

ORDINANCE NO. 2014-6-11

An Ordinance of the City of Plano, Texas, granting to CoServ Gas, Ltd., d/b/a CoServ Gas, a franchise to furnish and supply gas to the general public in the City of Plano, Collin and Denton Counties, Texas, for the transporting, delivery, sale, and distribution of gas in and out of, and through said municipality for all purposes; providing for the payment of a fee or charge for the use of the streets, alleys, and public ways; providing a severability clause, and an effective date.

WHEREAS, the City Council of the City of Plano, Texas, currently has a franchise agreement with CoServ Gas that expired on November 23, 2012, and said franchise agreement has been continued thereafter on a month-to-month basis; and

WHEREAS, the City Council of the City of Plano, Texas finds that it is in the best interest of the City to enter into a new franchise agreement with CoServ Gas to furnish and supply gas to the general public in the City of Plano, and for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes;

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

This Franchise Agreement (this "Agreement") is made and entered into by and between CoServ Gas, Ltd., a Texas limited partnership doing business as CoServ Gas (hereinafter referred to as "Company"), and the City of Plano, Texas, a Home-Rule Municipal Corporation (hereinafter referred to as "City"). For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties hereto agree as follows:

Section I. Grant of Franchise, Term, and Use

(A) City hereby grants to Company, its successors and assigns subject to Section XI herein, consent to use and occupy the present and future Public Rights-of-Way of the City for the purpose of laying, maintaining, constructing, operating, removing and replacing therein and thereon the System needed and necessary to deliver gas in, out of, and through said City and to sell gas to persons, firms, and corporations, including all the general public, within the City's corporate limits.

(B) The term of this Agreement begins on the Effective Date (as defined below) and ends on December 31, 2023. The term may be extended for one additional five year term by mutual agreement of the City and the Company upon approval by the City Council of the City.

(C) The terms and conditions set forth in this Agreement represent the terms and conditions under which the Company shall construct, operate, maintain, remove and replace the System within the City. In order to accept the franchise granted herein, the Company must

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evidence its written acceptance of the terms and conditions of this Agreement by executing and delivering to the City a letter in the form attached hereto as Exhibit "A" and incorporated herein.

(D) By entering into this Agreement, the City does not in any manner surrender or waive its regulatory or other authority or rights pursuant to the Constitution and statutes of the State of Texas as the same may be amended, nor any of its rights and powers pursuant to present or future ordinances of the City. Likewise, Company's acceptance of the terms of this Agreement shall in no way affect or impair Company's rights, obligations or remedies under any federal, state or local law or regulation, nor shall such acceptance be deemed a waiver, release or relinquishment of Company's rights to contest, appeal or file suit with respect to any action or inaction of the City, including adoption of ordinances by the City, that Company believes is contrary to this Agreement or any federal, state or local law or regulation.

Section II. Definitions

(A) "City" shall mean the City of Plano, Texas

(B) "Company" shall mean CoServ Gas, its successors and assigns, but does not include a CoServ affiliate, which shall have no rights hereunder except by succession or assignment in accordance with Section XI herein.

(C) "City Manager" shall mean the City Manager of the City or his or her designee.

(D) "Gross Revenues" shall mean:

- (1) all revenues derived, directly or indirectly, from the sale of gas to all classes of customers in the City (excluding gas sold to another gas utility in the City for resale to its customers within City);
- (2) all revenues derived from the transportation of gas through the System of Company within the City to customers located within the City (excluding gas transported to another gas utility in the City for resale to its customers within City);
- (3) the purchase price or, if the purchase price is not disclosed to the Company by the Transport Customer, the value of gas transported by Company for Transport Customers through the System of Company within the City ("Third Party Sales") (excluding the value of any gas transported to another gas utility in City for resale to its customers within City). Each Transport Customer of the Company shall disclose to the Company the purchase price of said gas. Should the Transport Customer fail or refuse to disclose such purchase price to Company, the value of such gas shall be established by utilizing 110% of the Houston Ship Channel index of prices for large package of gas as published each month in

