validly apply to any matter also covered hereby, then to the extent of any conflict, the provisions of Chapter 283 apply and corresponding provisions hereof shall be disregarded.

Section 2.11 <u>Compensation to City</u>

A Provider shall compensate the City by payment of the fees as provided below:

A. Access Line Fee Calculation. To compensate the City for the use of the rights-of-way, a Provider whose Telecommunications Network is used to serve customers in the City shall pay the City a monthly fee to be calculated as provided below for each Access Line owned or used by the Provider, as calculated as of month-end, that is activated for use by an end user customer of the Provider or of another Person as a Certificated Telecommunications Utility, by lease or otherwise, subject to Subsection (F) below or of any other Person;

1. Access Line Fee Calculation Amount:

a. Following the effective date of the Municipal Consent, a Provider shall submit to the City Manager on a quarterly basis, a certified statement together with the Access Line Fee payment under Section 2.12, indicating the number of Access Lines used to provide Telecommunications Service at month end, for each month of the quarter and for each customer class identified herein. The statement shall be provided on a form prescribed by the City Manager.

b. For each month of the quarter following the effective date of the Municipal Consent, a Provider shall pay an Access Line Fee which is based upon its number of Access Lines calculated as follows:

Access Line Fee Calculation Amount	Monthly Amount Per Access Line From Effective Date through PUC Determination Date
TYPE (1) or (2):	
Residential	$2.35
Non-Residential	$6.10
TYPE (3)	
Private Line Termination Point(s)	$6.10

The City reserves the right to make reasonable adjustments to the Access Line Fee, with 180 days notice, but not to exceed ten percent (10%) in any one year, subject to the continuing effect of Texas Utilities Code, §§ 54.204 - 54.206

Amounts appearing above are used to calculate the total compensation due the City and are not to be construed as the setting of a charge for end-users.

(For purposes of this Section only, lines terminating at customers with "Lifeline," "Tel-Assistance," or other service that is required to be similarly discounted pursuant to state or federal law or regulation for the purpose of advancing universal service to the economically disadvantaged shall not be included in the lines upon which the fee is calculated, but Provider shall provide information on the number of such lines upon request by the City.)

2. Number of Access Lines. Subject to City's agreement not to disclose this information unless required by law, Provider will provide annually or as requested by the City, within a reasonable time after receipt of the City's written request, a report certifying as to the number of Access Lines being maintained or operated by Provider that are serving premises within the City, as of the date used in calculating the payment. The report shall be used solely for the purposes of verifying the

number of Provider's Access Lines serving premises within the City. Upon written request, Provider shall verify the information in the report and, upon reasonable advance notice, all non-customer specific records and other documents required for such verification shall be subject to inspection by the City expressly excluding any records, documents or other writings the disclosure of which is prohibited by state or federal law, including the Electronic Communications Privacy Act, 18 U.S.C. § 2701 *et seq*.

B. Minimum Annual Fee. Notwithstanding any other provision in this Ordinance, for all new installations of Facilities placed in, on or under the Public Rights-of-Way from the Effective Date of the Municipal Consent, and for each calendar year period thereafter, the Provider shall pay the City a minimum annual fee ("Minimum Fee") of $250.00, in the event the Access Line Fee paid in the preceding twelve (12) months does not exceed $250.00, with a credit against such Minimum Fee for any Access Line Fees paid to the City in the preceding twelve (12) months.

Each Municipal Consent shall provide that the Minimum Fee of (B) above may be adjusted once every three (3) years by the City, but such adjustment shall not exceed $100 in any one three (3) year period.

C. Confidential Records. If the Provider notifies the City by a conspicuous written notation of the confidential nature of any information (including, but not limited to the information in paragraph (B) of this section), reports, documents, or writings, the City will maintain the confidentiality of the information, reports, documents, and writings to the extent permitted by law. Upon receipt by the City of requests for the Provider's confidential information, reports, documents, or writings, the City shall notify the Provider of the request in writing by facsimile transmission. The City shall furnish the Provider with copies of all requests for Attorney General opinions pertaining to the Provider's confidential information, reports, documents or writings. The City shall request an Attorney General's Opinion before disclosing any confidential information, reports, documents or writings, and shall furnish the Provider with copies of Attorney General Opinion Requests as soon as practicable that it may pertain to the Provider's

Confidential Information, reports, documents or writings.

D. No other fees. The payments due hereunder shall be in lieu of any construction, building or other permit, approval, inspection, or other similar fees or charges, including, but not limited to, all general business permit fees customarily assessed by the City for the use of the Public Rights-of-Way against Persons operating businesses similar to that of a Provider. Further, such Access Line Fee shall constitute full compensation to the City for all Provider's Facilities located within the Public Rights-of-Way, including interoffice-transport and other Transmission Media that do not terminate at an end-user customer's network interface device, even though those types of lines are not used in the calculation of the Public Rights-of-Way fee. The compensation paid herein is not in lieu of any generally applicable ad valorem taxes, sales taxes or other generally applicable taxes, fees, development impact fees or charges, or other statutory charges or expenses recoverable under the Texas Public Utility Regulatory Act, or successor statutes.

E. Uncollectibles. Any other provision of this agreement notwithstanding, Provider shall not be obligated to pay the City for any Access Lines or private line termination points the revenues for which remain uncollectible. Upon request, Provider shall provide a written report on the number of access lines for which revenues are uncollected, to include number of lines and number excluded, and a general description of the collection efforts.

F. Payments by or Use of the Network by Other Telecommunications Carriers and Providers.

1. Direct Payment-Facilities Provided to Other Telecommunications Service Providers: To the extent allowed by applicable state and federal law, any Telecommunications Service Providers who purchase Unbundled Network Elements or other Facilities or services for the purpose of rebundling those Facilities and/or Services to create Telecommunications Service for sale to Persons within the City ("Rebundler"), must pay to the City the Access Line Fee that is calculated as of month-end by applying the appropriate Access Line Fee, as specified in Section 2.11 above, to

each Access Line created by rebundling Telecommunications Service or Facilities. Direct payment further ensures that the Access Line Fee imposed herein can be applied on a non-discriminatory basis to all Telecommunications Service Providers that sell Telecommunications Service within the City. Other provisions of this Ordinance notwithstanding, the Provider shall not include in its monthly count of Access Lines any Facilities or services provided to other Telecommunications Service Providers for rebundling into Telecommunications Service, if the Telecommunications Service Provider who is rebundling those Facilities for resale has provided a signed statement to the Provider that the Telecommunications Service Provider is paying the Access Line Fees applicable to those rebundled services directly to the City. If Provider provides a copy of the signed statement to the City from the Rebundler which is acceptable to the City, then Provider is absolved of all responsibility for the Access Line Fees payable on the Services, Unbundled Network Facilities, and other Facilities rebundled for the creation of Telecommunications Service for sale within the City by each such Rebundler.

2. Indirect Payments - Public Rights-of-Way Fee Application to Use of Network by Others: With respect to any Person leasing, reselling, or otherwise using a Provider's Access Lines, if a Provider believes it does not have sufficient information to determine the appropriate rate to apply, then the higher Access Line Fee may be applied until such time as the Person using the Access Lines provides to the Provider sufficient written information to determine the correct Access Line Fee. If a Person provides sufficient written information for the application of the Access Line Fee, Provider may, at its discretion and not at the City's request, bill the Person on the basis of the information provided. Upon request, and to the extent allowed by law, Provider shall forward to the City a written report on a quarterly basis of the entities that have use of network elements for rebundling purposes. Provider shall provide to the City any information regarding the locations to which it is providing service or Facilities for use by another

Person for the provision of Telecommunications Service to end-user customers, so long as City first obtains written permission of such other Person for Provider to provide the information to the City. Any other provision of this Ordinance notwithstanding, however, a Provider shall not be liable for underpayment of Access Line Fees resulting from the Provider's reliance upon the written information provided by any Person who uses Provider's services or Facilities for the provision of Telecommunications Service to end-user customers.

Section 2.12 <u>City Payment Due Dates</u>

A. Access Line Fee:

A Provider shall remit the Access Line Fee on a quarterly basis together with the Certified Statement in the format required in Section 2.11(A)(1)(a). Payment shall be made on or before the 45th day following the close of each calendar quarter for which the payment is calculated and shall be paid by wire transfer to an account designated by the City Manager.

B. Minimum Fee Payment.

This fee per Section 2.11(B), if applicable, shall be due on January 31 of every year of the Consent Agreement.

Section 2.13 <u>Audits</u>

A. On 30 days notice to a Provider the City may audit a Provider for a period of five (5) years, or the term of the Municipal Consent, whichever is longer. The Provider shall furnish information to demonstrate its compliance with the Municipal Consent and/or other provisions of this Article.

B. A Provider shall keep complete and accurate books of accounts and records of business and operations that cumulatively reflect the monthly count of all Access Lines for a period of seven (7) years. The City Manager may require the keeping of additional records or accounts that are reasonably necessary for purposes of identifying, accounting for, and reporting the

number of Access Lines used to deliver telecommunication services or for calculation of the payments due hereunder. The City may examine the Provider's books and records referred to above, expressly excluding any records, documents or other writings the disclosure of which is prohibited by state or federal law, including the Electronic Communications Privacy Act, 18 U.S.C. §2701, *et seq*, to the extent such records reasonably relate to providing information to verify compliance with this Article and the Municipal Consent.

C. A Provider shall make available to the City or the City's designated agent (hereinafter "agent"), for the City or it's agent to examine, audit, review and copy, in the City, on the City Manager's written request, its books and records referred to above, including papers, books, accounts, documents, maps, plans and other Provider records that pertain to Municipal Consent conditions and requirements obtained under this Article. A Provider shall fully cooperate in making records available and otherwise assist the City examiner. The City examiner shall not inspect or copy or otherwise demand production of customer specific information or any records, documents or other writings the disclosure of which is prohibited by state or federal law, including the Electronic Communications Privacy Act, 18 U.S.C. §2701, *et seq*. Provider will use its best efforts to retain records in such a manner that allows retrieval of all lawful information.

D. The City Manager may, at any time, make inquiries pertaining to Providers' performance of the terms and conditions of a Municipal Consent conveyed under this Article. Providers shall respond to such inquiries on a timely basis.

E. Upon written request by the City Manager, to the extent the documents are reasonably identified, Providers shall furnish to the City within 30 business days from the date of the written request copies of all public petitions, applications, written communications and reports submitted by Providers, to the FCC and/or to the PUC or their successor agencies, relating to any matters affecting the physical use of City Public Rights-of-Way.

F. The provisions of this Section shall be continuing and shall survive the termination of a Municipal Consent

granted under this Article and shall extend beyond the term of the Municipal Consent granted to the Provider and the City shall have all the rights described in this Section for so long as Provider is providing any Telecommunications Service within the City, unless waived, in writing, by the City.

Section 2.14 <u>Transfer</u>

A. No Municipal Consent nor any rights or privileges that a Provider has under a Municipal Consent, or the Facilities held by a Provider for use under such Municipal Consent which are in the Public Rights-of-Way, shall be sold, resold, assigned, transferred or conveyed by the Provider, either separately or collectively, to any other Person, without the prior written approval of the City by ordinance or resolution. The City's approval shall be based upon the transferee providing adequate information to the City that it has the ability to perform and comply with the obligations and requirements of the Municipal Consent. Such approval shall not be unreasonably withheld. Should a Provider sell, assign, transfer, convey or otherwise dispose of any of its rights or interests under its Municipal Consent, including such Provider's Telecommunications Network, or attempt to do so, without the City's prior consent, the City may revoke the Provider's Municipal Consent for default, in which event all rights and interest of the Provider under the Municipal Consent shall cease.

B. Any transfer in violation of this Section shall be null and void and unenforceable. Any change of control of a Provider shall constitute a transfer under this Section. However, such a change in control shall not void the Municipal Consent as to the transferee, unless and until the City has given notice that such a change in control necessitates compliance with Section 2.14. If the Provider does not initiate compliance with Section 2.14 by a request for Municipal Consent within thirty (30) days after the above notice has been given by the City, the Municipal Consent shall be null and unenforceable as to the transferee.

C. There shall be a rebuttable presumption of a change of control of a Provider upon a change of 15% or greater in the ownership of such Provider. Such a change in

control shall be deemed a transfer which requires consent of the City.

D. A mortgage or other pledge of assets to a bank or lending institution in a bona fide lending transaction shall not be considered an assignment or transfer.

E. Every Municipal Consent granted under this Section 2.14 shall specify that any transfer or other disposition of rights which has the effect of circumventing payment of required Access Line Fees or Minimum Fees and/or evasion of payment of such fees by failure to accurately count or report the number of Access Lines by a Provider is prohibited.

F. Notwithstanding anything else in this Section 2.14, if the City has not approved or denied a request to transfer under this Section within 120 days of written notice of such request from the Provider to the City, it shall be deemed approved. Such time frame may be extended by mutual agreement of the parties.

G. Notwithstanding any other provision in this Section 2.14, a Provider may transfer, without City approval, the Facilities in the Public Rights-of-Way under a Municipal Consent to another Provider who has a Municipal Consent under this Article. The Provider transferring the Facilities remains subject to all applicable obligations and provisions of the Municipal Consent unless the Provider to which the Facilities are transferred is also subject to the same, as applicable, obligations and provisions. The Provider transferring the Facilities must give written notice of the transfer to the City Manager.

Section 2.15 <u>Notices to City</u>

A. A Provider shall notify the City Manager as is provided in the Consent Agreement.

B. A Provider shall give written notice to the City not later than 15 days before a transfer or change in operations that may affect the applicability of Sections 2.18 [Conditions of Public Rights-of-Way Occupancy], 2.19 [Insurance Requirements], 2.20 [Indemnity], and 2.21 [Renewal of Municipal Consent], to the Provider.

Section 2.16 <u>Circumvention of Fee Prohibited</u>

A Person may not circumvent payment of Access Line Fees or evade payment of such fees by bartering, transfer of rights, or by any other means that result in undercounting a Provider's number of lines. Capacity or services may be bartered if the imputed lines are reported in accordance with Section 2.11.

Section 2.17 <u>Construction Obligations</u>

A. A Provider is subject to the reasonable regulation of the City to manage its Public Rights-of-Way pursuant to the City' s rights as a custodian of public property under state and federal laws. A Provider is subject to City ordinances and requirements and federal and state laws and regulations in connection with the construction, expansion, reconstruction, maintenance or repair of Facilities in the Public Rights-of-Way.

B. At the City's request, a Provider shall furnish the City accurate and complete information relating to the construction, reconstruction, removal, maintenance, operation and repair of Facilities performed by the Provider in the Public Rights-of-Way. Such request may include up to three copies of such documents.

C. The construction, expansion, reconstruction, excavation, use, maintenance and operation of a Provider's Facilities within the Public Rights-of-Way are subject to applicable City requirements.

1. A Provider may be required to place certain Facilities within the Public Rights-of-Way underground according to applicable City requirements absent a compelling demonstration by the Provider that, in any specific instance, this requirement is not reasonable or feasible nor is it equally applicable to other similar users of the Public Rights-of-Way.

2. A Provider shall perform operations, excavations and other construction in the Public Rights-of-Way in accordance with all applicable City requirements, including the obligation to use trenchless technology whenever commercially economical and practical and consistent with obligations on other similar users of the Public

Rights-of-Way. The City shall waive the requirement of trenchless technology if it determines that the field conditions warrant the waiver, based upon information obtained by the City as well as information provided to the City by the Provider. All excavations and other construction in the Public Rights-of-Way shall be conducted so as to minimize interference with the use of public and private property. A Provider shall follow all reasonable construction directions given by the City in order to minimize any such interference.

3. A Provider must obtain a permit, as reasonably required by applicable City codes, prior to any excavation, construction, installation, expansion, repair, removal, relocation or maintenance of the Provider's Facilities. Once a permit is issued, Provider shall give to the City a minimum of forty-eight (48) hours notice (which could be at the time of application for the issuance of the permit) prior to undertaking any of the above listed activities on its Network in, on or under the Public Rights-of-Way. The failure of the Provider to request and obtain a permit from the City prior to performing any of the above listed activities in, on or over any Public Right-of-Way, except in an emergency as provided for in Subsection (10) below, will subject the Provider to a stop-work order from the City and enforcement action pursuant to the City's Code of Ordinances. If the Provider fails to act upon any permit within 90 calendar days of issuance, the permit shall become invalid, and the Provider will be required to obtain another permit.

