

ORDINANCE NO. _____

AN ORDINANCE APPROVING A UTILITY REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF DENTON AND ATMOS ENERGY CORPORATION; PROVIDING FOR THE PAYMENT OF TWO HUNDRED TWENTY THOUSAND, SEVENTY EIGHT DOLLARS AND 10/100 (\$220,078.10) TO ATMOS ENERGY CORPORATION FOR THE RELOCATION OF ITS "F-8 (2ND)" GAS PIPELINE LOCATED IN THE 1000 BLOCK OF SOUTH MAYHILL ROAD IN CONJUNCTION WITH THE CURRENT MAYHILL WIDENING AND IMPROVEMENTS PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Denton is presently undertaking the Mayhill Road Widening & Improvements project CCSJ: 0918-46-246, constituting the widening of a two lane rural road to a four lane urban section from US Highway 380 (University Drive) to North of Edwards Road (the "Project"); and

WHEREAS, Atmos Energy Corporation (Atmos) has an existing 8-inch diameter gas pipeline that crosses Mayhill Road at Project plan Station 182+60, in direct conflict with the City of Denton's planned road improvements; and

WHEREAS, a portion of Atmos' conflicting gas pipeline infrastructure is situated within the historic road right-of-way cross section of Mayhill Road, approximately 60 feet in width, and as such being subject to compelled franchise rearrangement cost requirements; and

WHEREAS, a portion of Atmos' conflicting gas pipeline infrastructure is located in preexisting easements owned by Atmos, approximately 282 lineal feet overall, therefore necessitating that a portion of the costs for rearrangement of said infrastructure be borne by the City of Denton, on a prorated basis in respect to the overall costs for subject gas pipeline rearrangement; and

WHEREAS, the City and Atmos desire to enter into a Gas Pipeline Rearrangement Agreement (the "Agreement") to provide for the rearrangement of Atmos' conflicting gas pipeline infrastructure; and

WHEREAS, the City Council finds the transaction contemplated by the Agreement is in the best interest of the citizens of the City of Denton; NOW, THEREFORE;

THE COUNCIL OF THE CITY OF DENTON, TEXAS HEREBY ORDAINS:

SECTION 1. The recitals and findings contained in the preamble of this ordinance are expressly incorporated herein.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Agreement, for and on behalf of the City of Denton, Texas, in substantially the form of the Agreement being attached hereto and incorporated herein as Exhibit "A".

SECTION 3. This ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this the _____ day of _____, 2017.

CHRIS WATTS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

BY:  _____

EXHIBIT "A" attachment to Ordinance

UTILITY REIMBURSEMENT AGREEMENT

Between

ATMOS ENERGY CORPORATION

And

THE CITY OF DENTON

This Agreement is entered into as of the ____ day of _____, 2017, by and between the CITY OF DENTON, a home rule city, (the "City"), and ATMOS ENERGY CORPORATION, a Texas and Virginia corporation, whose address is 5430 Lyndon B Johnson Freeway, Dallas, Texas 75240 (the "Utility" or "ATMOS"), acting herein by and through their duly authorized officers (sometimes hereinafter collectively referred to as the "Parties").

WHEREAS, the City of Denton is in the process of constructing the Mayhill Road Widening & Improvement Project (the "Mayhill Project") in the City of Denton, Texas;

WHEREAS, construction of the Mayhill Project makes necessary the relocation, adjustment, raising, lowering, rerouting, and/or changing the grade of and/or alteration of the construction of utility lines, pipelines, conduits, properties and facilities, including the adjustment and lowering of one (1) – 8" ATMOS gas pipeline traversing Mayhill Road at Station 182+60 and the relocation of an ATMOS regulator station (collectively, the "ATMOS Relocation");

WHEREAS, the cost of the ATMOS Relocation shall be shared by both the City and ATMOS;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and ATMOS hereby agree:

1. The declarations contained in the preambles to this Agreement are material and are hereby incorporated herein as a part of this Agreement as though they were fully set forth in this paragraph 1.

2. Definitions. As used in this Agreement, the following terms shall have the following meanings:

2.01. "Conflicting Facility" shall mean any existing Gas Facility owned by the Utility and currently used and needed in carrying out its business and meeting its obligations to its customers, and situated so as to require Rearrangement, as determined by the Utility and the City, in order to construct the City's Mayhill Project. If the proposed construction of the City's Mayhill Project would prevent or interfere with the Utility's use and necessary access to any Gas Facility, such facility shall be deemed a Conflicting Facility.

