



HISTORIC  
FRANKLIN  
TENNESSEE

ITEM #11  
WRKS 08/28/2012

## MEMORANDUM

August 20, 2012

TO: Board of Mayor and Aldermen

FROM: Eric S. Stuckey, City Administrator  
David Parker, P.E., CIP Executive/City Engineer  
Paul Holzen, P.E., Director of Engineering  
Jonathan Marston, P.E., Staff Engineer 2

SUBJECT: Consideration of Amendment No. 1 to the Gas Pipeline Relocation Agreement (McEwen Drive Phase III) Agreement with ATMOS Energy Corporation for the McEwen Drive Temporary Connector Project (COF Contract No 2012-0136)

### **Purpose**

The purpose of this memorandum is to recommend approval of Amendment No 1 to the Gas Pipeline Relocation Agreement (McEwen Drive Phase III) Agreement with ATMOS Energy Corporation for the McEwen Drive Temporary Connector Project.

### **Background**

As part of the McEwen Phase III project the City entered into an agreement with ATMOS Energy Corporation allowing for relocation of ATMOS's utilities. The estimated cost of this relocation was \$1,071,917.13 with the final bill being \$649,950.98. This resulted in a savings of \$421,966.15.

City staff has been working with our consultant and multiple utility companies to finalize the construction drawings for the McEwen Temporary Connector Project. While finalizing the plans it was determined that we would need to relocate an additional section of ATMOS's Utilities. These utilities are located within private easements making the City responsible for all financial cost associated with their relocation. The estimated cost for the relocation is \$608,970. During the CIP budgeting process utility conflicts were not known and staff only budgeted approximately \$50,000 for relocations. City staff is proposing to amend our current contract to allow for the utilities to be relocated. To keep the project on schedule these utilities will need to be lowered prior to November 2012.

### **Financial Impact**

The estimated financial cost to relocate these facilities is \$608,970. This would require the Board of Mayor and Alderman to obligate an estimated additional \$137,003.85 (\$608,970-\$421,966.15-\$50,000) to the construction project.

### **Recommendation**

Staff recommends approval of Amendment No. 1 to the Gas Pipeline Relocation Agreement (McEwen Drive Phase III) Agreement with ATMOS Energy Corporation for the McEwen Drive Temporary Connector Project (COF Contract No 2012-0136). This approval shall be contingent upon City Administrator's, City Engineer's and City Attorney's approval of the final contract.

**AMENDMENT NO. 1 TO  
GAS PIPELINE RELOCATION AGREEMENT  
(McEwen Drive Phase III)  
COF Contract No 2012-0136**

**THIS AMENDMENT** is made and entered into on this the 28<sup>th</sup> day of August 2012, by and between the **City of Franklin, Tennessee** ("City") and **ATMOS Energy Corporation** ("the Company").

**WITNESSETH:**

**WHEREAS**, the City and the Company entered into an Agreement entitled GAS PIPELINE RELOCATION AGREEMENT (McEwen Drive Phase III) ("Agreement") executed by the City January 13, 2009; and

**WHEREAS** this Agreement allowed for the Company to relocate its Gas Facilities to accommodate the City's roadway improvement project, known as McEwen Drive Phase III ("Project"); and

**WHEREAS**, the Company provided an estimate for the Relocation in the amount of \$1,071,917.13 and the actual cost as shown on the final invoice was \$649,950.98; and

**WHEREAS**, said Agreement stipulated that the Company would be reimbursed for the cost of the Relocation, regardless of whether such cost are more or less than the Estimate.

**WHEREAS**, the City has requested the Company to relocate its Gas Facilities and amend the current contract to include the Gas Facilities necessary to accommodate the McEwen Drive Temporary Connector Project as shown in "Exhibit A"; and

**WHEREAS**, the Company is willing to undertake the Relocation provided City reimburses the Company's Actual cost of the same; and

**WHEREAS**, the Company has provided an estimate for the Relocation attached hereto as "Exhibit B" and is able to complete the work prior to December 2012.

**NOW, THEREFORE**, in consideration of these premises and the mutual promises contained herein, it is agreed by and between the parties as follows:

1. The foregoing recitals are incorporated by reference as if fully stated herein.
2. That the Company will relocate its Gas Facilities to accommodate the McEwen Drive Temporary Connector Project.
3. That the City will reimburse Company for the cost of the Relocation, regardless of whether such cost are more or less than the Estimate.
4. That the Company may submit periodic invoices to the City during the course of the Relocation (not more frequently than every forty-five (45) days), which invoices shall be

payable within thirty (30) days after receipt of same by the City. Within 60 days of completion of the Relocation, the Company and the City shall settle on a final billing. Company will provide reasonable documentation for all such costs.

5. That if the City cancels the Project for any reason, City will promptly notify the Company and reimburse Company for its costs incurred through the date of termination.

6. That if the Company is relocated into public right-of-way as a result of the Relocation that the Company will retain its private easement rights with respect any future relocation required by the City (i.e., the City will reimburse the cost of any further relocations); and that if the Company is required to obtain replacement private easement rights it will do so at City's cost.

