

**TULIA CITY COUNCIL  
TUESDAY FEBRUARY 13, 2024  
AT 6:00 P.M.  
TULIA CITY HALL, CITY COUNCIL CHAMBERS**

**1. Call to Order and Quorum Call**

_____ Dusty George, Mayor	_____ City Manager
_____ Israel ‘Bibo’ Ramirez	_____ City Secretary
_____ Jay Smith	_____ Finance Director
_____ Jed Owens	_____ City Attorney
_____ Greg Needham	_____ Public Works Director
	_____ Chief of Police
	_____ Electric Director

**2. Presentations and Public Comment** (Public Comments is limited to 3 minutes per speaker.)

**3. Consider action on the Consent Agenda** (usually approval of council meeting minutes will be placed under consent agenda along with non-controversial items that may have already been discussed or routinely handled in the past. This may include resolutions but not ordinances. A council member may remove an item from the consent agenda and place it on the Discussion and Action agenda before a vote on the Consent Agenda items.)

- CONSIDER AND APPROVE MINUTES FROM THE NOVEMBER 14 AND NOVEMBER 27, 2023 MEETINGS
- POLICE CHIEF’S ANNUAL REPORT ON RACIAL PROFILING

**4. Items for Discussion and Action**

- a. CONSIDER AND TAKE ACTION REGARDING CALL FOR ELECTION FOR MAYOR, DISTRICT III, AND DISTRICT IV
- b. DISCUSSION ON MUTUAL OF UNDERSTANDING AGREEMENT BETWEEN TULIA ISD AND THE CITY OF TULIA
- c. BRIEFING, DISCUSSION AND ACTION ON ATMOS FRANCHISE AGREEMENT

d. DISCUSSION WITH CITY ATTORNEY TO FINALIZE FOOD TRUCK  
ORDINANCE

**5. Announcements**

- TULIA POWER & LIGHT
- PUBLIC WORKS
- POLICE DEPT
- CITY HALL

**6. Adjournment**

The City Council of the City of Tulia reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Section 551.071 (Consultation with Attorney), 551.072 (Deliberation about Real Property), 551.073 (Deliberation about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), and 551.087 (Economic Development)

This agenda was posted on or before February 9, 2024 by 5:00 p.m.

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STATE OF TEXAS                      X

COUNTY OF SWISHER                X

CITY OF TULIA                        X

ON the 14<sup>th</sup> day of November, 2023, the City Council of the City of Tulia met in the City Council Chambers at 6:00 p.m.

Present were:	Dusty George	Mayor
	Israel 'Bibo' Ramirez	Mayor ProTem
	Gregory Needham	Council Member
	Jay Smith	Council Member
	Jed Owens	Council Member

Also present were:	BJ Potts	City Manager
	Kristina Solomon	City Secretary
	Slater Elza	City Attorney
	Brian West	Electric Director

Absent was:	Russell Proctor	Public Works Director
	Paul Brown	Chief of Police

### **1. Call to Order and Quorum Call Work Session**

Dusty George called the meeting to order at 6:00 p.m. in the City Council Chambers.

### **2. Presentations and Public Comment** (Public Comment is limited to 3 minutes per speaker.)

Donnie Randall spoke about his concerns on food trucks in town.

### **3. Consider action on the Consent Agenda** (usually approval of council meeting minutes will be placed under consent agenda along with non-controversial items that may have already been discussed or routinely handled in the past. This may include resolutions but not ordinances. A council member may remove an item from the consent agenda and place it on the Discussion and Action agenda before a vote on the Consent Agenda items.)

- CONSIDER AND APPROVE MINUTES FROM THE OCTOBER 17, 2023 MEETING

Bibo Ramirez made a motion to approve the minutes as presented. A second was made by Greg Needham and passed with a 5-0 vote.

#### **4. Items for Discussion and Action**

a. DISCUSS AND TAKE ACTION ON FUNDVIEW SOFTWARE PRESENTATION

Zack Slaughter with Fundview gave a presentation on the software. He explained the differences between Fundview and Incode and how Fundview can simplify a lot of what the city is doing now.

Greg Needham made a motion to proceed with changing from Incode to Fundview software. A second was made by Jed Owens and passed with a 5-0 vote.

b. DISCUSS AND TAKE ACTION DISMISSING CONTRACT AGREEMENT BETWEEN THE CITY OF TULIA AND TULIA CHAMBER OF COMMERCE

It was decided at the last meeting to cancel the contract agreement between the City of Tulia and Tulia Chamber of Commerce. The Chamber of Commerce will instead present to the council their requests as needed. A vote was not taken at the time.

Greg Needham made a motion to dismiss the contract agreement between the City of Tulia and Tulia Chamber of Commerce. A second was made by Jay Smith and passed with a 5-0 vote.

c. DISCUSS, CONSIDER, AND TAKE ACTION ON AN AGREEMENT FOR ELECTION ADMINISTRATION BETWEEN THE CITY OF TULIA AND SWISHER COUNTY

The election agreement is an annual agreement between the City of Tulia and Swisher County

Greg Needham made a motion to accept the agreement for election administration between the City of Tulia and Swisher County.

#### **5. Announcements**

- TULIA POWER & LIGHT
- PUBLIC WORKS
- POLICE DEPT
- CITY HALL

## **6. Adjournment**

With no further business to discuss the meeting was adjourned at 6:38 p.m.

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Mayor, Dusty George

ATTEST:

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City Secretary, Kristina Solomon

STATE OF TEXAS                      X

COUNTY OF SWISHER                X

CITY OF TULIA                        X

ON the 27<sup>th</sup> day of November, 2023, the City Council of the City of Tulia met in special session in the City Council Chambers at 12:00 p.m.

Present were:	Dusty George	Mayor
	Gregory Needham	Council Member
	Jed Owens	Council Member

Also present were:	BJ Potts	City Manager
	Kristina Solomon	City Secretary
	Russell Proctor	Public Works Director

Absent was:	Israel ‘Bibo’ Ramirez	Mayor ProTem
	Jay Smith	Council Member
	Slater Elza	City Attorney
	Brian West	Electric Director
	Paul Brown	Chief of Police

### **1. Call to Order and Quorum Call Work Session**

Dusty George called the meeting to order at 12:00 p.m. in the City Council Chambers.

### **2. Presentations and Public Comment** (Public Comment is limited to 3 minutes per speaker.)

No comment at this time

### **3. Items for Discussion and Action**

- a. CONSIDER AND TAKE ACTION ON THE RECOMMENDATION OF THE PLANNING AND ZONING COMMITTEE TO CONSIDER THE APPLICATION OF ZONING 14.15 ACRES OF LAND SITUATED IN SECTION NO. 10, BLOCK W-1, ABSTRACT NO 1626. THE ZONING WOULD ZONE THIS 14.15 TRACT FROM AGRICULTURE TO COMMERCIAL ZONED PROPERTY

Greg Needham made a motion to approve the recommendation of the Planning and Zoning Committee to consider the application of zoning 14.15 acres of land situated in section No. 10, block w-1, abstract No. 1626. The zoning would zone this 14.15 tract to

commercial zoned property. A second was made by Jed Owens and passed with a 3-0 vote.

**4. Announcements**

**5. Adjournment**

With no further business to discuss the meeting was adjourned at 12:05 p.m.

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Mayor, Dusty George

ATTEST:

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City Secretary, Kristina Solomon



# **Racial Profiling 2023**

Since January 1, 2002, the **Tulia Police Department** in accordance with the Texas Racial Profiling Law (S.B. No. 1074), has been collecting police contact data for the purpose of identifying and responding (if necessary) to concerns regarding racial profiling practices. It is my hope that the findings provided in this report will serve as evidence that the Tulia Police Department continues to strive towards the goal of maintaining strong relations with the community.