4. When a Provider completes construction, expansion, reconstruction, removal, excavation or other work ("Work"), the Provider shall promptly restore to the same condition as prior to the work the Public Rights-of-Way in accordance with applicable City requirements. A Provider shall replace and properly relay and repair the surface, base, underground infrastructure (i.e., gas, water, sewer, and the like), irrigation system and landscape treatment of any Public Rights-of-Way that may be excavated or damaged by reason of the erection, construction, maintenance, or repair of the Provider's Facilities within thirty (30)

calendar days after completion of the work in accordance with existing standards of the City in effect at the time of the work.

5. Upon failure of a Provider to perform any such repair or replacement work, and five (5) days after written notice has been given by the City to the Provider, the City may repair such portion of the Public Rights-of-Way as may have been disturbed by the Provider, its contractors or agents. Upon receipt of a invoice from the City, the Provider will reimburse the City for the costs so incurred within thirty (30) calendar days from the date of the City invoice.

6. Should the City reasonably determine, within two (2) years from the date of the completion of the repair work on streets that the surface, base, underground infrastructure, irrigation system or landscape treatment requires additional restoration work to meet existing standards of the City, a Provider shall perform such additional restoration work to the satisfaction of the City, subject to all City remedies as provided herein.

7. Notwithstanding the foregoing, if the City determines that the failure of a Provider to properly repair or restore the Public Rights-of-Way constitutes a safety hazard to the public, the City may undertake emergency repairs and restoration efforts. A Provider shall promptly reimburse the City for all costs incurred by the City within thirty (30) calendar days from the date of the City invoice.

8. A Provider shall furnish the Engineering Services Department or the department as designated by the City Manager, with construction plans and maps (and up to three copies) showing the location and proposed routing of new construction or reconstruction at least fifteen (15) days [subject to Subsection (D)], before beginning construction or reconstruction that involves an alteration to the surface or subsurface of the Public Rights-of-Way. A Provider may not begin construction until the location of new Facilities and proposed routing of the new construction or reconstruction and all required plans and drawings have been approved in writing by the City, which

approval will not be unreasonably withheld, taking due consideration of the surrounding area and alternative locations for the Facilities and routing.

9. If the City Manager declares an emergency with regard to the health and safety of the citizens and requests by written notice the removal or abatement of Facilities, a Provider shall remove or abate the Provider's Facilities by the deadline provided in the City Manager's request. The Provider and the City shall cooperate to the extent possible to assure continuity of service. If the Provider, after notice, fails or refuses to act, the City may remove or abate the facility, at the sole cost and expense of the Provider, without paying compensation to the Provider and without the City incurring liability for damages.

10. Except in the case of customer service interruptions and imminent harm to property or Person ("Emergency Conditions"), a Provider may not excavate the pavement of a street or public rights-of-way without first complying with City requirements. The City Manager or designee shall be notified immediately regarding work performed under such Emergency Conditions, and the Provider shall comply with the requirements of City standards for the restoration of the Public Rights-of-Way.

11. Within sixty (60) days of completion of each new permitted section of a Provider's Facilities, the Provider shall supply the City with a complete set of "as built" drawings for the segment in a format used in the ordinary course of the Provider's business and as reasonably prescribed by the City, and as allowed by law.

12. The City may require reasonable bonding requirements of a Provider, as are required of other entities that place Facilities in the Public Rights-of-Way.

D. In determining whether any requirement under this section is unreasonable or unfeasible, the City Manager or his/her designee shall consider, among other things, whether the requirement would subject the Provider or Providers to an unreasonable increase in risk of

service interruption, or to an unreasonable increase in liability for accidents, or to an unreasonable delay in construction or in availability of its services, or to any other unreasonable technical or economic burden.

Section 2.18 <u>Conditions of Public Rights-Of-Way Occupancy</u>

A. In the exercise of governmental functions, the City has first priority over all other uses of the Public Rights-of-Way. The City reserves the right to lay sewer, gas, water, and other pipe lines or cables and conduits, and to do underground and overhead work, and attachments, restructuring or changes in aerial Facilities in, across, along, over or under a public street, alley or Public Rights-of-Way occupied by a Provider, and to change the curb, sidewalks or the grade of streets.

B. The City shall assign the location in or over the Public Rights-of-Way among competing users of the Public Rights-of-Way with due consideration to the public health and safety considerations of each user type, and to the extent there is limited space available for additional users, may limit new users, as allowed under state or federal law.

C. If, during the term of a Municipal Consent, the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or Public Rights-of-Way, the grant to an abutting landowner shall be subject to the rights of the Provider. If the City closes or abandons a Public Right-of-Way that contains a portion of a Provider's Facilities, the City shall close or abandon such Public Right-of-Way subject to the rights conveyed in the Municipal Consent.

D. If the City gives written notice, a Provider shall, at its own expense, temporarily or permanently, remove, relocate, change or alter the position of Provider's Facilities that are in the Public Rights-of-Way within 120 days, except in circumstances that require additional time as reasonably determined by the City based upon information provided by the Provider. For projects expected to take longer than 120 days to remove, change or relocate, the City will confer with Provider before determining the alterations to be required and the timing thereof. The City shall give notice whenever the City has determined that removal,

relocation, change or alteration is reasonably necessary for the construction, operation, repair, maintenance or installation of a City or other governmental public improvement in the Public Rights-of-Way. This section shall not be construed to prevent a Provider's recovery of the cost of relocation or removal from private third parties who initiate the request for relocation or removal, nor shall it be required if improvements are solely for beautification purposes without prior joint deliberation and agreement with Provider.

If the Provider fails to relocate Facilities in the time allowed by the City in this Section, the Provider may be subject to liability to the City for such delay and as set forth in the City Codes or Ordinance, now or hereafter enacted.

Notwithstanding anything in this Subsection (D), the City Manager and a Provider may agree in writing to different time frames than those provided above if circumstances reasonably warrant such a change.

E. During the term of its Municipal Consent, a Provider may trim trees in or over the Public Rights-of-Way for the safe and reliable operation, use and maintenance of its Network. All tree trimming shall be performed in accordance with standards promulgated by the City. Should the Provider, its contractor or agent, fail to remove such trimmings within twenty-four (24) hours , the City may remove the trimmings or have them removed, and upon receipt of a bill from the City, the Provider shall promptly reimburse the City for all costs incurred within thirty (30) working days.

F. Providers shall temporarily remove, raise or lower its aerial Facilities to permit the moving of houses or other bulky structures, if the City gives written notice of no less than 48 hours. The expense of these temporary rearrangements shall be paid by the party or parties requesting and benefitting from the temporary rearrangements. Provider may require prepayment or prior posting of a bond from the party requesting temporary move.

Section 2.19 <u>Insurance Requirements</u>

A. A Provider shall obtain and maintain insurance in the amounts reasonably prescribed by the City with an insurance company licensed to do business in the State of Texas acceptable to the City throughout the term of a Municipal Consent conveyed under this Article. A Provider shall furnish the City with proof of insurance at the time of filing the acceptance of a Municipal Consent. The City reserves the right to review the insurance requirements during the effective period of a Municipal Consent, and to reasonably adjust insurance coverage and limits when the City Manager determines that changes in statutory law, court decisions, or the claims history of the industry or the Provider require adjustment of the coverage. For purposes of this section, the City will accept certificates of self-insurance issued by the State of Texas or letters written by the Provider in those instances where the State does not issue such letters, which provide the same coverage as required herein. However, for the City to accept such letters the Provider must demonstrate by written information that it has adequate financial resources to be a self-insured entity as reasonably determined by the City, based on financial information requested by and furnished to the City. The City's current insurance requirements are described in Exhibit "A" attached hereto.

B. Provider shall furnish, at no cost to the City, copies of certificates of insurance evidencing the coverage required by this Section to the City. The City may request the deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, unless the policy provisions are established by a law or regulation binding the City, the Provider, or the underwriter. If the City requests a deletion, revision or modification, a Provider shall exercise reasonable efforts to pay for and to accomplish the change.

C. An insurance certificate shall contain the following required provisions:

1. name the City of and its officers, employees, board members and elected representatives as additional insureds for all applicable coverage;

2. provide for 30 days notice to the City for cancellation, non-renewal, or material change;

3. provide that notice of claims shall be provided to the City Manager by certified mail; and

4. provide that the terms of the Municipal Consent which impose obligations on the Provider concerning liability, duty, and standard of care, including the indemnity section, are included in the policy and that the risks are insured within the policy terms and conditions.

D. Provider shall file and maintain proof of insurance with the City Manager during the term of a Municipal Consent or an extension or renewal. An insurance certificate obtained in compliance with this section is subject to City approval. The City may require the certificate to be changed to reflect changing liability limits. A Provider shall immediately advise the City Attorney of actual or potential litigation that may develop may affect an existing carrier's obligation to defend and indemnify.

E. An insurer has no right of recovery against the City. The required insurance policies shall protect the Provider and the City. The insurance shall be primary coverage for losses covered by the policies.

F. The policy clause "Other Insurance" shall not apply to the City if the City is an insured under the policy.

G. The Provider shall pay premiums and assessments. A company which issues an insurance policy has no recourse against the City for payment of a premium or assessment. Insurance policies obtained by a Provider must provide that the issuing company waives all right of recovery by way of subrogation against the City in connection with damage covered by the policy.

Section 2.20 <u>Indemnity</u>

A. Each Municipal Consent granted under this Article shall contain provisions whereby the Provider shall promptly defend, indemnify and hold the City harmless from and against all damages, costs, losses or expenses:

1. for the repair, replacement, or restoration of City's property, equipment, materials, structures and Facilities which are damaged, destroyed or found to be defective as a result of the Provider's acts or omissions; and

2. from and against any and all claims, demands, suits, causes of action, and judgments for:

   a. damage to or loss of the property of any Person (including, but not limited to the Provider, its agents, officers, employees and subcontractors, City's agents, officers and employees, and third parties); and/or

   b. death, bodily injury, illness, disease, loss of services, or loss of income or wages to any Person (including, but not limited to the agents, officers and employees of the Provider, Provider's subcontractors and City, and third parties), arising out of, incident to, concerning or resulting from the negligent or willful act or omissions of the Provider, its agents, employees, and/or subcontractors, in the performance of activities pursuant to such Municipal Consent.

B. No Municipal Consent indemnity provision shall apply to any liability resulting from the negligence of the City, its officers, employees, agents, contractors, or subcontractors.

C. The provisions of the required indemnity provision set forth in an individual Municipal Consent shall provide that:

1. It is solely for the benefit of the parties to the Municipal Consent and is not intended to create or grant any rights, contractual or otherwise, to any other Person or entity;

2. To the extent permitted by law, any payments made to, or on behalf of the City under the provisions of this section are subject to the rights granted to Providers under Sections 54.204-54.206 of the Texas Utilities Code; and

3. Subject to the continued applicability of the provisions of Sections 54.204-54.206 of the Texas Utilities Code, as set forth in (2) above, the provisions of the indemnity shall survive the expiration of the Municipal Consent.

Section 2.21 <u>Renewal of Municipal Consent</u>

A Provider shall request a renewal of a Municipal Consent by making written application to the City Manager at least 90 days before the expiration of the consent.

Section 2.22 <u>Annexation; Disannexation</u>

Within thirty (30) days following the date of the passage of any action affecting the annexation of any property to or the disannexation of any property from the City's corporate boundaries, the City agrees to furnish Provider written notice of the action and an accurate map of the City's corporate boundaries showing, if available, street names and number details. For the purpose of compensating the City under this Ordinance, a Provider shall start including or excluding Access Lines within the affected area in the Provider's count of Access Lines on the effective date designated by the Comptroller of Public Accounts - Texas for the imposition of State local sales and use taxes; but in no case less than thirty (30) days from the date the Provider is notified by the City of the annexation or disannexation.

Section 2.23 <u>Severability</u>

The provisions of this ordinance are severable. However, in the event this Ordinance or any tariff that authorizes the Provider to recover the fee(s) provided for this Ordinance or any procedure provided in this Ordinance or any compensation due the City under this Ordinance becomes unlawful, or is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, illegal or otherwise inapplicable, in whole or in part, or is exchanged for another means of compensation under higher authority, the City shall adopt a new ordinance that is in compliance with the authority's decision or enactment. Unless explicitly prohibited, the new ordinance shall provide the City with a level of

compensation comparable to that set forth in this Ordinance as long as the compensation is recoverable by the Provider in a manner permitted by law for the unexpired portion of the term of this Ordinance.

Section 2.24 <u>Governing Law</u>

This Ordinance shall be construed in accordance with the City Code(s) in effect on the date of passage of this Ordinance to the extent that such Code(s) are not in conflict with or in violation of the Constitution and laws of the United States or the State of Texas, subject to the City's ongoing authority to adopt reasonable regulations to manage its Public Rights-of-Way, pursuant to Sections 2.17 and 2.18 or as otherwise provided by law. Municipal Consents entered into pursuant to this Ordinance are performable in Tarrant County, Texas.

Section 2.25 <u>Termination</u>

A. The City shall reserve the right to terminate any Municipal Consent and any rights or privileges conveyed under this Article in the event of a material breach of the terms and conditions of the Municipal Consent or of this Article, subject to a thirty day written notice and the opportunity to cure the breach during that thirty (30) day period.

B. Material breaches of a Municipal Consent specifically include, but are not limited to, continuing violations of Sections 2.11 [Compensation to City], 2.17 [Construction Obligations] and/or 2.18 [Conditions of Public Rights-of-Way Occupancy], and the furnishing of service of any kind that requires municipal authorization but that is not authorized by Section 2.03(A).

C. A material breach shall not be deemed to have occurred if the violation occurs without the fault of a Provider or occurs as a result of circumstances beyond its control. Providers shall not be excused from performance of any of their obligations under this Article by economic hardship, nor misfeasance or malfeasance of their City Managers, officers or employees.

D. A termination shall be declared only by a written decision by motion, resolution or ordinance of the City Council after an appropriate public proceeding before the City Council, which shall accord the Provider due process and full opportunity to be heard and to respond to any notice of grounds to terminate. All notice requirements shall be met by giving the Provider at least fifteen (15) days prior written notice of any public hearing concerning the proposed termination of its consent. Such notice shall state the grounds for termination alleged by City.

Section 2.26 **Unauthorized Use of Public Rights-Of-Way**

A. Any Person seeking to place Facilities on, in or over the Public Rights-of-Way, City property, City structures, or Utility infrastructure shall first file an application for a Municipal Consent with the City and shall abide by the terms and provisions of this Ordinance pertaining to use of the Public Rights-of-Way and pay the fees specified herein.

B. The City may institute all appropriate legal action to prohibit any Person from knowingly using the Public Rights-of-Way unless the City has consented to such use in accordance with the terms of this Article and with a Municipal Consent.

C. Any Person using the Public Rights-of-Way without a Municipal Consent shall be liable for the same fees and charges as provided for herein.

2.

That the **"Telecommunications"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended by adding new **Section 41**, which shall read as follows:

Section 41 **Nonapplicability**

On or after August 15, 1999, the provisions of this Chapter do not apply to a telecommunications provider not currently franchised under this Chapter that is certificated by the Public Utility Commission of Texas. Providers currently holding a franchise under this Chapter will hold their franchise subject to the provisions of Chapter 283 of the Texas Local Government Code, as applicable.

3.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Five Hundred and No/100 Dollars ($500) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption and penalty clause of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective on August 15, 1999.