- 2.02. "Design" shall mean that engineering and architectural work which results in the production of maps, plans, drawings, estimates and specifications which are necessary for the construction of the City's Mayhill Project or for adjustment of Conflicting Facilities.
- 2.03. "Eligible Costs" shall mean all direct and indirect costs, including materials and supplies, associated with any activity or work performed by the Utility pursuant to this Agreement, determined as provided herein.
- 2.04. "Gas Facility" shall mean gas transmission and distribution facilities, together with all necessary appurtenances owned by the Utility.
- 2.05. "Written Notice" shall mean a document, acceptable in form and substance to the Utility and the City which the City will issue to the Utility to authorize the performance of work and the supplying of materials to or by the Utility under the terms of this Agreement.
- 2.06. "Rearrangement" shall mean the relocation, adjustment, raising, lowering, rerouting and/or changing the grade of, and/or alteration or replacement of the construction of or the reconstruction of a Conflicting Facility or any portion thereof, whether permanent or temporary, resulting from the construction or operation of the City's Mayhill Project. "Rearrange" and "Rearranged" shall mean the act of Rearrangement.
- 2.07. "Replacement Facility" shall mean a permanent facility constructed for the use of the Utility as a result of a Rearrangement, that is not less than equivalent in all respects to the Conflicting Facility requiring Rearrangement.

3. General.

- 3.01. Construction of the City's Mayhill Project will necessitate the Rearrangement of certain Gas Facilities owned by the Utility as reflected in the detailed plans and specifications initialed by the Parties and attached to this Agreement as Exhibit "A".
- 3.02. By execution of this Agreement, the Utility agrees and consents to the Rearrangement of Conflicting Facilities necessary to eliminate conflict between City's Mayhill Project and such Conflicting Facilities in accordance with the terms and conditions of this Agreement.

- 3.03. The Utility and the City agree to exercise their reasonable and good faith efforts, consistent with the Utility's legal obligations and obligations to its customers and other public entities, to perform all work authorized by this Agreement as soon as reasonably possible to do so in a good and workmanlike manner and make reasonable efforts to coordinate with scheduled target dates in the City's construction schedule. It is understood and agreed that the scheduled target dates in the City's construction schedule and any changes to the schedule, will be furnished to the Utility by Written Notice in a timely manner which provides the Utility with reasonably sufficient time to complete the work authorized by this Agreement.
- 3.04. Notwithstanding any other provision of this Agreement, Utility shall have no obligation to commence with the work authorized by this Agreement until thirty (30) days following: (i) Utility's receipt of Written Notice to proceed from City, and (ii) Utility's receipt of satisfactory evidence from City that all required permits and approvals from governmental authorities, if any, necessary for the performance of the work authorized by this Agreement have been obtained, and (iv) the resolution all legal and physical impediments to the commencement of construction (e.g., the relocation of other utilities).
- 3.05. Subject to the terms of Section 3.04 of this Agreement, the Utility shall proceed with the work described in Exhibit "A", or a specific portion described in the Written Notice, and shall furnish all labor, materials and supervision necessary, to carry out such work in an efficient, timely and quality manner, and shall Rearrange that portion of the Conflicting Facilities described in Section 2.01, Exhibit "A" and as such Exhibit may from time to time be amended and modified in writing by the Parties, and in the Written Notice. If the Utility is delayed or hindered in the progress of its work by any cause beyond the control of the Utility, the City shall appropriately extend all applicable dates within the construction schedule for the number of days agreed in writing by negotiation between the parties.
- 3.06. The City recognizes that the Utility may not be adequately staffed or equipped to perform all of the Rearrangements called for with its own forces, and therefore authorizes the Utility to do the work or a portion of it on a contract basis. The Utility may utilize contractors with whom the utility has existing, continuing contracts. The Utility shall select such contractors on the basis of the lowest evaluated cost, which is a combination of price,

qualifications, quality, availability and reliability of the contractor(s).

4. Written Notice.

- 4.01. All work performed by the Utility under the terms of this Agreement shall be initiated by Written Notice from the City.
- 4.02. State of Texas statutes and regulations, shall apply to, and are incorporated by reference into this Agreement.

5. Reimbursements.

- 5.01. The issuance of a Written Notice shall obligate the City to pay the Utility \$220,078.10 as cost participation of all work performed and materials required to be acquired in order to carry out such Rearrangement in accordance with the terms of this Agreement and the Written Notice. The City of Denton shall reimburse their participation amount of \$220,078.10 in good funds, upon completion of the Rearrangement work, no later than thirty (30) days after submittal of an invoice to the City for payment.