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"Inside FERC's Gas Market Report" under "Delivered Spot-Gas Prices" (or a successor publication or another publication agreed upon by City and Company) as reasonably near the time as the transportation service is performed;

- (4) payments received for contributions in aid of construction performed within the City, including but not limited to, builder contributions, under contracts entered into after the Effective Date; and
- (5) fees paid pursuant to this Agreement, revenues from non-utility and non-regulated services or products, revenues billed but not ultimately collected or received by Company, and the following "miscellaneous charges":
 - (a) charges to connect, disconnect, or reconnect gas,
 - (b) charges to handle returned checks from consumers within the City, and
 - (d) State gross receipts fees.

"Gross Revenues" shall not include:

- (1) the revenue of any Affiliate or subsidiary of Company;
- (2) other than fees specifically included within the definition of Gross Revenues and fees payable pursuant to Section VII below, any taxes or fees required to be remitted to a third party including the City;
- (3) interest or investment income earned by Company;
- (4) monies received from the lease or sale of real or personal property, provided, however, that this exclusion does not apply to the lease of System Facilities within the Public Right-of-Way;
- (5) amounts billed or collected from Company's customers for refundable fees and deposits;
- (6) State or federal grants, credits or reimbursements;
- (7) reimbursements for damage to, or relocation of, any part of the System; and
- (8) amounts billed or collected by the Company from its customers for charitable contributions such as Operation Roundup.

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(E) "Person" shall mean any natural person, or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for-profit, but shall not, unless the context explicitly requires otherwise, include the City or any employee, agent, servant, representative or official of the City.

(F) "Public Right-of-Way" shall mean public streets, alleys, highways, thoroughfares and sidewalks of the City, as they now exist or may be hereafter constructed or extended within the corporate limits of the City.

(G) "Right of Way Management Ordinance" shall mean City of Plano Ordinance No. 2001-3-20, as may be amended from time to time.

(H) "System" or "System Facilities" shall mean all of the Company's pipes, pipelines, gas mains, laterals, feeders, regulators, meters, fixtures, connections and other infrastructure and appurtenant equipment used for or incident to providing delivery, transportation, distribution, supply and sales of natural gas for, but not limited to, heating, lighting, and power, located within the corporate limits of the City.

(I) "Transport Customer" shall mean any person or entity for which Company delivers gas through the System of Company within the City for delivery or consumption within the City.

(J) "Affiliate" shall mean any individual, partnership, association, joint stock company, limited liability company, trust, corporation, or other Person or entity who owns or controls, or is owned or controlled by, or is under common ownership or control with, the entity in question.

Section III. Conditions of Use and Occupancy

(A) This Agreement is granted subject to the laws of the United States of America, State of Texas and the City of Plano, Texas including its Charter and City Ordinances.

(B) In addition to compliance with federal, state and local law, all construction, work and operation of the System done by the Company pursuant to this Agreement shall, to the extent not inconsistent with federal or state law or regulatory authority, specifically be in conformance with the City of Plano Code of Ordinances, Chapter 19, Article IV, Right-of-Way Management Ordinance, as may be amended from time to time, and which is incorporated herein by reference as if incorporated in full. The Right-of-Way Management Ordinance may be obtained at the City of Plano Municipal Center, Engineering Division, 1520 Avenue K, Plano, Texas.

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Section IV. Rates

(A) Company shall furnish reasonably adequate service to the public at reasonable rates and charges therefor, and Company shall maintain its System in good order and condition. Such rates shall be established in accordance with all applicable statutes and ordinances. Company 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 by either the City or Company in the manner provided by law.