PRESENTED AND GIVEN FIRST READING on the 3rd day of August, **1999**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 10th day of August, **1999**, by a vote of 8 ayes and 0 nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

ORDINANCE NO. 02-007

AN ORDINANCE AMENDING THE **"UTILITIES"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987; THROUGH THE ADDITION OF **ARTICLE VIII**, ENTITLED ELECTRIC PROVIDER REGISTRATION; PROVIDING FOR THE REGISTRATION OF RETAIL ELECTRIC PROVIDERS PURSUANT TO THE TEXAS UTILITIES CODE; PROVIDING FOR A REGISTRATION FEE; AND PROVIDING FOR THE SUSPENSION OR REVOCATION OF REGISTRATION FOR NONCOMPLIANCE WITH THIS ORDINANCE OR THE TEXAS UTILITIES CODE; PROVIDING FOR A FINE OF UP TO **$500** FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTION; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER FIRST PUBLICATION

WHEREAS, in the 76th Legislative Session, the Texas Legislature adopted Senate Bill 7 and thereby set in motion electric deregulation, with the competitive retail electricity market scheduled to open in Texas on January 1, 2002; and

WHEREAS, under the provisions of Senate Bill 7 and the rules of the Public Utility Commission of Texas (PUC) adopted to implement Senate Bill 7, customers will deal directly with a retail electric provider (REP) in order to obtain electricity for their premises and accounts; and

WHEREAS, Section 39.358 of the Texas Utilities Code specifically provides for local registration of REPs, as well as the assessment of a reasonable administrative fee for such registration; and

WHEREAS, Section 39.358 of the Texas Utilities Code further provides for the suspension or revocation of an REP registration and operation within a city for significant violations of Chapter 39 of the Texas Utilities Code or the rules adopted by the PUC to implement Senate Bill 7; and

WHEREAS, registration will facilitate the City of Arlington (CITY) having accurate information concerning each REP that will be serving CITY residents and businesses in the event that CITY customers experience problems with an REP; and

WHEREAS, the City Council of the City of Arlington, Texas, hereby finds that REPs should be registered by the CITY and that an initial administrative fee of

$25.00 should be charged for each REP registration and that similar fees should be assessed annually; and

WHEREAS, the City Council also finds it in the best interest of the CITY and its citizens to allow the CITY to monitor REPs to ensure compliance with PUC certification and timely resolution of customer complaints; and

WHEREAS, the City Council finds that the REP serving as electric provider for the CITY's electric accounts should be exempt from registration requirements unless that REP is serving end use customers within municipal limits other than CITY; and

WHEREAS, the City Council further finds that an REP should be permitted to appeal to the City Council the decision of the City Manager to revoke registration; NOW THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Utilities"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the addition of a new **Article VIII**, Electric Provider Registration, so that hereafter said Article shall be and read as follows:

ARTICLE VIII

ELECTRIC PROVIDER REGISTRATION

Section 8.01 Registration, Fees, and Annual Renewal

A. Registration. No retail electric provider (REP), without first registering with the City of Arlington (CITY) and then paying the registration fee required by this Section, may serve residents of the CITY.

B. Form. Registration under this Section shall be submitted on a form provided by the City Manager or his designee. The registration shall be accompanied by any additional documents required therein or in rules issued by the City Manager or his designee. These forms shall include, but not be limited to, the following:

1. The name and legal status of the registrant, including any affiliates (affiliate as defined in the Public Utility Regulatory Act, as amended) who are required to register pursuant to this Section;

2. The name, address and telephone number of an officer, agent or employee who will serve as the contact point for the registrant; and

3. The name(s), address(es), and telephone number(s) of the individual(s) designated to receive, process, and resolve customer complaints.

C. Registration Fee. Each retail electric provider required to register under this Section shall pay to the CITY an initial registration fee in the amount of $25.00. The subsequent annual registration fee shall be initially set at $20.00 but may be changed from time to time by the City Manager based upon the City Manager's assessment of the amount necessary to recover all of the CITY's costs incurred in processing the registration.

D. Registration Fee Requirements. Each REP registered in the CITY shall pay an annual registration fee comprised of administrative costs as set forth in Subsection (C) for maintenance of its registration.

1. Unless otherwise specified, the annual registration fee shall be paid to the CITY by January 31, of each year.

2. For good cause, the CITY may extend for not to exceed one month, the time for making payment.

3. No acceptance by the CITY of any payment hereunder shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such payment be construed as a release of any claim the CITY may have for additional sums payable.

4. The payments hereunder are not a payment in lieu of any tax, fee or other assessment except as specifically provided in this Section, or as required by applicable law.

5. Notwithstanding the foregoing, in the event a registrant that is obligated to pay a fee ceases to provide service for any reason, such registrant shall make a final payment of any amounts owed to the CITY within ninety (90) calendar days of the date its operations in the CITY cease.

E. Exemption. The REP serving as electric provider for the CITY's municipal electric needs is exempt from the filing requirement during the term of service unless that REP serves end users within municipal limits other than the CITY. The REP serving municipal accounts is exempt from the registration fee.

Section 8.02 Monitoring

A. The CITY may, in its discretion, monitor the registration and certification status of an REP. Monitoring may include:

1. Confirming with the Public Utility Commission of Texas (PUC) every six (6) months that certification is current; and

2. Referring all customer complaints to both the REP and the PUC.

B. All registered REPs must file a quarterly report regarding each complaint from a resident of the CITY until resolution is achieved. Such report shall include:

1. the name and address of the complainant;

2. the date the complaint originated;

3. the nature of the complaint;

4. resolved matters; and

5. unresolved matters.

Section 8.03 <u>Penalties</u>

A. Any registrant who has not been granted an extension of time for remittance of a fee due and who fails to remit any fee imposed under Subsection 8.01(D)(1) prior to January 31 shall pay a penalty of $10.00.

B. Any registrant who has not been granted an extension of time for remittance of a fee due, and who fails to pay any delinquent remittance on or before a period of thirty (30) days following the date on which the remittance first becomes delinquent shall pay a second delinquency penalty of $15.00 plus the amount of the fee and the amount of the penalty first imposed.

C. Any REP that remains delinquent in the payment of annual registration fees after March 31 shall be subject to having registration suspended.

Section 8.04 <u>Suspension and Revocation</u>

A. The CITY may suspend or revoke an REP's registration and operation in the CITY for significant violations of the Public Utilities Regulatory Act (PURA), Chapter 39, as revised, or the rules of the PUC adopted under the Chapter, or for the REP's failure to comply with any provision of this Section.

B. Significant violations include, but are not limited to, the following:

1. Providing false or misleading information to the PUC or the CITY;

2. Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive business practices or unlawful discrimination;

3. Switching, or causing to be switched, the REP for a customer without first obtaining the customer's permission;

4. Billing an unauthorized charge, or causing an unauthorized charge to be billed to a customer's retail electric service bill;

5. Failure to maintain continuous and reliable electric service to its customers pursuant to law;

6. Failure to maintain the minimum level of financial resources as required by the PUC;

7. Bankruptcy, insolvency, or the inability to meet financial obligations on a reasonable and timely basis;

8. Failure to timely remit payment for invoiced charges to a transmission and distribution utility pursuant to the terms of the statewide standardized tariff adopted by the PUC;

9. Failure to observe any scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent system operator of the transmission grid;

10. A pattern of not responding to the PUC or the CITY inquiries or customer complaints in a timely fashion;

11. Suspension or revocation of a registration, certification, or license by any state or federal authority;

12. Conviction of a felony by the registrant or principal employed by the registrant, of any crime involving fraud, theft or deceit related to the registrant's service;

13. Not providing retail electric service to customers within twenty-four (24) months of the certificate being granted by the PUC;

14. Failure to serve as a provider of last resort if required to do so by the PUC pursuant to PURA § 39.106(f); and

15. Failure, or a pattern of failures to meet the conditions of this ordinance or PUC rules or orders.

D. Initiation of Revocation Process.

1. Upon information and belief, the City Manager or a designated representative may give notice to a registrant that, based upon alleged or perceived violations of this ordinance, registration is to be revoked in not less than thirty (30) days from the date the notice is deposited in the U.S. Mail. The registrant will have not less than ten (10) days from the date the notice is mailed to respond to the notice and show why revocation should not occur.

2. Notice. The notice letter shall specifically identify the alleged or perceived violations and indicate the scheduled date for revocation.

3. Not less than seven (7) days prior to the date scheduled for revocation, the City Manager or his designated representative will issue a written ruling

that revokes the registration, dismisses the action or extends the process of review of registration according to an identified schedule.

4. Appeal. If registration is to be revoked, a registrant may file an appeal to the City Council with the City Manager. If the appeal is filed prior to the date scheduled for revocation, the action will be stayed for thirty (30) days to provide an opportunity for the City Council to consider the appeal. If the Council agrees to entertain the appeal, the registrant may submit written materials to the Council prior to the Council's consideration of the matter in a noticed public hearing. However, oral presentations related to the appeal are a matter of Council discretion and not a matter of the REP's right.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Five Hundred ($500.00) dollars for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington; and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, Texas, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the **8th** day of **January**, **2002**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **15th** day of **January**, **2002**, by a vote of **9** ayes and **0** nays at a regular meeting of the City Council of the City of Arlington, Texas.

LOCAL REGISTRATION FORM FOR RETAIL ELECTRIC PROVIDER (REP) FOR THE PROVISION OF SERVICE IN THE CITY OF ARLINGTON, TEXAS

1. Legal Name of Applicant REP: _____

2. Authorized REP representative to contact:

Name: _____ Title: _____

Address: _____

Telephone: _____ Fax: _____

E-mail Address: _____

3. REP Customer Complaint representative:

Name: _____ Title: _____

Address: _____

Telephone: _____ Fax: _____

E-mail Address: _____

4. Type of Legal Structure

☐ Individual ☐ Partnership ☐ other description: _____

☐ Limited Liability Company ☐ Corporation

5. REP Affiliates (affiliate as defined in the Public Utility Regulatory Act, as amended). Provide, and label as "attachment 1," the name and relationship of each of the Registrant's affiliates, and subsidiaries that may provide utility related services, such as telecommunications, electric, gas, water, or cable services, if any.

6. Public Utility Commission (PUC) of Texas Certification of REP. Please provide and label as "attachment 2," the application form filed with the, or any other proof of certification with the PUC.

ORDINANCE NO. 02-118

AN ORDINANCE AMENDING THE **"UTILITIES"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE III**, ENTITLED GAS, BY THE ADDITION OF **SECTION 3.13**, ENTITLED 2002 AMENDMENT, RELATIVE TO THE AMENDMENT OF THE EXISTING GAS FRANCHISE BETWEEN THE CITY AND TXU GAS COMPANY, TO PROVIDE FOR A DIFFERENT CONSIDERATION AND TO AUTHORIZE THE LEASE OF FACILITIES WITHIN THE CITY'S RIGHTS-OF-WAY; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR ACCEPTANCE BY TXU GAS COMPANY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW

WHEREAS, TXU Gas Company ("TXU Gas" or "Company") is, through its TXU Gas Distribution division, engaged in the business of furnishing and supplying gas to the general public in the City of Arlington ("City"), including the transportation, delivery, sale, and distribution of gas in, out of, and through the City for all purposes, and is using the public streets, alleys, grounds and rights-of-way within the City for that purpose under the terms of a franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by TXU Gas; and

WHEREAS, the City and TXU Gas desire to amend said franchise ordinance to provide for a different consideration and to authorize the lease of facilities within the City's rights-of-way; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Utilities"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of Article III, Gas, by the addition of Section 3.13, 2002 Amendment, so that hereafter said section shall be and read as follows:

Section 3.13 2002 Amendment

A. Effective January 1, 2002, the consideration payable by TXU Gas for the rights and privileges granted to TXU Gas by the franchise ordinance heretofore duly passed by the governing body of this City and duly accepted by TXU Gas is hereby changed to be four percent (4%) of the Gross Revenues, as defined in Subsection 3.13(B) below, received by TXU Gas.

B. "Gross Revenues" shall mean all revenue derived or received, directly or indirectly, by the Company from or in connection with the operation of the System within the corporate limits of the City and including, without limitation:

(1) all revenues received by the Company from the sale of gas to all classes of customers within the City;

(2) all revenues received by the Company from the transportation of gas through the pipeline system of Company within the City to customers located within the City;

(3) the value of gas transported by Company for Transport Customers through the System of Company within the City ("Third Party Sales"), with the value of such gas to be reported by each Transport Customer to the Company, provided, however, that should a Transport Customer refuse to furnish Company its gas purchase price, Company shall estimate same by utilizing TXU Gas Distribution's monthly industrial Weighted Average Cost of Gas, as reasonably near the time as the transportation service is performed; and

(4) "Gross revenues" shall include:

(a) other revenues derived from the following 'miscellaneous charges':

i. charges to connect, disconnect, or reconnect gas within the City;

ii. charges to handle returned checks from consumers within the City;

iii. such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and

iv. contributions in aid of construction ("CIAC");

(b) revenues billed but not ultimately collected or received by the Company; and,

(c) gross receipts fees.

(5) "Gross revenues" shall not include:

(a) the revenue of any Person including, without limitation, an affiliate, to the extent that such revenue is also included in Gross Revenues of the Company;

(b) sales taxes;

(c) any interest income earned by the Company; and

(d) all 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.

C. Calculation and Payment of Franchise Fees Based on CIAC

(1) The franchise fee amounts based on "Contributions in aid of Construction" ("CIAC") shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year.

(2) The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year.

D. Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by TXU Gas

(1) If TXU Gas 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, 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 the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by TXU Gas to City pursuant to this Ordinance shall be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

(2) The provisions of this Subsection (D) apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, including without limitation the timing of such payments.

E. TXU Gas Franchise Fee Recovery Tariff

(1) TXU Gas may file with the City a tariff amendment(s) to provide for the recovery of the franchise fees under this amendment.

(2) City 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 TXU Gas' rates; (ii) if the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of TXU Gas' franchise fees is an issue, the City will take an affirmative position supporting 100% recovery of such franchise fees by TXU Gas and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by TXU Gas.

(3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by TXU Gas.

F. Lease of Facilities Within City’s Rights-of-Way. TXU Gas shall have the right to lease, license or otherwise grant to a party other than TXU Gas the use of its facilities within the City's public rights-of-way provided: (i) TXU Gas first

notifies the City 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) TXU Gas makes the franchise fee payment due on the revenues from such lease pursuant to Sections 3.13(A) and 3.13(B) of this Ordinance. This authority to Lease Facilities Within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees.

Section 3.13a:

In all respects, except as specifically and expressly amended by this ordinance, the existing effective franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by TXU Gas shall remain in full force and effect according to its terms until said franchise ordinance terminates as provided therein.

Section 3.13b:

This ordinance shall take effect upon ten days after publication and TXU Gas' acceptance. TXU Gas shall, within thirty (30) days from the passage of this ordinance, file its written acceptance of this ordinance with the Office of the City Secretary in substantially the following form:

To the Honorable Mayor and City Council:

TXU Gas Distribution, a division of TXU Gas Company, acting by and through the undersigned authorized officer, hereby accepts in all respects, on this the ____ day of _____, 20____, Ordinance No. _____ amending the current gas franchise between the City and TXU Gas and the same shall constitute and be a binding contractual obligation of TXU Gas and the City.

TXU Gas Distribution
A division of TXU Gas Company

By _____
Vice President

Section 313c.

It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

PRESENTED AND GIVEN FIRST READING on the **8th** day of **October**, **2002**, at a regular meeting of the City Council of the City of Arlington, Texas; and

GIVEN SECOND READING, passed and approved on the **15th** day of **October**, **2002**, by a vote of **8** ayes and **0** nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

ORDINANCE NO. 02-119

AN ORDINANCE AMENDING THE **"UTILITIES"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE AMENDMENT OF **ARTICLE IV**, ENTITLED ELECTRICITY, BY THE ADDITION OF **SECTION 4.17**, ENTITLED 2002 AMENDMENT, RELATIVE TO THE AMENDMENT OF THE EXISTING ELECTRIC FRANCHISE BETWEEN THE CITY OF ARLINGTON AND ONCOR ELECTRIC DELIVERY COMPANY TO PROVIDE FOR A DIFFERENT CONSIDERATION; PROVIDING AN EFFECTIVE DATE; PROVIDING FOR ACCEPTANCE BY ONCOR ELECTRIC DELIVERY COMPANY; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW

WHEREAS, Oncor Electric Delivery Company ("Oncor"), successor in interest to TXU Electric Company or Electric Company, is engaged in the business of providing electric utility service within the City and is using the public streets, alleys, grounds and rights-of-ways within the City for that purpose under the terms of a franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by Oncor; and

WHEREAS, the City and Oncor desire to amend said franchise ordinance to provide for a different consideration; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Utilities"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article IV**, Electricity, by the addition of **Section 4.17**, 2002 Amendment, so that hereafter said section shall be and read as follows:

Section 4.17 2002 Amendment

The existing electric franchise ordinance between the City and Oncor Electric Delivery Company, successor in interest to TXU Electric Company or Electric Company, is amended as follows:

A. Effective January 1, 2002, the franchise fee due from Oncor shall be a sum comprised of the following:

(1) a charge, as authorized by Section 33.008(b) of PURA, based on each kilowatt hour of electricity delivered by Oncor to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries and as specified by Oncor to the City by letter dated January 21, 2002.