In this report, the reader will encounter several sections designed at providing background information on the rationale and objectives of the Texas Racial Profiling Law. Other sections contain information relevant to the institutional policies adopted by the Tulia Police Department prohibiting the practice of racial profiling among its officers.

The final components of this report provide statistical data relevant to the public contacts made during the period of 01/01/2023 and 12/31/2023. This information has been analyzed and compared to the demographics data on citizens residing in the Tulia, Texas area. The analysis of the data and recommendations for future areas of research are also included. It is my sincere hope that the channels of communication between community leaders and the Tulia Police Department continue to strengthen as we move forward to meet the challenges of the future.

Respectfully,

A handwritten signature in blue ink, appearing to read "Paul Brown", is written over a horizontal line.

Paul Brown  
Chief of Police

# **The Tulia Police Department Racial Profile Complaint**

Complaint Process - Any person or persons alleging racial profiling may file a complaint against the specified employee or officer(s) and said complaints will be processed in accordance with the Tulia Police Department General Orders. All complainants will be informed of the Internal Affairs process. No person shall be discouraged, intimidated, or coerced from filing a complaint, or be discriminated against because they have filed a complaint.

Corrective Action: Any peace officer who is found, after investigation, to have engaged in racial profiling in violation of this policy shall be subject to corrective action, which may include reprimand; diversity, sensitivity or other appropriate training or counseling; paid or unpaid suspension; termination of employment, or other appropriate action as determined by the Chief of Police.

## **Data on Corrective action**

The Tulia Police Department has not received any complaints about any members of its Police force, for having violated the Texas Racial Profiling Law during the time period of 01/01/2023-12/31/2023.

## **Training**

In compliance with the Texas Racial Profiling Law, the Tulia Police Department requires that all its officers adhere to all The Texas Commission on Law Enforcement (TCOLE) training and the Law Enforcement Management Institute of Texas (LEMIT) requirements as mandated by law.

All officers from the Tulia Police Department are required to complete TCOLE training and education program on racial profiling not later than the second anniversary of the date the officer is licensed under Chapter 1701 of the Texas Occupations Code or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier. For example, a person who on September 1, 2001, held a TCOLE intermediate proficiency certificate, or who had held a peace officer license issued by TCOLE for at least two years will complete a TCOLE training and education program on racial profiling not later than September 1, 2003.

## **Video Review Report**

Each motor vehicle used by this department to make traffic and pedestrian stops is equipped with a video camera and transmitter-activated equipment.

Every traffic and pedestrian stop made by an officer of this department that is capable of being recorded by video is recorded. If for any reason a malfunction occurs in a video system, the Officers of the Tulia Police Department utilize body cameras.

It is the policy of this department to retain the video recording for at least ninety (90) days after the date of the stop. If a complaint is filed with this department alleging that one of our officers has engaged in racial profiling with respect to a traffic or pedestrian stop, this department retains the video of the stop until final disposition of the complaint.

Supervisors ensure that officers of this department are recording their traffic and pedestrian stops. The Chief randomly reviews stops from each Officer monthly. No incidents of Racial Profiling and no undocumented searches were discovered in any of the reviewed recordings.

In 2023 there were not any alleged allegations of Racial Profiling and no undocumented searches discovered when the recordings were reviewed.

## **(I) Racial Profiling Report Data**

Table 1. General Demographics of Contacts and Searches

Race/Ethnicity*	Contacts		Searches		Consensual Searches		PC for Search		Custody Arrest	
	N	%	N	%	N	%	N	%	N	%
Caucasian	410	43	20	37	8	31	7	32	4	99
African American	75	8	10	19	4	15	5	23	1	1
Hispanic	444	48	23	43	14	54	10	45	0	0
Asian/Pacific Islander	10	1	0	0	0	0	0	0	0	0
Alaska Native/American Indian or Other	4	0	1	1	0	0	0	0	0	0
Total	943	100	54	100	26	100	22	100	5	100

## **(II) Comparative Analysis**

Table 1. Comparison of Self-Initiated Stops of Drivers and PRPC Resident Data

Race/Ethnicity*	Contacts		Tulia Demographic Data (PRPC)		Variance	
	N	%	N	%	N	%
Caucasian	410	43	2150	43	1740	19.1
African American	75	8	495	10	420	15.2
Hispanic	444	48	2235	45	1791	19.9
Asian/Pacific Islander	10	1	4	0	6	150
Alaska Native/American Indian or Other	4	0	83	2	79	4.8
Total	943	100	4967	100		

### **Summary Statement**

The findings suggest that the Tulia Police Department does not currently experience a problem regarding racial profiling practices. This is supported by the fact that it has not received complaints from community members regarding officers' misconduct associated with racial profiling practices.

The collection of police contact data will not have significant changes for 2024. The reporting information requirements will remain the same. This will assure a continuing thorough evaluation of the Tulia Police Department practices. Thus, allowing for the citizens of the community to benefit from professional and courteous service from their police department.

## Analysis

The data presented in this report contains valuable information regarding police contacts with the public between 01/01/2023 through 12/31/2023.

When comparing the drivers who came in contact with the Tulia Police Department during 2023 with those who were residents of the city during that time the following data reveals, the number of police contacts with Caucasian drivers, when compared to the number of Caucasian city residents were 19.1% of the Caucasian population. Hispanic contacts were shown to be 19.9% of Hispanic population.

When analyzing in the same manner, the data relevant to individuals of African American descent, although the number of police contacts with African Americans, are (75) which is 15.2% of African American population, this does not represent a trend supportive of racial profiling because of the smaller population number.

The Tulia Police Department is required to collect Full reporting racial profiling data. Upon approval from the City Council, this report is submitted to TCOLE.



## *Tulia Police Department*

*Unity, Honor, Integrity*

*201 N Maxwell Avenue, Tulia, Texas 79088*

*806-995-3555 Fax 806-995-2222*

*Brandon Franco Chief of Police*



To: BJ Potts, City Manager

From: Paul Brown, Chief of Police

Re: 2023 Racial Profiling Video Review

Mr. Potts,

In accordance with The Texas State Law and The Tulia Police Department Policy regarding racial profiling, I, Paul Brown, Chief of Police, conducted reviews of randomly selected audio/video recordings of Police Officer, of this agency, interacting with the public. I also have the supervisors conduct random reviews of officers assigned to their supervision to increase the number of videos being reviewed annually. The selected videos have been from Body worn cameras worn by Tulia Police Department Police Officers.

This review concludes no Police Officers of The Tulia Police Department engaged in any patterns of racial profiling as defined by State and Federal law.

A handwritten signature in blue ink, appearing to read "Paul Brown", written over a horizontal line.

Chief of Police, Paul Brown

# **CITY OF TULIA POLICE DEPARTMENT**



## **2023 ANNUAL REPORT**

## MESSAGE FROM THE CHIEF



The Tulia Police Department is committed to providing the best quality police services for our community and visitors. We take pride in recognizing the best practices, striving for continuous improvement and building on accomplishments from the past.

The 2023 Annual Report is a reflection of how the department functioned throughout the year and the accomplishments achieved. As we reflect on the information provided in this report, we look to the future to improve the services the department currently provides and hopes to provide in 2024.

~ Chief Paul Brown

## INTRODUCTION

The Tulia Police Department is a full-service police agency, providing a variety of services for the community including:

- 24-Hour uniformed patrols by professional, sworn police staff
- 24-Hour communications center operated by state certified telecommunicators
- Animal Control operations that is responsible for the effective and humane care of animals, enforcement of city ordinances and State law.