(B) Company shall be entitled to require from each and every consumer of gas, before gas service is commenced, a deposit in an amount calculated pursuant to the Company's service rules and regulations as may be in effect during the term of this Agreement, and which are incorporated into this Agreement by reference as if incorporated in full. Said deposit shall be retained and refunded in accordance with such service rules and regulations, and shall bear interest as and to the extent provided in Chapter 183 of the Texas Utilities Code, as it may be amended from time to time. Company shall be entitled to apply said deposit with accrued interest to any indebtedness owed Company by the consumer making the deposit.

Section V. Extensions of Mains

Company shall not be required to extend mains on any Public Right-of-Way more than one hundred (100) feet for any one consumer of gas; provided, however, Company is not required to extend its mains or facilities if the customer will not use gas for space heating and water heating, or the equivalent load, at a minimum.

Section VI. Non-Exclusive Use

The rights and privileges granted to Company by this Agreement are not to be considered exclusive and City hereby expressly reserves the right to grant, at any time, like privileges and rights as it may see fit to any other person or corporation for the purpose of furnishing gas for, but not limited to, light, heat, and power to and for City and the inhabitants thereof. City shall not grant any more favorable conditions, including franchise fee, to any other gas utility franchisee than are granted herein to Company.

Section VII. Franchise Fee and Payment

(A) In consideration of the privilege granted by the City to Company to use and occupy the Public Rights-of-Way in the City for the purposes stated herein, Company, its successors and assigns, agrees to deliver and pay to City, and City agrees to accept a franchise fee in an amount equivalent to five percent (5%) of the Company's Gross Revenues as defined in Section II (D). The initial payment shall be paid to the City by Company on or before the Due Date for

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the Quarter, as set forth below, in which the Effective Date occurs, and shall include Gross Revenues received by Company from the Effective Date of this Ordinance. Thereafter the Company shall pay quarterly as follows:

Due Date	Quarter
May 15	First (January 1 - March 31)
August 15	Second (April 1 - June 30)
November 15	Third (July 1 - September 30)
February 15	Fourth (October 1 - December 31)

(B) Each payment due during the term of this Agreement will be made by wire transfer on or before the close of business on the payment due date. If any payment due date required by this Agreement falls on a weekend or declared bank holiday, payment shall be made by wire transfer on or before the close of business of the last working day prior to the payment due date. Payment shall be considered timely made if Company requests the wire transfer by the wire transfer deadline of its bank on the payment due date.

(C) It is expressly agreed that the aforesaid payment shall be in lieu of any payments for the right to use the Public Rights-of-Way of said City, including expressly the charge permitted to be levied by V.T.C.A, Tax Code sec. 182.021-182.026 and 182.081-182.082, or any successor statute permitting such a charge, however designated. Should City not have the legal power to agree that the payment of the foregoing sum of money shall be in lieu of all charges for the use of the Public Rights-of-Way of the City of Plano, the City agrees that it will apply so much of said sum of money paid as may be necessary to satisfy Company's obligations, if any, to pay such charges.

(D) If Company fails to pay when due any payment provided for in this Section, Company shall pay such amount plus interest consistent with the rate for customer deposits under Texas Utilities Code Section 183.003 from such due date until payment is received by City.

(E) CoServ Gas Franchise Fee Recovery Tariff

1. The Company may from time-to-time file with the City a tariff amendment(s) to provide for the recovery of the franchise fees payable by the Company under this Agreement.

2. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by the Company.

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(F) In order to determine the Gross Revenues received by Company, Company agrees that quarterly, on the same date that payment is made as provided in the preceding paragraphs of this Section VII, it will provide a statement showing the amount of Gross Revenues for the period covered by the payments.

Section VIII. Retention and Accessibility of Records

(A) Company shall maintain the fiscal records and supporting documentation for payments of Gross Revenues associated with this Agreement for five years.

