

AN ORDINANCE GRANTING TO GREY FOREST UTILITIES, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE NATURAL GAS FRANCHISE, RELATING TO THE DISTRIBUTION AND SALE OF GAS IN THE CITY OF LEON VALLEY THROUGH THE USE OF PUBLIC STREETS, EASEMENTS AND RIGHTS OF WAY; SETTING FORTH TERMS AND CONDITIONS TO GOVERN THE FRANCHISE; PROVIDING A SEVERABILITY CLAUSE, A SAVINGS CLAUSE AND AN EFFECTIVE DATE.

WHEREAS, Grey Forest Utilities is a Texas Corporation providing gas services in the Leon Valley, Texas area and its businesses and residents; and

WHEREAS, pursuant to the authority under the Texas Tax Code, the City of Leon Valley, Texas finds that it is to the mutual advantage of both the City and Grey Forest Utilities to enter into a franchise establishing the terms and conditions under which Grey Forest Utilities will operate in the City to the benefit of the City and its Citizens.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEON VALLEY, TEXAS:

SECTION 1: Grant of Franchise

1.1 Subject to the terms and conditions of this Ordinance, the right, privilege and franchise is hereby granted to Grey Forest Utilities, its successors and assigns (hereinafter referred to as "Grey Forest"), to establish, equip, install, construct, maintain and operate as now or hereafter constituted, works, systems, plants, lines and all related facilities in the present and future streets, alleys, and public places of the City of Leon Valley (hereinafter referred to as the "City"), Texas and its successors, gas lines, with all necessary or desirable appurtenances (including underground conduits, poles, wires, transmission lines and other structures and telephone wires), for the purpose of selling, storing, supplying, conveying, transmitting, distributing and/or transporting natural gas within the limits of the City, the inhabitants thereof, and persons and corporations beyond the limits thereof, for gas and other purposes, including any territory that the City may hereafter acquire, annex or purchase. The rights, privileges, and franchises granted by this ordinance are not to be considered exclusive, and City hereby expressly reserves the right to grant, at any time, like privileges, rights, and franchises as it may see fit to any other person or corporation for the purpose of transporting, delivering, distributing, or selling gas to and for City and the inhabitants thereof.

SECTION 2: Term and Renewal

2.1 The initial term of this Franchise shall expire ten (10) years from the effective date of this Franchise Ordinance. Grey Forest agrees to provide, no less than one (1) year before the expiration of the initial term, written notice of its intent to renew this Franchise. If written notice is provided then at the end of the initial ten (10) year term, the term shall be automatically renewed for one additional ten (10) year term, unless:

(a) The Company is in material default under the terms of this Franchise Ordinance and written notice is given to the Company by the City; or

(b) Written notice of intent to renegotiate this Franchise at the expiration of the initial term is given to the Company by the City.

2.2 Written notice by the City specified in Section 2.1 above shall be provided one hundred and eighty (180) days after receipt of Grey Forest's intent renew the Franchise. The notice shall specify either the desire to renegotiate or the desire to terminate this Franchise, in which event this Franchise shall either be renegotiated or terminated at the end of the initial term. After renegotiation, this Franchise may be extended for an additional twenty (20) year term, which will include twenty (20) years from the date of the expiration of the initial term. The party that has been provided notice of its intent to seek to renegotiate the terms of this Franchise may withdraw its request prior to the expiration of the initial term of the Franchise, in which event the Franchise shall be renewed automatically.

SECTION 3: Location of Facilities and Use of Public Ways

3.1 The construction, maintenance, and operation of Grey Forest's distribution system and property subject to this franchise shall be subject to all ordinances, regulations and permitting passed and approved by City Council, to the extent that such ordinances and regulations are not in conflict with any pre-emptive jurisdiction over the City. Poles, structures and other appurtenances shall be so erected and maintained as not to interfere unreasonably with traffic over streets and alleys, and underground utilities shall conform to City ordinances and codes, including, but not limited to, requirements for placement of utilities underground.

3.2 In refilling of all openings made by Grey Forest, it shall restore the City's public right of way to a condition equal or better than the original condition, and when Grey Forest shall open any ground in the City's rights of way, Grey Forest shall open no more space or keep the space open any longer than is reasonably necessary to properly execute for which such space shall have been opened. The Company shall comply with all applicable ordinances, rules and regulations for the repair of cuts and excavations.

3.2 Grey Forest shall not install any pipe, line or facility within any park or recreational land and shall not install any above ground facility on City property, without specific written permission by the City. Grey Forest may petition the City Council for permission to cross park lands at the sole discretion of the City Council.