### **Entering 2024 Tulia Police Department staffing is as follows**

- Tulia Police Department is authorized 10 sworn positions. Currently the department is staffed at 9.
- Tulia Police Department is authorized 5 telecommunicators. Currently the department is staffed at 4.
- Tulia Police Department is authorized 1 animal control officer and is fully staffed.
- Tulia Police Department is authorized 1 administrative assistant and is fully staffed.

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## DEPARTMENT STATEMENTS

### Our Vision

**Our vision** is a community partnership where the public has full faith and confidence in its police department to provide an atmosphere where people feel safe, secure, and acknowledged.

### Our Mission

**Our mission** is to serve in partnership and with the support of our community, in an effort to protect all citizens. We will recognize and respect the constitutional rights of all and will uphold local, state and federal laws, while maintaining the highest professional and ethical standard.

### Our Core Values

**Our Core Values** Honor, Unity, and Integrity.

### Our Philosophy

**We are committed** to maintaining high ethical standards by conducting ourselves with integrity, compassion and accountability.

**We, both as individuals and as an organization, strive** to be leaders in our profession and in the community we serve. Effective leadership will model the way, enable others to act and inspire a shared vision.

**We endorse** the principles embodied in our Constitution. We respect and protect the rights of all persons, and we endeavor to ensure the safety, security and protection of life and property.

**Integrity is central** to the values we embrace and establishes the foundation for community trust.

**We are accountable** to each other and to the community we serve, and we expect ethical, legal and moral behavior in all aspects of our lives.

**We strive** to maintain the highest quality of life for all that reside within and visit our community. Our values guide our work and decisions, help us contribute to the quality of life and promote a positive work experience.

### Our Approaches

**Vigorously** pursue criminals and those that harm our community.

**Demonstrate** proactive, progressive, and preventative policing at all levels.

**Maximize** the use of technology to achieve effectiveness and efficiency.

**Utilize** problem solving techniques to address issues of crime and disorder.

**Foster** an organizational culture of integrity and accountability through leadership.

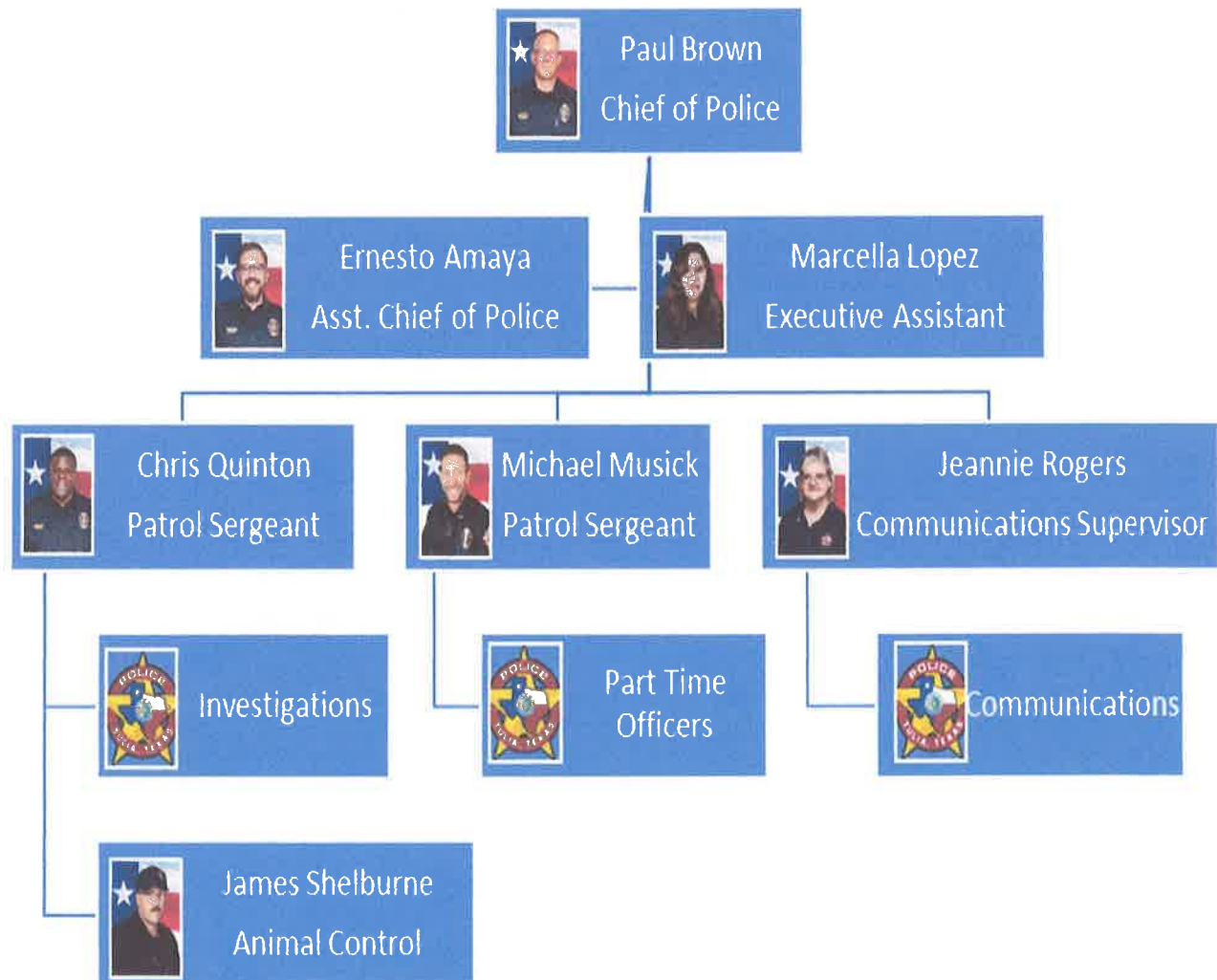
**Invest** in the community by promoting cooperation and trust with our citizens.

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# TULIA POLICE DEPARTMENT



## ORGANAZATIONAL CHART





# TULIA POLICE DEPARTMENT

## ANNUAL REPORT

### 2023



In 2023, The Tulia Police Department focused on technology to assist with better serving our community. We recognized that through technology we could accomplish our mission without having a detrimental impact on the City budget.

The department partnered with Kologik software for Record Management Systems (RMS) and Peace Maker Technologies for in car hardware. Combining the two will allow officers to work from their patrol vehicles, rather than returning to the office after each call to complete the report. This makes us more efficient and keeps officers visible in the community, therefore deterring criminal activity. The technology also decreases the work load on our communications center. With Kologik, we now can partner and share information with all other departments on the Kologik system, including Swisher County Sheriff's Office, Briscoe County Sheriff's Office and Dimmitt Police Department. In total there are over 800 agencies in the State of Texas using Kologik software.

Peace Maker Technologies brings the actual computers and ticket writers into the vehicle. Having electronic citations allows us to better and more efficiently work with the City of Tulia Municipal Court and enables those issued citations a more efficient way to take care of that citation. Peace Maker also keeps track of all racial profiling data. We now have the capability to pull racial profiling data on the department as a whole or an individual officer at anytime. Previously this was only accessible at the end of the calendar year. By having this resource, we are far more transparent with the community, and can address problems the moment they arise.

In this report we will outline how the Tulia Police Department is reducing crime, the fear of crime and improving the relationships between the police department and the community.