(B) Company gives City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written material, and other papers belonging to or in use by Company pertaining to this Agreement (the "Records") during the Company's regular business hours and at the Company's principal offices upon receipt of ten (10) business days written notice from the City. The City's access to the Records will be limited to information needed to verify that, within the three (3) year period prior to such access to the Records, Company is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by City. The City shall provide notice to Company of any request for release of information previously designated by Company as proprietary or confidential non-public information prior to releasing the information so as to allow Company adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information Act that includes Company's previously designated proprietary or confidential information, City will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the document(s). The City also will provide Company with notice of the request, and thereafter Company is responsible for establishing that an exception under the Texas Public Information Act allows the City to withhold the information. If such an examination reveals that Company has underpaid City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section VII.(D). The cost of the audit shall be borne by City unless the Company is finally determined to have underpaid the franchise fee by five percent (5%) or more, in which case the reasonable costs of the audit shall be immediately reimbursed to the City by the Company. The rights to access the Records shall terminate one (1) year after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to suspend this Agreement as provided for in Section IX below. In the event of an audit by the City, all Records related to such audit shall be retained by Company for a period of five (5) years after all performance requirements are achieved for audit purposes and until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. Company agrees to maintain the Records in an accessible location.

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Section IX. Renegotiation

If either the City or the Company requests renegotiation of any term of this Agreement, Company and City agree to renegotiate in good faith revisions to any and all terms of this Agreement. If the parties cannot come to agreement upon any provisions being renegotiated, then the existing provisions of this Agreement will continue in effect for the remaining term of the Franchise.

Section X. Termination

(A) The City, in accordance with subsection (B) below, may terminate this Agreement and all rights and privileges pertaining thereto, in the event that the Company violates any material provision of this Agreement (a "default").

(B) In the event of a default of this Agreement, City shall give written notice to Company specifying the nature of the default and the Company shall have thirty (30) days after the receipt of such notice to cure the default and come into compliance with the terms and conditions of this Agreement. If Company fails to cure the default within thirty (30) days of the notice, or as longer provided by written agreement of the parties, then this Agreement shall be subject to termination by decision of City Council.

Section XI. Successors and Assigns

This Agreement may not be assigned, in whole or in part, without the express written consent of the City expressed by ordinance, as required in Section 10.02 of the City Charter.

Section XII. Notices

Any notice required or permitted to be delivered hereunder shall be deemed received three (3) business days after sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:

City of Plano, Texas
Attention: City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

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With a copy to:

City of Plano, Texas
Attention: City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company:

CoServ Gas, Ltd.
Attention: President
7701 S. Stemmons Freeway
Corinth, Texas 76210

Section XIII. Severability; Ordinance Controlling

It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance. Both the Company and the City expressly recognize that this Ordinance creates a binding and enforceable contract between them, which contract may not be amended without written consent of both the Company and the City. Should any inconsistency or conflict exist now or in the future between the provisions of this Ordinance and the City's charter or another ordinance or ordinances, then the provisions of this Ordinance shall control to the extent of such inconsistency or conflict to the extent not prohibited by law. Notwithstanding the foregoing, the failure of this Ordinance to include provisions that exist in other City rules, regulations, or ordinances, does not affect the enforceability of such other City rules, regulations, or ordinances, whether fully set out herein or not.

Section XIV. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

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Section XV. Rate and Compliance Review

Company agrees that City may, at any time during the term of this agreement, employ at the expense of Company, expert assistance and advice in determining fair, just, and reasonable rates to be charged by Company to its consumers in the corporate limits of City. Company agrees to pay reasonable expenses in connection therewith, or reimburse City for the same, which expense Company shall be entitled to recover through rates and tariffs.

Section XVI. Effective Date

Upon and subject to the filing of the Company's written acceptance of the terms and conditions of the Franchise Agreement set forth herein, this Ordinance (A) shall become effective as of the first day of the calendar month that is not less than sixty (60) days after the final adoption of this Ordinance by the City (such date being the "Effective Date"), and (B) shall, as of the Effective Date, supersede and replace that certain Ordinance No. 98-9-32, passed and approved by the City Council of the City on August 24, 1998, as subsequently amended. This ordinance will be published in accordance with law.

