

CITY OF SAN ANTONIO
INTERDEPARTMENTAL CORRESPONDENCE
Finance Department

AGENDA ITEM NO. _____

27

TO: Mayor and City Council

FROM: Ben Gorzell Jr. CPA, Public Utilities Supervisor/Assistant Director of Finance

THROUGH: Terry M. Brechtel, City Manager

COPIES TO: Melissa Byrne Vossmer, Assistant City Manager; Milo D. Nitschke, Director of Finance; Thomas G. Wendorf, Director of Public Works; Andrew Martin, City Attorney; File

SUBJECT: License Agreement with Grey Forest Utilities

DATE: May 22, 2003

SUMMARY AND RECOMMENDATION:

This ordinance authorizes a License Agreement with Grey Forest Utilities (GFU), a gas utility owned by the City of Grey Forest, to allow GFU to use the City's public rights-of-way to operate a gas distribution system within the licensed area; provides that consideration of 3% of gross revenues derived from GFU's system within the license area be paid to the City of San Antonio; and provides for a 25 Year term beginning June 1, 2003 and ending May 31, 2028.

Staff recommends approval of this Ordinance.

BACKGROUND INFORMATION:

In 1967, the City of Grey Forest established a natural gas utility system to serve the City of Grey Forest and surrounding areas. Grey Forest Utilities (GFU), an agency formed by the City of Grey Forest, operates and manages the natural gas distribution system.

The GFU gas distribution system was originally established outside of the City of San Antonio's corporate City limits, however, as the corporate limits have expanded to the north through annexations, GFU's distribution system was incorporated into the City limits and occupies the City's public rights-of-way. Pursuant to State law and the City Charter, the City has the right to consent to the use of its public rights-of-way and receive compensation for that use. Also, based on State law, GFU is not required to obtain the City's consent to utilize the City's public rights-of-way to construct, operate, and maintain its utility system in an annexed area for a period of ten years from the date of annexation.

For at least ten (10) years, GFU and City staff have attempted to negotiate an agreement for the use of the City's public rights-of-way, including provisions related to compensation and the description of the service area. As a result of negotiations, a nine (9) month Interim License Agreement with a term of January 1, 2002 through September 30, 2002 was agreed to and approved on May 16, 2002 with the passage of Ordinance No. 95761 by City Council. To provide additional time to negotiate the terms of a final License Agreement, the term of the Interim License Agreement was extended on two (2) separate occasions. Most recently, pursuant to Ordinance No. 97115 which was passed on January 30, 2003, the term was extended through May 31, 2003.

The City and GFU have continued to meet to resolve all outstanding issues and develop a final license agreement. The City and GFU have reached agreement on a proposed final License Agreement (copy in substantially final form attached as Exhibit I) and following is a summary of the key terms of the agreement:

- Term of the Agreement. The twenty-five (25) year term of the License Agreement is from June 1, 2003 through May 31, 2028.
- Compensation. The City will receive 3% of all gross revenues derived within the Licensed Area (LA) with the exception of revenues derived from the sale of gas to Martin Marietta. GFU has retained the remaining approximately 5 years under its (10) ten year statutory exemption on this annexed area, however, on July 6, 2008 with the expiration of their exemption, GFU will be required to begin compensating the City 3% on the revenues derived from the sale of gas to Martin Marietta. GFU has waived any remaining statutory exemption on all other areas in the License Area as well as areas added to the License Area in the future as consideration for: a) past compensation due the City for past use of its public right-of-way and b) the rights for inclusion of certain areas within the License Area pursuant to the procedures outlined below. Other exclusions to the calculation of gross revenues include sales to public schools, line extension charges, sales tax and bad debt write off.
- License Area (LA). A map of the LA is included as Exhibit II. The LA is subject to change during the term of the License Agreement through the process described below under "Additions to the License Area" or by formal amendment to the License Agreement through passage of an ordinance by City Council.
- Additions to the License Area. During the term of the agreement, the City will be required to notify GFU through its Annexation Plan of its intent to annex any areas which fall within areas identified as "ETJ 1" and "ETJ 2" on the map included as Exhibit I. If, after review and analysis by the Supervisor of Public Utilities, the criteria outlined below is met for areas within ETJ 1 and ETJ 2, respectively, then certain areas will be included in the GFU license area without further City Council action.
 - ⇒ Areas within ETJ 1. If either one of the following criteria is met, then an area will be included within the License Area: Criteria I is that GFU has contiguous natural gas facilities within the newly annexed area. Criteria II is that GFU has natural gas facilities within 7,500 feet and CPS does not have natural gas facilities in the newly annexed area or within 7,500 feet of the newly annexed area.
 - ⇒ Areas within ETJ 2. If GFU has contiguous natural gas facilities within the newly annexed areas, then an area will be included in the License Area.
- Amendments to the License Area. During the term of the agreement, GFU may submit an application to the City to serve an area outside of ETJ 1 or ETJ 2 or an area within ETJ 1 or ETJ 2 that does not meet the criteria outlined above under "Additions to the License Area". The Public Utilities Office will review the application taking into consideration factors such as CPS' ability to serve the area, adequacy of existing service, need for additional service, as well as other factors the City deems reasonable. Any amendment to the License Area under this process would require a formal amendment to the License Agreement evidenced by passage of an ordinance by City Council.
- Construction, Restoration, and Maintenance of Streets. GFU is required to abide by all provisions of the City's Rights-Of-Way Management Ordinance, including the payment of all the required fees and insurance requirements.
- Relocations of Facilities. GFU is required to relocate all its facilities at no cost to the City when reasonable and necessary to accommodate street construction and, widening or any other public improvement projects of the City.

