

ORDINANCE NO. 1

SERIES 2013

AN ORDINANCE GRANTING A FRANCHISE TO THE
ATMOS ENERGY CORPORATION TO OPERATE A
NATURAL GAS SUPPLY AND DISTRIBUTION SYSTEM
IN THE TOWN OF CRESTED BUTTE

WHEREAS, the Town of Crested Butte, Colorado (the "**Town**") is a home rule municipality duly and regularly organized and validly existing as a body corporate and politic under and by virtue of the Constitution and laws of the State of Colorado;

WHEREAS, pursuant Chapter 5, Article 1 of the Crested Butte Municipal Code (the "**Code**"), the Town has the right to grant franchises to public utilities by duly adopted ordinance;

WHEREAS, ATMOS Energy Corporation's ("**ATMOS**") gas franchise agreement with the Town expired on or about June 25, 2010;

WHEREAS, the Town staff and ATMOS have been in negotiations since early 2010 on a new franchise agreement governing ATMOS' right to furnish and distribute natural gas in Crested Butte;

WHEREAS, the Town staff and ATMOS have reached agreement on the terms satisfactory to both parties governing ATMOS' activities in furnishing and distributing natural gas in Crested Butte;

WHEREAS, the Town staff recommends entering into a new franchise agreement with ATMOS that includes terms agreed upon with ATMOS; and

WHEREAS, the Town Council finds that the Town entering into a new franchise agreement with ATMOS upon such terms as the Town staff has found acceptable is in the best interest of the health, safety and general welfare of the residents and visitors of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CRESTED BUTTE, COLORADO, THAT,

Section 1. Repeal of Chapter 5, Article 4. All of the provisions of Chapter 5, Article 4 of the Code are hereby repealed in their entirety and replaced with the Franchise Agreement (the "**Agreement**") adopted pursuant to this ordinance.

Section 2. Approval of Franchise Agreement. The Town Council hereby approves and adopts the proposed Agreement with ATMOS attached hereto as **Exhibit "A"** which grants ATMOS the right to furnish, sell and distribute natural gas to the Town and to all residents of the Town. Subject to the conditions, terms, and provisions contained in the Agreement, the Town also grants to ATMOS the right to acquire, construct, install, locate, maintain, operate and extend

into, within and through the Town all facilities reasonably necessary to furnish, sell and distribute natural gas within and through the Town and the right to make reasonable use of the streets, alleys and other public rights-of-way and public easements as may be reasonably necessary to carry out the terms of the Agreement. The use of the streets, alleys and other public rights-of-way and public easements shall not be exclusive and the Town reserves the right to itself to make or grant a similar use of the same and other streets, alleys and other public rights-of-way and public easements to any other person, firm or corporation, and to otherwise exercise its police powers in such regard.

Section 3. **Cooperation.** In accordance with the Agreement, ATMOS shall promptly and fully comply with all ordinances, regulations, permits and orders adopted, approved and made by the Town, in particular those regarding street and curb cuts, excavating, digging and any other construction related activities.

Section 4. **Assignment; Transfer.** Any sale, assignment or transfer of the Agreement or any rights granted thereunder shall require the prior consent of the Town.

Section 5. **Term of Franchise.** The term of the franchise rights given to ATMOS shall be as set forth in the Agreement.

Section 6. **Execution; Undertakings.** The Mayor is hereby authorized to execute the Agreement on behalf of the Town and the Town Manager is hereby authorized to undertake such actions and delegate such responsibilities consistent with the provisions of the Agreement as are deemed necessary and appropriate to carry out the terms thereof.

Section 7. **Severability.** If any section, sentence, clause, phrase, word or other provision of this ordinance is for any reason held to be unconstitutional or otherwise invalid, such holding shall not affect the validity of the remaining sections, sentences, clauses, phrases, words or other provisions of this ordinance, or the validity of this ordinance shall stand notwithstanding the invalidity of any section, sentence, clause, phrase, word or other provision.