7. That the Company will complete the Relocation using in-house labor, third-parties, or a combination of both.

8. Severability. If any term or provision of the Amendment is held to be illegal or unenforceable, the validity or enforceability of the remainder of the Amendment will not be affected.

9. Precedence. In the event of conflict between this Amendment and the provisions of the previous Agreement(s), or any other contract, agreement or other document to which this Amendment may accompany or incorporate by reference, the provisions of this Amendment will, to the extent of such conflict (or to the extent the Agreement is silent), take precedence unless such document expressly states that it is amending this Amendment.

10. Entire Agreement. The Amendment between the parties supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of the entire Amendment. The terms and conditions of this Amendment may not be changed except by an amendment expressly referencing this Amendment by section number and signed by an authorized representative of each party.

11. Additions/Modifications. If seeking any addition or modification to the Amendment, the parties agree to reference the specific paragraph number sought to be changed on any future document or purchase order issued in furtherance of the Amendment, however, an omission of the reference to same shall not affect its applicability. In no event shall either party be bound by any terms contained in any purchase order, acknowledgement, or other writings unless: (a) such purchase order, acknowledgement, or other writings specifically refer to the Amendment or to the specific clause they are intended to modify; (b) clearly indicate the intention of both parties to override and modify the Amendment; and (c) such purchase order, acknowledgement, or other writings are signed, with specific material clauses separately initialed, by authorized representatives of both parties.

12. Breach. Upon deliberate breach of the Amendment by either party, the non-breaching party shall be entitled to terminate the Amendment without notice, with all of the remedies it would have in the event of termination, and may also have such other remedies as it may be entitled to in law or in equity.

13. Survival. This Amendment shall survive the completion of or any termination of the original contract, revised contract, or agreement or other document to which it may accompany or incorporate by reference.

All other provisions of the Agreement executed by the City on January 13, 2009, are unchanged and remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this Amendment.

**CITY OF FRANKLIN, TENNESSEE**

**ATMOS Energy Corporation**

By: \_\_\_\_\_  
**Dr. Ken Moore**  
Mayor  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Attest:**

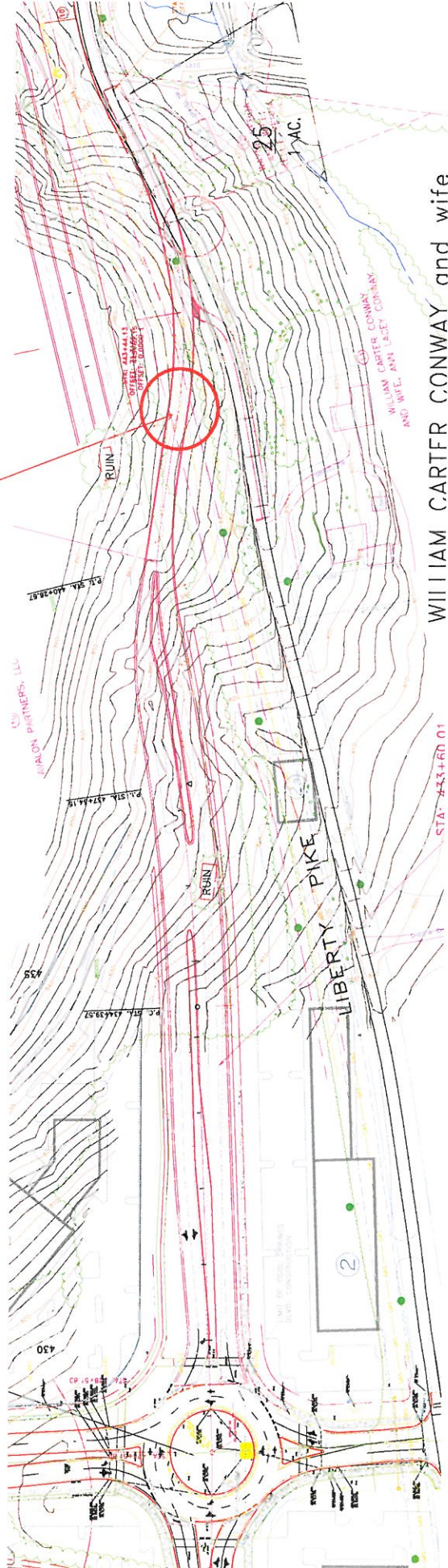
\_\_\_\_\_  
**Eric S. Stuckey**  
City Administrator/Recorder  
Date: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Shauna R. Billingsley, City Attorney



Lower Gas Line



WILLIAM CARTER CONWAY and wife

8/7/2012

**McEwen Drive temporary connector**

Estimated direct costs to replace 400 feet of 8" transmission east of Cool Springs Blvd.

Includes costs to drill and blast an area 300 ft x 60 ft x 10 ft deep adjacent the gas easement. This will allow road contractor to remove the material without endangering the gas line with blasting operations.

This work should be able to be completed before winter operations.

Contractor services	454,680.00
Material	136,555.00
Company labor	17,735.00
Total Estimated Costs	<u>\$608,970.00</u>