- Audits. At the City's option, an audit for compliance with any or all of the terms of the License Agreement will be performed by a Certified Public Accountant agreed to by both the City and GFU. The cost of the audit shall be borne solely by GFU and the scope and timing of the audit shall be determined by the City subject to the scope being limited to an audit for compliance with the terms of the License Agreement.
- Confidential and Proprietary Information. The City agreed that it would deal with all information marked by GFU as confidential and proprietary in accordance with the Texas Public Information Act and City Policy.

POLICY ANALYSIS:

Pursuant to State Law and the City Charter, the City is entitled to receive compensation for the use of its' public rights-of-way. Additionally, this action is consistent with CPS' bond covenants. As noted above, GFU's system has been incorporated into the City limits as the City has expanded north through annexations. The proposed License Agreement is consistent with the aforementioned policies and application of the CPS' bond covenants.

FINANCIAL IMPACT:

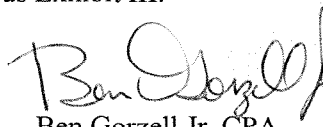
For calendar year 2002, GFU paid the City \$61,467 under the terms of the Interim License Agreement. The estimated compensation to be received pursuant to the proposed License Agreement for the first full year is \$85,000. Additionally, GFU has waived its remaining statutory exemption on all areas in the License Area with the exception of the Martin Marietta property as consideration to the City for past use of the public rights-of-way. The estimated value for GFU's waiver over the next approximately 5 1/2 years is estimated at \$173,000 and will be remitted on a quarterly basis as part of the license fee.

COORDINATION:

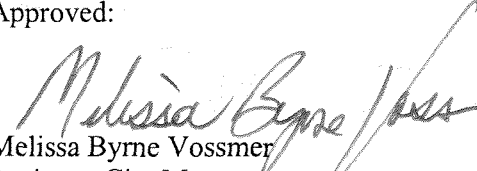
This item has been coordinated with the Public Works Department and the City Attorney's Office. Additionally, elements of the License Agreement which relate to the CPS' Bond Indenture have been coordinated with CPS' bond counsel and general counsel.

SUPPLEMENTARY COMMENTS:

The required ethics disclosure form has been attached as Exhibit III.


Ben Gorzell Jr., CPA
Public Utilities Supervisor/
Assistant Director of Finance

Approved:


Melissa Byrne Vossmer
Assistant City Manager



Terry M. Brechtel
City Manager

Exhibit I

**25 - Year License Agreement Between The City of San Antonio
And the City of Grey Forest on behalf of Grey Forest Utilities**

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LICENSE AGREEMENT

This License Agreement ("License") is made and entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation and Home Rule municipality, acting herein through its City Manager pursuant to Ordinance No. _____, dated _____, 2003, as Licenser (herein referred to as the **CITY**) and the City of Grey Forest on behalf of Grey Forest Utilities, a municipal utility owned by the City of Grey Forest, a Texas Municipal Corporation (herein referred to as **LICENSEE**),

WHEREAS, LICENSEE originally established a natural gas distribution system in 1967 outside the corporate limits of the **CITY** to serve the residents of Grey Forest and surrounding areas of Bexar County; and

WHEREAS, LICENSEE has made major capital investments in the system to serve the areas in which its lines are located; and

WHEREAS, the CITY has annexed some areas in which **LICENSEE'S** gas lines exist and may annex other areas in which **LICENSEE'S** lines may lie in the future; and

WHEREAS, this License, in the nature of a franchise, is intended to replace the Interim License Agreement that was originally approved by Ordinance No. 95761 on May 16, 2002, and effective January 1, 2002, which was subsequently amended by Ordinance Nos. 96466 and 97115, dated September 26, 2002 and January 30, 2003 respectively; and

WHEREAS, this License is intended to resolve any and all past consideration that may be received by the **CITY** for the benefit of past use of its right-of-way already enjoyed by **LICENSEE**; and

WHEREAS, the CITY recognizes that **LICENSEE** has historically provided a valuable utility service to areas and citizens of the **CITY** not generally served by the **CITY'S** municipally-owned utility, City Public Service (CPS); and

WHEREAS, it is the ultimate wish of both the CITY and the LICENSEE to establish and set forth the rights and obligations of **LICENSEE** within the **CITY**, to license and authorize continuance of **LICENSEE'S** utility system within the **CITY**, and to establish procedures (as set forth herein) for determining whether, in consideration of the public health, safety, and interest, further service within the **CITY** and further use of **City's** streets, alleys, highways or public ways by future extensions of **LICENSEE'S** system within the **CITY** should be licensed, consistent with the **CITY'S** and CPS' bond covenants; and

WHEREAS, it is the CITY'S position that the **CITY** has issued billions of dollars of revenue bonds for improvements in its municipally owned electric and gas systems

Licenser: City of San Antonio
Licensee: City of Grey Forest

serving the **CITY** and its environs subject to a covenant included in its bond ordinances under which the **CITY** has agreed with its bondholders that, to the extent it legally may, it covenants that "no franchise shall be granted for the installation or operation of any competing electric or gas system other than that owned by the City," and that "the operation of such systems by anyone other than the City is hereby prohibited; and

WHEREAS, the **CITY** construes the covenants of its bond ordinances to require that its power to grant any franchise, or license having the effect of a franchise, for a competing gas system is limited to the minimum grant that would be required by law consistent with its police power obligations to its citizens and its contractual obligations to its bondholders; and