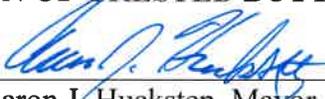
Section 8. **Savings Clause.** Except as amended hereby, the Crested Butte Municipal Code, as amended, shall remain valid and in full force and effect. Any provision of any ordinance previously adopted by the Town which is in conflict with this ordinance is hereby repealed as of the enforcement date hereof.

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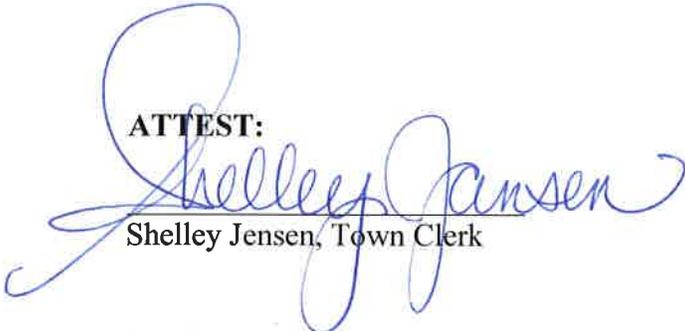
INTRODUCED, READ AND SET FOR PUBLIC HEARING THIS 7TH DAY OF JANUARY, 2013.

ADOPTED BY THE TOWN COUNCIL UPON SECOND READING IN PUBLIC HEARING THIS 4TH DAY OF FEBRUARY, 2013.

TOWN OF CRESTED BUTTE, COLORADO

By: 
Aaron J. Huckstep, Mayor

ATTEST:


Shelley Jensen, Town Clerk

[SEAL]

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EXHIBIT "A"

Franchise Agreement

[attach here]

FRANCHISE AGREEMENT

A FRANCHISE AGREEMENT GRANTING A FRANCHISE TO THE ATMOS ENERGY CORPORATION, TO OPERATE GAS SUPPLY AND DISTRIBUTION SYSTEM IN THE TOWN OF CRESTED BUTTE, COLORADO, AND FIXING THE TERMS AND CONDITIONS OF SUCH GRANT.

RECITALS:

WHEREAS, the ATMOS Energy Corporation desires to secure a franchise to construct, maintain, and operate a gas supply and distribution system for the sale of gas for heat, cooling and power within the Town of Crested Butte, Colorado;

WHEREAS, the Town Council of the Town of Crested Butte, a Colorado home rule municipality, deems the granting of a franchise on the terms and conditions as set forth herein to be in the best interests of the Town of Crested Butte, its inhabitants, property owners and visitors, and desires to grant a franchise to ATMOS Energy Corporation.

NOW, THEREFORE, for and in consideration of the above recitals and the mutual covenants and promises set forth herein, the parties agree as follows:

AGREEMENT:

Section 1 Grant of Franchise

The Town hereby grants to Company, for the period specified and subject to the conditions, terms and provisions contained in the franchise, a nonexclusive right to furnish, sell, and distribute gas to the Town and to all residents of the Town. Subject to the conditions, terms, and provisions contained in the franchise, the Town also hereby, grants to the Company, a non-exclusive right to acquire, construct, install, locate, maintain, operate, and extend into, within and through the Town all Facilities reasonable necessary to furnish, sell and distribute gas within, into, and through the Town and to its residents and a nonexclusive right to make reasonable use of the streets and other public places and easements as may be necessary to carry out the terms of this franchise. These rights shall extend to all areas of the Town as it is now constituted and to additional areas as the Town may increase in size by annexation or otherwise.

Section 2 Term of Franchise

This franchise shall take effect on February 4, 2013 The initial term of this franchise shall be for ten (10) years, beginning with said effective date of this franchise and expiring February 4, 2023; provided, this franchise and all rights and privileges herein provided shall be extended for two (2) successive periods of five (5) years each unless a notice of intent to renegotiate is given in writing by either party at least six (6) months before the end of such initial term, or before the end of the first extended term, as the case may be.

Section 3 Definitions.

