



## STAFF REPORT

**Title:** Franchise Agreement - ATCO Gas and Pipelines Ltd.

**Meeting Date:** September 27, 2022

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### **Executive Summary:**

Under the terms of the ten (10) year Gas Franchise Agreement, signed and approved in October 2005, and subject to the approval process outlined in the *Municipal Government Act*, RSA 2000, c. M-26, municipalities have the ability to request an annually adjustment to the franchise fee paid to the City, subject to Alberta Utilities Commission (AUC) approval.

The current Franchise fee is 13% with a cap of 35%. The franchise fee is estimated to generate \$580,128 in 2022 and \$568,157 in 2023.

### **Background:**

The City entered into a gas franchise fee agreement with ATCO in October 2005. The agreement has a 10-year term and as such expired in October 2015. Despite its expiry, the agreement is still in force under section 47(1) of the *Municipal Government Act*, RSA 2000, c. M-26. Pursuant to section 2(e)(i) of the Agreement, one year following the expiration of the term (October 2016), ATCO can withhold 50% of the franchise fee, which would be placed into an interest-bearing trust account. Despite being 7 years beyond the expiration of the terms, to date the City has received 100% of the franchise fees. The Agreement grants ATCO the exclusive right within the municipal service area to provide a gas distribution system, to construct, operate and maintain the gas distribution system, and to use designated roads, right of ways, and municipal lands necessary to provide the gas distribution service. In consideration of the exclusive right granted, ATCO agrees to pay the City a franchise fee calculated as a percentage of ATCO's actual revenue in that year from the distribution tariff rate charged in the municipality (excluding amounts refunded or collected pursuant to third party riders). The Franchise fees are recovered from consumers.

Under the franchise agreement, the franchise fee paid to the City is "in addition to municipal taxes and other levies or charges made by the Municipality against the Company, its land and buildings, linear property, machinery and equipment and the Distribution System" (section 7 of Agreement). As such, ATCO continues to pay both a franchise fee and linear taxes.



Customers on 4 Wing are not included in the Franchise agreement and are not charged the franchise fee due to a Service and Lending agreement between ATCO and 4 Wing. To date a new agreement has not been approved by Council.

Over the term of the Agreement, the City has received:

	Franchise Fee	Municipal Portion of Linear Tax
2013	\$377,877	\$72,121
2014	\$391,453	\$68,241
2015	\$404,074	\$73,837
2016	\$435,172	\$66,859
2017	\$481,002	\$66,391
2018	\$407,117	\$69,824
2019	\$444,337	\$72,325
2020	\$451,172	\$76,205
2021	\$457,807	\$78,039
2022	\$580,128 estimate	\$78,030
2023	\$568,157 estimate	

The franchise fee cap of 35 per cent is a provision under the Franchise Agreement. The franchise fee may only be changed with AUC approval. Franchise fee rates range from 0% to 35%. There does not seem to be any formula or rules on changing rates except that they are at the discretion of the municipality and must be approved by AUC. Revenue generated from an increase in franchise fees could be earmarked for a specific utilities project. ATCO would request a new agreement be signed if Council wishes to change the Franchise fee.

Since the current Gas Franchise Agreement was signed in October 2005, the franchise fee percentage has remained at 13%.

If Council wishes to change the Franchise fee the City would have to notify ATCO in writing no later than November 1, 2022 to begin the process.

Any changes would be included in the 2023 budget.

#### **Alternatives:**

Council may consider the following options:

1. Council may pass a motion to maintain the Franchise Fee as recommended.
2. Council may request a change in the Franchise Fee.



**Recommended Action:**

Administration recommends that Council pass a motion to maintain the 2023 Atco Gas Franchise Fee at 13%.

**Budget Implications (Yes or No):**

Yes

**Submitted by:**

Kevin Nagoya, Chief Administrative Officer