

AN ORDINANCE GRANTING EASEMENTS TO ATMOS ENERGY CORPORATION FOR APPROXIMATELY .221 ACRE CONSISTING OF A SURFACE SITE EASEMENT, TEMPORARY WORKSPACE EASEMENT, AND ACCESS EASEMENT LOCATED AT THE TERMINUS OF PERSIMMON DRIVE, ADJACENT TO 3008 PERSIMMON DRIVE; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR THE REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Atmos Energy Corporation has presented to the City of Killeen, a request for easements for approximately .221 acre consisting of a surface site easement, temporary workspace easement and access easement, for property located at the terminus of Persimmon Drive, adjacent to 3008 Persimmon Drive, Killeen, Texas;

WHEREAS, the City Council, after three readings at three separate Council meetings, duly considered said request and the evidence in support thereof, and the City Council being of the majority opinion that the Atmos Energy's easement request should be approved;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KILLEEN:

That for and in consideration of the sum of TEN DOLLARS (\$10.00), and other good and valuable consideration paid by Atmos Energy Corporation, a Texas and Virginia corporation with its principal office at 5420 LBJ Freeway, Suite 1800, Dallas, Texas 75240, together with its successors and assigns (said entity and its successors and assigns are herein collectively called "Grantee"), the receipt of which is hereby acknowledged, the undersigned, (herein called "Grantor" whether one or more), hereby grants, sells and conveys unto Grantee, a free and unobstructed right of way and exclusive easement for the purposes of:

(i) laying, constructing, operating, maintaining, inspecting, repairing, replacing, changing the size of, relocating and changing the route or routes of, abandoning in place and removing at will, in whole or in part, aboveground and underground pipeline or pipelines and the appurtenances thereto, including, without limitation, valves, fittings, metering facilities, pigging facilities, pressure regulating facilities, cathodic protection equipment, communication facilities, barricades and fencing, the right to construct and install gravel, asphalt or concrete upon the surface of the Facilities Easement Area (as defined herein), aerial markers, and other appurtenances as may be necessary or convenient in the operation of said facilities (collectively, the "Aboveground Facilities"), over, across, under and upon

the lands more particularly described, and labeled as "Surface Site" on Exhibit "A" attached hereto and made a part hereof for all purposes (collectively, the "Facilities Easement Area"); and

(ii) vehicular and pedestrian ingress to and egress from the Facilities Easement Area along and upon the land more particularly described as the "Access Easement" on Exhibit "A" attached hereto and made a part hereof (the "Access Easement Area").

Grantee's Aboveground Facilities and any improvements to the Access Easement Area are collectively referred to as Grantee's "Easement Facilities." The areas comprising the Facilities Easement Area and the Access Easement Area are collectively referred to as the "Easement Area."

Grantee shall also be entitled to use temporary workspace as described in Exhibit "A" (the "Temporary Workspace") to carry out the initial construction of the Easement Facilities, which rights shall include, but not be limited to, boring activities, clearing, leveling, temporary storage, and staging equipment and materials. Grantee's right to utilize this Temporary Workspace will terminate and cease on the date on which initial construction of the Easement Facilities has been completed and the same are placed into service.

It is further agreed as follows:

1. Grantee shall have the right to select the exact location of its Aboveground Facilities within the Facilities Easement Area, and to do whatever may be requisite for the use and enjoyment of the rights herein granted, including the right of ingress and egress over Grantor's adjacent or additional lands to or from the Facilities Easement Area in the event that Grantee cannot, within its sole discretion, reasonably access the Facilities Easement Area by staying within the boundaries of the Access Easement Area.
2. Grantor shall have no access rights on, under, or over the Facilities Easement Area. Further, Grantor shall not obstruct Grantee's use of the Access Easement Area.
3. Grantor further agrees not to change the grade, remove dirt from the surface of the Easement Area or impound water over the Easement Area without the prior written approval of Grantee.
4. The aforesaid consideration includes any and all damages that may be sustained by the original construction of the Easement Facilities, including without limitation, cutting trees and damages to land, trees, buildings, fences, growing crops and grasses; however, after the original construction Grantee will pay to the owner of the land and, if leased, to his tenant, as they may be respectively entitled, actual damages done to fences and growing crops by reason of entry to repair, maintain and remove the Easement Facilities. Further, the aforesaid consideration includes the right of Grantee to install additional, future appurtenances as Grantee, in its sole discretion, may determine to be necessary or convenient.
5. Grantee has the right to trim, cut down or eliminate trees or shrubbery to the extent, in the sole judgment of Grantee as may be necessary to prevent possible present or future

interference with the convenient operation or convenient inspection of the Easement Facilities and to remove possible present or future hazards to the Easement Facilities, and the right to remove or prevent the construction of any and all buildings, structures, reservoirs, or other obstructions on the Easement Area and to prevent activities on the Easement Area, any of which, in the sole judgment of the Grantee may presently or in the future endanger or interfere with the efficiency, safety, convenient operation or convenient inspection of the Easement Facilities.

6. If Grantee should abandon the rights granted herein and if such abandonment should continue for a continuous period of ten years, all rights of Grantee herein shall ipso facto terminate and revert to Grantor, his heirs, legal representatives, and assigns.

7. Grantor and Grantee agree that the failure to assert any right under this Aboveground Facilities Easement shall not constitute a waiver of any other right hereunder. Further, it is hereby agreed that any delay by Grantee in asserting any right granted it in this Aboveground Facilities Easement, regardless of the length of any such delay, shall not prevent Grantee from later asserting or otherwise enforcing that same right, including but not limited to the right to prevent or remove any encroachments within the Easement Area as provided in Paragraph 5 above.

8. Both Grantor and Grantee hereby represent and warrant that they have read and have fully understood the terms of this Aboveground Facilities Easement, that they have had the opportunity to have same reviewed by an attorney, and that in entering into this Aboveground Facilities Easement they are relying solely upon their independent review and the advice of their respective counsel. Further, Grantor and Grantee acknowledge that this Aboveground Facilities Easement has been negotiated by the parties, and this Aboveground Facilities Easement shall be construed as one prepared by the joint efforts of Grantor and Grantee and shall not be construed against either party as the drafter.

TO HAVE AND TO HOLD the above-described easements and rights unto the said Grantee, and Grantee's successors and assigns, until abandoned as provided for herein.

This instrument and covenants and agreements herein contained shall constitute covenants running with the land, binding upon Grantor, his heirs, legal representatives, successors and assigns, for the benefit of Grantee, and Grantee's successors and assigns.

Grantor hereby binds himself, his heirs, legal representatives and assigns to warrant and forever defend all and singular the above-described easements and rights, unto the said Grantee, and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

SECTION II. That should any section or part of this ordinance be declared unconstitutional or invalid for any reason, it shall not invalidate or impair the validity, force,

or effect of any other section or parts of this ordinance.

SECTION III. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.**SECTION IV.** That this ordinance shall take effect immediately upon passage of the ordinance.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Killeen, Texas, this 14th day of September 2021, at which meeting a quorum was present, held in accordance with the provisions of V.T.C.A., Government Code, §551.001 et seq.

APPROVED:

Jose L. Segarra, MAYOR

ATTEST:

Lucy C. Aldrich, CITY SECRETARY

APPROVED AS TO FORM

Traci S. Briggs, CITY ATTORNEY
Case #21-03AB
Ord. #21-____

EXHIBIT "A"
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