WHEREAS, the City of Grey Forest and **LICENSEE** issued revenue bonds for the construction of its gas system, with similar covenants, and the revenues derived from its natural gas distribution system are vital to servicing the bonds and providing revenues for the maintenance and operation of its system; and

WHEREAS, consistent with the foregoing, the interests of both cities are served by an agreement recognizing those areas within the **CITY'S** corporate boundaries where facilities of the **LICENSEE** already exist, authorizing service by **LICENSEE** in such areas and providing for the payment for such service rights and for the use of the public rights-of-ways of the **CITY** by the **LICENSEE** for the **LICENSEE'S** natural gas lines, as provided for in this License; and

WHEREAS, the **CITY** and **LICENSEE** wish to resolve in advance potential disputes or conflicts arising from future annexations in areas served by **LICENSEE** by establishing a process to include within the terms of this License and the associated Licensed Area newly annexed areas;

WHEREAS, unless modified by this License, pursuant to § 181.026 of the Texas Utilities Code **LICENSEE** is statutorily exempted from the **CITY'S** consent to use **CITY** rights-of-way within newly annexed areas to operate its existing facilities for a ten-year period of time following annexation;

WHEREAS, after careful consideration, the City Council of the City of San Antonio finds that it is consistent with the public health, safety, and interest that natural gas service be provided to areas of the **CITY** as specified in this License and the accompanying enabling ordinance providing authorization for the **LICENSEE** to utilize the **CITY'S** rights-of-ways as allowed by law in the specified area in return for the compensation provided for herein; **NOW THEREFORE, THE ABOVE PARTIES AGREE TO THE FOLLOWING:**

I. DEFINITIONS

1.1 "Licensed Area" means the area within the **CITY** corporate limits in which Public Rights-of-Way may be used by **LICENSEE** for location of natural gas transmission, distribution, service mains, pipes and related service devices under the authority and subject to the terms and conditions contained in this Interim License. The outlined area depicted in the map attached hereto and incorporated herein as Exhibit A constitutes the Licensed Area. The boundaries of this Licensed Area begin at the northwestern boundary of the corporate limits of the City of Leon Valley at Bandera Road; then proceed in a northwesterly direction along the eastern boundary of Bandera Road to the San Antonio corporate City limits north of Loop 1604; then proceed in a northeasterly direction along the corporate City limits to the western boundary of IH-10; then proceed in a southerly direction along the western boundary of IH-10 to the intersection of IH-10 and Fredericksburg Road; then proceed in a southerly direction along the western boundary of Fredericksburg Road to Workbench Road; then proceed in a southwesterly direction along the northwestern boundary of Workbench Road to Medical Drive; then proceed in a northwesterly direction along the northeastern boundary of Medical Drive to Babcock Road; then proceed in a northerly direction along the eastern boundary of Babcock Road to Roanoke Run; then proceed in a southwesterly direction along the northwestern boundary of Roanoke Run to Oak dell Way; then proceed in a southeasterly direction along the southwestern boundary of Oak dell Way to Danny Kaye Drive; then proceed in a southwesterly direction along the northwestern boundary of Danny Kaye Drive to John Wayne Drive; then proceed in a northwesterly direction along the northeastern boundary of John Wayne Drive to George Burns Drive; then proceed in a southwesterly direction along the northwestern boundary of George Burns Drive to the northeastern corporate limits of the City of Leon Valley; then proceed in a northwesterly direction along the northern boundary of the corporate city limits of the City of Leon Valley to a termination point at the northwestern boundary of the corporate limits of the City of Leon Valley at Bandera Road. (Add new areas, which are: 1) a point-to-point in "E"; 2) an area encompassing NW Loop 1604 west of HW 16 with Leslie Road on the north and approx. 1 mile south of Loop 1604 and Culebra on the south; 3) Sheldon tract north of 1604; and 4) areas east of IH 10 and north of 1604, including the Dominion and M&M's [Martin Marietta Materials Southwest, Ltd., a subsidiary of Martin Marietta Materials, Inc., hereinafter to as Martin Marietta, or its successor, so long as it is quarrying ops] current operational boundaries) These boundaries of the Licensed Area are subject to change and may be redefined to include newly annexed areas pursuant to the procedures specified in Section 17 below or to extend to the east of Salado Creek and contiguous to the Martin Marietta quarrying operations if, and only if, Martin Marietta's quarrying operations are expanded beyond Salado Creek and **LICENSEE** is Martin Marietta's gas provider. (review Ben Cadena's draft of boundaries including the new areas)

1.2 "Public Rights-of-Way" means the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alley, boulevard, parkway, drive, or other easement located inside the San Antonio corporate limits now or hereafter held by the **CITY** and over which the **CITY** exercises rights of

management and control within the **CITY'S** corporate limits, and shall include other easements and rights-of-way as shall now be held or hereafter held by the **CITY** within **City's** corporate limits.

II. GRANTING CLAUSE

2.1 There is hereby granted by the **CITY** to **LICENSEE**, acting by and through Grey Forest Utilities, a nonexclusive license to provide natural gas service to the public within the Licensed Area and for the location of natural gas transmission, distribution, service mains and pipes and related service devices in conjunction with **LICENSEE'S** sale of natural gas in any and all Public Rights-of-Way located within the Licensed Area, as depicted on the map attached hereto as "Exhibit A," subject to the laws of the State of Texas and the City Charter and the applicable laws of the City of San Antonio, as may be amended, and subject to the conditions outlined in this License.