3.3 If Grey Forest is required to remove or relocate its mains, laterals or other facilities to accommodate construction of streets or alleys by the City, Grey Forest shall have the right to seek a surcharge to recover relocation costs pursuant to Section 104.112, Texas Utility Code or reimbursement through any other federal, state county or local program. All requests require appropriate documentation submitted to the City.

3.4 Grey Forest shall use reasonable efforts to avoid any permanent or other damage to any street, alley, bridge or other public place or right of way. City and Grey Forest shall exercise reasonable effort that the installation of utilities in public right of ways do not unreasonably interfere with any facilities of Grey Forest, the city or other utility providers.

SECTION 4: Construction, Maintenance, Operation, and Relocation of Grey Forest Facilities:

A. GREY FOREST shall lay, maintain, repair, construct, operate, and replace its pipes, mains, laterals, and other equipment to minimize interference with traffic, place or cause to be placed

appropriate barriers to mark excavations or obstructions in accordance with applicable state and federal requirements, and restore to approximate original condition all Public Rights-of-Way that it may disturb. In the event the GREY FOREST fails to restore the Public Rights-of-Way to approximate as good a condition as before the commencement of the work and within a reasonable time, the City may restore or maintain same, after giving the GREY FOREST thirty (30) days' written notice, provided however that if the GREY FOREST is proceeding diligently to restore the property, the time for restoration shall be extended for such time as is necessary for the GREY FOREST to complete the restoration. If the GREY FOREST fails to restore the Public Rights-of-Way as stated above, GREY FOREST will receive a bill for the reasonable cost of the City repairing same. The GREY FOREST shall, within thirty (30) days after receiving such bill, pay the reasonable cost for such service. In determining the location of the facilities of the City and other users of Public Right-of-Way within City, City shall minimize interference with the then existing Facilities of GREY FOREST and shall require other users of Public Rights-of-Way to minimize interference with existing facilities of GREY FOREST. In the event of a conflict between the location of the proposed facilities of GREY FOREST and the location of the existing facilities of City or other users of Public Rights-of-Way within Public Rights-of-Way that cannot otherwise be resolved, City or an authorized agent of City shall resolve the conflict and determine the location of the respective facilities within the Public Rights-of-Way.

GREY FOREST or contractors working on behalf of GREY FOREST shall not be required to pay for street cutting, street excavation or other special permits related to excavations in Public Rights-of-Way in connection with GREY FOREST's operations in Public Rights-of-Way. City shall notify GREY FOREST as soon as reasonably possible of any projects that will affect GREY FOREST's facilities located in the Public Rights-of-Way. When required to by City to remove or relocate its mains, laterals, and/or other facilities lying within Public Rights-of-Way, GREY FOREST shall do so as soon as practically possible with respect to the scope of the project. In no event shall GREY FOREST be required to remove or relocate its facilities in less than thirty (30) days from the time notice is given to GREY FOREST by City.

- B. If City, in constructing, reconstructing, reconfiguring, maintaining, or repairing its sewers, drainage, water lines, streets, or utilities, should request that GREY FOREST remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way, GREY FOREST shall do so at its own expense.

When GREY FOREST is required by City to remove or relocate its mains, laterals, and other facilities lying within Public Rights-of-Way to accommodate a request by City, and costs of utility removals or relocations are eligible under federal, state, county, local or other programs for reimbursement of costs and expenses incurred by GREY FOREST as a result of such removal or relocation, and such reimbursement is required to be handled through City, GREY FOREST costs and expenses shall be included in any application by City for reimbursement if GREY FOREST submits its cost and expense documentation to City prior to the filing of the application. City shall reimburse GREY FOREST for its cost to remove or relocate its facilities within thirty (30) days after receipt of the reimbursement from federal, state, county, local or other agencies.

If GREY FOREST is required by City to remove or relocate its mains, laterals, or other facilities lying within Public Rights-of-Way for any reason other than the construction or reconstruction, reconfiguration, maintaining, or repairing of sewers, drainage, water lines, streets or utilities by

City or others, GREY FOREST shall be entitled to reimbursement from City or others of the cost and expense of such removal or relocation.