For the purpose of this franchise, the following words and phrases shall have the meaning given in this Article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words, in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in the Article shall be given their common and ordinary meanings.

“Company” refers to Atmos Energy Corporation, a Texas and Virginia corporation, and its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

“Distribution Facilities” refers to and is only that portion of the Company's gas distribution system within the Town, which delivers gas from the Town gate stations (Town border) to the point-of-delivery of the customer, including all devices connected to that system.

“Emergency” refers to ruptures and leakage of pipelines, explosions, fires and similar instances where immediate action is necessary to prevent loss of life or significant damage to underground facilities and advance notice of proposed excavation is impracticable under the circumstances.

“Facilities” refers to and are all facilities reasonably necessary to provide gas service into, within, and through the Town and include but are not limited to plants, works, systems, regulator stations, transmission and distribution structures, equipment, rectifiers, valves, above and underground lines, meters and wires.

“Gas” refers to natural gas, a mixture of predominantly methane, with other hydrocarbons in lesser proportions or other fuel gas mixtures that may include hydrogen that provide fuel for lighting, heating, cooling, motive power, cogeneration, fuel cell, vehicle fuel, and other processes.

“Public Easements” refers to and are public and dedicated easements created and available for use by a natural gas public utility for their facilities.

“Public Utilities Commission” or “PUC” refers to and is the Public Utilities Commission of the State of Colorado or other authority succeeding to the regulatory powers of the Public Utilities Commission.

“Residents” refers to and includes all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.

“Revenues” refers to and are those amounts of money which the Company receives from its customers within the Town from the sale of gas or Tariff Services provided under rates authorized by the Public Utilities Commission and from the use by others of its facilities within the Town and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, corrections or other regulatory adjustments.

“Streets and Other Public Places” refer to and are streets, alleys, viaducts, bridges, roads, lanes, utility easements, and other public ways in said Town.

“Tariff Service” is a service provided by the Company pursuant to its Tariff which are filed with and approved by the PUC, for which the Company may charge a fee. Such fees include, but are not limited to fees for connecting and disconnecting customers, for transferring service and for returned check charges.

“Town” refers to the Town of Crested Butte, Gunnison County, Colorado, a Colorado home rule municipality, and includes the territory as it currently is or may in the future be included within the boundaries of the Town of Crested Butte.

“Transportation” refers to the movement of gas, owned by others, into the Company's distribution system for redelivery to the end user's facility within the Town. This includes the movement of gas that has been, or may be, accumulated by an aggregator or broker for the purpose of providing the end user, within the Town, with fuel for uses normally associated with gas.

Section 4 Franchise

(a) In consideration for the franchise rights granted herein which provide, among other things, for the company's use of the streets and public utility easements which are valuable public properties acquired and maintained by the Town at great expense to its residents and in recognition that the grant to the Company of the use of the streets and public easements is a valuable right, Company shall pay the Town the sums provided in this section. Except as specified in this franchise, payment of the franchise fee shall not exempt the Company from any other lawful taxes or fees; however, the franchise fee provided for herein shall constitute the exclusive monetary payment by the Company to the Town for the Company's use and occupancy of the streets and public easements except as specifically provided herein.

(b) The Company shall pay, within thirty (30) days after the end of each calendar quarter, a franchise fee equal to the aggregate of the following:

1. Three (3 %) of Company's Revenue, (including natural gas transportation revenue by the Company) derived from residents within the Town during the preceding calendar quarter.
2. Company shall provide a list and addresses of transportation customers in the Town franchise area once each calendar year.

Section 5 Payment Schedule.

(a) For franchise fees owed on revenues received after the effective date hereof, payment shall be made within thirty (30) days after each calendar quarter during the term hereof. Adjustments shall be allowed for net write-offs of uncollectible amounts. All payments shall be made to the Town Finance Director. The Town Finance Director or other authorized representatives, shall have reasonable access to the appropriate books of the Company at the Company's offices in Crested Butte, Colorado (or at Company's nearest office if Company has no office in Crested Butte) for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed, upon at least ten (10) days notice by the Town and during regular business hours.

