ORDINANCE NO. **2014-02-10-06**

GRANTING AN ELECTRIC & GAS FRANCHISE TO
CITY PUBLIC SERVICE

BE IT ORDAINED BY THE CITY COUNCIL

OF THE CITY OF LEON VALLEY

SECTION 1. Description. This agreement hereby grants the City of San Antonio, acting by and through the City Public Service Board, (CPS Energy), a twenty-year franchise commencing on February 1, 2014, for transmission, distribution and sale of electricity within CPS Energy's certificated service area and within the City of Leon Valley (Franchise Agreement). CPS Energy may construct, operate and maintain in, upon, over, under, and across the present and future streets, alleys, public ways and places within the City of Leon Valley, Texas (City) all the facilities CPS Energy deems reasonably necessary for the rendition of safe, reliable and economical electric and gas service (CPS Energy Facilities).

SECTION 2. Payment for Street Rental. CPS Energy shall make a payment for street rental to the City in the amount of four and one half percent (4.5%) of CPS Energy's gross receipts from the sale of electricity and gas within the City. "Gross receipts" excludes uncollectibles. The payment for street rental shall be treated by CPS Energy as a system-wide cost of service, and shall not be identified separately on the customer bill.

2.1. The payment for street rental will reflect CPS Energy's gross receipts for such sales, on a quarterly basis and will be due to the City within thirty (30) days after the close of each quarter in CPS Energy's fiscal year.

2.2. If at any time within the term of this franchise the City passes an ordinance increasing the franchise fee from 4% to 5%, CPS Energy agrees to execute documents necessary to accept this increased fee. Payment of the additional 1% shall be treated by CPS Energy as a City-specific fee and will be identified separately as a surcharge on bills of customers residing within the City limits. Payment to the City of this additional street rental fee will be made consistent with the procedure described in Section 2.1, beginning no sooner than the following quarter, as soon as the implemented surcharge is reflected on customer bills.

SECTION 3. Limitation on Assessments. The street rental charge is in lieu of all other fees or charges and the City shall not impose or collect, nor attempt to impose or collect, any charge or fee in connection with the construction, operation and maintenance of CPS Energy Facilities within the City other than the payment for street rental provided for under SECTION 2 above.

SECTION 4. Audits. Upon written notice to CPS Energy, the City shall be entitled, during normal working hours and at reasonable intervals during the term of this agreement, to audit records of CPS Energy supporting the payment for street rental, including customer lists, to the extent such information is public information.

SECTION 5. Construction, Operation and Maintenance of Facilities. CPS Energy may open cut streets, curbs and sidewalks, bore, or utilize any other methods it deems reasonably necessary to construct, operate and maintain CPS Energy Facilities within the City. The design and construction of CPS Energy Facilities and CPS Energy's access to and restoration of paved surfaces shall be in accordance with CPS Energy design and construction standards, which CPS Energy shall make available for review by the City upon request. Street cuts

and restoration of paved surfaces shall be subject to ordinances that may be adopted by the City, to the extent that such requirements are not in conflict with the following provisions.

5.1 Prior to starting any work, CPS Energy shall give ten (10) days written notice of the scope and duration of the work to the official designated by the City. Prior notice may be reduced or waived by the City in order to allow the work to proceed. In the event CPS Energy determines there is an emergency, CPS Energy may act without any prior notice, but shall provide notice to the City as soon as practicable.

5.2 The surface of any street, alley, or public way or place disturbed by CPS Energy shall be restored by CPS Energy within a reasonable time after the completion of the work. No street, alley, or public way or place shall be encumbered by CPS Energy for a longer period than shall be reasonably necessary to execute the work. CPS Energy shall continue to maintain the integrity of the portion of any paved surface over CPS Energy Facilities, as restored by CPS Energy during the work, as long as CPS Energy Facilities remain in use by CPS Energy at that location. CPS Energy shall have no responsibility for any injuries to landscaping or improvements located over, under, or around CPS Energy Facilities, but shall use reasonable care to avoid such injuries.

SECTION 6. Civic Improvements. The City shall give reasonable prior written notice of street repaving, widening or straightening projects to CPS Energy. CPS Energy shall, at its expense, relocate CPS Energy Facilities in connection with activities reasonably related to the City's widening or straightening of streets.

SECTION 7. Use of Pole Space. CPS Energy shall permit the City to use existing CPS Energy poles for the City's communications conductors used for the City's governmental purposes, to the extent CPS Energy determines space is available. Such use shall be subject to the City's execution of CPS Energy's form of contract for pole attachment and payment of the CPS Energy fees applicable to such service.

SECTION 8. Rate Schedules. CPS Energy shall offer to serve the City's accounts under the rate schedules most favorable to the City, in accordance with CPS Energy's Rules and Regulations applying to Electric Service, a copy of which will be provided upon request.