- C. When GREY FOREST is required to remove or relocate its mains, laterals or other facilities to accommodate construction by City without reimbursement from City, GREY FOREST shall have the right to seek recovery of relocation costs from responsible parties as provided for in applicable state and/or federal law. Nothing herein shall be construed to prohibit, alter, or modify in any way the right of GREY FOREST to seek or recover a surcharge from customers for the cost of relocation pursuant to applicable state and/or federal law. City shall not oppose recovery of relocation costs when GREY FOREST is required by City to perform relocation. City shall not require that GREY FOREST document request for reimbursement as a pre-condition to recovery of such relocation costs.
- D. If City abandons any Public Rights-of-Way in which GREY FOREST has facilities, such abandonment shall be conditioned on GREY FOREST's right to maintain its use of the former Public Right-of-Way and on the obligation of the party to whom the Public Right-of-Way is abandoned to reimburse GREY FOREST for all removal or relocation expenses if GREY FOREST agrees to the removal or relocation of its facilities following abandonment of the Public Right-of-Way. If the party to whom the Public Right-of-Way is abandoned requests GREY FOREST to remove or relocate its facilities and GREY FOREST agrees to such removal or relocation, such removal or relocation shall be done within a reasonable time at the expense of the party requesting the removal or relocation. If relocation cannot practically be made to another Public Right-of-Way, the expense of any right-of-way acquisition shall be considered a relocation expense to be reimbursed by the party requesting the relocation.
- E. All construction and work done by GREY FOREST, and the operation of its business, under and by virtue of this ordinance, shall be in conformance with the ordinances, rules and regulations now in force and that may hereafter be adopted by the City, relating to the use of its Public Rights-of-Way of the City. This franchise agreement shall in no way affect or impair the rights, obligations or remedies of the parties under the Texas Utilities Code, or other state or federal law. Nothing herein shall be deemed a waiver, release or relinquishment of either party's right to contest or appeal any action or decision of the other party, including ordinances adopted by the City, that it believes is contrary to any federal, state or local law or regulation. GREY FOREST shall, on an Annual basis, provide, reproducible copies of maps showing the location of all existing Facilities to the City.

SECTION 5: Duty to Serve:

The GREY FOREST hereby agrees that it will not arbitrarily refuse to provide service to any residential or commercial customer that it is economically feasible for the GREY FOREST to serve if the customer to be benefited will pay the cost thereof or if it can be shown that the revenue resulting from such extension will, within a reasonable time after same is made, pay a reasonable return on the GREY FOREST's investment, after making the customary allowance for depreciation.

SECTION 6: Indemnification

6.1 IN THE EVENT OF INJURY TO ANY PERSON OR DAMAGE TO ANY PROPERTY BY REASON OF GREY FOREST'S OR ITS AGENTS OR CONTRACTORS IN THE CONSTRUCTION, OPERATION, MAINTENANCE, OR REPLACEMENT OF GREY FOREST'S

GAS DISTRIBUTION SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY, GREY FOREST SHALL INDEMNIFY AND HOLD HARMLESS THE CITY FROM LIABILITY IN CONNECTION THEREWITH. GREY FOREST HAS THE SOLE RIGHT TO CONTROL THE DEFENSE AND SETTLEMENT OF ANY CLAIM OR LEGAL PROCEEDING THAT GIVES RISE TO A RIGHT OF INDEMNITY UNDER THE IMMEDIATELY PRECEDING SENTENCE.

TO THE FULLEST EXTENT PERMITTED BY LAW GREY FOREST SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, AND AGENTS AND EMPLOYEES OF THEM FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK, PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF), BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF GREY FOREST, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN PART BY A PARTY INDEMNIFIED HEREUNDER. SUCH OBLIGATION SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY THAT WOULD OTHERWISE EXIST AS TO A PARTY OR PERSON DESCRIBED IN THIS AGREEMENT.

IN CLAIMS AGAINST ANY PERSON OR ENTITY INDEMNIFIED UNDER THIS SECTION, BY AN EMPLOYEE OF GREY FOREST, A SUBCONTRACTOR, ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT SHALL NOT BE LIMITED BY A LIMITATION ON AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR GREY FOREST OR A SUBCONTRACTOR UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFIT ACTS.

SECTION 7: Beneficiary

7.1 This franchise is intended for the sole benefit of the City and Grey Forest and shall not be construed to create any right, benefit, or cause of action in any third party.

7.2 In addition to the rates charged for gas service, Grey Forest may make and enforce reasonable charges, rules, and regulations for service rendered in the conduct of its business. Such rates shall be established in accordance with all applicable statutes and ordinances. Grey Forest shall maintain on file with the City copies of its current tariffs, schedules or rates and charges and service rules and regulations applicable to the City. The rates and charges collected from its customers in the City shall be subject to revision and change in the manner provided by law. The City recognizes and acknowledges that the members of Grey Forest agree to abide by all rules and regulations of Grey Forest as members/customers and nothing in this ordinance should be construed to relieve any member of its obligations to Grey Forest or to abridge its rights of membership in Grey Forest. Grey Forest agrees to apply its policies, rules, regulations, and tariffs in a fair and uniform manner when providing gas service to its members who reside within the limits of the City.