(a) The franchise fee due pursuant to Section 33.008(b) of PURA shall be payable in accordance with the existing electric franchise; and

(2) a sum equal to four percent (4%) of gross revenues received by Oncor from services identified in its "Tariff for Retail Delivery Service", Section 6.1.2, "Discretionary Service Charges," items DD1 through DD24, that are for the account or benefit of an end-use retail electric consumer.

(a) The franchise fee amounts based on "Discretionary Service Charges" shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year.

(b) The franchise fee amounts that are due based on "Discretionary Service Charges" shall be paid at least once annually on or before April 30 each year based on the total "Discretionary Service Charges" received during the preceding calendar year.

B. Oncor Franchise Fee Recovery Tariff

(1) Oncor may file a tariff amendment(s) to provide for the recovery of the franchise fee on Discretionary Service Charges.

(2) City agrees (i) to the extent the City acts as regulatory authority, to adopt and approve that portion of any tariff which provides for 100% recovery of the franchise fee on Discretionary Service Charges; (ii) in the event the City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of the franchise fees on such Discretionary Service Charges is an issue, the City will take an affirmative position supporting the 100% recovery of such franchise fees by Oncor and; (iii) in the event of an appeal of any such regulatory proceeding in which the City has intervened, the City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Oncor.

(3) City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by Oncor.

Section 4.17a:

In all respects, except as specifically and expressly amended by this ordinance, the existing effective franchise ordinance heretofore duly passed by the governing body of the City and duly accepted by Oncor shall remain in full force and effect according to its terms until said franchise ordinance terminates as provided therein.

Section 4.17b

This ordinance shall take effect upon ten days after publication and Oncor's acceptance. Oncor shall, within thirty (30) days from the passage of this ordinance, file its written acceptance of this ordinance with the Office of the City Secretary in substantially the following form:

To the Honorable Mayor and City Council:

Oncor Electric Delivery Company, acting by and through the undersigned authorized officer, hereby accepts in all respects, on this the _____ day of _____, 20____, Ordinance No. _____ amending the current electric franchise between the City and Oncor and the same shall constitute and be a binding contractual obligation of Oncor and the City.

Oncor Electric Delivery Company

By _____
Vice President

Section 4.17c:

It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

PRESENTED AND GIVEN FIRST READING on the **8th** day of **October**, **2002**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **15th** day of **October**, **2002**, by a vote of **8** ayes and **0** nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

ORDINANCE NO. 03-046

AN ORDINANCE AMENDING THE **"UTILITIES"** CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, THROUGH THE REPEAL OF ARTICLE VIII, ENTITLED ELECTRIC PROVIDER REGISTRATION, AND THE ADDITION OF A NEW **ARTICLE VIII**, ENTITLED REGISTRATION OF RETAIL ELECTRIC PROVIDERS, TO PROVIDE FOR THE REGISTRATION OF RETAIL ELECTRIC PROVIDERS, REQUIRING LOCAL REGISTRATION OF RETAIL ELECTRIC PROVIDERS PURSUANT TO SECTION 39.358 OF THE TEXAS UTILITIES CODE, PROVIDING FOR A REGISTRATION FEE, PROVIDING FOR THE SUSPENSION OR REVOCATION OF REGISTRATION FOR SIGNIFICANT VIOLATIONS OF CHAPTER 39 OF THE TEXAS UTILITIES CODE; PROVIDING FOR A FINE OF UP TO $500 FOR EACH OFFENSE IN VIOLATION OF THE ORDINANCE; PROVIDING THIS ORDINANCE BE CUMULATIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR GOVERNMENTAL IMMUNITY; PROVIDING FOR INJUNCTION; PROVIDING FOR PUBLICATION AND BECOMING EFFECTIVE TEN DAYS AFTER FIRST PUBLICATION

WHEREAS, in the 76th Legislative Session, the Texas Legislature adopted Senate Bill 7 and thereby set in motion electric deregulation, and the competitive retail electricity market in Texas that opened on January 1, 2002; and

WHEREAS, under the provisions of Senate Bill 7 and the rules of the Public Utility Commission of Texas ("PUC") adopted to implement Senate Bill 7, customers will deal directly with a retail electric provider ("REP") in order to obtain electricity for their premises and accounts; and

WHEREAS, Section 39.358 of the Texas Utilities Code and PUC Substantive Rule § 25.113 specifically provides for local registration of REPs, as well as the assessment of a reasonable administrative fee for such registration; and

WHEREAS, Section 39.358 of the Texas Utilities Code further provides for the suspension or revocation of a REP's registration and operation within a city for significant violations of Chapter 39 of the Texas Utilities Code or the rules adopted by the PUC to implement Senate Bill 7; and

WHEREAS, registration will facilitate the City of Arlington having accurate information concerning each REP that will be serving Arlington residents and businesses in the event that Arlington customers experience problems with a REP; and

WHEREAS, the City Council of the City of Arlington, Texas, hereby finds that REPs should be registered by the City of Arlington and that an administrative fee of $25 should be charged for each REP registration; and

WHEREAS, the City Council also finds it in the best interest of the City of Arlington and its citizens to allow the City to monitor REPs to ensure compliance with PUC certification; and

WHEREAS, the City Council finds that the REP serving as electric provider for the City of Arlington's electric accounts should be exempt from registration requirements unless that REP is serving end use customers within municipal limits other than the municipality; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Utilities"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the **repeal** of Article VIII, entitled Electric Provider Registration, and the addition of a new **Article VIII**, entitled Registration of Retail Electric Providers, so that hereafter said Article shall be and read as follows:

ARTICLE VIII

REGISTRATION OF RETAIL ELECTRIC PROVIDERS

Section 8.01 General Provisions

A. Purpose. The City of Arlington City Council finds that it is in the best interest of the public to require that a Retail Electric Provider ("REP") register as a condition of serving City residents. This ordinance establishes a "safe harbor" process for registration of REPs to standardize notice and filing procedures, deadlines, and registration information and fees. The "safe harbor" registration process provides certainty to City and REPs, thereby facilitating the development of a competitive retail electric market in Texas.

B. Repeal of Existing Ordinance Addressing REP Registration. To the extent that an existing ordinance or ordinances of the City of Arlington address REP registration, such other ordinance or ordinances are hereby repealed.

C. Definitions. The following words and terms, when used in this Article, shall have the following meanings, unless the context clearly indicates otherwise:

"Commission" or "PUC" shall mean the Public Utility Commission of Texas.

"PURA" shall mean the Texas Public Utility Regulatory Act, as amended.

"REP" shall mean Retail Electric Provider.

"Registration Form" shall mean the registration form approved by the Commission in accordance with Commission Substantive Rule §25.113 and available on the Commission's website or from the Commission's Central Records division.

"Resident" shall mean any electric customer located within the City, except the City of Arlington, regardless of customer class.

"Revocation" shall mean the cessation of all REP business operations within the City, pursuant to Commission order.

"Suspension" shall mean the cessation of all REP business operations within the City associated with obtaining new customers, pursuant to Commission order.

D. Non-discrimination in REP registration requirements. The registration requirements apply equally to all REPs and types of REPs. However, the City may exclude from its registration requirement the REP that provides service only to the City's own electric accounts as long as the REP providing service to the City does not serve any residents of the municipality.

Section 8.02 Registration

A. Standards for registration of REPs. Registrations will be processed administratively by City.

1. A REP shall register within 30 days after the effective date of this Ordinance or 30 days after providing retail electric service to any resident of City, whichever is later.

2. A REP shall register with City by completing the Registration Form approved by the Commission, and signed by an owner, partner, officer, or other authorized representative of the registering party. Forms may be submitted to City by mail or facsimile.

3. City shall review the submitted Registration Form for completeness, including the remittance of the registration fee. Within 15 business days of receipt of an incomplete registration, City shall notify the registering party in writing of the deficiencies in the registration. The registering party shall have 20 business days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within 20 business days, City shall notify the registering party that the registration is rejected without prejudice.

B. Information. City shall require a REP to provide only the information set forth in the Registration Form.

C. Registration fees. REPs shall pay a reasonable administrative fee for the purpose of registration.

1. Each retail electric provider required to register under this Article shall pay to the City a one-time registration fee in the amount of $25.

2. A REP shall pay a late fee of $15 if the REP fails to register within 30 days after this ordinance requiring registration becomes effective or 30 days after providing retail electric service to any resident of the municipality, whichever is later.

D. Post-registration requirements and re-registration.

1. A REP shall notify City within 30 days of any change in information provided in its registration. In addition, a REP shall notify City within ten days if it discontinues offering service to residents of City.

2. If a REP's registration is revoked and the REP subsequently cures its defects and resumes operations it must re-register. In that circumstance, the REP may register in the same manner as a new REP.

Section 8.03 Suspension and Revocation

City may suspend or revoke a REP's registration and authority to operate within the municipality upon a Commission finding that the REP has committed significant violations of PURA Chapter 39 or rules adopted under that chapter. City will not suspend or revoke the registration of the affiliated REP or provider of last resort ("POLR") serving residents in City. City shall not take any action against a REP other than suspension or revocation of a REP's registration and authority to operate in the municipality, or imposition of a late fee in accordance with this Article.

1. City may provide a REP with a warning prior to seeking to suspend or revoke a REP's registration.

2. City shall provide the REP with at least 30 calendar days written notice, informing the REP that its registration and authority to operate shall be suspended or revoked. The notice shall specify the reason(s) for such suspension or revocation.

3. City may order that the REP's registration be suspended or revoked only after the notice period has expired.

4. In its suspension order, City shall specify the reasons for the suspension and provide a date certain or provide conditions that a REP must satisfy to cure the suspension. Once the suspension period has expired or the reasons for the suspension have been rectified, the suspension shall be lifted.

5. In its revocation order, City shall specify the reasons for the revocation.

6. A REP may appeal a suspension or revocation order to the Commission.

Section 8.04 Notice and Effective Date

Upon adoption of this ordinance, the City shall file the ordinance with the Commission in a docket established by the Commission for the purpose of submitting municipal REP registration ordinances. The filing of this ordinance in such docket in accordance with Commission rules relating to the filing of pleadings, documents, and other materials shall serve as notice to all REPs of the requirement to submit a registration to the City. The ordinance will become effective 31 days after the ordinance has been filed with the Commission in accordance with this section.

2.

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined an amount not to exceed Five Hundred Dollars ($500) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

3.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington; and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

4.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

5.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

6.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

7.

The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, Texas, in compliance with the provisions of Article

VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

8.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the **15th** day of **April**, **2003**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **22nd** day of **April**, **2003**, by a vote of **8** ayes and **0** nays at a regular meeting of the City Council of the City of **Arlington, Texas**.

ORDINANCE NO. 03-069

AN ORDINANCE AMENDING ORDINANCE NO. 03-046 OF THE "UTILITIES" CHAPTER OF THE CODE OF THE CITY OF ARLINGTON, TEXAS, 1987, BY THE REPEAL OF PARAGRAPHS 2, 3 AND 6

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That **Ordinance No. 03-046**, passed on April 15, 2003, amending the "Utilities" Chapter of the Code of the City of Arlington, Texas, 1987, by the amendment of Article VIII, entitled Registration of Retail Electric Providers, to repeal paragraphs 2, 3 and 6, so that hereafter said Ordinance shall be and read as follows:

"I.

WHEREAS, in the 76th Legislative Session, the Texas Legislature adopted Senate Bill 7 and thereby set in motion electric deregulation, and the competitive retail electricity market in Texas that opened on January 1, 2002; and

WHEREAS, under the provisions of Senate Bill 7 and the rules of the Public Utility Commission of Texas ("PUC") adopted to implement Senate Bill 7, customers will deal directly with a retail electric provider ("REP") in order to obtain electricity for their premises and accounts; and

WHEREAS, Section 39.358 of the Texas Utilities Code and PUC Substantive Rule § 25.113 specifically provides for local registration of REPs, as well as the assessment of a reasonable administrative fee for such registration; and

WHEREAS, Section 39.358 of the Texas Utilities Code further provides for the suspension or revocation of a REP's registration and operation within a city for significant violations of Chapter 39 of the Texas Utilities Code or the rules adopted by the PUC to implement Senate Bill 7; and

WHEREAS, registration will facilitate the City of Arlington having accurate information concerning each REP that will be serving Arlington residents and businesses in the event that Arlington customers experience problems with a REP; and

WHEREAS, the City Council of the City of Arlington, Texas, hereby finds that REPs should be registered by the City of Arlington and that an administrative fee of $25 should be charged for each REP registration; and

WHEREAS, the City Council also finds it in the best interest of the City of Arlington and its citizens to allow the City to monitor REPs to ensure compliance with PUC certification; and

WHEREAS, the City Council finds that the REP serving as electric provider for the City of Arlington's electric accounts should be exempt from registration requirements unless that REP is serving end use customers within municipal limits other than the municipality; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Utilities"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the **repeal** of Article VIII, entitled Electric Provider Registration, so that hereafter said Article shall be and read as follows:

ARTICLE VIII

REGISTRATION OF RETAIL ELECTRIC PROVIDERS

Section 8.01 General Provisions

A. Purpose. The City of Arlington City Council finds that it is in the best interest of the public to require that a Retail Electric Provider ("REP") register as a condition of serving City residents. This ordinance establishes a "safe harbor" process for registration of REPs to standardize notice and filing procedures, deadlines, and registration information and fees. The "safe harbor" registration process provides certainty to City and REPs, thereby facilitating the development of a competitive retail electric market in Texas.

B. Repeal of Existing Ordinance Addressing REP Registration. To the extent that an existing ordinance or ordinances of the City of Arlington address REP registration, such other ordinance or ordinances are hereby repealed.

C. Definitions. The following words and terms, when used in this Article, shall have the following meanings, unless the context clearly indicates otherwise:

"Commission" or "PUC" shall mean the Public Utility Commission of Texas.

"PURA" shall mean the Texas Public Utility Regulatory Act, as amended.

"REP" shall mean Retail Electric Provider.

"Registration Form" shall mean the registration form approved by the Commission in accordance with Commission Substantive Rule §25.113 and available on the Commission's website or from the Commission's Central Records division.

"Resident" shall mean any electric customer located within the City, except the City of Arlington, regardless of customer class.

"Revocation" shall mean the cessation of all REP business operations within the City, pursuant to Commission order.

"Suspension" shall mean the cessation of all REP business operations within the City associated with obtaining new customers, pursuant to Commission order.

D. Non-discrimination in REP registration requirements. The registration requirements apply equally to all REPs and types of REPs. However, the City may exclude from its registration requirement the REP that provides service only to the City's own electric accounts as long as the REP providing service to the City does not serve any residents of the municipality.

Section 8.02 Registration

A. Standards for registration of REPs. Registrations will be processed administratively by City.

1. A REP shall register within 30 days after the effective date of this Ordinance or 30 days after providing retail electric service to any resident of City, whichever is later.

2. A REP shall register with City by completing the Registration Form approved by the Commission, and signed by an owner, partner, officer, or other authorized representative of the registering party. Forms may be submitted to City by mail or facsimile.

3. City shall review the submitted Registration Form for completeness, including the remittance of the registration fee. Within 15 business days of receipt of an incomplete registration, City shall notify the registering party in writing of the deficiencies in the registration. The registering party shall have 20 business days from the issuance of the notification to cure the deficiencies. If the deficiencies are not cured within 20 business days, City shall notify the registering party that the registration is rejected without prejudice.

B. Information. City shall require a REP to provide only the information set forth in the Registration Form.

C. Registration fees. REPs shall pay a reasonable administrative fee for the purpose of registration.

1. Each retail electric provider required to register under this Article shall pay to the City a one-time registration fee in the amount of $25.

2. A REP shall pay a late fee of $15 if the REP fails to register within 30 days after this ordinance requiring registration becomes effective or 30 days after providing retail electric service to any resident of the municipality, whichever is later.

D. Post-registration requirements and re-registration.

1. A REP shall notify City within 30 days of any change in information provided in its registration. In addition, a REP shall notify City within ten days if it discontinues offering service to residents of City.