Total Calls Received for service	2022	2023	Difference %
	5,993	6,417	+7% or +432 Calls
Incident Reports By Tulia PD	2022	2023	Difference %
*TISD PD Established late 2022	710	662	-7% or -48 Reports Taken

Arrest 2022									
Arrest Type	Arrests	Male	Female	White	Black	Indian		Asian	Unknown
CITATION	72	40	31	56	13	0		0	3
ON VIEW	61	41	20	48	13	0		0	0
SUMMONED / CITED	15	7	8	13	1	0		0	1
TAKEN INTO CUSTODY	57	41	16	38	18	0		0	1
UNKNOWN	9	5	4	4	5	0		0	0
WARRANT	74	50	24	56	17	0		0	1
<b>Total</b>	<b>288</b>	<b>184</b>	<b>103</b>	<b>215</b>	<b>67</b>	<b>0</b>		<b>0</b>	<b>6</b>



# TULIA POLICE DEPARTMENT

## ANNUAL REPORT

### 2023



#### ARREST (CONT.)

Arrest 2023									
Arrest Type	Arrests	Male	Female	White	Black	Indian	Asian	Unknown	
CITATION	91	59	32	79	12	0	0	0	
ON VIEW	58	48	10	45	12	0	0	1	
SUMMONED / CITED	15	10	5	10	5	0	0	0	
TAKEN INTO CUSTODY	97	69	28	74	22	0	0	1	
UNKNOWN	12	8	4	6	4	0	0	2	
WARRANT	41	23	18	37	4	0	0	0	
<b>Total</b>	<b>314</b>	<b>217</b>	<b>97</b>	<b>251</b>	<b>59</b>	<b>0</b>	<b>0</b>	<b>4</b>	

Arrest Totals by Year	2022	2023	Difference %
	288	314	+8%

#### Major Crimes

Murder	2022	2023	Difference %	Rape	2022	2023	Difference %
	2	1	-50%		3	1	-66%

Robbery	2022	2023	Difference %	Burglary	2022	2023	Difference %
	2	2	0%		39	13	-66%

MV Theft	2022	2023	Difference %	Arson	2022	2023	Difference %
	10	7	-30%		1	0	-100%

Human Tfkng	2022	2023	Difference
	0	0	0%

Citations	2022	2023	Difference %
	492	680	+32%



# TULIA POLICE DEPARTMENT

## ANNUAL REPORT

### 2023



#### Telecommunications:

***The Mission of the Tulia Police Department Telecommunications Center is to protect life and property and to assist agencies that depend on Tulia Police Department Telecommunications Center for first responder information.***

Tulia Police Department Telecommunications Center dispatches for 17 entities in Swisher and Briscoe Counties. They answer all incoming phone calls for both counties, 9-1-1 calls and maintain TCIC files for Swisher County, Briscoe County, Kress PD and Happy PD.

Total Phone Calls Rcvd	2022	2023	Difference %
*Does not include 9-1-1	20,650	29,344	+30% or +8,694 calls

Total 9-1-1 Calls Rcvd	2022	2023	Difference %
	3,372	4,029	+18% or +657 calls

#### Animal Control:

***The mission of the Tulia Animal Control is to protect and advocate for companion animals in need, and to build a humane community that promotes compassion and seeks to strengthen the human-animal bond.***

The Tulia Animal Control is housed and supervised with the Tulia Police Department. The pound is located at 1480 NW 6th Street.

	Loose Dog	Re-Claims	Trap Request	Owner Surre.	Euthanasia	Bite Report	Adoptions
2022	156	44	26	49	11	6	21
2023	125	51	41	56	5	6	46
Difference	-20%	+15%	+45%	+13%	-75%	0%	+119%

Citations	2022	2023	Difference %
	20	24	8%

## ORDER OF ELECTION FOR CITY OF TULIA

An election is hereby ordered to be held on May 4, 2024 for the purpose of filling the elected positions of:

Mayor

Council Member Dist. III

Council Member Dist. IV

Early voting by personal appearance will be conducted each weekday in the basement of the Swisher County Courthouse. Early voting hours are from 8:00 am to 5:00 pm beginning April 22, 2024 until April 30, 2024.

Applications for ballot by mail shall be mailed to:

Richelle Culifer  
119 S. Maxwell Ave  
Tulia, TX 79088

All applications for ballots by mail must be received no later than April 23, 2024 at 5:00 pm.

Issued this date the 13<sup>th</sup> of February, 2024.

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Mayor

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Signature of Councilperson

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Signature of Councilperson

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Signature of Councilperson

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Signature of Councilperson

## ORDEN DE ELECCIÓN PARA CIUDAD DE TULIA

Una elección se ordenó que se celebrará el 4 de mayo de 2024 con el fin de llenar los puestos elegidos de:

Alcalde

Consejo de Miembros Dist. III

Consejo de Miembros Dist. IV

Votación anticipada por la apariencia personal se realizará cada día en el sótano de Swisher County Courthouse. De las 8:00 am hasta las 5:00 p.m., horario de votación temprana empiezan el 22 de abril de 2024 hasta el 30 de abril de 2024. Las solicitudes de voto por correo deberán enviarse a:

Richelle Culifer  
119 S. Maxwell Ave  
Tulia, TX 79088

Todas las solicitudes de boletos por correo deben ser recibidas no más tarde del 23 de abril de 2024 a las 5:00 pm.

Emitió esta fecha el 13 de febrero de 2024.

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Mayor

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Signature of Councilperson

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Signature of Councilperson

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Signature of Councilperson

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Signature of Councilperson

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Signature of Councilperson

THE STATE OF TEXAS

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Memorandum of Understanding For  
Law Enforcement Services  
by and between the City of Tulia,  
and the Tulia Independent School  
District.

COUNTY OF SWISHER

This Memorandum of Understanding (“MOU”) is entered into on this 16th day of February, 2024, by and among the CITY OF TULIA, in the State of Texas, (hereinafter referred to as “CITY”) and the TULIA INDEPENDENT SCHOOL DISTRICT, an independent school district located at Swisher County, Texas (hereinafter referred to as “SCHOOL DISTRICT”) (collectively referred to as the “Part(ies).”

WITNESSETH:

WHEREAS, the SCHOOL DISTRICT is an independent school district maintaining and operating facilities within the CITY, and

WHEREAS, the SCHOOL DISTRICT has commissioned peace officers for security and law enforcement purposes; and

WHEREAS, the Texas Education Code, Section 37.081, requires that the jurisdiction of a peace officer employed by a school district shall be determined by the board of trustees and may include all territory in the boundaries of the school district and all property outside the boundaries of the district that is owned, leased, or rented by or otherwise under the control of the school district, and

WHEREAS, Texas Education Code, Section 37.081, requires that school district police departments and the law enforcement agencies with which it has overlapping jurisdiction shall enter into a memorandum of understanding that outlines reasonable communication and coordination efforts between the department and the agencies, and

WHEREAS, the CITY and the SCHOOL DISTRICT each find that this undertaking is necessary for the benefit of the public and that each party has legal authority to provide the governmental functions, which are the subject matter of this MOU, and

WHEREAS, the CITY and the SCHOOL DISTRICT desire to improve the efficiency and effectiveness of their police departments by cooperating in the provision and performance of law enforcement services pursuant to Chapter 791 of the Texas Government Code; and

WHEREAS, the CITY and the SCHOOL DISTRICT desire to specify the terms and conditions of an agreement through which this mutually beneficial relationship may be affected; and

WHEREAS, the CITY and the SCHOOL DISTRICT recognize and understand that the circumstances of an incident may necessitate that the requirements of this MOU be amended or revised to allow the law enforcement officers of each party to better address the unique demands of a specific situation and provide appropriate mutual aid and support to each other, under the circumstances; and

NOW THEREFORE IN CONSIDERATION of the mutual undertaking hereinafter set forth and for adequate consideration given, the above-named governmental entities agree as follows:

## **I. Definitions**

The following terms shall have the following meanings when used in this MOU:

- (a) “Peace officer” means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, or other law, and licensed by the Texas Commission on Law Enforcement officer Standards and Education;
- (b) “Party” means a governmental entity which is a party to this MOU;
- (c) “Chief law enforcement officer” means the chief of police of a municipality and the chief of police of an independent school district;
- (d) “Chief administrative officer” means the mayor or superintendent of an independent school district;
- (e) “Requesting governmental entity” or “requesting party” shall mean and refer to the contracting governmental entity that requests another party to this MOU for law enforcement services in aid and assistance in responding to an emergency condition within the boundaries of the requesting party.
- (f) “Responding governmental entity” or “responding party” shall mean and refer to the governmental entity that answers or responds to request of another party to this MOU for law enforcement services in aid and assistance in responding to an emergency condition within the boundaries of the requesting party.