(b) In the event an error by the Company results in an overpayment of the franchise fee to the Town and said overpayment is in excess of \$5,000.00, credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is \$5,000.00 or less, credit shall be taken against the next payment.

In the event an error by the Company results in an underpayment of the Franchise Fee to the Town, the full amount of such underpayment shall be paid to the Town within thirty (30) days after the discovery of the error.

Section 6 Change of Franchise Fee.

Once during each calendar year of the franchise, the Town Council, upon giving 30 days notice to the Company, may review and change the franchise fee that the Town may be entitled to receive as a part of the franchise; provided, however, that the Council may only change the franchise fee amount such as to cause the Town to receive a franchise fee under this franchise equivalent to the franchise fee that the Company may pay to any other city or town in any other franchise under which the Company renders gas service in Colorado.

Section 7 Franchise Fee Payment in Lieu of Other Fees.

Payment of the franchise fee by the Company is accepted by the Town in lieu of any occupancy tax, easement tax, franchise tax or charge, license tax, permit fee, inspection fee, bond, street tax, street or alley rental or charge, business license fee or any other tax, fee, charge, levy, or rental in connection with the privilege of doing business or in connection with the physical operation thereof, or in connection with the physical occupation of the streets and public easements, but does

not exempt the Company from any other lawful taxation upon its property or any other tax not related to the franchise, and does not, except as otherwise herein provided, exempt company from the payment of other fees assessed generally upon businesses.

Section 8 Contract Obligation.

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

Section 9 Supply of Gas.

The Company shall take all reasonable steps to provide an adequate supply of gas to its customers at a reasonable cost. If the supply of gas to its customers should be interrupted, the Company shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.

Section 10 Restoration of Service.

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

Section 11 Obligations Regarding Company Facilities.

The Company shall install, maintain, repair, renovate, and replace its facilities with due diligence in a good and workmanlike manner, and the Company's facilities will be of sufficient quality and durability to provide adequate and efficient gas service to the Town and its residents. Company facilities shall not unreasonably interfere with the Town's water mains, sewer mains, electric distribution lines and facilities or other municipal use of streets and other public places. The Company shall construct and maintain its facilities in such a way so as to minimize the interference with trees, historical, and other natural features. Company facilities, where reasonably practicable, shall be installed in public easements so as to cause a minimal amount of interference with such public and private property, but nothing herein shall be construed as preventing Company from obtaining private easements or rights-of way, whether through purchase or the powers of eminent domain, where and when Company deems necessary. The Company will comply with all landscape and aesthetic requirements of the Town insofar as these requirements do not interfere with the safe operation and regulatory compliance of gas equipment, fixtures, or facilities.

Section 12 Excavation and Construction.

All excavation and construction work done by the Company and its subcontractors shall be done pursuant to permits issued by the Town and in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. Company will provide three (3) days advance notice to Town prior to construction for any routine maintenance or new construction project that has a direct impact on the Town Property or Public ROW. Company and its subcontractors shall not be obligated for payment of any fee to the Town to obtain any permit. All public and private property legally placed in public easements disturbed by Company or its subcontractors' excavation or construction activities shall be restored by the Company or its subcontractors at Company's expense to substantially its former condition or, upon the Town's request, to such improved condition as will result in said property meeting current code conditions imposed upon said property by the Town; provided, however, that the Company shall not be put to any additional expense as a result of returning said property to an improved condition rather than to substantially its former condition. All work shall be completed in a workmanlike manner. Any subsidence or degradation of the pavement, which occurs as a result of Company or its subcontractors' excavation, will be corrected in a timely and expeditious manner. Company shall

comply with the Town's criteria on pavement warranty and restorations for any excavations on Town property or the Public ROW including alleys and streets.

Section 13 Relocation of Company Facilities.