2. If a REP's registration is revoked and the REP subsequently cures its defects and resumes operations it must re-register. In that circumstance, the REP may register in the same manner as a new REP.

Section 8.03 Suspension and Revocation

City may suspend or revoke a REP's registration and authority to operate within the municipality upon a Commission finding that the REP has committed significant violations of PURA Chapter 39 or rules adopted under that chapter. City will not suspend or revoke the registration of the affiliated REP or provider of last resort ("POLR") serving residents in City. City shall not take any action against a REP other than suspension or revocation of a REP's registration and authority to operate in the municipality, or imposition of a late fee in accordance with this Article.

1. City may provide a REP with a warning prior to seeking to suspend or revoke a REP's registration.

2. City shall provide the REP with at least 30 calendar days written notice, informing the REP that its registration and authority to operate shall be suspended or revoked. The notice shall specify the reason(s) for such suspension or revocation.

3. City may order that the REP's registration be suspended or revoked only after the notice period has expired.

4. In its suspension order, City shall specify the reasons for the suspension and provide a date certain or provide conditions that a REP must satisfy to cure the suspension. Once the suspension period has expired or the reasons for the suspension have been rectified, the suspension shall be lifted.

5. In its revocation order, City shall specify the reasons for the revocation.

6. A REP may appeal a suspension or revocation order to the Commission.

Section 8.04 Notice and Effective Date

Upon adoption of this ordinance, the City shall file the ordinance with the Commission in a docket established by the Commission for the purpose of submitting municipal REP registration ordinances. The filing of this ordinance in such docket in accordance with Commission rules relating to the filing of pleadings, documents, and other materials shall serve as notice to all REPs of the requirement to submit a registration to the City. The ordinance will become effective 31 days after the ordinance has been filed with the Commission in accordance with this section.

2.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

3.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

4.

The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, Texas, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

5.

This ordinance shall become effective immediately."

PRESENTED AND GIVEN FIRST READING on the **3rd** day of **June**, **2003**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **10th** day of **June**, **2003**, by a vote of **9** ayes and **0** nays at a regular meeting of the City Council of the City of Arlington, Texas.

Ordinance No. 05-112

An ordinance amending the "Utilities" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article III, entitled Gas, by granting to Atmos Energy Corporation, a Texas and Virginia corporation, its successors and assigns, a franchise to furnish, transport and supply gas to the general public in the City of Arlington, Tarrant County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all previous Atmos Energy gas franchise ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; prescribing the terms, conditions, obligations and limitations under which such franchise shall be exercised; providing a most favored nations clause; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; and providing an effective date

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Utilities"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of Article III, Gas, so that said article shall be and read as follows:

SECTION 3.01 GRANT OF AUTHORITY

A. The City of Arlington, Texas, hereinafter called "City," hereby grants to Atmos Energy Corporation, hereinafter called "Atmos Energy" or "Company," its successors and assigns, privilege and license to use and occupy the present and future Public Rights-of-Way of the City for the purpose of laying, maintaining, constructing, protecting, operating, and replacing the System needed and necessary to deliver, transport and distribute gas in, out of, and through City and to sell gas to persons, firms, and corporations, including all the general public, within the City's corporate limits.

B. Said privilege and license being granted by this Ordinance is for a term ending December 31, 2015.

C. The provisions set forth in this Ordinance represent the terms and conditions under which the Company shall construct, operate, and maintain the System

within the City, hereinafter sometimes referred to as the "Franchise." In granting this Franchise, the City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future generally applicable ordinances of the City. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time.

SECTION 3.02 <u>DEFINITIONS</u>

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

A. "City" shall mean the City of Arlington, Texas.

B. "Company" shall mean Atmos Energy Corporation, its successors and assigns, but does not include an Affiliate, which shall have no right or privilege granted hereunder except through succession or assignment in accordance with Section 3.06.

C. "City Manager" means City's manager, or his or her designee.

D. "Gross Revenues" shall mean all revenue derived or received, directly or indirectly, from the sale of gas to all classes of customers (excluding gas sold to another gas utility in City for resale to its customers within City) within the corporate limits of City.

(1) "Gross revenues" shall include:

(a) revenues derived from the following 'miscellaneous charges':

i. charges to connect, disconnect, or reconnect gas within the City;
ii. charges to handle returned checks from consumers within the City;
iii. such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and
iv. contributions in aid of construction ("CIAC").

(b) revenues billed but not ultimately collected or received by the Company;

(c) gross receipts fees;

(d) all revenues derived by Company from the transportation of gas through the System of Company within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City); and

(e) the value of gas transported by Company for Transport Customers through the System of Company located in the City's Public Rights-of-Way ("Third Party Sales") (excluding the value of any gas transported to another gas utility in City for resale to its customers within City), with the value of such gas to be established by utilizing Company's monthly Weighted Average Cost of Gas charged to industrial customers in the Mid-Tex division, as reasonably near the time that the transportation service is performed.

(2) "Gross revenues" shall not include:

(a) the revenue of any Person including, without limitation, an Affiliate, to the extent that such revenue is also included in Gross Revenues of the Company; and

(b) sales taxes; and

(c) any interest income earned by the Company; and

(d) all 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 Public Right-of-Way.

E. "Person" shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include the City or any employee, agent, servant, representative or official of the City.

F. "Public Right-of-Way" shall mean public streets, alleys, highways, bridges, public easements, public places, public thoroughfares, grounds, and sidewalks of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.

G. "System" or "System Facilities" shall mean all of the Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections, and all other appurtenant equipment used in or incident to providing delivery, transportation, distribution, supply and sales of natural gas for heating, lighting, and power, located in the Public Right-of-Way within the corporate limits of the City.

H. "Affiliate" shall mean in relation to the Company, a Person that controls, is controlled by, or is under common control with the Company. As used in this definition, the term "control" means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such Person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract or otherwise.

I. "Transport Customer" shall mean any Person for which Company transports gas through the System of Company within the City's Public Rights-of-Way for delivery within the City (excluding other gas utilities in City who resell gas to their customers within the City).

SECTION 3.03 <u>EFFECT OF OTHER MUNICIPAL FRANCHISE ORDINANCE FEES ACCEPTED AND PAID BY COMPANY</u>

A. If Company 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, 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 the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Company to City pursuant to this Ordinance shall be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

B. The provisions of this Section 3.03 apply only to the amount of the franchise fee to be paid and do not apply to other franchise fee payment provisions, including without limitation the timing of such payments.

SECTION 3.04 <u>ACCEPTANCE OF TERMS OF FRANCHISE</u>

A. The Company shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary. If the Company does not file such written acceptance of this Franchise Ordinance, the Franchise Ordinance shall be rendered null and void. The effective date shall be determined in accordance with the requirements of Section 3.27.

B. At 11:59 P.M. on December 31, 2015, ALL rights, franchises and privileges herein granted, unless they have already at that time ceased or been forfeited or extended by mutual agreement while a new franchise is being negotiated, shall at once cease and terminate.

SECTION 3.05 NO THIRD PARTY BENEFICIARIES

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

SECTION 3.06 SUCCESSORS AND ASSIGNS

No assignment or transfer of this Franchise shall be made, in whole or in part, except in the case of assignment or transfer to an Affiliate without approval of the City Council of the City. Written notice of said transfer or assignment to an Affiliate shall be provided to the City Manager. The City will grant such approval unless withheld for good cause such as: (1) the failure of the proposed Assignee or Transferee to agree to comply with all provisions of this Ordinance and such additional conditions as the Council may prescribe in order to remedy existing conditions of non-compliance, and (2) the failure of the proposed Assignee or Transferee to provide assurances reasonably satisfactory to the Council of its qualifications, character, the effect of the Transfer and such other matters as the Council deems relevant. Upon approval, the rights, privileges, and Franchise herein granted to Company shall extend to and include its successors and assigns. The terms, conditions, provisions, requirements and agreements contained in this Franchise shall be binding upon the successors and assigns of the Company.

SECTION 3.07 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

This Franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas, the Arlington City Charter, as amended, and all other generally applicable ordinances of the City of Arlington, not inconsistent herewith, including, but not limited to, ordinances regulating the use of Public Rights-of-Way.

SECTION 3.08 PREVIOUS ORDINANCES

When this Franchise becomes effective, all gas franchise ordinances and parts of franchise ordinances applicable to the Company or its predecessors in interest granted by the City of Arlington, Texas, are hereby repealed.

SECTION 3.09 NOTICES

Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified

mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY	COMPANY
City Manager City of Arlington P.O. Box 90231 101 E. Abram St. Arlington, Texas 76004-3231	Manager of Public Affairs Atmos Energy Corp. Mid-Tex Division 800 E. Border Street Arlington, Texas 76010
City Attorney City of Arlington P.O. Box 90231 101 E. Abrams St. Arlington, Texas 76004-3231	

SECTION 3.10 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 3.11 CONDITIONS OF OCCUPANCY

A. All construction and the work done by Company, and the operation of its business, under and by virtue of this Ordinance, shall be in conformance with the ordinances, rules and regulations now in force, including but not limited to the "Right-of-Way Management" Chapter and the Public Right-of-Way Permitting and Construction Manual, and generally applicable ordinances that may hereafter be adopted by the City, relating to the use of its Public Rights-of-Way. This Franchise agreement shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code, or other state or federal Law.

B. If the City believes that Company has failed to comply with any operational or maintenance standards as required by this Franchise Ordinance, City shall give the Company written notice of such failure to comply. Company shall have the opportunity to cure such failure during a period not to exceed five (5) working days from receipt of the written notice. If the Company fails to cure the alleged

failure to comply within the prescribed time period, the Company's alleged failure to comply shall be heard at a public meeting of the City Council. The Company shall be given written notice of the public meeting no later than five (5) calendar days prior to the posting date of the agenda for the City Council meeting at which such alleged failure is scheduled to be considered by the Council. The notice to the Company shall include a list of the failures complained of. Company shall have an opportunity to address the Council at such public meeting. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with operational or maintenance standards as required by this Franchise Ordinance, Company shall pay One Hundred Fifty Dollars ($150.00) per day for each day that such noncompliance continues.

SECTION 3.12 <u>RELOCATION OF COMPANY EQUIPMENT</u>

A. Whenever by reason of widening or straightening of streets, water or sewer line projects, or any other public works projects in which beautification is not a purpose of the project (e.g., installing or improving storm drains, water lines, sewer lines, etc.), it shall be deemed necessary by City to remove, alter, change, adapt, or conform the underground or aboveground System Facilities of Company to another part of the Public Rights-of-Way, such alterations shall be made by Company at Company's expense in accordance with the Right-of-Way Management Chapter of the Code of the City of Arlington.

B. If City abandons any Public Right-of-Way in which Company has facilities, such abandonment shall be conditioned on Company'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 Company for all removal or relocation expenses if Company 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 the Company to remove or relocate its facilities and Company 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 3.13 <u>LAYING OF LINES IN ADVANCE OF PUBLIC IMPROVEMENTS</u>

A. Whenever the City shall decide to make any public improvements in any Public Right-of-Way in which mains and pipes already exist or in which Company may propose to lay its mains or pipes, the Company will be provided the opportunity, at no expense to the City, in advance of such public improvements, to renew such mains or pipes, if defective or inadequate in size, and to lay service lines, or

renew same, if inadequate in size or defective, to the property lines where buildings are already located.

B. The Company shall be given written notice of the intention of the City to make public improvements in any such Public Right-of-Way. Within one hundred twenty (120) days from receipt of such notice, the Company, if it has determined a need, shall initiate work and thereafter proceed in a workmanlike manner to completion of the necessary work. If the Company should fail to so proceed, and such street or alley is thereupon paved, except in an emergency or in response to a request for initiation of new service, the Company shall for five (5) years thereafter not be allowed to cut such pavement or excavate in such paved street or alley for any purpose. All pavement cuts or excavations within the five (5) year period, except in response to an emergency, shall be performed only upon written permission of the Director of Public Works under such terms and conditions as the Director of Public Works may prescribe. Company shall give notice to the City of emergency work as soon as possible after the commencement of such work. Notice shall be given by contacting the City personnel designated by the City for this purpose.

SECTION 3.14 INSTALLATION OF METERS

If a meter is to be installed in or near the Public Rights-of-Way, Company agrees to discuss with the Public Works Director or his/her delegate the aesthetics of the meter placement. If the City requires a meter upgrade, the Company will comply so long as the City reimburses the Company for the reasonable costs incurred by the Company in changing meters; provided, however, that in no event shall underground meters be required.

SECTION 3.15 EXTENSIONS FOR CUSTOMERS

Company shall extend distribution mains in any street up to one hundred (100) feet for any one residential or commercial customer so long as the customer at a minimum uses gas for unsupplemented space heating and water heating. Company shall not be required to extend transmission mains in any Public Rights-of-Way within City or to make a tap on any transmission main within City unless Company agrees to such extension by a written agreement between Company and a customer.

SECTION 3.16 DUTY TO SERVE

A. The Company hereby agrees that it will not arbitrarily refuse to provide service to any Person that it is economically feasible for the Company to serve. In the event that a Person is refused service, said Person may request a hearing before the City Council of the City or its designee, said hearing to be held within forty-five (45) days from the date of the request for hearing. The Council may order the Company to provide service or take any other action necessary to bring the

Company into compliance with the intent of the Council in granting this Franchise, including the adoption of an ordinance or resolution in accordance with Section 3.16(B) or termination or forfeiture of the Franchise in accordance with Section 3.23. The Council shall render its opinion at its next regular meeting but in no event shall it be required to act in less than seven (7) days.

B. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with operational or maintenance standards as required by this Franchise Ordinance, Company shall pay One Hundred Fifty Dollars ($150.00) per day for each day that such noncompliance continues.

SECTION 3.17 <u>RATES</u>

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

SECTION 3.18 <u>PAYMENTS TO THE CITY</u>

A. In consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business, Company, its successors and assigns, agrees to pay and City agrees to accept such franchise fees in the amount and manner described herein. Except as provided for in Section 3.18(B), such payments shall be made on a quarterly basis, on or before the forty-fifth (45th) day following the end of each calendar quarter. The franchise fee shall be a sum of money that shall be equivalent to four percent (4%) of the quarterly Gross Revenues, as defined in Section 3.02(D), for the preceding calendar quarter. The initial payment provided under this Franchise shall be due on or before November 15, 2005 based on the preceding calendar quarter (July 1 – September 30, 2005) and shall be for the right and privilege during the preceding calendar quarter (July 1 – September 30, 2005). Subsequent payments shall be made as follows during the term of the Franchise:

Payment Due	Based Upon and For Calendar Quarter
Feb. 15	Oct. 1 – Dec. 31
May 15	Jan. 1 – March 31
Aug. 15	April 1 – June 30
Nov. 15	July 1 – Sept. 30

The final payment under this Franchise will be due on or before February 15, 2016 and will be for the calendar quarter October 1 – December 31, 2015.

B. The franchise fee amounts based on "Contributions in Aid of Construction" ("CIAC") shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee payment will be due on or before April 30, 2006 and will be based on CIAC received from the effective date of this Ordinance through December 31, 2005. The final payment of franchise fee amounts based on CIAC will be April 30, 2016, for the calendar year ending December 31, 2015.

C. It is also expressly agreed that the franchise fee payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as a 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 City may now impose or hereafter levy and collect from Company or Company's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. Except however, Company's separate obligation to reimburse the City for City's reasonable rate case expenses and for street repairs in accordance with City's ordinances are not affected by Company's payment of franchise fees hereunder. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of occupation taxes, licenses, fees, street or alley rentals or charges, easements or franchise taxes, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay such occupation taxes, licenses, charges, fees or rentals.

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

E. Company Recovery of Franchise Fees. City agrees that (i) as a regulatory authority, it will adopt and approve the ordinance, rates, or tariff which provide for 100% recovery of such franchise fees as part of Company's rates; (ii) if City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Company's franchise fees is an issue, City will take an affirmative position supporting 100% recovery of such franchise fees by Company; and (iii) in the event of an appeal of any such regulatory proceeding in which City has intervened, City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company. City further 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 Company.

F. Lease of Facilities Within City's Rights-of-Way. Company shall have the right to lease, license or otherwise grant to a party other than Company the use of its Facilities within the City's Public Rights-of-Way provided: (i) Company first

notifies the City 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) Company makes the franchise fee payment due on the revenues from such lease pursuant to Sections 3.18(A) and 3.18(B) of this Ordinance. This authority to lease Facilities within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees, access line fees, or similar Public Right-of-Way user fees.