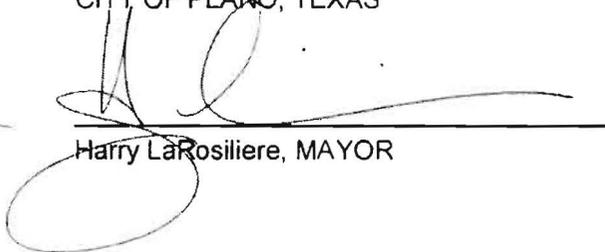
PASSED AND APPROVED ON FIRST READING ON THIS THE 12th DAY OF May, 2014.

ATTEST:

CITY OF PLANO, TEXAS



Lisa C. Henderson, CITY SECRETARY



Harry LaRosiliere, MAYOR

APPROVED AS TO FORM



Paige Mims, CITY ATTORNEY

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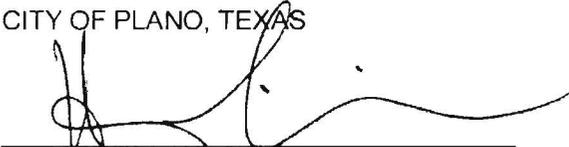
FINALLY PASSED AND APPROVED ON SECOND READING (WHICH DATE IS AT LEAST 30 DAYS FROM THE FIRST READING) THIS THE 23rd DAY OF June, 2014.

ATTEST:



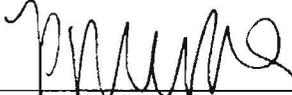
Lisa C. Henderson, CITY SECRETARY

CITY OF PLANO, TEXAS



Harry LaRosiere, MAYOR

APPROVED AS TO FORM



Paige Mims, CITY ATTORNEY

Exhibit "A" to Ordinance No. 2014-6-11

Exhibit "A"

CoServ Authorization for City of Plano Franchise Agreement

[DATE]

City of Plano

Attention: Mark Israelson

P.O. Box 860358

Plano, Texas 75086-0358

RE: CoServ Gas Franchise Agreement; Ordinance No. 2014-6-11

This letter certifies that CoServ Gas, Ltd. accepts and agrees to be contractually bound by the terms and conditions of the Franchise Agreement with the City of Plano for natural gas delivery, transport, sale and distribution pursuant to Ordinance No. 2014-6-11 in the form attached hereto as Exhibit A.

CoServ Gas, Ltd.

By: CoServ Natural, L.L.C., its general partner

By: _____

Name: _____

Title: _____



July 9, 2014

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED
7003 1010 0004 2447 7853

City of Plano
Attention: Mark Israelson
P.O. Box 860358
Plano, Texas 75086-0358

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Sincerely,

CoServ Gas, Ltd.

By: CoServ Natural, L.L.C., its general partner

By: 
Name: Joe R. Forman
Title: Senior Vice President - operations

Exhibit "A"

CoServ Authorization for City of Plano Franchise Agreement

[DATE]

City of Plano

Attention: Mark Israelson

P.O. Box 860358

Plano, Texas 75086-0358

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EXHIBIT A

ORDINANCE NO. 2014-6-11

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WHEREAS, the City Council of the City of Plano, Texas, currently has a franchise agreement with CoServ Gas that expired on November 23, 2012, and said franchise agreement has been continued thereafter on a month-to-month basis; and

WHEREAS, the City Council of the City of Plano, Texas finds that it is in the best interest of the City to enter into a new franchise agreement with CoServ Gas to furnish and supply gas to the general public in the City of Plano, and for the transporting, delivery, sale, and distribution of gas in, out of, and through said municipality for all purposes;

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(J) "Affiliate" shall mean any individual, partnership, association, joint stock company, limited liability company, trust, corporation, or other Person or entity who owns or controls, or is owned or controlled by, or is under common ownership or control with, the entity in question.