(a) Any relocation of the Company's facilities in any street or other public place required, caused or occasioned by any Town project shall be at the cost of the Company. Relocation shall be completed within a reasonable time as mutually agreed to by the parties; provided, however, the Company shall be granted an extension of time of completion equivalent to any delay caused by conditions not under its control, provided that the Company proceeds with due diligence at all times.

(b) Relocated underground facilities shall be underground. Relocated above-ground facilities shall be above-ground unless the Town agrees to pay the additional cost of moving them underground. Notwithstanding the previous sentence, the Company expressly reserves, and the Town expressly recognizes, the Company's right to make the final decision in the relocation of its facilities when, in the reasonable discretion of the Company, such decision is necessary either technically, or for safety and benefit of the Town and its residents and in compliance with Section 11.

Section 14 Service to New Areas.

If the boundaries of the Town are expanded during the term of this franchise, the Company shall extend service to residents in the expanded area at the earliest practicable time and in accordance with the Company's extension policy. Service to the expanded area shall be in accordance with the terms of this franchise agreement, including payment of franchise fees.

Section 15 Town Not Required to Advance Funds.

Upon receipt of the Town's authorization for billing and construction, the Company shall extend its facilities to provide gas service to the Town for municipal uses within the Town limits without requiring the Town to advance funds prior to construction. Requests for new service extensions will be performed in compliance with the tariffs in effect at the time of the request, which are on file with the Colorado Public Utilities Commission.

Section 16 Technological Improvements.

The Company shall generally introduce and install, as soon as practicable, gas energy technological advances in its equipment and service within the Town when such advances, in the Company's reasonable discretion, are technically and economically feasible and are safe and beneficial to the Town and its residents. Upon request by the Town, which request shall not be made more frequently than once every twelve months, the Company shall review and promptly report advances which have occurred in the gas utility industry that have been incorporated into the Company's operations in the Town in the previous year or will be so incorporated in the six (6) months following the Town's request. The Company shall report in advance to the Town any plans to include technological advances relating to gas facilities already in place.

The Company agrees to cooperate as appropriate to facilitate energy efficiency and sustainability as outlined in the Town's Energy Action Plan. This includes making available to the Company's customers within the Town any energy efficiency or conservation programs sponsored by the Company in Colorado as well as cooperating in future initiatives to save energy and track energy use within the Town. Notwithstanding the foregoing, the Company shall not be obligated to participate in any energy efficiency or sustainability initiative that constitutes a significant financial burden to the Company or that has not been approved by the Colorado Public Utilities Commission.

Section 17 Rates.

The Company shall furnish natural gas within the corporate limits of the Town, as such limits now exist, or may, during the term of this franchise, be extended to the residents thereof, and to any person or persons or corporation doing business in the Town, or any addition thereto, at the rates and under the terms and conditions set forth in the tariffs, filed with or fixed by the PUC, or by any other competent authority having jurisdiction in the premises.

Section 18 No Discrimination.

The Company shall not unlawfully discriminate against any consumer within the Town with respect to charges for natural gas or services rendered.

Section 19 Company Rules and Regulations.

The Company, from time to time, may promulgate such rules, regulations, terms and conditions governing the conduct of its business, including the utilization of natural gas and payment therefore, and the interference with, or alteration of, any of the Company's property upon the premises of its customers, as shall be necessary to ensure a continuous and uninterrupted service to each and all of its customers and the proper measurement thereof and payment therefore, provided that the Company shall keep on file in its office at Denver, Colorado, available to the public, copies of its tariffs concurrently in effect and on file from time to time with the PUC, and other competent authority having jurisdiction in the premises.

Section 20 Town Regulation.

The Town expressly reserves, and the Company expressly recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such charter provision, ordinances, and rules and regulations as may by the Town be deemed necessary in the exercise of its police power for the protection of the health, safety, and welfare of its citizens.

Section 21 Compliance Town Requirements.

Except in instances of Emergency, the Company will comply with all Town requirements and obtain any permits required regarding curb and pavement cuts, excavating, digging, and related construction activities. Except in instances of Emergency, the Town may require that all installations be coordinated with the Town's capital improvement programs. If an Emergency requires a curb or pavement cut the Company shall notify the Town as soon as practical after the Emergency is safely mitigated.