G. City shall within thirty (30) days of final approval, give Company notice of annexations and disannexations of territory by the City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Company shall promptly initiate a process to reclassify affected customers into the city limits no later than sixty (60) days after receipt of notice from the City. The annexed areas added to the city limits will be included in future franchise fee payments in accordance with the effective date of the annexation if notice was timely received from City. Upon request from City, Company will provide documentation to verify that affected customers were appropriately reclassified and included for purposes of calculating franchise fee payments.

SECTION 3.19 <u>BOOKS AND RECORDS</u>

A. Company agrees that at the time of each quarterly payment, Company shall also submit to the City a statement showing its Gross Revenues for the preceding calendar quarter as defined in Section 3.02(D). City shall be entitled to treat such statement as though it were sworn and signed by an officer of Company.

B. City may, if it sees fit, upon reasonable notice to the Company, have the books and records of Company examined by a representative of City to ascertain the correctness of the reports agreed to be filed herein. The Company shall make available to the auditor such personnel and records as the City may in its reasonable discretion request in order to complete such audit, and shall make no charge to the City therefore. The Company shall assist the City in its review by providing all requested information no later than fifteen (15) days after receipt of a request. The cost of the audit shall be borne by the City unless the audit discloses that the Company has underpaid the franchise fee by 10% or more, in which case the reasonable costs of the audit shall be reimbursed to the City by the Company. If such an examination reveals that Company has underpaid the City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of the City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section 3.18(D). Should Company determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Company regarding the existence of such overpayment, City shall review Company's claim and if said overpayment is confirmed, remit the amount of overpayment to Company.

C. If, after receiving reasonable notice from the City of the City's intent to perform an audit as provided herein, the Company fails to provide data, documents, reports, or information required to be furnished hereunder to the City, or fails to reasonably cooperate with the City during an audit conducted under the terms hereunder, the Company shall be liable for payment of a fee as set forth herein. The City shall give the Company written notice of its intent to impose a fee and shall provide Company with a period to cure its failure, such period not to exceed five (5) working days. If the Company fails to cure the alleged failure within the prescribed time period, the Company's alleged failure to comply shall be heard at a public meeting of the City Council. The Company shall be given written notice of the public meeting no later than five (5) calendar days prior to the posting date of the agenda for the City Council meeting at which such failure is scheduled to be considered by the Council. The notice to the Company shall include a list of the failures complained of. Company shall have an opportunity to address the Council at such public meeting. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with the requirements of this Section, Company shall pay a fee of One Hundred Dollars ($100.00) per day for each day that such noncompliance continues.

SECTION 3.20 <u>RESERVATION OF RIGHTS: GENERAL</u>

A. The City reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of Company's use of the Public Rights-of-Way to ensure the rendering of efficient public service, and the maintenance of Company's System in good repair throughout the term of this Franchise.

B. The rights, privileges, and Franchise granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other Person for the purpose of furnishing gas for light, heat, and power for City and the inhabitants thereof.

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

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

SECTION 3.21 RIGHT TO INDEMNIFICATION, LEGAL DEFENSE AND TO BE HELD HARMLESS

A. In consideration of the granting of this Franchise, Company agrees to indemnify, defend and hold harmless the City, its officers, agents, and employees (City and such other persons and entities being collectively referred to herein as "Indemnitees"), from and against all suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company's intentional and/or negligent acts or omissions in connection with Company's operations.

B. The Company's obligation to indemnify Indemnitees under this Franchise Ordinance shall not extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one or more Indemnitees. In such case the obligation to indemnify shall be reduced in proportion to the negligence of the Indemnitees. By entering into this Franchise Ordinance, City does not consent to suit, waive any governmental immunity available to the City under Texas law or waive any of the defenses of the parties under Texas law.

C. Except for instances of the City's own negligence, City shall not at any time be required to pay from its own funds for injury or damage occurring to any person or property from any cause whatsoever arising out of Company's construction, reconstruction, maintenance, repair, use, operation or dismantling of System or Company's provision of service.

D. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Company shall, upon notice from any of the Indemnitees, at Company's sole cost and expense, resist and defend the same with legal counsel selected by Company; provided, however, that Company shall not admit liability in any such matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Company. Company's obligation to defend shall apply regardless of whether City is solely or concurrently negligent. The Indemnitees shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 3.21. Nothing herein shall be deemed to prevent the Indemnitees at their election and at their own expense from cooperating with Company and participating in the defense of any litigation by their own counsel. If Company fails to retain defense counsel within seven (7) business days after receipt of Indemnitee's written notice that Indemnitee is invoking its right to indemnification under this Franchise, Indemnitees shall have the

right to retain defense counsel on their own behalf, and Company shall be liable for all defense costs incurred by Indemnitees.

SECTION 3.22 INSURANCE

The Company will maintain an appropriate level of insurance in consideration of the Company's obligations and risks undertaken pursuant to this Franchise, unless a specific amount of insurance is required by the City's Right-of-Way Ordinance, in which case said Ordinance will control. Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an approved formal plan of self-insurance maintained by Company in accordance with sound accounting and risk-management practices. A certificate of insurance shall be provided to the City. The Company will require its self-insurance to respond to the same extent as if an insurance policy had been purchased naming the City as an additional insured, and any excess coverage will name the City as an additional insured up to the amounts required by the City's Right-of-Way Ordinance.

SECTION 3.23 TERMINATION

A. Right to Terminate. In addition to any rights set out elsewhere in this Franchise Ordinance, the City reserves the right to terminate the Franchise and all rights and privileges pertaining thereto, in the event that the Company violates any material provision of the Franchise.

B. Procedures for Termination.

(1) The City may, at any time, terminate this Franchise for a continuing material violation by the Company of any of the substantial terms hereof. In such event, the City shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to the Company at the address set forth in Section 3.09 hereof. The Company shall have sixty (60) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's Franchise is subject to termination under the following provisions. Provided, however, that, if the Company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Franchise will not be terminated.

(2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby the Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The Company shall be provided at least

fifteen (15) days prior written notice of any public hearing concerning the termination of the Franchise. In addition, ten (10) days notice by publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by the Company.

(3) The City, after full public hearing, and upon finding material violation or failure to comply, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by the Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.

(4) Nothing herein stated shall preclude Company from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction.

(5) Nothing herein stated shall prevent the City from seeking to compel compliance by suit in any court of competent jurisdiction if the Company fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Company to comply with said terms.

SECTION 3.24 <u>RENEGOTIATION</u>

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

SECTION 3.25 <u>SEVERABILITY</u>

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

SECTION 3.26 <u>NO WAIVER</u>

Either City or the Company shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a

waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

SECTION 3.27 EFFECTIVE DATE

This Franchise shall be effective on January 1, 2006, if Company has filed its acceptance as provided by Section 3.04 herein.

2.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

3.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

4.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

5.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

PRESENTED AND GIVEN FIRST READING on the **6th** day of **December, 2005**, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the **20th** day of **December, 2005**, by a vote of **8** ayes and **0** nays at a regular meeting of the City Council of the City of Arlington, Texas.

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney
BY David Barber

Ordinance No. 08-087

An ordinance amending the "Utilities" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article III, entitled Gas, by the addition of Section 3.28, 2008 Amendment, relative to amending the existing gas franchise between the City and Atmos Energy Corporation to provide for a different compensation; providing for acceptance by Atmos Energy Corporation; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; and becoming effective October 1, 2008

WHEREAS, Atmos Energy Corporation ("Company") is engaged in the business of furnishing and supplying gas to the general public in the City, including the transportation, delivery, sale, and distribution of gas in, out of, and through the City for all purposes, and is using the public streets, alleys, grounds and rights-of-ways within the City for that purpose under the terms of a franchise ordinance duly passed by the governing body of the City and duly accepted by Company or its predecessor in interest; and

WHEREAS, the City and Company desire to amend said franchise ordinance to provide for a different consideration; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Utilities"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of Article III, Gas, by the addition of Section 3.28, 2008 Amendment, so that said section shall be and read as follows:

Section 3.28 2008 Amendment

A. The consideration payable by Company for the rights and privileges granted to Company as set forth in Section 3.18 of the franchise ordinance duly passed by the City Council and accepted by Company or its predecessor in interest is hereby changed to be five percent (5%) of the Gross Revenues, as defined in the franchise ordinance.

B. Franchise payments shall be made on the dates prescribed in the existing franchise and shall be for the rights and privileges of the respective period during which the payment is made.

C. This ordinance shall take effect on October 1, 2008. Company shall, within thirty (30) days from the receipt of this ordinance, file its written acceptance of this ordinance with the Office of the City Secretary in substantially the following form:

> To the Honorable Mayor and City Council:
>
> Atmos Energy Corporation, acting by and through the undersigned authorized officer, hereby accepts in all respects, on this the ____ day of _____, 2008, Ordinance No. _____ amending the current gas franchise between the City and Atmos Energy Corporation.
>
> Atmos Energy Corporation
> By _____
> Vice President, Mid-Tex Division

D. In all respects, except as specifically and expressly amended by this section, the existing franchise ordinance heretofore duly passed by the governing body of the City shall remain in full force and effect.

2.

The City shall provide a copy of this Ordinance to Mr. David Park, VP of Rates and Regulatory Affairs, Atmos Energy Corp., 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, no later than ten (10) business days after its final passage and approval.

3.

It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given as required.

4.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

5.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

6.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

7.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

8.

This ordinance shall become effective October 1, 2008.

PRESENTED AND GIVEN FIRST READING on the 11TH day of SEPTEMBER, 2008, at a special meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 16TH day of SEPTEMBER, 2008, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

KAREN BARTAR, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY

Ordinance No. 13-053

An ordinance amending Ordinance No. 88-141, as amended, which grants a franchise to Oncor Electric Delivery Company LLC, successor in interest to Texas Utilities Electric Company through the amendment of the "Utilities" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article IV, entitled Electricity, at Section 4.10, Period Of Time Of This Ordinance-Expiration-Renewal, by extending the initial term; providing for severability; providing for limitations of certain liability; and providing an effective date

WHEREAS, on October 18, 1988 the City Council adopted Ordinance No. 88-141, an ordinance granting Oncor Electric Delivery Company LLC ("Oncor" or "Company"), successor in interest to Texas Utilities Electric Company, a franchise for a period of twenty-five (25) years to, among other things, use and occupy the present and future streets, avenues, alleys, highways, public places, public ways and utility easements (Public Rights-of-Way) within the City of Arlington (the "City") for the purpose of constructing, extending, maintaining, using and operating an electric utility system of poles, lines, wires, towers, anchors, cables, manholes, underground conduits, transmission lines, telegraphic and telephone lines for Company's own use, and other structures and appurtenances necessary for the delivery of electricity to customers located in the City, which was amended from time to time (collectively, the "Franchise"); and

WHEREAS, Ordinance No. 88-141, as amended, expires on November 30, 2013; and

WHEREAS, in order to allow the City and Oncor more time to negotiate the provisions of a new franchise, it is necessary to extend the initial term of Ordinance No. 88-141, as amended; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Utilities"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of **Article IV**, Electricity, at **Section 4.10**, Period Of Time Of This Ordinance-Expiration-Renewal, so that said section shall be and read as follows:

Section 4.10 Period Of Time Of This Ordinance-Expiration-Renewal

The term of Ordinance No. 88-141 (as amended) of the City of Arlington, Texas is extended not to exceed the earlier of May 31, 2014 or

the effective date of an ordinance passed by the City Council granting a new franchise to the Company and accepted in writing by Company.

2.

In all respects, except as specifically and expressly amended by this ordinance, the Franchise shall remain in full force and effect according to its provisions.

3.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

4.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

5.

The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

6.

This ordinance shall become effective from and after its publication, passage and adoption by the City and upon the Company's written acceptance hereof, said written acceptance to be filed by Company with the City Secretary's Office within sixty (60) calendar days following City's adoption of this Ordinance.

PRESENTED AND GIVEN FIRST READING on the 5th day of November, 2013, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 19th day of November, 2013, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY

Ordinance No. 14-040

An ordinance amending the "Utilities" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article IV, entitled Electricity, whereby the City grants to Oncor Electric Delivery Company LLC a franchise for the purpose of constructing, maintaining and operating an electric delivery system in the City; prescribing compensation to the City from the Company for the franchise privilege; prescribing the term and effective date of said franchise; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; and providing for publication and providing an effective date

WHEREAS, on October 18, 1988 the City Council adopted Ordinance No. 88-141 granting Oncor Electric Delivery Company LLC ("Oncor"), successor in interest to Texas Utilities Electric Company, a franchise for a period of twenty five (25) years to use and occupy the present and future streets, avenues, alleys, highways, public places, public ways and utility easements (Public Rights-of-Way) within the City of Arlington (the "City") for the purpose of constructing, extending, maintaining, using and operating an electric utility system of poles, lines, wires, towers, anchors, cables, manholes, underground conduits, transmission lines, telegraphic and telephone lines for its own use, and other structures and appurtenances necessary for the delivery of electricity to customers located in the City, as amended (collectively, the "Franchise"); and

WHEREAS, Oncor is now and has been engaged in the construction, maintenance and operation of an electric delivery system in the City pursuant to such rights as have been granted it and its predecessors by and under the laws of the State of Texas, and subject to the exercise of such reasonable rights of regulation under the police power and other rights as have been also lawfully granted by and under said laws to the City; and

WHEREAS, Texas Transportation Code § 311.071(a) provides that the governing body of a home-rule municipality by ordinance may grant to a person a franchise to use or occupy a public street or alley of the municipality; and

WHEREAS, Texas Tax Code § 182.025(a) provides that an incorporated city may make a reasonable charge for the use of a city street, alley, or public way by a public utility in the course of its business; and

WHEREAS, Texas Tax Code § 182.025(c) provides that the total charges related to distribution service of an electric utility or transmission and distribution utility within the city may not exceed the amount or amounts prescribed by Section 33.008, Utilities Code; and

WHEREAS, Texas Utilities Code § 33.008(a) provides that a municipality may impose on an electric utility a reasonable charge for use of a municipal street, alley, or public way to deliver electricity to a retail customer; and

WHEREAS, Texas Utilities Code §33.008(b) provides that a municipality is entitled to collect from each electric utility that uses the municipality's street, alleys, or public ways to provide distribution service a fee per kilowatt hour delivered to each retail customer for consumption within the city; and

WHEREAS, Texas Utilities Code §33.008(f) provides that a municipality and an electric utility may mutually agree to a different level of compensation; and

WHEREAS, in 2002, the City and Oncor's predecessor in interest agreed that Oncor would pay franchise fees on revenues received from Oncor's Discretionary Service Charges at the rate of four percent (4%) of such revenues; and

WHEREAS, in 2006, the City and Oncor agreed that the franchise fee per kilowatt hour would be increased over a period of time to its current level; NOW THEREFORE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Utilities"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended at Article IV, Electricity, so that said article shall be and read as follows:

ARTICLE IV

Electricity

Section 4.01 Grant of Franchise

The City hereby grants to Oncor Electric Delivery Company LLC, its successors and assigns, herein called "Electric Company" or "Company," the right, privilege and franchise to use its present and future streets, avenues, alleys, highways, public ways and utility easements for the purpose of constructing, maintaining and operating in the present and future streets, avenues, alleys, highways, public ways and utility easements of the City, electric power lines together with all necessary or desirable appurtenances (including underground conduits, poles, towers, wires, and transmission lines, and communication lines for its own use) for the purpose of delivering electricity to the City, the inhabitants thereof, and persons, firms, and corporations beyond the corporate limits thereof.

Section 4.02 Placement of Facilities

The placement of Electric Company's facilities in the streets, avenues, alleys, highways, public ways and easements within the City shall interfere as little as reasonably practicable with the use of public streets, avenues, alleys, highways, drainage systems and public ways and shall comply with all pertinent requirements of the National Electric Safety Code and with City ordinances.