2.2 **LICENSEE** may construct, erect, operate, and maintain in, upon, along, over, under, and across the present and future Public Rights-of-Ways within the Licensed Area its gas distribution system and all the facilities **LICENSEE** deems reasonably necessary for the provision of safe, reliable, and economical natural gas service. All of Licensee's operations within the Licensed Area must conform with any and all of the City's right-of-way rules, policies and regulations, including, but not limited to, Ordinance No. 93319, which was passed and approved on January 25, 2001 and became effective on May 1, 2001, and any future amendments thereto.

2.3 The right to use and occupy said streets for the purpose herein set forth shall not be exclusive, and the **CITY** reserves the right to grant a similar use of said streets to itself or to any person or entity at any time during the period of this License.

III. TERM

3.1 Term. Upon the final approval and execution by both parties, this License shall be deemed effective on June 1, 2003 and shall expire twenty-five (25) years thereafter at midnight on May 31, 2028.

3.2 Acceptance. This License shall be effective and in full force upon execution by both parties. By execution of this License, **LICENSEE** accepts without qualification the rights and privileges granted by this License, subject to the included terms and conditions expressly set forth herein.

IV. COMPENSATION TO CITY

4.1 Compensation to City. The **LICENSEE** shall pay the **CITY** a quarterly License Fee equal to 3% of the gross revenues received during the immediately preceding quarter from gas service provided by **LICENSEE** within the Licensed Area. "Gross revenues" for purposes of this License shall be all revenues from the sale of natural gas, from all classes of customers served by **LICENSEE** and only exclude revenue from

public schools, line extension charges, sales tax and bad debt write-off. **LICENSEE** shall be responsible for providing sufficient proof of such exclusions with each payment. This payment shall include all revenues generated within areas that are annexed by the **CITY** in the future upon final annexation. This payment shall not include those revenues generated from the sale of gas to Martin Marietta for the remainder of the 10-year statutory period (pursuant to §181.026 of the Texas Utilities Code) applicable to that property. **LICENSEE'S** duty to pay the 3% gross revenue License fee for revenues generated from sales to the Martin Marietta property shall commence on July 5, 2008.

4.2 Payments required to be paid pursuant to Section 4.1 above are due to the **CITY** on the forty-fifth (45th) day following the last day of the preceding quarter. **LICENSEE** shall send a statement with the quarterly check that shows gross revenues by customer class by month and deductions from gross revenues to arrive at net sales subject to License Fee (rev. from schools, extension charges, sales tax and bad debt write-off).

4.3 **LICENSEE** shall, unless otherwise directed in writing by **CITY**, send all payments and accounting reports to:

City of San Antonio
Supervisor of Public Utilities
P. O. Box 839966
San Antonio, Texas 78283-3966

4.4 **LICENSEE** shall be assessed a late payment fee of six percent (6%) per annum on any outstanding balance past the date specified for payment until paid, unless prior written approval by the **CITY** has been granted for payment extension.

4.5 Other Assessments. The License fee charge is in addition to those fees that apply to other utilities that use the **CITY'S** rights-of-way and are required by **CITY** Ordinance, presently in force or hereafter enacted, including, Ordinance #93319, as may be amended, or if repealed, its successor ordinance.

4.6 Payment for the quarter in which this License becomes effective will be prorated from the Effective Date to the end of the quarter.

V. CONDITIONS AND LIMITATIONS OF GRANT

5.1 **CITY** expressly reserves the right to adopt, from time to time, in addition to these provisions, ordinances, rules and regulations that it may deem necessary in the exercise of **CITY'S** governmental powers.

5.2 CITY expressly reserves the right to enforce reasonable regulations concerning Licensee's access to or use of streets and other public ways or property, including requirements for permit applications. Except for the procedures set forth in the Future Annexations provision below, during the term of this License, **LICENSEE** shall not apply for, or be granted, permits outside of the Licensed Area and within the corporate limits of the **CITY**. Nothing herein prohibits **LICENSEE** from applying with the Supervisor of Public Utilities, or his successor, to extend its system into other areas of the corporate limits of the **CITY** and consistent with Article 17 below; however, such extensions must be in writing and approved by ordinance. It is understood and agreed that **LICENSEE** is responsible for obtaining all necessary permits and licenses from regulatory authorities other than the **CITY**.

5.3 LICENSEE shall promptly and fully comply with all applicable statutes, ordinances, judgments, decrees, orders, rules and regulations of any governmental authority having jurisdiction over **LICENSEE'S** activities.

VI. CIVIC IMPROVEMENTS

6.1 The **LICENSEE** shall, upon the written request of the **CITY**, relocate its facilities situated within any street, at no expense to the **CITY**, where reasonable and necessary to accommodate street construction, or widening, or other public improvement projects of the **CITY**. **LICENSEE** shall have the right to present to the **CITY** alternative proposals to the proposed relocation. The **CITY** shall give due and reasonable consideration to such alternative proposals.

VII. APPLICABLE LAW AND VENUE

7.1 This License will be interpreted according to the Constitution and laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this License shall be in Bexar County, Texas. This License is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

VIII. INSURANCE REQUIREMENTS

8.1 In lieu of the coverage required by Section 8.2 below, **CITY** agrees that **LICENSEE** may provide proof that it is a municipality that enjoys governmental immunity as defined by the Texas Tort Claims Act, if applicable, and has coverage through the Texas Municipal League Intergovernmental Risk Pool or other satisfactory coverage in an amount sufficient to cover claims and losses as limited by State Law, satisfying the limits specified in 8.2. It is agreed and understood that the **CITY'S** Risk Manager may modify insurance requirements as may be reasonably necessary.