SECTION 8: Franchise Fees & Rates

8.1 As full consideration for the rights and privileges conferred by this Franchise Ordinance and as a charge for the use of streets, alleys and public rights of way, Grey Forest shall collect from its customers and pay to the City a Franchise Fee equal to the sum of the following:

- 1) Four and one-half percent of Grey Forest's actual Gross Receipts from gas sales to its gas sales customers located in the City; plus
- 2) Four and one-half percent of Grey Forest's actual Gross Receipts from Gas Transportation to its gas transportation customers with re-delivery points in the City.
- 3) Other revenues derived from the following 'miscellaneous charges':
 - i. Charges to connect, disconnect, or reconnect gas within the City;
 - ii. Charges to handle returned checks from consumers within the City;
 - iii. Such other service charges and charges as may, from time to time, be authorized in the rates and charges on file with the City; and
 - iv. Revenues billed but not ultimately collected or received by WTG; and
 - v. Contributions in aid of construction" ("CIAC") which shall be calculated on an annual calendar year basis, i.e. from January 1 through December 31 of each calendar year.

8.2 From and after the effective date of this agreement, Grey Forest will make quarterly payments to the City for use of City rights of way and file a statement with the City showing its Gross Receipts from gas sales and gas transportation into the City, including the calculation of the franchise Fee for the subject time period.

8.3 It is agreed that the Franchise Fee payments shall be in lieu of any payments for the rights to use the public rights of way in the City including the charge permitted by Texas Tax code Chapter 182 et. seq.

SECTION 9: Non-Exclusive

9.1 This franchise is not exclusive, and nothing herein shall be construed so as to prevent the City, from granting other like or similar rights and privileges to any other person, firm or corporation consistent with applicable state law.

SECTION 10: Dispute Resolution

10.1 Resolution of any dispute arising under this Franchise Ordinance between the City and Grey Forest shall first be attempted via mediation. The dispute shall be submitted to mediation upon written demand by either party. The mediation shall take place in Bexar County, Texas. The mediator shall be selected by agreement between the City and Grey Forest within twenty (20) calendar days from the date the demand for mediation is received by the other party. If the City and Grey Forest cannot agree on a mediator, it shall be done via chance drawing with each submitting a name. Mediation of any dispute shall be a condition precedent to filing a lawsuit, except that nothing herein shall preclude a party from seeking a mandatory or prohibitive injunction or equitable relief from any Court of competent jurisdiction to maintain the status quo pending mediation of any dispute.

SECTION 11: Audit

The Mayor or his/her designee, shall, upon (5) days written notice, have the right to examine and audit, at any time during regular business hours, the accounts and records of Grey Forest that relate to administration of this Franchise.

SECTION 12: Acceptance

12.1 Grey Forest shall file its written acceptance of this franchise to the City within sixty (60) days after its passage and approval by City Council.

12.2 Grey Forest acceptance of the franchise agreement under City of Leon Valley Ordinance 2015-xx is reflected in Exhibit A as attached.

SECTION 13: Conflicting Ordinances & Severability

13.1 To the extent that any part or all of any other existing ordinance shall conflict with any provision of this Franchise Ordinance shall prevail upon passage, adoption and acceptance of this Ordinance. It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this Ordinance are severable, and if any phrase, clause sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation in this Ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Leon Valley this the 16th day of June, 2015.

APPROVED

Chris Riley

CHRIS RILEY
MAYOR

Attest:

Saundra Passailaigue

SAUNDRA PASSAILAIGUE, TRMC
City Secretary

Approved as to Form:

Pat [Signature]

City Attorney

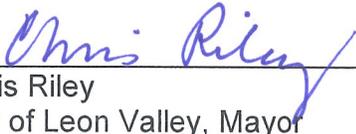


EXHIBIT A

GREY FOREST (ORDINANCE 212) ACCEPTANCE OF FRANCHISE AGREEMENT WITH THE
CITY OF LEON VALLEY (ORDINANCE No. 15-008)

Date: 7-7-2015

Date: _____


Chris Riley
City of Leon Valley, Mayor

Richard G. Reinhard
City of Grey Forest, Mayor


Hank Brummett
City of Leon Valley, Interim City Manager

William J. English
Grey Forest Utilities, General Manager

ATTEST:

ATTEST:


Sandra Passailaigue
City of Leon Valley, City Secretary

Shannan Kinsley
City of Grey Forest, City Secretary