Section 22 Town Review of Construction and Design.

Except in instances of Emergency, prior to construction of any significant facilities above ground, for gas control buildings, regulator stations or similar structures within the Town, unless otherwise requested in writing by the Town, the Company shall furnish to the Town the plans for such facilities. In addition, upon request, the Company shall assess and report on the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain inter alia that the Company is in compliance with the following requirements:

- (1) that all applicable laws, including building and zoning codes, applicable design guidelines duly adopted by the Town and air and water pollution regulations, are complied with; and
- (2) that aesthetic and good planning principles have been given due consideration; and
- (3) that adverse impact on the environment has been minimized. The Company shall incorporate all reasonable changes requested by the Town. The Town shall not require the Company to meet any standard higher than those required to meet Federal, State or local laws.

Section 23 Compliance with PUC Regulations.

The gas which the Company distributes shall conform with the minimum standards promulgated by the PUC in the Rules Regulating the Service of Gas Utilities and with the tariff provisions of the Company setting standards, as the same may be amended from time to time.

Section 24 Compliance with Federal State and Local Laws.

The Company shall comply with all applicable Federal, State and local laws. The Company shall use its commercially reasonable best efforts to take measures which will result in its facilities meeting the standards required by applicable Federal and State air and water pollution laws. Upon the Town's request, Company will provide the Town with a status report of such measures.

Section 25 Inspection.

The Town shall have the right to inspect at all reasonable times any portion of the Company's system used to serve the Town and its residents. The Company agrees to cooperate with the Town in conducting the inspection and to correct any reasonable discrepancies affecting the Town's interest in a prompt and efficient manner.

Section 26 Weed Control.

The Company agrees to participate in local efforts to control the proliferation of noxious weeds within streets and other public places by paying the amount of \$1000 to the Town on or before June 1 annually during the term of this Ordinance.

Section 27 Public Utilities Commission Regulation.

The lawful provisions of the Company's tariffs on file and in effect with the Public Utilities Commission, which are consistent with the restrictions and limitations of Article XXV of the Colorado Constitution regarding the rights of municipalities to franchise are controlling over any inconsistent provision in this franchise dealing with the same subject matter. To the best of the Company's knowledge, no provision of the franchise is inconsistent with any of the currently effective provisions of the Company's tariffs.

Section 28 Reports on Company Operations.

Upon reasonable notice, the Company shall submit reasonable and necessary reports containing or based on information readily obtainable from the Company's books and records as the Town may request with respect to the operations of the Company within the Town limits under this franchise. The Town will ensure the confidentiality of information which, in the Company's reasonable discretion, it deems to be confidential and proprietary, to the extent provided by law. Company understands that the Town is subject to the Colorado public records statute.

Section 29 Copies of Tariffs, All PUC Filings.

The Company shall keep on file in its Denver, Colorado office, all tariffs, rules, regulations and policies approved by the PUC relating to service by the Company to the Town and its residents. Upon request by the Town, the Company shall provide the Town with copies of all filings affecting said service which it makes with the Colorado PUC. Should Company's gas cost adjustment rates for service within the Town increase by ten percent (10%) or more. Company shall meet all PUC notification requirements.

Section 30 Notice of Emergency or Force Majeure Events.

In recognition that the Town is responsible for public safety functions and emergency response the Company commits to notify the Town telephonically with a follow up by telefax of any emergency or force majeure event existing within or affecting its distribution facilities. The parties will endeavor to coordinate an appropriate and reasonable response to any such emergency or force majeure event. In addition, the Company agrees to notify the Town of any extra-ordinary event on the Company's system that would require a response by the Town in pursuit of its public safety and emergency response functions, such extra-ordinary event to include, but not be limited to, a

reasonable determination by the Company as to the existence of an improper level of odorant or a significant planned or unplanned interruption in the Company's gas supplies serving the Town.