8.2 LICENSEE shall at least be bound by the insurance terms contained in Ordinance No. 93319, as may be amended.

8.3 To the extent that **LICENSEE'S** activities within the **CITY'S** Right-of-way are construed to be protected activities under the Texas Tort Claims Act, **LICENSEE** and the **CITY** acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in Civil Practices and Remedies Code, Section 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

IX. EXCAVATIONS

9.1 All of **LICENSEE'S** excavations and operations within the Licensed Area must conform to any and all of the City's right-of-way rules, policies, fees and regulations, including, but not limited to, those contained in Ordinance No. 93319, which was passed and approved on January 25, 2001 and became effective on May 1, 2001, and any future amendments thereto.

X. LEGAL CONSTRUCTION

10.1 With the exception of provisions in Section 4 and Subsection 16.4 below, in case any one or more of the provisions contained in this License shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions hereof and this License shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If **LICENSEE'S** waiver of its rights pursuant to Section 181.026 of the Texas Utilities Code is construed as invalid, illegal or unenforceable in any respect, then the **CITY** has not waived any claim that it may have against **LICENSEE** for past consideration and the **CITY'S** Supervisor of Public Utilities may require **LICENSEE** to pay an amount equal to the value of the remaining waiver, based upon the Supervisor's determination.

XI. ENTIRE AGREEMENT

11.1 Unless otherwise authorized pursuant to terms specified in this License, it is understood and agreed that this instrument, together with the authorizing ordinance, contains the entire agreement between **CITY** and **LICENSEE** hereto and may not be altered, amended, or modified except by an instrument in writing signed by the parties hereto with the same formality as this License, including approval by San Antonio's City Council. It is further understood and agreed by **LICENSEE** that **CITY** and **CITY'S** agents have made no representations or promises with respect to this License or the making or entry into this License, except as in this License expressly set forth, and **CITY** shall not be liable for reason of the breach of any representations or promises not expressly stated in this License.

XII. RECORDS AND REPORTS

12.1 Method of Accounting. The **LICENSEE** shall maintain its books and a system of accounts in accordance with methods of accounting applicable to the gas distribution industry.

12.2 Books, Records and Inspections. **LICENSEE** shall keep accurate books and accounts of the matters upon the basis of which payments are calculated herein. All applicable books, records, and accounts which serve as supporting documentation for **LICENSEE'S** compliance with this License and for the verification of Gross Revenues, as defined in this License, and calculations of payments made to the **CITY** in accordance with Section 4 above, shall be maintained by **LICENSEE** during the term of this License and for four (4) years thereafter, or until all audits, if any, relating to those documents are complete and findings on all claims have been fully resolved, and any litigation shall have been finally resolved, whichever is the greater period of time.

12.3 The **CITY**, if it elects, has the right during the term of the License to require an independent audit(s) performed by a Certified Public Accountant (CPA), at **LICENSEE'S** sole cost, for the purposes of determining **LICENSEE'S** compliance with any or all of the terms of the License. The **LICENSEE** shall choose the independent CPA within ten (10) calendar days after the **CITY** notifies **LICENSEE** of its election to require an audit. The independent CPA chosen by **LICENSEE** shall be subject to approval by the **CITY'S** Supervisor of Public Utilities. In the event that the **CITY** does not approve an independent CPA chosen by **LICENSEE**, then **LICENSEE** shall have five (5) calendar days to choose another independent CPA, subject to the **CITY'S** approval. This process shall be repeated until an independent auditor is selected by **LICENSEE** and approved by the **CITY**. The scope and timing of the audit shall be determined by the **CITY**, subject to the limitation that the scope is limited to verification of compliance with **LICENSEE'S** obligations under this License. The independent auditor must prepare an engagement letter defining the scope of the audit that is approved by the **CITY**, and the **LICENSEE** must sign the engagement letter within five (5) calendar days so that the audit may be commenced. In the event of such audit, all such books, records, and accounts shall be open and available for inspection and audit by the independent auditor within ten (10) working days from the date of the engagement letter. The **CITY** may at its option elect to accept without audit **LICENSEE'S** accounting and contractual compliance. The independent auditor will not incorporate into its final report the listing of any individual customer, the quantity of gas delivered to such customer, or the individual revenue resulting therefrom, however, nothing in this provision is to be construed to limit the independent auditor's ability to review and audit such records or include in the final report cumulative totals that are based on such records.

12.4 **LICENSEE** and **CITY** understand that some of the information to be provided to the **CITY** by **LICENSEE** pursuant to this section may be proprietary in nature and disclosure of such information to any individuals employed by or working for the **CITY'S** publicly owned utility (City Public Service) or any other competing utility may cause a

competitive disadvantage to **LICENSEE**. As such, in the event that a party other than the **CITY** requests information related to this License, the **CITY** agrees that it will seek an Attorney General Decision, consistent with the Texas Public Information Act, or its successor, related to all information provided by **LICENSEE** pursuant to this section, which has been marked or stamped by **LICENSEE** as confidential or proprietary. If the **CITY** receives a request for information that has been submitted to the **CITY** and marked confidential or proprietary by **LICENSEE**, then it is the **CITY'S** policy, for the purposes of this License and pursuant to the Texas Public Information Act, to timely notify the **LICENSEE** of **LICENSEE'S** right to seek an Attorney General Decision as a third party with interest.