## **II. Purpose**

The purpose of this MOU is to assist in providing additional law enforcement officers and equipment necessary to protect health, life, and property against violations of criminal law and breaches of the peace. The Parties recognize and acknowledge that mutual cooperation and communication are in the best interest of their constituents, employees and the public, and the Parties therefore pledge to meet on a periodic basis to discuss the purpose of this MOU and to develop practices and procedures in keeping with this purpose.

## **III. Primary Jurisdiction and Concurrent Jurisdiction**

- A. the CITY shall retain primary jurisdiction over property owned by the CITY, and over property located within the CITY's corporate limits and not owned by any other Party.
- B. the SCHOOL DISTRICT shall retain primary jurisdiction, over property owned by the SCHOOL DISTRICT and located within the CITY.

## **IV. Requests for Assistance and Response**

A responding party may assign its law enforcement officers to perform law enforcement duties outside the responding party's territorial limits, subject to the responding party's determination of availability of personnel and at the responding party's sole discretion as to participation, when:

- A. requested by the chief law enforcement officer, or his designee, of a requesting party; and
- B. the chief law enforcement officer, or his designee, of the responding party has determined, in his sole discretion, that the assignment is necessary to the providing of law enforcement services within the territorial limits of the requesting party for the purposes set forth at paragraph II above.

The CITY reserves the right to retain the primary authority for its specialized police units, dispatched in response to incidents within the corporate limits of the CITY such as a missing child, sexual assault, kidnapping, armed barricaded subject, active shooter or sniper, riot, an incident involving fatalities or any other incident within the CITY limits for which the CITY believes the use of its specialized police services is reasonable and necessary.

The ranking on-duty peace officer of each party present at the response location shall be deemed the authorizing official for that party.

Any request for aid under this MOU shall include a statement of the amount and type of equipment and number of personnel requested, and shall specify the location to which the equipment and personnel are to be dispatched, but the amount and type of equipment and number

of personnel to be furnished shall be finally determined by the responding party's chief law enforcement officer or his designee. Requests for aid shall be directed to the attention of the following named persons or officers of each respective party, or to such other persons or officers as a party may hereinafter designate:

A. City of Tulia: Paul Brown

B. Tulia Independent School District: Chris Tristan

Law enforcement personnel of the responding party will be released by the requesting party when their services are no longer required as determined by the chief law enforcement officer, or his designee, of the requesting party. The chief law enforcement officer of the responding party, or his designee, in collaboration with the requesting party's chief law enforcement officer, may withdraw his personnel or equipment or discontinue participation in any activity initiated pursuant to this MOU, at any time. Such withdrawal should be made in such a way that it does not pose a threat to the safety or security of the location and/or situation.

#### **V. Status of Responding Peace Officers and Command Authority**

While any law enforcement officer regularly employed as such by a responding party is in the service of any requesting party, he shall at all times remain a peace officer of the responding party and shall be under the command of the responding party's chief law enforcement officer.

#### **VI. Service of Arrest and Search Warrants**

Whenever possible, a peace officer of a municipality should notify the police department of a school district before serving any arrest or search warrant on the property of a school district. A peace officer of a school district may accompany a peace officer of a municipality when the municipal peace officer is serving an arrest or search warrant on the property of a school district.

#### **VII. Responsibility for Completing Investigation**

The completion of any investigation upon termination of a response to request, or upon withdrawal from an initiated response, will remain under the jurisdiction and authority of the party having primary jurisdiction, unless otherwise agreed to by the parties.

## **VIII. Dispatching Calls Between Police Departments**

The dispatcher of a party receiving or dispatching a call relating to the provision made for law enforcement services by this MOU will:

- A. Maintain a record of calls received, routed and dispatched to any other party to this MOU, which record shall be available to all parties upon request;
- B. When referring an emergency caller to a party under this MOU, the dispatcher should advise the caller that the referral is being made and should remain on the line with the caller until a connection is made with the party referred to; and
- C. When dispatching a unit to another party's primary jurisdiction, the dispatcher should attempt to notify the dispatcher of the department for the other party as soon as possible.

## **IX. No Waiver of Reimbursement for Services**

No party to this MOU waives the right granted by Section 362.003(c), Texas Local Government Code, to request reimbursement for services performed under this MOU. The governmental entity whose authorized official requested the services shall reimburse the governmental entity providing such services upon request, unless the responding entity had jurisdiction to perform the law enforcement services notwithstanding this MOU.

## **X. Employee Compensation Unaffected**

Any law enforcement officer or other person who is assigned, designated, or ordered by the chief law enforcement officer of the party which regularly employs him, or his designee, to perform police or peace officer duties pursuant to this MOU, shall receive the same wage, salary, pension, and all other compensation and all other rights for such service, including injury or death benefits, and workers' compensation benefits, the same as though the service had been rendered within the limits of the party where he is regularly employed. Moreover, all wages and disability payments, including equipments and clothing, medical expenses, expenses of travel, food, and lodging, shall be paid by the party which regularly employs such person in the same manner as though the service had been rendered within the limits of the party where the person is regularly employed.

## **XI. Civil Lawsuits and Retention of Benefits Related to Employee Status**

In the event that any person performing law enforcement, law enforcement services pursuant to this MOU shall be cited as a party to any civil lawsuit, state or federal, arising out of the performance of those services, he shall be entitled to the same benefits that he would be entitled to receive if such civil action has arisen out of the performance of his duties as a party of the department where he is regularly employed and in the jurisdiction of the party by which he is

regularly employed. Nothing in this MOU is construed as creating any personal liability on the part of any employee, officer or agent of any public body that may be a party to this MOU.

## **XII. Municipal Prosecution**

Any and all citations issued by the SCHOOL DISTRICT within the municipal limits of the City of Tulia where the municipal court has jurisdiction shall be filed with the municipal court of the City of Tulia.

## **XIII. Non-Waiver of Immunity**

It is expressly understood and agreed that, in the execution of this MOU, no Party waives nor shall be deemed hereby to waive any immunity or defense that would otherwise be available to it against claims made by third parties and arising directly or indirectly out of the performance of this MOU. **THE PARTIES RETAIN ALL GOVERNMENTAL IMMUNITIES.**

## **XIV. Duration of MOU**

This MOU shall be effective for a period beginning on the date first written above and ending on December 31, 2024, and shall thereafter automatically renew for one year terms running from January 1 until December 31 of each year unless terminated in accordance with the terms and conditions of this MOU.

## **XV. Termination**

Any party to this MOU may terminate it, by giving the other parties thirty (30) days prior written notice of its intent to terminate the MOU, mailed by certified mail and addressed to the person or officer of each other party to this MOU designated herein for notice.

## **XVI. Performance of Services**

Law enforcement services, and all other services reasonably related thereto, which are provided under this MOU shall be performed in accordance with the standard operating procedures, rules, regulations, and ordinances of the department by which each such peace officer or employee providing such services is employed, and in conformity with the requirements and mandates of laws of the State of Texas and the United States.