Section 31 Indemnification of the Town; Town Held Harmless.

The Company shall construct, maintain and operate its facilities in a manner which provides reasonable protection against injury or damage to persons or property: provided, however, said obligation of the Company shall not increase or decrease its liability on third party claims. The Company shall indemnify, defend, and save the Town harmless from and against all liability or damage and all claims and demands whatsoever in nature arising out of the operations of the Company within the Town pursuant to this franchise and the securing of and the exercise by the Company of the franchise rights granted in this ordinance and shall pay all reasonable expenses arising therefrom, including, without limitation, reasonable attorneys' fees.¹ The Town and the Company will each provide prompt written notice to the other of the pendency of any claim or action against either party arising out of the exercise by the Company of its franchise rights. The Company and the Town will each be permitted at their own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien is determined to have arisen, out of, or in connection with any negligent act or failure to act of the Town or the Town's officers, agents, or employees. In the event that the Town institutes litigation against the Company for a material breach of this franchise, and the Town is the substantially prevailing party, the Company shall reimburse the Town all costs related thereto, including reasonable attorneys' fees.

Section 32 Payment of Expenses Incurred by Town in Relation to Ordinance.

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

Section 33 Financial Responsibility.

Company shall procure and thereafter continuously maintain adequate general liability insurance coverage for as long as this franchise remains in effect at Company's expense, with a limit of not less than \$10 Million aggregate and per occurrence, covering liability arising from premises, operations, including risks of explosion, collapse and underground hazards, independent contractors, personal injury, products, completed operations, and liability assumed under an insured contract, on an occurrence basis. Under the terms of the required policy, this franchise shall be defined as an insured contract. A certificate of insurance evidencing Company's compliance with this section shall be filed with the Town's Director of Finance on or before the effective date of this franchise and in the event of any material reduction to the policy thereafter. The Town shall be entitled to thirty (30) days written notice prior to cancellation, termination or lapse of any insurance coverage referred to in said certificate. The Town may require Company to furnish a complete copy of the policy including all declarations and endorsements upon written notice to Company.

Section 34 Transfer of Franchise; Consent of Town Required.

The Company shall not transfer or assign any rights under this franchise to a third party unless the Town shall approve such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld by the Town. A corporate merger, consolidation, or reorganization involving Company shall not constitute a transfer or assignment for purposes hereof.

Section 35 Town's Right to Purchase or Condemn.

Any right of the Town to construct, purchase or condemn any public utility works or ways, and the rights of the Company in connection therewith, as provided by the Colorado Constitution and statutes and the Town of Crested Butte Municipal Charter, are hereby expressly reserved and may

be exercised at any time during the term of this franchise as provided by the Colorado Constitution and statutes.

Section 36 Continued Cooperation by Company.

In the event the Town exercises any right it may have under applicable law to purchase or condemn, the Company agrees that, at the Town's request, it will continue to supply and service its supplies under this franchise, for the duration of the term of this franchise pursuant to terms and conditions negotiated for such continued operation.

Section 37 Removal Of Company Facilities At End Of Franchise; Limitations on Company Removal.

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

Section 38 Forfeiture and Cure.

Both the Company and the Town recognize there may be circumstances whereby compliance with the provisions of this franchise is impossible or is delayed because of circumstances beyond the Company's control. In this instance, the Company shall use its best efforts to comply in a timely manner and to the extent possible. The failure of a party to timely observe or perform any material obligation, term or condition required to be observed or performed under this franchise that is not cured within thirty (30) days following receipt of written notice of such failure, or such shorter or longer time period where otherwise provided in this franchise, shall constitute a material breach and default under this franchise and shall allow the non-defaulting party to (i) recover actual damages due to such default, including reasonable attorneys' fees, costs and expenses, (ii) terminate this franchise, and/or (iii) pursue all remedies available at law and in equity. All remedies may be independently and concurrently applied, provided, however, that termination shall not be effective unless and until the procedures described below have been followed:

(a) The Town must deliver to Company, by certified or registered mail or hand-delivery, a written notice. Such notice must (i) fairly and fully set forth in detail each of the alleged acts or omissions of Company that the Town contends constitutes a substantial breach of any material provision hereof; (ii) designate which of the terms and conditions hereof the Town contends Company breached; and (iii) specify the date, time and place at which a public hearing will be held by the governing body of the Town for the purpose of determining whether the allegations contained in the notice did, in fact, occur; provided, however, that the date of such hearing may not be less than fifteen (15) days after the date of such notice.