12.5 LICENSEE shall file, within sixty (60) days of the close of the **LICENSEE'S** fiscal year, an annual report prepared and audited by a Certified Public Accountant, clearly showing the annual gross revenues attributable to Grey Forest gas distribution within the San Antonio City limits, including verification of the calculation of payments made to the **CITY** in accordance Section 4 above, as well as those other items of information required by Section 133 of the City Charter. The **City**, upon request of the **LICENSEE** may grant an extension of up to thirty (30) additional days. Such extension shall not be unreasonably denied. The annual report shall be sent to the **CITY'S** Supervisor of Public Utilities at the address specified herein. The independent CPA must state in his or her report an opinion whether the "Gross Revenues" reported under this License to the **CITY** and the amounts paid to the **CITY** during the preceding year, were made in accordance with the applicable terms of this License and are accurately stated. The CPA's annual revenue verification statement shall also include a separate calculation that shows the amount of gross revenues generated within areas that were annexed by the **CITY** within 10 years of each quarter of the year to which that annual statement relates. If it shall be determined as a result of such audit, that there has been a deficiency in the Gross Revenues reported to the **CITY** or the payments due to the **CITY** hereunder, then such deficiency shall become immediately due and payable with interest at 6% per annum from the date when said payments should have been made.

12.6 Notification. Notices required herein may be given by registered or certified mail by depositing the same in the United States mail in the continental United States, postage prepaid. Either party shall have the right, by giving written notice to the other, to change the address at which its notices are to be received. Until any such change is made, notices to **CITY** and **LICENSEE** shall be delivered as follow:

If to CITY:

Supervisor of Public Utilities
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
(210) 207-8620

and

City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
(210) 207-7253

If to LICENSEE:

General Manager
Grey Forest Utilities
P. O. Box 258
Helotes, Texas 78023
(210) 695-8781

and

Mayor
City of Grey Forest
18502 Scenic Loop Rd.
Helotes, Texas 78023
(210) 695-3261

12.7 Upon the **CITY'S** request, **LICENSEE** will make available to the **CITY** meeting agendas for specific Grey Forest Utilities Board meetings and rate filings pursuant to the Texas Public Information Act (running requests not permitted).

12.8 **CITY** agrees that it will not initiate and conduct more than one (1) audit per annum, however, nothing in this Article 12 shall be deemed as limiting the duration or scope of an audit in accordance with Section with 12.3 above. If the **CITY** requests information, books and records for the purposes of conducting an audit pursuant to Section 12.3 above, then any subsequent requests for information, books and records that the **CITY** determines is necessary to complete that audit shall not be construed as additional audits.

XIII. DEFAULT

13.1 Without prejudice to any right, **CITY** shall have the right to terminate this License at any time upon written notice to **LICENSEE** if **LICENSEE** shall fail to perform any material term or condition of this License and fails to cure such breach within sixty (60) days from the date of written notification.

13.2 In the event that performance by **LICENSEE** of any of its obligations under the terms of this License shall be interrupted or delayed by an act of God, by acts of war, riot, or civil commotion, by an act of State, by strikes, fire or flood, then **LICENSEE** shall be excused from such performance for the same amount of time as such occurrence shall have lasted.

XIV. WAIVER

14.1 Other than certain modifications authorized pursuant to the specific terms of this License, no provision of this License may be waived or modified except expressly in writing signed by both parties, and approved by San Antonio's City Council and Grey Forest's City Council, respectively. Failure of either party to require the performance of any term in this License or the waiver by either party of any breach thereof shall not prevent subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

XV. PUBLIC PROPERTY

15.1 The ownership, right of control and use of streets, highways, alleys, parks, public places and all other real property of the **CITY** is hereby declared to be inalienable by the **CITY**.

15.2 **LICENSEE** shall maintain sufficient depreciation as required by applicable law, if any, governing the finance of municipal utilities or the issuance of bonds.

XVI. MISCELLANEOUS

16.1 The attached Exhibit A (map of Licensed Area, ETJ 1 and ETJ 2), are an integral part of this License. Further, any Exhibits demonstrating additions to Licensed Area pursuant to procedures established in this License shall become an integral part of this License.

16.2 Transfer of Rights. This Agreement and any rights herein are personal to **LICENSEE** and shall not be assigned, transferred, sublicensed, leased, subleased or encumbered (other than for bonding or borrowing) without **CITY'S** written consent evidenced by a resolution or ordinance, and such consent may not be unreasonably withheld.

16.3 The individuals executing this License warrant that they have full authority to execute this License on behalf of the entity for whom they are acting herein.

16.4 As consideration for: 1) a release of all of the **CITY'S** potential rights to past compensation for the benefit received by **LICENSEE** for the past use of **CITY** Right-of-Way; and 2) the rights associated with the inclusion of future annexed areas into the Licensed Area pursuant to the procedures set forth in Section 17 below, **LICENSEE** waives its statutory protections found in Section 181.026 of the Texas Utilities Code. Such waiver includes **LICENSEE'S** agreement to pay the 3% of gross revenues in accordance with Section 4 above for all revenues generated within the Licensed Area, except for those revenues generated from the sale of gas to the Martin Marietta property through July 4, 2008. **LICENSEE'S** duty to pay the 3% gross revenue License fee for revenues generated from sales to the Martin Marietta property shall commence on July 5, 2008 and continue thereafter for the duration of this License.