## **XVII. Release and Indemnification**

**To the extent permitted by law each Party to this MOU expressly waives all claims against every other Party to this MOU for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance of this MOU, and shall, to the extent permitted by law, indemnify each other Party for any liability arising out of the acts or omissions of its own employees and officers.**

## **XVIII. Waiver of Subrogation**

The Parties hereby release each other, and their respective officers, agents, and employees, from any and all liability to each other or anyone claiming through or under them by way of subrogation or otherwise for any loss, injury or damage caused by or resulting from risks insured against under any insurance policy maintained by the Parties.

## **XIX. Remedies**

No right or remedy granted herein or reserved to the Parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this MOU may be waived without first obtaining consent of the Parties in writing. Forbearance or indulgence by either Party shall not constitute a waiver of any covenant or condition to be performed pursuant to this MOU.

## **XX. Severability**

If any of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this MOU, are for any reason held to be invalid, void or unenforceable, the remainder of the terms, sections, subsections, sentences, clauses, phrases, provisions, covenants, conditions or any other part of this MOU shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

## **XXI. Applicable Law**

This MOU is entered into subject to and is to be construed, governed and enforced under all applicable State of Texas and federal law.

## **XXII. Venue**

The Parties to this MOU agree and covenant that this MOU will be enforceable in Swisher County, Texas; and that if legal action is necessary to enforce this MOU exclusive venue will lay in Swisher County, Texas.

## **XXIII. Notice**

Notice by any party to any other party hereto shall be in writing and shall be deemed to have been duly given only if delivered personally or sent by registered or certified mail, with proper postage attached addressed to the respective party as follows subject to change as the respective party may hereafter give notice to the other parties:

For the CITY:  
City Manager,  
City of Tulia  
P.O. Box 847  
Tulia, Texas 79088-0847

For the SCHOOL DISTRICT:  
Dr. Ricardo Garcia,  
Tulia Independent School District Superintendent  
300 North Dallas Ave.  
Tulia, Texas 79088

#### **XXIV. Public Information**

This MOU is public information. To the extent, if any, that any provision of this MOU is in conflict with Tex. Gov't. Code Ann. Chapter 552 et seq., as amended (the "Texas Public Information Act") the same shall be of no force and effect. Each party agrees that it will notify the other party of any public information request which seeks disclosure of "law enforcement tactical information" and will assert a lawful objection or privilege to keep such information confidential.

#### **XXV. No Joint Enterprise**

This MOU does not, is not intended to, and shall not be construed to, create any joint enterprise between or among the parties.

#### **XXVI. Entire Understanding**

This MOU embodies the complete understanding of the parties hereto superseding all oral or written previous and contemporaneous agreements or understandings between the parties relating to matters herein; and, except as otherwise provided herein, must be modified in writing by the parties, unless the circumstances of a particular situation make such a written amendment impracticable, in which case, the ranking on-duty peace officer of each party present at the response location is authorized to deviate from this MOU as that officer, in his sole discretion, deems necessary and advisable.

#### **XXVII. Authorization**

The undersigned officers and agents are properly authorized to execute this MOU on behalf of the parties hereto and each party hereby certifies to the other that any necessary resolutions extending such authority have been duly passed and are now in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the date first state above.

CITY OF TULIA, Texas

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Dusty George  
Mayor

ATTEST:

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Kristina Solomon, City Secretary

APPROVED AS TO CONTENT:

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Paul Brown, Chief of Police, City of Tulia Police Department

TULIA INDEPENDENT SCHOOL DISTRICT

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Dr. Ricardo Garcia  
Superintendent

ATTEST:

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**ORDINANCE NO. 2024-01**

**ORDINANCE OF THE CITY OF TULIA, TEXAS, GRANTING TO ATMOS ENERGY CORPORATION (A TEXAS AND VIRGINIA CORPORATION, WITH ITS PRINCIPAL OFFICE IN THE CITY OF DALLAS, DALLAS COUNTY, TEXAS) THE FRANCHISE AND RIGHTS TO CONDUCT IN SUCH CITY THE BUSINESS OF ACQUIRING, MAINTAINING, CONSTRUCTING, LAYING, REPAIRING, REMOVING, REPLACING, INSTALLING, OPERATING, AND DISPOSING OF A GAS SYSTEM FOR THE SALE, TRANSPORTATION, AND DISTRIBUTION OF NATURAL GAS WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY AND TO THE RESIDENTS AND BUSINESSES LOCATED THEREIN FOR LIGHT, HEAT, POWER, AND ANY OTHER PURPOSES AND THE RIGHT TO USE THE PRESENT AND FUTURE STREETS, ROADS, HIGHWAYS, ALLEYS, PUBLIC WAYS, AND REAL PROPERTY IN SUCH CITY AND OWNED OR CONTROLLED BY SUCH CITY FOR SUCH PURPOSES; PRESCRIBING THE TERMS AND CONDITIONS TO WHICH SUCH FRANCHISE AND RIGHTS ARE SUBJECT; AND PRESCRIBING THE TERM OF SUCH FRANCHISE AND RIGHTS.**

BE IT HEREBY ORDAINED by the CITY of TULIA, TEXAS (hereinafter referred to as the "City") that, subject to the terms and conditions hereinafter set forth, ATMOS ENERGY CORPORATION, a Texas and Virginia corporation with its principal office in the City of Dallas, Dallas County, Texas (hereinafter referred to as "Atmos"), be, and hereby is, granted the non-exclusive franchise and rights to conduct in the City the business of acquiring (by purchase, lease, or otherwise), maintaining, constructing, laying, repairing, removing, replacing, installing, operating, and disposing of (by sale, lease, or otherwise) a gas system, as hereinafter defined, for the sale, transportation, and distribution of natural gas within the municipal boundaries of the City and to the residents and businesses located therein for light, heat, power, and any other purpose during the term set forth below. Such franchise and rights shall include, but not be limited to, the right to use the present and future streets, roads, highways, alleys, public ways, and other real property owned by or under the control of the City for purposes of maintaining, constructing, laying, repairing, removing, replacing, installing, and operating any and all components of the gas system, together with access, at all times and from time to time, to such streets, roads, highways, alleys, public ways, and other real property during the term hereof.

ARTICLE I  
DEFINITIONS

For purposes of this Ordinance, the following terms shall have the meanings set forth below:

Section 1.1. Gas System. The term “gas system” shall mean any and all pipelines, as hereinafter defined, meters, valves, compressors, anti-corrosion items, facilities, structures, machinery, equipment, and appurtenances of any kind that Atmos, in its sole discretion, may deem necessary or advisable for the exercise of the franchise and rights granted to Atmos herein.

Section 1.2. Pipelines. The term “pipelines” shall mean any and all above-ground and below-ground pipes, including, but not limited to, mains, distribution lines, secondary lines, laterals, and other pipes, that have been, are being, or are intended to be used at any time in, or in connection with, the sale, transportation, or distribution of natural gas within the City.

ARTICLE II  
TERM

Section 2.1. Term. Unless earlier terminated in accordance with the terms and provisions hereof, the term of the franchise and rights hereby granted to Atmos shall be for a period of five (5) years, commencing on the effective date hereof as defined in Section 7.6 below.

ARTICLE III  
ACKNOWLEDGMENT AND GRANT  
OF SPECIFIC RIGHTS OF ATMOS

In addition to the franchise and rights granted herein to Atmos, the City acknowledges that Atmos has, and hereby grants to Atmos, the following rights and powers:

Section 3.1. Right to Contract. Atmos may enter into separate gas service contracts with industrial or other consumers in the City whose average consumption of gas generally is substantially in excess of the average consumption by residential or commercial consumers or whose service requirements generally are substantially different from the average service requirements of residential or commercial consumers. Such contracts may provide for rates different from the rates applicable to such residential and commercial consumers.