(b) Within ten (10) days following the adjournment of the public hearing described in subsection (a) above, the Town must deliver to Company, by certified or registered mail, a written notice setting forth (i) the acts and omissions of Company described in the first notice that the governing body of the Town determines to have in fact occurred; and (ii) the specific terms and conditions of this ordinance listed in the first notice that the governing body of the Town determines to have in fact been breached by such acts or

omissions of Company.

(c) The Town shall permit Company the opportunity to substantially correct and cure all the breaches hereof set forth in the written notice described in subsection (b) above, provided such breaches are amenable to cure, within thirty (30) days after Company's receipt of such notice before termination occurs.

Section 39 Judicial Review.

Any such declaration of forfeiture shall be subject to judicial review as provided by law.

Section 40 Other Legal Remedies.

Nothing herein contained shall limit or restrict any legal rights that the Town or the Company may possess arising from any alleged violation of this franchise.

Section 41 Continued Obligations.

Upon forfeiture, the Company shall continue to provide service to the Town and its residents in accordance with the terms hereof until the Town makes alternative arrangements for such service. If the Company fails to provide continued service, it shall be liable for damages to the Town.

Section 42 Force Majeure.

Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Company is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of undertakings shall be suspended, and the time during which Company is so prevented herein, shall mean any cause not reasonably within Company control and includes, but is not limited to, acts of God, strikes, lockouts, wars, riots, orders, or decrees of any lawfully constituted Federal, state or local body, contagious or contaminations hazardous to human life or health, fires, storms, floods, wash-outs, explosions, breakages or accidents to machinery or lines of pipe, inability to obtain or the delay in obtaining rights-of-way, materials, supplies, or labor permits, temporary failure of gas supply, or necessary repair, maintenance or replacement of facilities used in the performance of the obligations contained in this ordinance.

Section 43 Amendments to Franchise.

At any time during the term of this franchise, the Town or the Company may propose amendments to this franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired and both parties thereafter, through their designated representatives, will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendment(s), unless otherwise provided by this franchise or law.

Section 44 Successors and Assigns.

The rights, privileges, and obligations granted and contained in this ordinance shall inure to the benefit of and be binding upon Atmos Energy, its successors and assigns, as provided for in section 9.1 above.

Section 45 Third Parties.

Nothing contained in this franchise shall be construed to provide rights to third parties.

Section 46 Representatives.

Both parties shall designate from time to time in writing representatives for the Company and the Town, who will be the persons to whom notices shall be sent regarding any action to be taken under this ordinance. Notice shall be in writing and forwarded by certified mail or hand delivery to

the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the Town Manager and to the Atmos Energy, Vice President of Operations.

Currently the addresses are as follows:

For the Town of Crested Butte: Town of Crested Butte
P.O. Box 39
Crested Butte, CO 81224
970-349-5338

For the Company: 1555 Blake St. Suite # 400
Denver CO 80202

Section 47 Entire Agreement.

This franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this franchise.

WHEREFORE, the parties have executed this franchise to be effective as the effective date of the ordinance of the Town Council adopting this agreement and franchise.

TOWN OF CRESTED BUTTE, COLORADO

By: *Aaron J. Huckstep*
Aaron J. Huckstep, Mayor



ATTEST:

Shelley Jansen
Shelley Jansen, Town Clerk

[SEAL]

ATMOS ENERGY CORPORATION

By: *Gary W. Gregory*
Gary W. Gregory
President (Colorado-Kansas Division)

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