XVII. ANNEXATIONS AND ADDITIONS TO LICENSED AREA

17.1 The parties acknowledge that as of the effective date of this License a portion of the **LICENSEE'S** gas system lies outside of the **CITY'S** current corporate limits, but within the **CITY'S** extra-territorial jurisdiction (ETJ). "ETJ 1" and "ETJ 2" are identified on Exhibit A, which is attached hereto and incorporated herein for all purposes, and is a

map that identifies the area of the ETJ that may be affected by procedures adopted in this Section 17. For purposes of this License, the **CITY** and **LICENSEE** acknowledge that the territorial configuration of ETJ 1 and ETJ 2 may change if the **CITY** annexes territory in either of those areas in the future.

17.2 Areas Annexed within ETJ 1. For purposes of this License, the **CITY** and **LICENSEE** agree that certain areas within ETJ 1 shall be included within the Licensed Area upon annexation of an area by the **CITY**, if either one of the following criteria is satisfied prior to the date an area is formally annexed by the **CITY**: 1) the contiguous existence and location of **LICENSEE'S** natural gas system components or customers within any portion of a newly annexed area; or 2) the contiguous existence and location of **LICENSEE'S** natural gas system components or customers within 7,500 feet of that area and only if CPS does not have any contiguous components or customers within 7,500 feet of that area.

17.3 Areas Annexed within ETJ 2. For purposes of this License, the **CITY** and **LICENSEE** agree that certain areas within ETJ 2 shall be included within the Licensed Area if, and only if, upon the date of final annexation, **LICENSEE** has contiguous natural gas system components or customers located within a portion of a newly annexed area.

17.4 Any areas that may be identified by the **CITY** as the Thrift tracts, Proposition 3 Parks Development and Expansion Venue Project tracts, conservation easements, public park land, or any other area in which development is prohibited within ETJ 1 or ETJ 2 is specifically excluded from this process. If any such area within ETJ 1 or ETJ 2 is developed in the future, then the procedures relevant to each area identified in this Section 17 shall apply.

17.5 The **CITY**, by and through the City Manager, or her designee, shall provide **LICENSEE** written notice of the **CITY'S** plans to annex any area north of the existing corporate limits of the **CITY**, within ETJ 1 and ETJ 2 by delivering to **LICENSEE** a copy of any Municipal Annexation Plan or Amended Annexation Plan within 90 days after the adoption or amendment of such an annexation plan, specifically identifying any and all extra-territorial areas planned for future annexation by the **CITY**. **LICENSEE** agrees to waive any and all rights that it might have related to notification of the **CITY'S** December 2002 Annexation Plan, however, such waiver only applies to the December 2002 Plan, and the **CITY** shall notify **LICENSEE** of any future amendments to that Plan in accordance with this provision.

17.6 Upon notification of an annexation plan or an amendment thereto, **LICENSEE** shall have 180 days to provide written verification, with supporting documentation, to the **CITY** specifying whether or not **LICENSEE** has facility components or customers within a planned annexation. **LICENSEE** may file an amended verification up to the date of annexation if **LICENSEE** constructs contiguous system components or acquires and serves customers within the planned annexation after the date of its initial verification but before the date of final annexation. Failure to notify the **CITY** within 180 days shall

not constitute a waiver by so long as **LICENSEE** provides sufficient information pursuant to 17.7 below.

17.7 If after the 180 day period the **CITY** has not received sufficient information related to **LICENSEE'S** presence within or near a planned annexation, then, upon request of the **CITY**, the **LICENSEE** shall submit appropriate documentation evidencing the existence and location of **LICENSEE'S** components or customers within the newly annexed area within 45 days of such request. Failure to provide sufficient information pursuant to Sections 17.6 and 17.7 shall not constitute a waiver of **LICENSEE'S** duty to pay the 3% License fee for revenues generated within newly annexed areas upon the date of final annexation.

17.8 Upon receipt of sufficient information by **LICENSEE** regarding the status of its system within or near the planned annexation within ETJ 1 or ETJ 2, accompanied by any and all appropriate documentation that may support the existence and location of **LICENSEE'S** components or customers within or near the planned annexed area, the **CITY** will, within 90 days, do any one of the following:

- A. Notify **LICENSEE** in writing that the newly annexed area requested by **LICENSEE** will be included within the Licensed Area;
- B. Notify **LICENSEE** in writing that portions of the newly annexed area will be included within the Licensed Area; or,
- C. Notify **LICENSEE** that no portion of the newly annexed area will be included in the permanent license agreement because **LICENSEE** has failed to meet the requirements of Section 17.2 or 17.3 and, if requested by **LICENSEE**, a statement setting forth specific facts demonstrating that City Public Service provides natural gas to customers, or has natural gas components, in the newly annexed area or is able to serve the area or any other factors relied upon by the **CITY** in denying **LICENSEE'S** request.

17.9 Upon receipt of written notification pursuant to Section 17.8 C., **LICENSEE** has the option of appealing the **CITY'S** decision within 30 days after it receives the **CITY'S** notification letter. Such appeal shall be before a mediator as provided in Section 18 below. **LICENSEE'S** failure to appeal within 30 days shall constitute its acceptance of the **CITY'S** decision.

17.10 License Fees. If the **CITY** notifies **LICENSEE** that an area requested by **LICENSEE** for inclusion in the Licensed Area meets the criteria for inclusion as defined herein, **LICENSEE** agrees to waive its statutory ten year exemption within that area and agrees to pay a 3% gross revenue fee, consistent with Section 4 above, for the area at issue immediately upon receiving notification by the **CITY** and upon final annexation of the area.