Section 3.2. Discontinuance of Service. Atmos may discontinue service to any residential or commercial consumer for any lawful reason, including, but not limited to, such consumer's failure to pay, when due, any indebtedness owed by such consumer to Atmos.

Section 3.3. Reconnection Charges. In addition to any and all other proper charges, Atmos may charge and collect from any residential or commercial consumer whose service has been discontinued by Atmos a reasonable reconnection or similar charge for recommencing service to such consumer.

Section 3.4. Adoption of Rules. From time to time during the term hereof, Atmos may, subject to any and all valid and applicable statutes, ordinances, rules, and regulations of any federal or state governmental authority or agency, make and enforce reasonable rules pertaining to Atmos' business and operations, including, but not limited to, requiring any residential or commercial consumer to execute and deliver a written contract or amendment to an existing written contract prior, and as a condition, to the initial commencement, recommencement, or continuation of service to such consumer.

Section 3.5. Removal of Gas System. Atmos may remove all or any portion of the gas system upon the termination by the City, pursuant to Article VI of this Ordinance, of the franchise and rights granted hereby.

Section 3.6. Consumer Preferences. Atmos may give preference to residential consumers over other consumers during periods in which the total volume of gas available for distribution to and within the City is insufficient, for any reason whatsoever, to adequately supply all residential and commercial consumers.

#### ARTICLE IV

##### OBLIGATIONS OF ATMOS

###### Section 4.1. Franchise Fee.

(a) As consideration for the grant of the franchise and rights herein and for the use by Atmos of the streets, roads, highways, alleys, public ways, and other real property owned or controlled by the City, Atmos shall pay to the City, within thirty (30) days after the end of each calendar quarter, a franchise fee equal to five percent (5%) of Atmos' gross receipts derived from the sale, transportation, and distribution by Atmos of natural gas within the City limits during the preceding calendar quarter. Additionally, Atmos shall pay to the City, within thirty (30) days after the end of each calendar quarter, a franchise fee equal to five percent (5%) of the value of gas transported by Atmos Energy for transport customers through the Gas System of Atmos to a delivery point within the City (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' monthly Weighted Average Cost of Gas charged to industrial customers in the West Texas division, as reasonably near the time as the transportation service is performed. At any time during the term of this franchise, the City may increase the franchise fee payable hereunder, subject to and in accordance with all of the following terms and conditions:

- (1) The City may increase the franchise fee only if the franchise fee, as so increased, constitutes a charge for Atmos' use of the City's streets, roads, highways, alleys, public ways, and other real property that is reasonable and lawful. Such increase must be adopted by the governing body of the City at a public hearing that is held no earlier than thirty (30) days following the delivery to Atmos by the City, in person or by certified or registered mail, of a written notice stating the reason for, and the date, time, and place of, such hearing.
- (2) The franchise fee may not be increased pursuant to this Subsection 4.1(a) more than one time in any five-year period during the term of this franchise.
- (3) The franchise fee may not be increased at any one time by an amount exceeding one-half of one percent (1/2 of 1%) of Atmos' gross receipts derived from the sale, transportation, and distribution by Atmos of natural gas within the municipal boundaries of the City; and the total franchise fee payable hereunder may not be increased during the term hereof to an amount exceeding the lesser of (i) five percent (5%) of such gross receipts or (ii) the percentage of gross receipts payable by any electric utility doing business within the City pursuant to a franchise granted by the City.
- (4) In the event the franchise fee provided herein exceeds that franchise fee amount that is recovered by Atmos as part of its base rates for natural gas service charged to its customers within the City, or if the franchise fee is increased in accordance with this Subsection 4.1(a), the City agrees that Atmos may immediately add a line-item surcharge to the monthly bills of Atmos' customers located within the City in an amount sufficient to recover such excess or increase.

(b) Nothing in Subsection 4.1(a) shall preclude, or be deemed to preclude, Atmos and the City from agreeing to an increase in the franchise fee in excess of the limitations imposed in such subsection.

(c) The franchise fee, together with any and all charges of the City for water, sewage, and garbage services provided by the City to Atmos, any and all sales taxes collected by Atmos, and any and all ad valorem taxes assessed by the City against Atmos' property, shall constitute the only amounts for which Atmos shall be obligated to pay to the City and shall be in

lieu of any and all other costs, levies, assessments, fees, or other amounts, of any kind whatsoever, that the City, currently or in the future, may charge Atmos or assess against Atmos' property.

Section 4.2. No Obstruction of Public Property. Atmos shall not, unnecessarily or for any unreasonable period of time, obstruct or interfere with the public use of any of the streets, roads, highways, alleys, public ways, or other real property owned or controlled by the City.

Section 4.3. Repair of Damages. Atmos shall repair any and all damages caused solely by Atmos to any streets, roads, highways, alleys, public ways, or other real property owned or controlled by the City and shall restore, as nearly as practicable, such property to substantially its condition immediately prior to the incident causing such damage. The City may, from time to time, adopt reasonable ordinances regulating such work.

Section 4.4. Conduct of Work and Activities. Atmos shall use reasonable care in conducting its work and activities in order to prevent injury to any person and unnecessary damage to any real or personal property and shall hold and save harmless the City from all damages, losses, or expense caused by the negligence of Atmos, its agents or employees, while exercising any of the rights herein granted.

Section 4.5. Use of Alleys. Atmos shall attempt to utilize the alleys of the City insofar as is reasonably practicable in conducting its work and activities hereunder. Notwithstanding the foregoing, however, Atmos may, when reasonably necessary, utilize the streets and any other public ways owned or controlled by the City to perform such work and activities.

Section 4.6. Service and Supply. Atmos shall use reasonable care to furnish good and reliable service and an adequate supply of natural gas.

Section 4.7. Installation of Underground Pipelines. Atmos shall, when reasonably practicable, install all pipelines under-ground at such depth and in such manner so as not to interfere with the existing pavement, curbs, gutters, or underground wires, cables, or water or sewer pipes owned or controlled by the City.

Section 4.8. No Discrimination Between Consumers. Subject to Atmos' rights set forth in Article III of this Ordinance, Atmos shall not discriminate against any consumer with respect to charges for natural gas or services rendered under substantially the same circumstances to other consumers of the same classification.

Section 4.9. Changes in Gas System.

(a) Atmos shall, upon written request from the City, change the location, position, route, or depth of any pipeline or other component of the gas system if and when such change becomes reasonably necessary because of a change in the grade of any street, road, highway,

alley, public way, or other real property owned or controlled by the City or because of any change in the location of, or in the manner of maintaining, constructing, laying, repairing, removing, replacing, installing, or operating any pavement, curbs, gutters, or underground wires, cables, or water or sewer pipes owned or controlled by the City. The City's written request for such change must set forth, in detail, all of the essential elements and specifications of the requested change.

(b) Atmos may seek payment from any governmental entity or agency, person, or party of any amount to which Atmos may be entitled because of such change in location, position, route, or depth or because of the abandonment of any pipeline or other component of the gas system regardless of whether such pipeline or component is wholly or partially located in any public or private way or right-of-way.