SECTION 9. Furnishing of Information CPS Energy will make available to the City meeting agendas for CPS Energy's Board meetings, information packets, and rate filings, and will arrange periodic sessions for presentations by and discussions with knowledgeable CPS Energy employees.

CPS Energy will at times provide confidential and competitively sensitive information to the City, including, quarterly electrical usage reports. The City agrees to keep such information confidential according to the Confidentiality Agreement for an Inter-Governmental Transfer of Information attached hereto as Exhibit A.

SECTION 10. Uniform Franchise Benefits. If at any time during the term of this Franchise Agreement, CPS Energy enters into another franchise agreement for the provision of electric and gas service which provides increased financial benefits to any incorporated community in excess of the percentages stated in SECTION 2, CPS Energy shall provide written notice of such event to the City. At the option of the City, which must be exercised in writing within thirty (30) days after the City's receipt of notice from CPS Energy, this Franchise Agreement shall be amended to incorporate such increased financial benefit. The amendment to the Franchise Agreement shall be effective from the same date shown in the franchise agreement with such other incorporated community.

SECTION 11. *Limited indemnity.* It is expressly understood and agreed by and between the City and CPS Energy that CPS Energy shall indemnify and hold the City harmless from any and all loss sustained by the

City on account of any suit, judgment, claim or demand whatsoever to the extent that such loss is attributed to the negligence of CPS Energy, its agents or employees in the performance of services under this Franchise Agreement.

SECTION 12. Effective Date. This Franchise Agreement shall become effective upon its adoption by the City in the form authorized by the board of CPS Energy. It shall supersede and take precedence over inconsistent ordinances, resolutions, or regulations hereafter or heretofore passed by the City. The payments provided for in SECTION 2 shall be effective for CPS Energy's gross receipts from electric sales within the City commencing February 1, 2014, if this Franchise Agreement is adopted by the City on or before February 10, 2014, or otherwise shall be effective for CPS Energy's gross receipts from electric and gas sales within the City commencing the first day of the month following adoption by the City.

SECTION 13. Headings. The headings of the sections in this Franchise Agreement are for organizational purposes only. They have no separate meaning and shall not be read as affecting the language of the sections.

SECTION 14. Continuation of Agreement. This Franchise Agreement shall remain in effect beyond the expiration of its term until a new agreement becomes effective between the parties or until this Franchise Agreement is terminated by either party upon 180 days prior written notice, which notice may precede the expiration date by not more than 180 days.

SECTION 15. Assignment. This Franchise Agreement may be assigned by CPS Energy upon mutual written agreement of the City and CPS Energy.

Passed and Approved on this the 10 day of February 2014.

Chris Riley

MAYOR: CITY OF LEON VALLEY

ATTEST:

City Secretary

EXHIBIT A

Confidentiality Agreement for an Inter-Governmental Transfer of Information

This Confidentiality Agreement for an Inter-Governmental Transfer (Agreement) is made on this the_____ day of _____, 20___ between the City of San Antonio, Texas, acting by and through the City Public Service Board ("CPS Energy") and the City of Leon Valley("City").

WHEREAS, the City will receive confidential and competitively sensitive information from CPS Energy throughout the term of the City and CPS Energy's franchise agreement ("Information");

WHEREAS, CPS Energy considers the Information excepted from required disclosure under the Texas Public Information Act, Texas Government Code, Chapter 552 ("Act");

WHEREAS, the Texas Attorney General has recognized that governmental entities may share information without violating the confidentiality of the information or waiving exceptions to disclosure; and

WHEREAS, in the spirit of intergovernmental cooperation, CPS Energy is agreeable to sharing the Information with the City, subject to certain commitments by the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, CPS Energy and the City agree as follows:

1. CPS Energy will provide the Information to the City without waiving exceptions to disclosure under the Act.

2. CPS Energy, by providing the Information, is not agreeing to provide similar information to the City or to other governmental entities in response to subsequent requests for information and is not waiving its rights to withhold this type of information in the future.

3. Consistent with CPS Energy's assertion of confidentiality of the Information, the City shall (a) maintain the Information in a secure and non-public file; (b) permit access to the Information only to authorized personnel acting within their official capacity and only on a "need-to-know" basis; and (c) otherwise take all reasonable precautions to prevent the dissemination of the Information to any other employee, contractor, agent or other persons.

4. The City shall not provide the Information in response to a request for the information under the Act. The City shall immediately inform CPS Energy if the City receives a request under the Act for the Information so that CPS Energy can take the necessary actions under the Act to prevent disclosure of the Information.

Chris Riley

City of Leon Valley, Texas

Title: MAYOR

Printed Name: CHRIS RILEY