17.11 In the event that **LICENSEE** wishes to serve any other area that is not located within ETJ 1 or ETJ 2 or does not meet either criteria identified for inclusion of area within ETJ 1 or ETJ 2 into the Licensed Area, then **LICENSEE** has the right to submit a written application to the Supervisor of Public Utilities. The Supervisor of Public Utilities shall review each application individually to determine whether to recommend a grant or denial of such an extension and shall coordinate with City Public Service prior to making a determination on the application. The **CITY** will consider CPS' ability to serve the location sought to be served by **LICENSEE**, as well as any other factors deemed reasonable by the **CITY**. Other factors may include, but shall not be limited to, the adequacy of existing service, the need for additional service, the effect of granting the extension on the **LICENSEE** and any other utility serving the area, community values, recreational and park areas, historical and aesthetic values, environmental integrity and the probable improvement of service or lowering of cost to consumers in the area. **LICENSEE** shall not extend its system until it has final authorization from the **CITY**, as evidenced by the passage of an ordinance. If the **CITY** grants the application to serve the annexed area then **LICENSEE** shall pay the **CITY** the 3% license fee from revenues generated within that area upon final annexation.

17.12 Any area added to the Licensed Area that results from: 1) the process associated with newly annexed areas within ETJ 1 or ETJ 2 and in satisfaction of the criteria established in 17.2 or 17.3 above; or 2) the contiguous expansion of Martin Marietta's, or its successor's, quarrying operations beyond Salado Creek, must be approved in writing by the City Manager or her designee. Any other addition that might result from an application process consistent with 17.11 above shall require City Council approval. Any addition of area to the Licensed Area shall be specifically identified and mapped on future Exhibits and incorporated herein.

XVIII. MEDIATION

18.1 Prior to filing suit, the parties to this License shall use non-binding mediation in an attempt to resolve any denials pursuant to Section 17.8 C. above, and certain other limited provisions, expressly excluding disputes involving the applicability or effect of superior laws, the constitutionality of any requirement in this License or the preemptive effect of federal law. If any of the provisions of this section are determined to be invalid or unenforceable, the remaining provisions shall remain in effect and binding on the parties to the fullest extent permitted by law.

18.2 To initiate non-binding mediation, a party shall give written notice to the other party or parties. In the mediation process, the parties will try to resolve their differences voluntarily with the aid of an impartial mediator, who will attempt to facilitate negotiations. The mediator will be selected by agreement of the parties. If the parties cannot agree on a mediator, JAMS/Endispute shall designate a mediator at the request of a party. Any mediator so designated must be acceptable to all parties.

18.3 The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to discuss their differences in good faith and to

attempt with the assistance of the mediator, to reach an amicable resolution of the dispute. Any finding by the mediator shall be a non-binding determination.

18.4 So long as it is consistent with applicable open government laws, the mediation will be treated as a settlement discussion and therefore will be confidential in accordance with Tex. Civ. Prac. & Rem. Code §154.073. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings.

18.5 _____ will _____ costs in the mediation.

In witness of which this License has been executed this _____ day of _____, 2003.

CITY OF SAN ANTONIO:

TERRY M. BRECHTEL
City Manager

ATTEST: _____
City Clerk

APPROVED AS TO FORM: _____
City Attorney

ACCEPTED AND AGREED TO: Pursuant to the authority granted by the City Council of the City of Grey Forest, the _____ day of _____, 2003, the City of Grey Forest, by and through Grey Forest Utilities accepts the License granted by the City of San Antonio to Grey Forest Utilities for the use of the CITY'S streets and public rights-of-way for gas distribution and agrees to the terms and conditions set out therein.

**CITY OF GREY FOREST BY AND THROUGH
GREY FOREST UTILITIES:**

MAYOR of the City of Grey Forest

General Manager of Grey Forest Utilities

ATTEST: _____
City Secretary

APPROVED AS TO FORM: _____
City Attorney

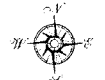
Exhibit II



Legend

Cities and Towns

Extraterritorial Jurisdiction

 Grey Forest License Area


0 8,000 16,000

Feet

**City of San Antonio
Planning Department**

Erni R. Moncivais, AICP, AIA
Director, Planning Department

Development and Business
Services Unit - 2nd Floor
1501 S. Alamo
SAN ANTONIO, TEXAS 78205

The seal of the City of San Antonio is located to the right of the contact information. It features a central shield with a figure, surrounded by a circular border containing the text "CITY OF SAN ANTONIO" and "1822".

MAP OF DESIGNATED AREAS SUBJECT TO LICENSE AGREEMENT BETWEEN CITY OF SAN ANTONIO & CITY OF GREY FOREST & GREY FOREST UTILITIES

Exhibit III

City of San Antonio Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) Identity of any individual who would be a party to the discretionary contract.

James Tipton

(2) Identity of any individual who is a party to the discretionary contract.

(3) Identity of any individual who is a party to the discretionary contract.

N/A.

(4) Identity of any individual who is a party to the discretionary contract.

N/A.

(5) Identity of any individual who is a party to the discretionary contract.

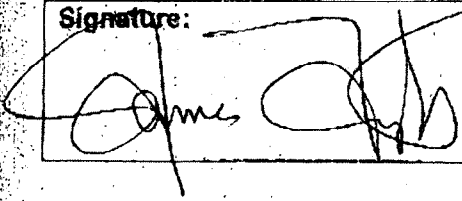
N/A.

¹ A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

CONFIDENTIAL

To Whom Made:	Amount:	Date of Contribution:
N/A.		

CONFIDENTIAL

N/A.		
Signature: 	Title: C.E.O. Company: Grey Forest Utilities	Date: 05-15-03

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.