Section 4.10. Service to New Areas. If during the term of this franchise the boundaries of the City are expanded, the City will promptly notify Atmos in writing of any geographic areas annexed by the City during the term hereof ("Annexation Notice"). Any such Annexation Notice shall be sent to Atmos by certified mail, return receipt requested, and shall contain the effective date of the annexation, maps showing the annexed area and such other information as Atmos may reasonably require in ascertaining whether there exist any customers of Atmos receiving natural gas service in said annexed area. To the extent there are such Atmos customers therein, then the gross revenues of Atmos derived from the sale and distribution of natural gas to such customers shall become subject to the franchise fee provisions hereof effective on the first day of Atmos' billing cycle immediately following Atmos' receipt of the Annexation Notice. The failure by the City to advise Atmos in writing through proper Annexation Notice of any geographic areas which are annexed by the City shall relieve Atmos from any obligation to remit any franchise fees to City based upon gross revenues derived by Atmos from the sale and distribution of natural gas to customers within the annexed area until City delivers an Annexation Notice to Atmos in accordance with the terms hereof.

Section 4.11. Schedule of Rates. Atmos shall, at all times, keep on file with the City a schedule setting forth current residential and commercial rates for natural gas and services rendered to customers within the City. Nothing contained in this Ordinance, however, shall adversely affect Atmos' right to apply for an increase in all or any of its rates at any time and from time to time during the term hereof and to a lawful and equitable decision with respect to any such application.

Section 4.12. Rebates. Atmos shall not grant, directly or indirectly, any rebate, in the form of money or any other thing of value, to any consumer in order to circumvent the rate schedule filed with the City pursuant to Section 4.10 of this Article IV.

Section 4.13. Maps of Gas System. Atmos shall have available a map or maps showing the current location of all pipelines and other components of Atmos' natural gas distribution facilities located in the City.

Section 4.14. Bond for Removal of Gas System. Atmos shall, upon electing to remove all or any portion of the gas system in accordance with Section 3.5 of Article III of this Ordinance, file with the Secretary of the City a bond in a reasonable amount and with a proper and adequate surety, securing Atmos' obligation to promptly repair, at Atmos' sole expense, any damage to any real property owned or controlled by the City caused by Atmos' removal of all or any portion of the gas system and to restore such property to substantially the same condition it was in immediately prior to the incident causing such damage.

Section 4.15. Installation of Lines and Meters to Consumers. Atmos shall, at its sole expense, lay a pipeline of adequate size to or near the property line of each consumer and shall install a meter at an appropriate place in order to measure the consumption of gas by such consumer, provided, however, that Atmos shall not be required, and has no obligation hereunder, to lay or extend any pipeline a distance of more than seventy-five feet (75') per customer for the purpose of furnishing natural gas.

## ARTICLE V

### RIGHTS OF THE CITY

Section 5.1. Use of City Property. The right of Atmos hereunder to use any streets, roads, highways, alleys, public ways, and other real property owned or controlled by the City shall in no way affect the right of the City or its agents to maintain, construct, lay, repair, remove, replace, install, or operate any pavement, curbs, gutters, or underground wires, cables, or water or sewer pipes owned by the City and located on or near such streets, roads, highways, alleys, public ways, and other real property.

Section 5.2. Inspection of Books and Records. The City may, at its sole expense and, upon reasonable prior notice, at any reasonable time during normal business hours, inspect and copy any of Atmos' books and records, wherever located, pertaining to and directly affecting the rights of the City arising under or by virtue of this Ordinance.

## ARTICLE VI

## REMEDIES UPON DEFAULT BY ATMOS

Section 6.1. Termination of Franchise and Rights. In the event of a substantial breach by Atmos of any material provision of this Ordinance, the City may terminate the franchise and rights granted to Atmos hereunder, provided, however, that such termination shall not be effective unless and until the procedures described below have been followed:

(a) The City must deliver to Atmos, by certified or registered mail, a written notice signed by the Mayor, attested by the Secretary, and sealed with the official seal of the City. Such notice must (i) fairly and fully set forth in detail each of the alleged acts or omissions of Atmos that the City contends constitutes a substantial breach of any material provision hereof, (ii) designate which of the terms and conditions hereof the City contends Atmos breached, and (iii) specify the date, time, and place at which a public hearing will be held by the governing body of the City 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 thirty (30) days after the date of such notice.

(b) Within ten (10) days following the adjournment of the public hearing described in Subsection 6.1(a) above, the City must deliver to Atmos, by certified or registered mail, a written notice signed by the Mayor, attested by the Secretary, and sealed with the official seal of the City, setting forth (i) the acts and omissions of Atmos described in the first notice that the governing body of the City 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 City determines to have in fact been breached by such acts or omissions of Atmos.

(c) The City must permit Atmos the opportunity to substantially correct all of the breaches hereof set forth in the written notice described in Subsection 6.1(b) above within sixty (60) days after Atmos' receipt of such notice.

## ARTICLE VII

### GENERAL PROVISIONS

Section 7.1. Force Majeure. Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Atmos is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended, and the time during which Atmos is so prevented shall not be counted against Atmos for any reason. The term "force majeure", as used herein, shall mean any cause not reasonably within

Atmos' control and includes, but is not limited to, acts of God, strikes, lock-outs, wars, terrorism, riots, orders or decrees of any lawfully constituted federal, state, or local body, contagions 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 failures of gas supply, or necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this Ordinance.

Section 7.2. Other Ordinances. Except to the extent otherwise expressly provided herein, the franchise and rights granted hereby and the operations and activities performed by Atmos pursuant hereto shall be subject to all valid ordinances and regulations of the City and any valid amendments thereto insofar as, and only insofar as, such ordinances and regulations (i) do not shorten the term hereof or terminate, abrogate, or materially and adversely affect the franchise and rights granted to Atmos hereby or (ii) do not conflict with or are not inconsistent with the terms and provisions contained in this Ordinance, such conflicting or inconsistent ordinances hereby being repealed to the extent of such conflict or inconsistency.

Section 7.3. Amendments. This Ordinance and the franchise and rights granted herein may be amended only by written agreement of the City and Atmos to such amendment.

Section 7.4. Severability. In the event any part of this Ordinance is determined to be invalid or illegal for any reason whatsoever, such invalidity or illegality shall not affect the validity or legality of this Ordinance as a whole or of any part hereof.

Section 7.5. Binding Effect. This Ordinance shall extend to, be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

Section 7.6. Effective Date. This Ordinance shall become effective on the date on which this Ordinance is finally adopted by the City in accordance with law, and Atmos shall file with the Secretary of the City a letter stating that Atmos accepts this Ordinance as adopted and agrees to comply with and be bound by all of the terms and conditions hereof. A true and correct copy of this Ordinance as finally adopted shall be attached to such letter and by reference made a part thereof, and the letter shall be addressed to the Mayor and the governing body of the City, dated, and executed by an authorized officer of Atmos. Upon this Ordinance becoming effective, this Ordinance shall supersede any and all prior ordinances of the City, including but not limited to Ordinance No. 2017-09, regarding the subject matter of this Ordinance.

Section 7.7. Section and Other Headings. The section and other headings contained in this Ordinance are for reference purposes only and shall not affect in any way the meaning or interpretation of this Ordinance.

Read and passed by the City Council of the City of Tulia, Texas with a quorum of such Councilmen duly and lawfully assembled and voting, on the first (1st) reading, on the 13<sup>th</sup> day of February, 2024.

ATTEST:

CITY OF TULIA, TEXAS

\_\_\_\_\_  
Kristina Solomon, City Secretary

By: \_\_\_\_\_  
Dusty George, Mayor

Read and passed by the City Council of the City of Tulia, Texas with a quorum of such Councilmen duly and lawfully assembled and voting, on the second (2nd) and final reading, on the 12<sup>th</sup> day of March, 2024.

ATTEST:

CITY OF TULIA, TEXAS

\_\_\_\_\_  
Kristina Solomon, City Secretary

By: \_\_\_\_\_  
Dusty George, Mayor

City's Mailing Address and Phone Number:

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