6. Miscellaneous.

- 6.01. Notice. Any notice provided for in this Agreement to be given by either party to the other, shall be in writing and shall be deemed given when personally delivered or sent by facsimile, or three (3) business days after being deposited in the United States Mail, postage prepaid, certified, return receipt requested, or registered and addressed as follows:

To the City:

City of Denton, Capital Projects
Attention: Paul Williamson
Real Estate Manager
901-A Texas Street
Denton, Texas 76209
Facsimile No: 940-349-8951
Telephone No.: 940-349-8921

City Attorney's Office
Attention: Trey Lansford
Deputy City Attorney
215 East McKinney Street
Denton, Texas 76201
Facsimile No.: 940-382-7923
Telephone No.: 940-349-8333

To the Utility:

ATMOS ENERGY Corporation
Mid-Tex Division
MDTX-Dallas-LCII
Attention: Marc E. Rothbauer,
Director of Engineering
5420 LBJ Freeway, Suite 1800
Dallas, Texas 75240
Facsimile No.: 214-206-2132
Telephone No.: 214-206-2912

Either party may change its address or facsimile number for notice by giving the other party written notice of same.

- 6.02. Ownership. All Replacement Facilities constructed pursuant to this Agreement shall be the property of the Utility.
- 6.03. Assignment. This Agreement may not be assigned or transferred by either party without the prior written consent of the other party, EXCEPT, HOWEVER, that it may be freely assigned without further consent among any companies affiliated with Utility as of the date of this Agreement.
- 6.04. Binding Agreement: Parties Bound. This Agreement has been duly executed and delivered by both Parties and constitutes a legal, valid and binding obligation of the Parties, their successors and assigns.
- 6.05. Amendment. This Agreement may not be amended except in a written instrument specifically referring to this Agreement and signed by the Parties hereto and dated after the date of this Agreement is signed.
- 6.06. Applicable Law Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. This Agreement is to be performed in whole or in part in Denton County, Texas. Sole venue for any proceeding to construe or enforce any of the terms or conditions of this Agreement, or seeking damages for its breach shall be Denton County, Texas.
- 6.07. Number and Gender. Words of any gender used in this Agreement shall be held and construed to include any other gender and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise.

- 6.08. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
- 6.09. Sole Agreement. This Agreement constitutes the sole agreement Between the Parties respecting the subject matter and supersedes any prior understandings or written or oral agreements.
- 6.10. Legal Construction. In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions in this document and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

[Signatures on the following page]

EXECUTED by the Parties on the dates indicated with their signatures, but effective as of the date specified at the beginning of this Agreement:

The UTILITY:

ATMOS ENERGY
CORPORATION,
a Texas and Virginia corporation

By: _____

Marc E. Rothbauer,
Director of Engineering

Date: _____

The CITY:

CITY OF DENTON, TEXAS

By: _____

Todd Hileman,
City Manager

Date: _____

ATTEST:

JENNIFER WALTERS, CITY SECRETARY

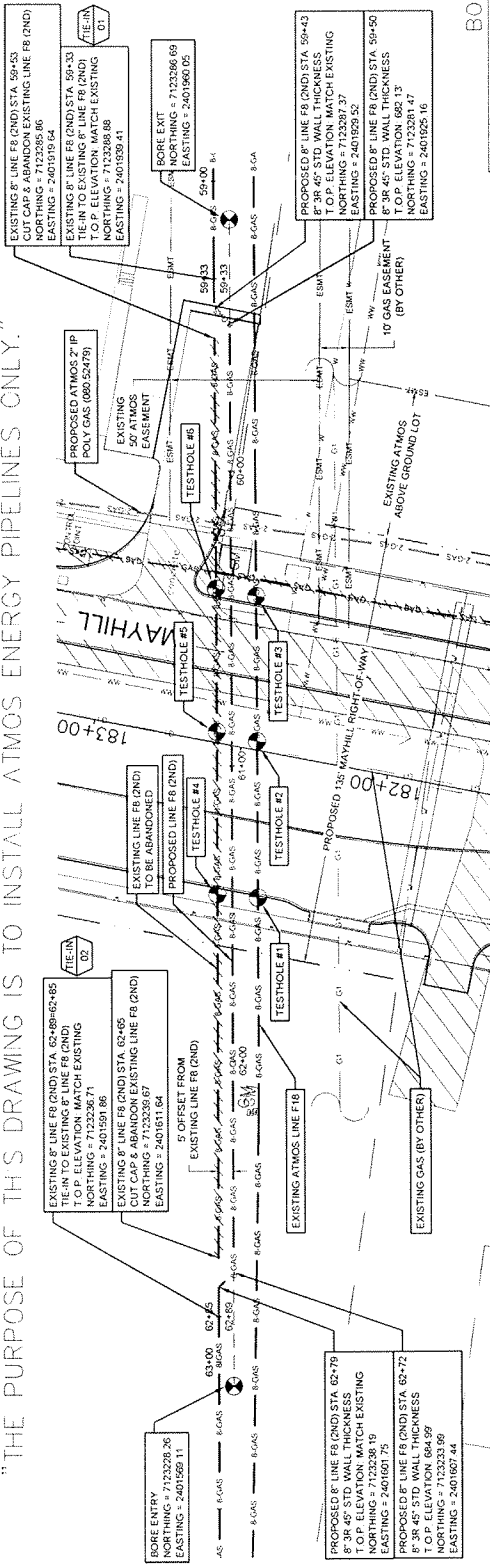
By: _____

APPROVED AS TO LEGAL FORM:
AARON LEAL, INTERIM CITY ATTORNEY

By: _____

EXHIBIT A attachment to Rearrangement Agreement

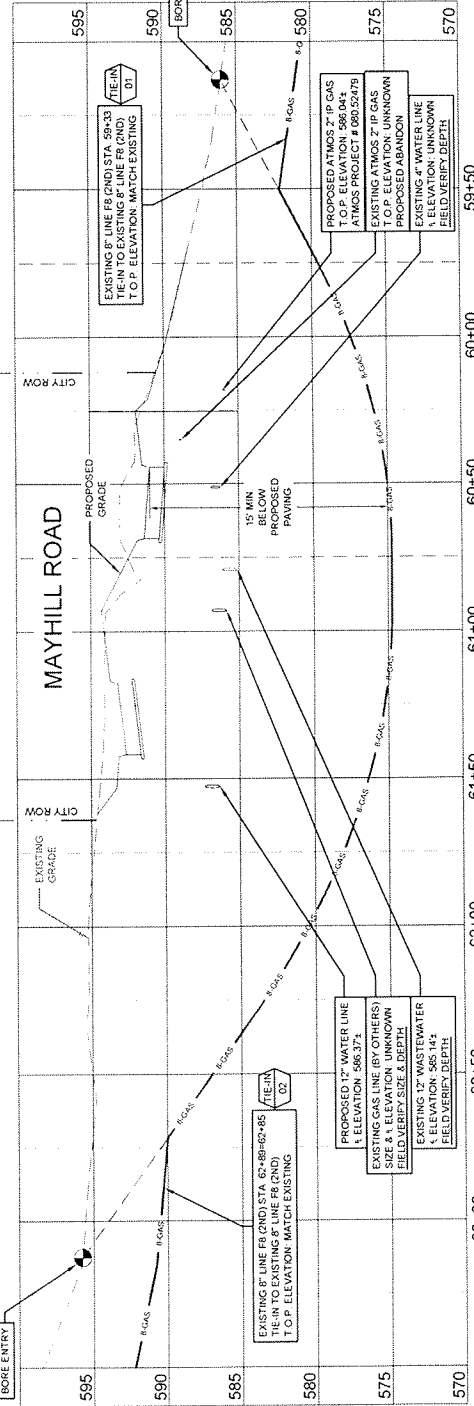
"THE PURPOSE OF THIS DRAWING IS TO INSTALL ATMOS ENERGY PIPELINES ONLY."



BORE GUIDELINES

MARK	NAME	ENTRY	ANGLE	RADIUS	TANGENT	EXIT	TOTAL LENGTH
1	LINE FB (2ND)	8"	100.00 FT	8"	20.00 FT	8"	40.00 FT

* TOTAL LENGTH OF BORES ARE CALCULATED FROM ENTRY GRADE TO EXIT GRADE



ISSUED FOR PLUM W

ATMOS ENERGY LINE F8 (2ND) DENTON COUNTY, DENTON, TEXAS MAYHILL ROAD NORTH OF GAYLA ROAD PIPELINE RELOCATION							UPDATE DATE: 2/24/16 SCALE: AS NOTED DRAWING NUMBER: F8(2ND) PLAN & PROFILE SHEET 3 OF 3							
THE INFORMATION PROVIDED ON THESE PLANS IS FOR INFORMATION ONLY. IT IS NOT TO BE USED FOR CONSTRUCTION OR FOR ANY OTHER PURPOSE. THE USER OF THESE PLANS SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND FOR THE PROTECTION OF THE PUBLIC. THE USER OF THESE PLANS SHALL BE RESPONSIBLE FOR THE PROTECTION OF THE PUBLIC.							180 30500 SHEET NO. 10278							
HALFF TRITECH 10000 HALFF TRITECH DRIVE DALLAS, TEXAS 75243 TEL: 972.444.4444 WWW.HALFFTRITECH.COM							ATMOS ENERGY							
REV							BY		DATE		CHKD		APPRD	
A							480		07/19/2015					
ISSUED FOR REVIEW														
DESCRIPTION							BY		DATE		CHKD		APPRD	
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