Section 4.03 Franchise Fee

A. In consideration of the grant of said right, privilege and franchise by the City and as full payment for the right, privilege and franchise of using and occupying the said Public Rights-of-Way, and in lieu of any and all occupation taxes, assessments, municipal charges, fees, easement taxes, franchise taxes, license, permit and inspection fees or charges, street taxes, bonds, street or alley rentals, and all other taxes, charges, levies, fees and rentals of whatsoever kind and character which the City may impose or hereafter be authorized or empowered to levy and collect, excepting only the usual general or special ad valorem taxes which the City is authorized to levy and impose upon real and personal property, sales and use taxes, and special assessments for public improvements, Electric Company shall pay to the City a franchise fee as follows:

1. As authorized by Section 33.008(b) of PURA, the amount of $0.002904 multiplied by each kilowatt hour of electricity delivered by Company to each retail customer whose consuming facility's point of delivery is located within the City's municipal boundaries, in accordance with the Agreement to Resolve Outstanding Franchise Issues between Oncor and the Steering Committee of Cities Served by TXU Electric Delivery Company, dated January 27, 2006.

2. Payments to the City shall be made per the quarterly schedule as follows:

Payment Due Date	Basis Period	Privilege Period
February 28(29)	Oct. 1 – Dec. 31	Mar. 1 – May 31
May 31	Jan. 1 – Mar. 31	Jun. 1 – Aug. 31
August 31	Apr. 1 – Jun. 30	Sept. 1 – Nov. 30
November 30	Jul.1 – Sept. 30	Dec.1 – Feb. 28(29)

3. A sum equal to four percent (4%) of gross revenues received by Company from services identified as DD1 through DD24 in Section 6.1.2 "Discretionary Service Charges," in its Tariff for Retail Delivery Service (Tariff), effective 1/1/2002, that are for the account and benefit of an end-use retail electric consumer, pursuant to the Compromise, Settlement, and Release Agreement between the City and TXU Electric Company, effective January 1, 2002. Company will, upon request by City, provide a

cross reference to Discretionary Service Charge numbering changes that are contained in Company's current approved Tariff.

4. The franchise fee amounts based on "Discretionary Service Charges" shall be calculated on an annual calendar year basis, i.e. from January through December 31 of each calendar year. The franchise fee amounts that are due based on "Discretionary Service Charges" shall be paid at least once annually on or before April 30 each year based on the total "Discretionary Service Charges", as set out in Section 4.03.A.3, received during the preceding calendar year.

B. With each payment of compensation required by Section 4.03.A.2, Electric Company shall furnish to the City a statement, executed by an authorized officer of Electric Company or designee, providing the total kWh delivered by Electric Company to each retail customer's point of delivery within the City and the amount of payment for the period covered by the payment.

C. With each payment of compensation required by Section 4.03(A)(3), Electric Company shall furnish to the City a statement, executed by an authorized officer of Electric Company or designee, reflecting the total amount of gross revenues received by Electric Company from services identified in its "Tariff for Retail Delivery Service," Section 6.1.2, "Discretionary Service Charges," Items DD1 through DD24.

D. Pursuant to Section 33.008(e) of the Texas Utilities Code, the City may conduct an audit or other inquiry in relation to a payment made by Electric Company less than two (2) years before the commencement of such audit or inquiry. The City may audit the applicable books and records of the Electric Company to verify statements provided under this Section 4.03. Audits may be done to verify that all fees have been charged and paid according to this franchise. The Electric Company will provide adequate office space and records to accomplish each audit.

E. If either party discovers that Electric Company has failed to pay the entire or correct amount of compensation due, the correct amount shall be determined by mutual agreement between the City and Electric Company and the City shall be paid by Electric Company within thirty (30) calendar days of such determination. Any overpayment to the City through error or otherwise will, at the sole option of the City, either be refunded to Electric Company by City within thirty (30) days of such determination or offset against the next payment due from Electric Company. Acceptance by either party of any payment due under this Section shall not be deemed to be a waiver of any claim of breach of this Franchise, nor shall the acceptance by either party of any such payments preclude the other party from later establishing that a larger amount was actually due or from collecting any balance due. Nothing in this section shall be deemed a waiver by either party of its rights under law or equity.

F. Interest on late payments shall be calculated in accordance with the interest rate for customer deposits established by the Public Utility Commission of Texas in accordance with Texas Utilities Code Section 183.003 which may be amended for the time period involved.

G. The franchise fee payable to the City pursuant to Section 4.03 hereunder, shall not be offset by any payment by Electric Company to the City relating to ad valorem taxes.

Section 4.04 <u>Period Of Time Of This Ordinance-Expiration</u>

A. This franchise shall be in full force and effect for a period beginning with the effective date hereof and ending ten (10) years after to expire on August 31, 2024.

B. In the event that this franchise is renewed, the quarterly payments under Section 4.03.A.2 and the annual Discretionary Service Charge payments under Section 4.03.A.3 of this ordinance shall continue uninterrupted under the terms of this Section and Section 4.03.

Section 4.05 <u>No Exclusive Privileges Conferred By This Ordinance</u>

Nothing herein contained shall be construed as giving to the Electric Company any exclusive privilege within City limits.

Section 4.06 <u>Successors and Assigns</u>

The rights, powers, limitation, duties and restrictions herein provided for shall inure to and be binding upon the parties hereto and upon their respective successors and assigns.

Section 4.07 <u>Electric Company Subject to Other Regulations</u>

The Electric Company's property and operations within the City limits shall be subject to applicable City Charter provisions, ordinances and all rules and regulations that have been or will be promulgated by the City including but not limited to the Right-of-Way Management Chapter of the City Code unless otherwise in conflict with this Ordinance, federal or state laws, rules, or regulations. The failure of this Ordinance to include provisions that exist in other City rules, regulations, or ordinances, does not affect the enforceability of such other City rules, regulations, or ordinances against Electric Company, and such other City rules, regulations, and ordinances remain in full force and effect with regard to Electric Company, whether fully set out herein or not.

Section 4.08

In all respects, this franchise ordinance heretofore duly passed by the governing body of the City shall remain in full force and effect according to its terms until said franchise ordinance terminates as provided therein.

Section 4.09 Effective Date

This ordinance shall take effect upon City publication and City passage.

Section 4.10 Supersede

This Ordinance shall supersede any and all other Franchises granted by the City to Electric Company, its predecessors and assigns.

Section 4.11 Open Meeting

It is hereby officially found and determined that the meeting at which this Ordinance is passed is open to the public as required by law and that public notice of the time, place and purpose of said meeting was given by the City as required.

2.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed

3.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

4.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

5.

The caption of this ordinance shall be published in a newspaper of general circulation in the City of Arlington, in compliance with the provisions of Article VII, Section 15, of the City Charter. Further, this ordinance may be published in pamphlet form and shall be admissible in such form in any court, as provided by law.

6.

This ordinance shall become effective ten (10) days after first publication as described above.

PRESENTED AND GIVEN FIRST READING on the 24th day of June, 2014, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 5th day of August, 2014, by a vote of 8 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

ROBERT N. CLUCK, Mayor

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY

Ordinance No. 15-064

An ordinance amending the "Utilities" Chapter of the Code of the City of Arlington, Texas, 1987, through the amendment of Article III, entitled Gas, by granting to Atmos Energy Corporation, a Texas and Virginia corporation, its successors and assigns, a franchise to furnish, transport and supply gas to the general public in the City of Arlington, Tarrant County, Texas, for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; repealing all previous Atmos Energy gas franchise ordinances; providing that it shall be in lieu of other fees and charges, excepting ad valorem taxes; prescribing the terms, conditions, obligations and limitations under which such franchise shall be exercised; providing this ordinance be cumulative; providing for severability; providing for governmental immunity; providing for injunctions; and providing an effective date

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

1.

That the **"Utilities"** Chapter of the Code of the City of Arlington, Texas, 1987, is hereby amended through the amendment of Article III, Gas, so that said article shall be and read as follows:

Section 3.01 Grant of Authority

A. The City of Arlington, Texas, hereinafter called "City," hereby grants to Atmos Energy Corporation, hereinafter called "Atmos Energy" or "Company," its successors and assigns, privilege and license to use and occupy the present and future Public Rights-of-Way of the City for the purpose of laying, maintaining, constructing, protecting, operating, and replacing the System needed and necessary to deliver, transport and distribute gas in, out of, and through City and to sell gas to persons, firms, and corporations, including all the general public, within the City's corporate limits.

B. Said privilege and license being granted by this Ordinance is for a term ending December 31, 2025. Unless written notice of its intent to renegotiate is provided by either the City or Atmos Energy at least 180 days prior to the expiration of any term, the franchise shall be extended for two (2) additional terms of five (5) years on the same terms and conditions as set forth herein.

C. The provisions set forth in this Ordinance represent the terms and conditions under which the Company shall construct, operate, and maintain the System within the City, hereinafter sometimes referred to as the "Franchise." In granting this Franchise, the City does not in any manner surrender or waive its regulatory or other rights and powers under and by virtue of the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers under or by virtue of present or future generally applicable ordinances of the City. Company, by its acceptance of this Franchise, agrees that all such lawful regulatory powers and rights as the same may be from time to time vested in the City shall be in full force and effect and subject to the exercise thereof by the City at any time.

Section 3.02 <u>Definitions</u>

For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meanings given herein. When not inconsistent with the context, words in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

A. "Affiliate" shall mean in relation to the Company, a Person that controls, is controlled by, or is under common control with the Company. As used in this definition, the term "control" means, with respect to a Person that is a corporation, the ownership, directly or indirectly, of more than 50% of the voting securities of such Person or, with respect to a Person that is not a corporation, the power to direct the management or policies of such Person, whether by operation of law, by contract or otherwise.

B. "City" shall mean the City of Arlington, Texas.

C. "Company" shall mean Atmos Energy Corporation, its successors and assigns, but does not include an Affiliate, which shall have no right or privilege granted hereunder except through succession or assignment in accordance with Section 3.06.

D. "City Manager" means City's manager, or his or her designee.

E. "Gross Revenues" shall mean:

(1) all revenues received from the sale of gas to all classes of customers (excluding gas sold to another gas utility in City for resale to its customers within City) within the corporate limits of City;

(2) all revenues received by Atmos Energy from the transportation of gas through the System of Atmos Energy within the City to customers located within the City (excluding any gas transported to another gas utility in City for resale to its customers within City);

(3) the value of gas transported by Atmos Energy for Transport Customers through the System of Atmos Energy within the City ("Third Party Sales") (excluding the value of any gas transported to another gas utility in City for resale to its customers within City), 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 fees paid pursuant to this agreement, revenues billed but not ultimately collected or received by Company, and the following 'miscellaneous charges': charges to connect, disconnect, or reconnect gas, contributions in aid of construction, charges to handle returned checks from consumers within the City and State gross receipts fees.

(5) "Gross revenues" shall not include:

(a) the revenue of any affiliate or subsidiary of Atmos Energy;

(b) sales taxes;

(c) any interest or investment income earned by the Company; and

(d) all 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 Public Right-of-Way.

F. "Person" shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context clearly intends otherwise, include the City or any employee, agent, servant, representative or official of the City.

G. "Public Right-of-Way" shall mean public streets, alleys, highways, bridges, public easements, public places, public thoroughfares, grounds, and sidewalks of the City, as they now exist or may be hereafter constructed, opened, laid out or extended within the present limits of the City, or in such territory as may hereafter be added to, consolidated or annexed to the City.

H. "System" or "System Facilities" shall mean all of the Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections, and all other appurtenant equipment used in or incident to providing delivery, transportation,

distribution, supply and sales of natural gas for heating, lighting, and power, located in the Public Right-of-Way within the corporate limits of the City.

I. "Transport Customer" shall mean any Person for which Company transports gas through the System of Company within the City's Public Rights-of-Way for delivery within the City (excluding other gas utilities in City who resell gas to their customers within the City).

Section 3.03 <u>Effect of Other Municipal Franchise Ordinance Fees Accepted and Paid by Company</u>

A. If Company 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, 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 the City, would result in a franchise fee greater than the amount otherwise due City under this Ordinance, then the franchise fee to be paid by Company to City pursuant to this Ordinance may, at the election of the City, be increased so that the amount due and to be paid is equal to the amount that would be due and payable to City were the franchise fee provisions of that other franchise ordinance applied to City.

B. The City acknowledges that the exercise of this right is conditioned upon the City's acceptance of all terms and conditions of the other municipal franchise *in toto*. The City may request waiver of certain terms and Company may grant, in its sole reasonable discretion, such waiver.

Section 3.04 <u>Acceptance of Terms of Franchise</u>

A. The Company shall have sixty (60) days from and after the passage and approval of this Ordinance to file its written acceptance thereof with the City Secretary. If the Company does not file such written acceptance of this Franchise Ordinance, the Franchise Ordinance shall be rendered null and void. The effective date shall be determined in accordance with the requirements of Section 3.26. When this franchise ordinance becomes effective, all previous ordinances of City granting franchises for gas delivery purposes that were held by Company shall be automatically canceled and annulled, and shall be of no further force and effect except to the extent that payments due under the previous ordinance are required to be made after the effective date of this franchise ordinance.

B. At 11:59 P.M. on December 31, 2025, ALL rights, franchises and privileges herein granted, unless they have already at that time ceased or been forfeited or extended in accordance with Section 3.01 or by mutual agreement while a new franchise is being negotiated, shall at once cease and terminate.

Section 3.05 No Third Party Beneficiaries

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

Section 3.06 Successors and Assigns

No assignment or transfer of this Franchise shall be made, in whole or in part, except in the case of assignment or transfer to an Affiliate without approval of the City Council of the City. Written notice of said transfer or assignment to an Affiliate shall be provided to the City Manager. The City will grant such approval unless assignee is materially weaker than Company. For the purposes 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. The City will grant approval to a materially weaker proposed Assignee or Transferee unless withheld for good cause such as: (1) the failure of the proposed Assignee or Transferee to agree to comply with all provisions of this Ordinance and such additional conditions as the Council may prescribe in order to remedy existing conditions of non-compliance, and (2) the failure of the proposed Assignee or Transferee to provide assurances reasonably satisfactory to the Council of its qualifications, character, the effect of the Transfer and such other matters as the Council deems relevant. City agrees that said approval shall not be unreasonably withheld or delayed. Upon approval, the rights, privileges, and Franchise herein granted to Company shall extend to and include its successors and assigns. The terms, conditions, provisions, requirements and agreements contained in this Franchise shall be binding upon the successors and assigns of the Company.

Section 3.07 Compliance With Laws, Charter and Ordinances

This Franchise is granted subject to the laws of the United States of America and its regulatory agencies and commissions and the laws of the State of Texas, the Arlington City Charter, as amended, and all other generally applicable ordinances of the City of Arlington, not inconsistent herewith, including, but not limited to, ordinances regulating the use of Public Rights-of-Way.

Section 3.08 Previous Ordinances

When this Franchise becomes effective, all gas franchise ordinances and parts of franchise ordinances applicable to the Company or its predecessors in interest granted by the City of Arlington, Texas, are hereby repealed.

Section 3.09 Notices

Any notices required or desired to be given from one party to the other party to this Ordinance shall be in writing and shall be given and shall be deemed to have been served and received if (i) delivered in person to the address set forth below; (ii) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by certified mail, return receipt requested, and addressed to such party at the address hereinafter specified; or (iii) delivered to such party by courier receipted delivery. Either party may designate another address within the confines of the continental United States of America for notice, but until written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

CITY	COMPANY
City Manager City of Arlington P.O. Box 90231 101 E. Abram St. Arlington, Texas 76004-3231	Manager of Public Affairs Atmos Energy Corp. Mid-Tex Division 1550 Tech Centre Pkwy. Arlington, Texas 76014

City Attorney
City of Arlington
P.O. Box 90231
101 S. Mesquite St.
Arlington, Texas 76004-3231

Section 3.10 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 3.11 Conditions of Occupancy

A. All construction and the work done by Company, and the operation of its business, under and by virtue of this Ordinance, shall be in conformance with the ordinances, rules and regulations now in force, including but not limited to the "Right-of-Way Management" Chapter and the Public Right-of-Way Permitting

and Construction Manual, and generally applicable ordinances not in conflict with this Franchise that may hereafter be adopted by the City, relating to the use of its Public Rights-of-Way. This Franchise agreement shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code, or other state or federal Law.

