

AN ORDINANCE      97667

**AUTHORIZING A 25-YEAR 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; AND PROVIDING THAT CONSIDERATION OF THREE PERCENT (3%) OF GROSS REVENUES DERIVED FROM GFU'S SYSTEM WITHIN THE LICENSED AREA BE PAID TO THE CITY OF SAN ANTONIO.**

\* \* \* \* \*

**WHEREAS**, the City of Grey Forest established a natural gas distribution system ("System"), Grey Forest Utilities (GFU), in 1967 to serve the residents of Grey Forest and surrounding areas of Bexar County; and

**WHEREAS**, the City of Grey Forest has continued to make additional major capital investments in the System to serve the areas in which its lines are located; and

**WHEREAS**, the City of San Antonio (City) has annexed some areas in which GFU gas lines exist and may annex other areas in which GFU lines may lie in the future; and

**WHEREAS**, this action authorizes a twenty-five (25) year License that defines a Licensed Area in which GFU may operate its System from June 1, 2003 through May 31, 2028, on the condition that GFU pay the City 3% of gross revenues derived from the operation of its System within the Licensed Area in addition to other consideration; and

**WHEREAS**, this License is intended to replace and terminate the Interim License Agreement that was authorized pursuant to Ordinance No. 95761 on May 16, 2002, and twice extended by Ordinance Nos. 96466 and 97115, which were passed on September 26, 2002 and January 30, 2003 respectively; and

**WHEREAS**, provided that GFU abides by the terms and conditions of the License, then it is intended that this License release GFU from potential past liability for payment related to the past use of City right-of-way; and

**WHEREAS**, it is to the benefit of the City, and its residents, City Public Service, and its bondholders, to establish and set forth the rights and obligations of GFU within the City, to license and authorize continuance of the GFU System within the City, and to establish procedures for determining whether, in consideration of the public health, safety, and interest, further service within the City and further use of City's rights-of-way by future extensions of the System within the City should be licensed, consistent with the City's bond covenants; and

**WHEREAS**, the City of Grey Forest issued revenue bonds for the construction of its gas system 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 gas system; and

**WHEREAS**, the City of San Antonio has issued billions of dollars of revenue bonds for improvements to our municipally-owned electric and gas systems serving the City of San Antonio and its environs, subject to a covenant included in its bond ordinances under which the City of San Antonio 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 of San Antonio 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**, consistent with the foregoing, the interests of both cities are served by an agreement recognizing those areas within City’s corporate boundaries where facilities of GFU already exist, authorizing service by GFU 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 GFU for the GFU’s natural gas lines, as provided for in the License; and

**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 enabling ordinance and the accompanying License, including authorization for GFU to utilize the City’s rights-of-ways as allowed by law in the specified area in return for the compensation provided for the License: and

**WHEREAS**, pursuant to the proposed License, GFU shall be required to abide by all City ordinances, including, but not limited to, those that regulate the use of the City’s right-of-way and to relocate its facilities to accommodate public improvement projects at GFU’s sole expense; and

**WHEREAS**, the City shall have the right to audit GFU’s performance through an independent auditor at GFU’s sole expense; and

**WHEREAS**, as consideration for the City’s potential rights to past compensation for the benefit received by GFU for the past use of City right-of-way, GFU has agreed to waive

its rights pursuant to Section 181.026 of the Texas Utilities Code, however, GFU shall retain such statutory rights related to the property used by Martin Marietta Materials Southwest, Ltd., a subsidiary of Martin Marietta Materials, Inc. (Martin Marietta) for quarrying operations until July 4, 2008, at which time such statutory protection shall expire;

**WHEREAS**, the License includes a process to include areas that are annexed by the City in the future into the Licensed Area without further Council approval and GFU shall pay the City the 3% gross revenue fee upon annexation and a process to include an area adjacent to Martin Marietta and beyond Salado Creek into the Licensed Area without further Council approval, if that area is used for related quarrying operations in the future; and

**WHEREAS**, the License includes a process to include any other area into the Licensed Area upon application by GFU and review by City staff upon final approval by City Council; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** A twenty-five (25) year License Agreement with Grey Forest Utilities System (GFU), which is owned and operated by the City of Grey Forest, to allow GFU to use the City's right-of-way to operate its gas distribution system within an Licensed Area in consideration of 3% of gross revenues that are derived from the gas system within the Interim Licensed Area to be paid to the City, is hereby approved. The License Agreement, in substantially final form, and including a map of the Licensed Area, is attached hereto and incorporated herein as Attachment I. Upon final execution, the final License Agreement will be attached hereto and incorporated herein as Attachment I I.

**SECTION 2.** The City Manager, or her designee, shall be authorized for the next ninety (90) days to execute said License Agreement in substantially the same form as Attachment I.

**SECTION 3.** The revenues received from GFU under this License Agreement shall be deposited in Fund 1 I-000 (General Fund) in Index Code 071985 entitled "Grey Forest Utilities."

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager, or her designee, correct allocations to specific Index Codes and the Fund Numbers, as necessary to carry out the purpose of this Ordinance.

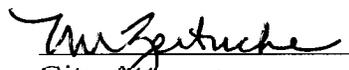
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**SECTION 5.** This Ordinance shall take effect on the tenth (10<sup>th</sup>) day after the date of passage hereof.

**PASSED AND APPROVED THIS** 22<sup>nd</sup> day of May, 2003.

  
**MAYOR**  
**EDWARD D. GARZA**

**ATTEST:**   
City Clerk

APPROVED AS TO FORM:   
for City Attorney