Section III. Conditions of Use and Occupancy

(A) This Agreement is granted subject to the laws of the United States of America, State of Texas and the City of Plano, Texas including its Charter and City Ordinances.

(B) In addition to compliance with federal, state and local law, all construction, work and operation of the System done by the Company pursuant to this Agreement shall, to the extent not inconsistent with federal or state law or regulatory authority, specifically be in conformance with the City of Plano Code of Ordinances, Chapter 19, Article IV, Right-of-Way Management Ordinance, as may be amended from time to time, and which is incorporated herein by reference as if incorporated in full. The Right-of-Way Management Ordinance may be obtained at the City of Plano Municipal Center, Engineering Division, 1520 Avenue K, Plano, Texas.

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Section IV. Rates

(A) Company shall furnish reasonably adequate service to the public at reasonable rates and charges therefor, and Company shall maintain its System in good order and condition. Such rates shall be established in accordance with all applicable statutes and ordinances. Company 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 by either the City or Company in the manner provided by law.

(B) Company shall be entitled to require from each and every consumer of gas, before gas service is commenced, a deposit in an amount calculated pursuant to the Company's service rules and regulations as may be in effect during the term of this Agreement, and which are incorporated into this Agreement by reference as if incorporated in full. Said deposit shall be retained and refunded in accordance with such service rules and regulations, and shall bear interest as and to the extent provided in Chapter 183 of the Texas Utilities Code, as it may be amended from time to time. Company shall be entitled to apply said deposit with accrued interest to any indebtedness owed Company by the consumer making the deposit.

Section V. Extensions of Mains

Company shall not be required to extend mains on any Public Right-of-Way more than one hundred (100) feet for any one consumer of gas; provided, however, Company is not required to extend its mains or facilities if the customer will not use gas for space heating and water heating, or the equivalent load, at a minimum.

Section VI. Non-Exclusive Use

The rights and privileges granted to Company by this Agreement are not to be considered exclusive and City hereby expressly reserves the right to grant, at any time, like privileges and rights as it may see fit to any other person or corporation for the purpose of furnishing gas for, but not limited to, light, heat, and power to and for City and the inhabitants thereof. City shall not grant any more favorable conditions, including franchise fee, to any other gas utility franchisee than are granted herein to Company.

Section VII. Franchise Fee and Payment

(A) In consideration of the privilege granted by the City to Company to use and occupy the Public Rights-of-Way in the City for the purposes stated herein, Company, its successors and assigns, agrees to deliver and pay to City, and City agrees to accept a franchise fee in an amount equivalent to five percent (5%) of the Company's Gross Revenues as defined in Section II (D). The initial payment shall be paid to the City by Company on or before the Due Date for

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the Quarter, as set forth below, in which the Effective Date occurs, and shall include Gross Revenues received by Company from the Effective Date of this Ordinance. Thereafter the Company shall pay quarterly as follows:

Due Date	Quarter
May 15	First (January 1 - March 31)
August 15	Second (April 1 - June 30)
November 15	Third (July 1 - September 30)
February 15	Fourth (October 1 - December 31)

(B) Each payment due during the term of this Agreement will be made by wire transfer on or before the close of business on the payment due date. If any payment due date required by this Agreement falls on a weekend or declared bank holiday, payment shall be made by wire transfer on or before the close of business of the last working day prior to the payment due date. Payment shall be considered timely made if Company requests the wire transfer by the wire transfer deadline of its bank on the payment due date.

(C) It is expressly agreed that the aforesaid payment shall be in lieu of any payments for the right to use the Public Rights-of-Way of said City, including expressly the charge permitted to be levied by V.T.C.A, Tax Code sec. 182.021-182.026 and 182.081-182.082, or any successor statute permitting such a charge, however designated. Should City not have the legal power to agree that the payment of the foregoing sum of money shall be in lieu of all charges for the use of the Public Rights-of-Way of the City of Plano, the City agrees that it will apply so much of said sum of money paid as may be necessary to satisfy Company's obligations, if any, to pay such charges.