B. If the City believes that Company has failed to comply with any operational or maintenance standards as required by this Franchise Ordinance, City shall give the Company written notice of such failure to comply. Company shall have the opportunity to cure such failure during a period not to exceed five (5) working days from receipt of the written notice. If the Company fails to cure the alleged failure to comply within the prescribed time period, the Company's alleged failure to comply shall be heard at a public meeting of the City Council. The Company shall be given written notice of the public meeting no later than five (5) calendar days prior to the posting date of the agenda for the City Council meeting at which such alleged failure is scheduled to be considered by the Council. The notice to the Company shall include a list of the failures complained of. Company shall have an opportunity to address the Council at such public meeting. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with operational or maintenance standards as required by this Franchise Ordinance, the City may elect to terminate this Franchise in accordance with Section 3.22.

Section 3.12 <u>Relocation of Company Equipment</u>

A. Whenever by reason of widening or straightening of streets, water or sewer line projects, or any other public works projects in which beautification or accommodation of a private developer is not a primary purpose of the project (e.g., installing or improving storm drains, water lines, sewer lines, etc.), it shall be deemed necessary to remove, alter, change, adapt, or conform the underground or aboveground System Facilities of Company to another part of the Public Rights-of-Way, such alterations shall be made by Company at Company's expense in accordance with the Right-of-Way Management Chapter of the Code of the City of Arlington. Facilities are deemed to be in conflict to the extent that the proposed City facilities are determined by City to physically conflict with Company's facilities; or determined by Atmos Energy to be inconsistent with gas distribution industry standard safe operating practices for existing facilities. City agrees to use its best effort to provide Atmos Energy with its annual capital improvements plan as well as any material updates or changes within a reasonable time after they become available. City 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. Atmos Energy shall not be required to relocate facilities to a depth of greater than four (4) feet unless a greater depth is necessary to avoid conflict with other facilities.

If Atmos Energy is required by City 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, or any other public works projects in which beautification or accommodation of a private developer is not a primary purpose of the project, Atmos Energy shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation. When Atmos Energy is required to remove or relocate its mains, laterals or other facilities to accommodate construction by City without reimbursement from City, 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. City shall not oppose recovery of relocation costs when Company is required by City to perform relocation. City shall not require that Company document request for reimbursement as a pre-condition to recovery of such relocation costs. Notwithstanding the foregoing, the City shall have the right to request other project documentation to the full extent provided by state law.

B. If City abandons any Public Right-of-Way in which Company has facilities, such abandonment shall be conditioned on Company'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 Company for all removal or relocation expenses if Company 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 the Company to remove or relocate its facilities and Company 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 3.13 <u>Laying of Lines in Advance of Public Improvements</u>

The City shall give written notice to the Company whenever the City shall decide to make any public improvements in any Public Right-of-Way in which mains and pipes already exist or in which Company may propose to lay its mains or pipes. The Company will be provided the opportunity, at no expense to the City, in advance of such public improvements, to renew such mains or pipes, if defective or inadequate in size, and to lay service lines, or renew same, if inadequate in size or defective, to the property lines where buildings are already located.

Section 3.14 Installation of Meters

If a meter is to be installed in or near the Public Rights-of-Way, Company agrees to discuss with the City the aesthetics of the meter placement. Meters shall not be placed within City sidewalks. If the City requires a meter upgrade, the Company will comply so long as the City reimburses the Company for the reasonable costs incurred by the Company in changing meters; provided, however, that in no event shall underground meters be required.

Section 3.15 Duty to Serve

A. The Company hereby agrees that it will not arbitrarily refuse to provide service to any Person that it is economically feasible for the Company to serve. In the event that a Person is refused service, said Person may request a hearing before the City Council of the City or its designee, said hearing to be held within forty-five (45) days from the date of the request for hearing. The Council may order the Company to provide service or take any other action necessary to bring the Company into compliance with the intent of the Council in granting this Franchise, including the adoption of an ordinance or resolution in accordance with Section 3.15(B) or termination or forfeiture of the Franchise in accordance with Section 3.22. The Council shall render its opinion at its next regular meeting but in no event shall it be required to act in less than seven (7) days.

B. Commencing five (5) calendar days following the adoption of a resolution or an ordinance of the City that finds and determines a failure of Company to comply with operational or maintenance standards as required by this Franchise Ordinance, the City may elect to terminate this Franchise in accordance with Section 3.22.

Section 3.16 Rates

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

Section 3.17 Payments to the City

A. In consideration of the privilege and license granted by City to Company to use and occupy the Public Rights-of-Way in the City for the conduct of its business,

Company, its successors and assigns, agrees to pay and City agrees to accept such franchise fees in the amount and manner described herein. Except as provided for in Section 3.17(B), such payments shall be made on a quarterly basis, on or before the forty-fifth (45th) day following the end of each calendar quarter. The franchise fee shall be a sum of money that shall be equivalent to five percent (5%) of the quarterly Gross Revenues, as defined in Section 3.02(E), for the preceding calendar quarter. The initial payment provided under this Franchise shall be due on or before May 15, 2016, based on the preceding calendar quarter (January 1 – March 31, 2016) and shall be for the right and privilege during the preceding calendar quarter (January 1 – March 31, 2016). Subsequent payments shall be made as follows during the term of the Franchise:

Payment Due	Based Upon and For Calendar Quarter
Feb. 15	Oct. 1 – Dec. 31
May 15	Jan. 1 – March 31
Aug. 15	April 1 – June 30
Nov. 15	July 1 – Sept. 30

The final payment under the initial term of this Franchise will be due on or before February 15, 2026 and will be for the calendar quarter October 1 – December 31, 2025.

B. The franchise fee amounts based on "Contributions in Aid of Construction" ("CIAC") shall be calculated on an annual calendar year basis, i.e., from January 1 through December 31 of each calendar year. The franchise fee amounts that are due based on CIAC shall be paid at least once annually on or before April 30 each year based on the total CIAC recorded during the preceding calendar year. The initial CIAC franchise fee payment will be due on or before April 30, 2016 and will be based on CIAC received from the effective date of this Ordinance through December 31, 2015. The final payment of franchise fee amounts based on CIAC will be April 30, 2026, for the calendar year ending December 31, 2025.

C. It is also expressly agreed that the franchise fee payments shall be in lieu of any and all other and additional occupation taxes, easement, franchise taxes or charges (whether levied as a 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 City may now impose or hereafter levy and collect from Company or Company's agents, excepting only the usual general or special ad valorem taxes that City is authorized to levy and impose upon real and personal property. Except however, Company's separate obligation to reimburse the City for City's reasonable rate case expenses and for street repairs in accordance with City's ordinances are not affected by Company's payment of franchise fees hereunder. Should City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of occupation taxes, licenses, fees, street or alley rentals or charges, easements or

franchise taxes, then City agrees that it will apply so much of said sums of money paid as may be necessary to satisfy Company's obligations, if any, to pay such occupation taxes, licenses, charges, fees or rentals.

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

E. Company Recovery of Franchise Fees. City agrees that (i) as a regulatory authority, it will adopt and approve the ordinance, rates, or tariff which provide for 100% recovery of such franchise fees as part of Company's rates; (ii) if City intervenes in any regulatory proceeding before a federal or state agency in which the recovery of Company's franchise fees is an issue, City will take an affirmative position supporting 100% recovery of such franchise fees by Company; and (iii) in the event of an appeal of any such regulatory proceeding in which City has intervened, City will take an affirmative position in any such appeals in support of the 100% recovery of such franchise fees by Company. City further 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 Company.

F. Lease of Facilities Within City's Rights-of-Way. Company shall have the right to lease, license or otherwise grant to a party other than Company the use of its Facilities within the City's Public Rights-of-Way provided: (i) Company first notifies the City 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) Company makes the franchise fee payment due on the revenues from such lease pursuant to Sections 3.17(A) and 3.17(B) of this Ordinance. This authority to lease Facilities within City's Rights-of-Way shall not affect any such lessee, licensee or user's obligation, if any, to pay franchise fees, access line fees, or similar Public Right-of-Way user fees.

G. City shall within thirty (30) days of final approval, give Company notice of annexations and disannexations of territory by the City, which notice shall include a map and addresses, if known. Upon receipt of said notice, Company shall promptly initiate a process to reclassify affected customers into the city limits no later than sixty (60) days after receipt of notice from the City. The annexed areas added to the city limits will be included in future franchise fee payments in accordance with the effective date of the annexation if notice was timely received from City. Upon request from City, Company 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 Company 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 3.18 Books and Records

A. Company agrees that at the time of each quarterly payment, Company shall also submit to the City a statement showing its Gross Revenues for the preceding calendar quarter as defined in Section 3.02(E). City shall be entitled to treat such statement as though it were sworn and signed by an officer of Company.

B. City may, if it sees fit, upon reasonable notice to the Company, have the books and records of Company examined by a representative of City to ascertain the correctness of the reports agreed to be filed herein. The Company shall make available to the auditor such personnel and records as the City may in its reasonable discretion request in order to complete such audit, and shall make no charge to the City therefore. The Company shall assist the City in its review by providing all requested information no later than fifteen (15) days after receipt of a request. The cost of the audit shall be borne by the City unless the audit discloses that the Company has underpaid the franchise fee by 10% or more, in which case the reasonable costs of the audit shall be reimbursed to the City by the Company. If such an examination reveals that Company has underpaid the City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of the City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section 3.17(D). Should Company determine through examination of its books and records that City has been overpaid, upon receipt of written notification from Company regarding the existence of such overpayment, City shall review Company's claim and if said overpayment is confirmed, remit the amount of overpayment to Company.

C. If, after receiving reasonable notice from the City of the City's intent to perform an audit as provided herein, the Company fails to provide data, documents, reports, or information required to be furnished hereunder to the City, or fails to reasonably cooperate with the City during an audit conducted under the terms hereunder, the City may elect to terminate this Franchise in accordance with Section 3.22.

Section 3.19 Reservation of Rights: General

A. The City reserves to itself the right and power at all times to exercise, in the interest of the public and in accordance with state law, regulation and control of Company's use of the Public Rights-of-Way to ensure the rendering of efficient public service, and the maintenance of Company's System in good repair throughout the term of this Franchise.

B. The rights, privileges, and Franchise granted by this Ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any

time, like privileges, rights, and franchises as it may see fit to any other Person for the purpose of furnishing gas for light, heat, and power for City and the inhabitants thereof.

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

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

Section 3.20 <u>Right to Indemnification, Legal Defense and to be Held Harmless</u>

A. In consideration of the granting of this Franchise, Company agrees to indemnify, defend and hold harmless the City, its officers, agents, and employees (City and such other persons and entities being collectively referred to herein as "Indemnitees"), from and against all suits, actions or claims of injury to any person or persons, or damages to any property brought or made for or on account of any death, injuries to, or damages received or sustained by any person or persons or for damage to or loss of property arising out of, or occasioned by Company's intentional and/or negligent acts or omissions in connection with Company's operations.

B. The Company's obligation to indemnify Indemnitees under this Franchise Ordinance shall not extend to claims, losses, and other matters covered hereunder that are caused or contributed to by the negligence of one or more Indemnitees. In such case the obligation to indemnify shall be reduced in proportion to the negligence of the Indemnitees. By entering into this Franchise Ordinance, City does not consent to suit, waive any governmental immunity available to the City under Texas law or waive any of the defenses of the parties under Texas law.

C. Except for instances of the City's own negligence, City shall not at any time be required to pay from its own funds for injury or damage occurring to any person or property from any cause whatsoever arising out of Company's construction, reconstruction, maintenance, repair, use, operation or dismantling of System or Company's provision of service.

D. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Company shall, upon notice from any of the

Indemnitees, at Company's sole cost and expense, resist and defend the same with legal counsel selected by Company; provided, however, that Company shall not admit liability in any such matter on behalf of the Indemnitees without their written consent and provided further that Indemnitees shall not admit liability for, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without the prior written consent of Company. Company's obligation to defend shall apply regardless of whether City is solely or concurrently negligent. The Indemnitees shall give Company prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 3.20. Nothing herein shall be deemed to prevent the Indemnitees at their election and at their own expense from cooperating with Company and participating in the defense of any litigation by their own counsel. If Company fails to retain defense counsel within seven (7) business days after receipt of Indemnitee's written notice that Indemnitee is invoking its right to indemnification under this Franchise, Indemnitees shall have the right to retain defense counsel on their own behalf, and Company shall be liable for all defense costs incurred by Indemnitees.

Section 3.21 <u>Insurance</u>

The Company will maintain an appropriate level of insurance in consideration of the Company's obligations and risks undertaken pursuant to this Franchise, unless a specific amount of insurance is required by the City's Right-of-Way Ordinance, in which case said Ordinance will control. Such insurance may be in the form of self-insurance to the extent permitted by applicable law, under an approved formal plan of self-insurance maintained by Company in accordance with sound accounting and risk-management practices. A certificate of insurance shall be provided to the City. The Company will require its self-insurance to respond to the same extent as if an insurance policy had been purchased naming the City as an additional insured, and any excess coverage will name the City as an additional insured up to the amounts required by the City's Right-of-Way Ordinance.

Section 3.22 <u>Termination</u>

A. Right to Terminate. In addition to any rights set out elsewhere in this Franchise Ordinance, the City reserves the right to terminate the Franchise and all rights and privileges pertaining thereto, in the event that the Company violates any material provision of the Franchise.

B. Procedures for Termination.

(1) The City may, at any time, terminate this Franchise for a continuing material violation by the Company of any of the substantial terms hereof.

In such event, the City shall give to Company written notice, specifying all grounds on which termination or forfeiture is claimed, by registered mail, addressed and delivered to the Company at the address set forth in Section 3.09 hereof. The Company shall have sixty (60) days after the receipt of such notice within which to cease such violation and comply with the terms and provisions hereof. In the event Company fails to cease such violation or otherwise comply with the terms hereof, then Company's Franchise is subject to termination under the following provisions. Provided, however, that, if the Company commences work or other efforts to cure such violations within thirty (30) days after receipt of written notice and shall thereafter prosecute such curative work with reasonable diligence until such curative work is completed, then such violations shall cease to exist, and the Franchise will not be terminated.

(2) Termination shall be declared only by written decision of the City Council after an appropriate public proceeding whereby the Company is afforded the full opportunity to be heard and to respond to any such notice of violation or failure to comply. The Company shall be provided at least fifteen (15) days prior written notice of any public hearing concerning the termination of the Franchise. In addition, ten (10) days notice by publication shall be given of the date, time and place of any public hearing to interested members of the public, which notice shall be paid for by the Company.

(3) The City, after full public hearing, and upon finding material violation or failure to comply, may terminate the Franchise or excuse the violation or failure to comply, upon a showing by the Company of mitigating circumstances or upon a showing of good cause of said violation or failure to comply as may be determined by the City Council.

(4) Nothing herein stated shall preclude Company from appealing the final decision of the City Council to a court or regulatory authority having jurisdiction.

(5) Nothing herein stated shall prevent the City from seeking to compel compliance by suit in any court of competent jurisdiction if the Company fails to comply with the terms of this Franchise after due notice and the providing of adequate time for Company to comply with said terms.

Section 3.23 <u>Renegotiation</u>

If either City or Company requests renegotiation of any term of this Ordinance, Company and City agree to renegotiate in good faith revisions to any and all terms of this Ordinance. If the parties cannot come to agreement upon any provisions being

renegotiated, then the existing provisions of this Ordinance will continue in effect for the remaining term of the Franchise.

Section 3.24 Severability

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

Section 3.25 No Waiver

Either City or the Company shall have the right to waive any requirement contained in this Ordinance, which is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Ordinance shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or a different type of breach or violation.

Section 3.26 Effective Date

This Franchise shall be effective on January 1, 2016, if Company has filed its acceptance as provided by Section 3.04 herein.

2.

This ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Arlington, and this ordinance shall not operate to repeal or affect any of such other ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

3.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional, such holding shall not affect the validity of the remaining portions of this ordinance.

4.

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of Arlington in the discharge of his/her duties, shall not thereby render himself/herself personally liable; and he/she is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his/her said duties.

5.

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of Arlington in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of Arlington.

PRESENTED AND GIVEN FIRST READING on the 1st day of December, 2015, at a regular meeting of the City Council of the City of Arlington, Texas; and GIVEN SECOND READING, passed and approved on the 15th day of December, 2015, by a vote of 9 ayes and 0 nays at a regular meeting of the City Council of the City of Arlington, Texas.

W. JEFF WILLIAMS, Mayor

ATTEST:

MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
TERIS SOLIS, City Attorney

BY