(D) If Company fails to pay when due any payment provided for in this Section, Company shall pay such amount plus interest consistent with the rate for customer deposits under Texas Utilities Code Section 183.003 from such due date until payment is received by City.

(E) CoServ Gas Franchise Fee Recovery Tariff

1. The Company may from time-to-time file with the City a tariff amendment(s) to provide for the recovery of the franchise fees payable by the Company under this Agreement.

2. City agrees that it will take no action, nor cause any other person or entity to take any action, to prohibit the recovery of such franchise fees by the Company.

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(F) In order to determine the Gross Revenues received by Company, Company agrees that quarterly, on the same date that payment is made as provided in the preceding paragraphs of this Section VII, it will provide a statement showing the amount of Gross Revenues for the period covered by the payments.

Section VIII. Retention and Accessibility of Records

(A) Company shall maintain the fiscal records and supporting documentation for payments of Gross Revenues associated with this Agreement for five years.

(B) Company gives City, its designee, or any of their duly authorized representatives, access to and the right to examine relevant books, accounts, records, audit reports, reports, files, documents, written material, and other papers belonging to or in use by Company pertaining to this Agreement (the "Records") during the Company's regular business hours and at the Company's principal offices upon receipt of ten (10) business days written notice from the City. The City's access to the Records will be limited to information needed to verify that, within the three (3) year period prior to such access to the Records, Company is and has been complying with the terms of this Agreement. Any information that is not required by law to be made public shall be kept confidential by City. The City shall provide notice to Company of any request for release of information previously designated by Company as proprietary or confidential non-public information prior to releasing the information so as to allow Company adequate time to pursue available remedies for protection. If the City receives a request under the Texas Public Information Act that includes Company's previously designated proprietary or confidential information, City will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the document(s). The City also will provide Company with notice of the request, and thereafter Company is responsible for establishing that an exception under the Texas Public Information Act allows the City to withhold the information. If such an examination reveals that Company has underpaid City, then upon receipt of written notification from City regarding the existence of such underpayment, Company shall undertake a review of City's claim and if said underpayment is confirmed, remit the amount of underpayment to City, including any interest calculated in accordance with Section VII.(D). The cost of the audit shall be borne by City unless the Company is finally determined to have underpaid the franchise fee by five percent (5%) or more, in which case the reasonable costs of the audit shall be immediately reimbursed to the City by the Company. The rights to access the Records shall terminate one (1) year after the termination or expiration of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give the City the right to suspend this Agreement as provided for in Section IX below. In the event of an audit by the City, all Records related to such audit shall be retained by Company for a period of five (5) years after all performance requirements are achieved for audit purposes and until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. Company agrees to maintain the Records in an accessible location.

specifying the nature of the default and the Company shall have thirty (30) days after the receipt of such notice to cure the default and come into compliance with the terms and conditions of this Agreement. If Company fails to cure the default within thirty (30) days of the notice, or as longer provided by written agreement of the parties, then this Agreement shall be subject to termination by decision of City Council.

Section XI. Successors and Assigns

This Agreement may not be assigned, in whole or in part, without the express written consent of the City expressed by ordinance, as required in Section 10.02 of the City Charter.

Section XII. Notices

Any notice required or permitted to be delivered hereunder shall be deemed received three (3) business days after sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for the City:

City of Plano, Texas
Attention: City Manager
1520 Avenue K
P.O. Box 860358
Plano, TX 75086-0358

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With a copy to:

City of Plano, Texas
Attention: City Attorney
1520 Avenue K
P. O. Box 860358
Plano, TX 75086-0358

If intended for the Company:

CoServ Gas, Ltd.
Attention: President
7701 S. Stemmons Freeway
Corinth, Texas 76210

Section XIII. Severability; Ordinance Controlling

It is the intention of the City Council that this Ordinance, and every provision thereof, shall be considered severable, and the invalidity or unconstitutionality of any section, clause, provision or portion of this Ordinance shall not affect the validity or constitutionality of any other portion of this Ordinance. Both the Company and the City expressly recognize that this Ordinance creates a binding and enforceable contract between them, which contract may not be amended without written consent of both the Company and the City. Should any inconsistency or conflict exist now or in the future between the provisions of this Ordinance and the City's charter or another ordinance or ordinances, then the provisions of this Ordinance shall control to the extent of such inconsistency or conflict to the extent not prohibited by law. Notwithstanding the foregoing, the failure of this Ordinance to include provisions that exist in other City rules, regulations, or ordinances, does not affect the enforceability of such other City rules, regulations, or ordinances, whether fully set out herein or not.

Section XIV. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without giving effect to any conflicts of law rule or principle that might result in the application of the laws of another jurisdiction. Venue for any action concerning this Agreement, the transactions contemplated hereby or the liabilities or obligations imposed hereunder shall be in the State District Court of Collin County, Texas.

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Section XV. Rate and Compliance Review

Company agrees that City may, at any time during the term of this agreement, employ at the expense of Company, expert assistance and advice in determining fair, just, and reasonable rates to be charged by Company to its consumers in the corporate limits of City. Company agrees to pay reasonable expenses in connection therewith, or reimburse City for the same, which expense Company shall be entitled to recover through rates and tariffs.

Section XVI. Effective Date

Upon and subject to the filing of the Company's written acceptance of the terms and conditions of the Franchise Agreement set forth herein, this Ordinance (A) shall become effective as of the first day of the calendar month that is not less than sixty (60) days after the final adoption of this Ordinance by the City (such date being the "Effective Date"), and (B) shall, as of the Effective Date, supersede and replace that certain Ordinance No. 98-9-32, passed and approved by the City Council of the City on August 24, 1998, as subsequently amended. This ordinance will be published in accordance with law.

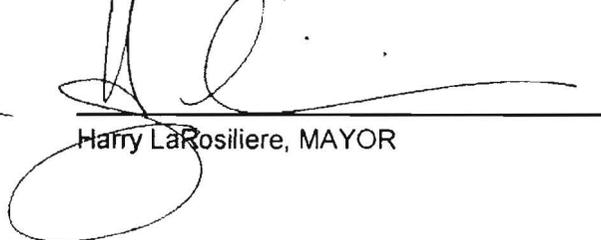
PASSED AND APPROVED ON FIRST READING ON THIS THE 12th DAY OF
May, 2014.

ATTEST:

CITY OF PLANO, TEXAS



Lisa C. Henderson, CITY SECRETARY



Harry LaRosiliere, MAYOR

APPROVED AS TO FORM



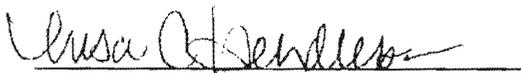
Paige Mims, CITY ATTORNEY

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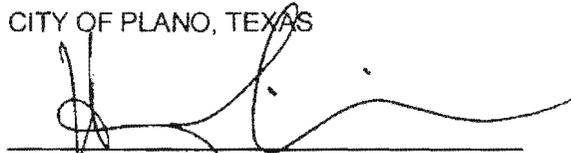
FINALLY PASSED AND APPROVED ON SECOND READING (WHICH DATE IS AT LEAST 30 DAYS FROM THE FIRST READING) THIS THE 23rd DAY OF June, 2014.

ATTEST:

CITY OF PLANO, TEXAS

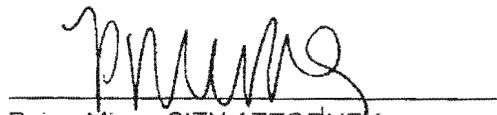


Lisa C. Henderson, CITY SECRETARY



Harry LaRosiere, MAYOR

APPROVED AS TO FORM



Paige Mims, CITY ATTORNEY