

# *FRANCHISE AGREEMENT*

*Between*

*SOUTHWEST GAS CORPORATION*

*and the*

*THE CITY OF SAN LUIS, ARIZONA*

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Section I - Grant of Franchise: There is hereby granted to Southwest Gas Corporation, a corporation organized and existing under and by virtue of the laws of the State of California (herein called "Grantee"), its successors and assigns, the right, privilege, and franchise to construct, maintain, and operate upon, over, along, across, and under the present and future public rights-of-way, (including, but not limited to streets, alleys, ways, highways and bridges), in the City of San Luis, Arizona (herein called "Municipality"), a natural gas and/or artificial gas distribution system, together with all necessary appurtenances (herein called the "Franchise"), for the purpose of supplying natural gas and/or artificial gas, including gas containing a mixture of natural gas

and such artificial gas to Municipality, its successors, the inhabitants thereof, and all individuals and entities either within or beyond the limits thereof, for all purposes.

Municipality shall not be liable to Grantee should Grantee construct facilities pursuant to this Franchise in an area over which Municipality has erroneously exercised jurisdiction.

Section 2 - Grantee's Compliance with Municipality Practice; Plans Submitted for

Approval: All construction under this Franchise shall be performed in accordance with all applicable federal and state laws and regulations and with those lawful municipal ordinances, regulations and established practices that are not in conflict with provisions of this Franchise with respect to such public rights-of-way. Before Grantee makes any installations in the public rights-of-way, Grantee shall submit for approval a map showing the location of such proposed installations to the designated Municipal Official or the City Council.

Section 3 - Construction and Relocation of Grantee's Facilities; Payment: All

facilities installed or constructed pursuant to this Franchise shall be so located or relocated and so erected as to minimize the interference with traffic or other authorized uses over, under or through the public rights-of-way. Those phases of construction of Grantee's facilities relating to traffic control, backfilling, compaction and paving, as well as the location or relocation of gas

lines and related facilities herein provided for shall be subject to lawful regulation by Municipality not inconsistent with this Franchise and state and federal law. Grantee shall keep installation records, as defined by A.R.S. §40-360.21(6) or its successors, of the location of all facilities in the public right-of-way and furnish them to Municipality upon request. Upon completion of new or relocation construction of underground facilities in the public right-of-way Grantee shall provide the designated Municipal Official or the City Council with installation records showing the location of all facilities in those cases where the location substantially differs from the proposed location approved in the permit plans or the map previously submitted under Section 2 hereof. All construction shall be subject to issuance of a permit. Grantee shall be required to obtain and pay all required fees and charges for construction permits and inspections of all non-gas related distribution facilities, including but not limited to, office buildings, storage buildings or repair shops. Permits for and inspections of gas distribution facilities will be provided at no cost under this Franchise, including but not limited to, pipes, pipelines, mains, laterals, service lines, manholes, pumps, meters, gauges, valves, traps, fences, vaults, regulators, regulator stations, conduits, appliances, attachments and appurtenances thereto ("gas distribution facilities").

A. If Municipality requires Grantee to relocate Grantee's facilities which are located in private easements or rights-of-way obtained by Grantee prior to Municipality's acquisition of the public right-of-way from which the facilities must be relocated, the entire cost of relocating Grantee's facilities (including the cost of purchasing a new private easement or right-of-way if necessary) shall be borne by Municipality, unless the origin grant to Grantee requires, or would have required, Grantee to bear the cost of relocation under the circumstances. Municipality shall also bear the entire cost of all subsequent relocation of the relocated facilities required by Municipality until such time as Municipality condemns or purchases Grantee's private easement or right-of-way. Municipality and Grantee will cooperate to determine which facilities of Grantee are in private easements or rights-of-way as need arises.

B. Except as covered in Paragraph A above, Grantee shall bear the entire cost of relocating its facilities located on public rights-of-way, the relocation of which is necessary for Municipality's carrying out of its governmental functions. Governmental functions are defined as those duties imposed by the state on municipalities, where the duties involve a general public benefit, are not in the nature of a corporate or business undertaking for the corporate benefit and interest of Municipality.

Governmental functions, whether performed by Municipality or a third party include, but are not limited to, the following:

1. Improvements to Municipal streets, alleys and venues;
2. Establishing and maintaining sanitary sewers, storm drains and related facilities;
3. Establishing and maintaining municipal parks, parking, parkways, pedestrian malls, or grass, shrubs, trees and other vegetation for the purposes of landscaping any street or public property;
4. Providing fire or police protection;
5. Collecting and disposing of garbage.

This paragraph 3B is not intended to prohibit Grantee from requiring private persons or entities (i.e., not the state, a political subdivision of the state or an affiliated entity thereof) from including relocation expenses relating to proprietary functions as part of advances-in-aid-of-construction or contributions-in-aid-of-construction, to the extent said advance or contribution could otherwise be required of said private person or entity under Grantee's duly adopted and lawful rules, regulations and tariffs; provided, however, in no event shall Southwest Gas receive, from any combination of sources, monies in excess of the actual cost of removal and relocation.

C. Municipality will bear the entire cost of relocating any facilities, the relocation of which is necessitated by the

construction of improvements by or on behalf of Municipality in furtherance of a proprietary function. All functions of Municipality which are not governmental are proprietary. The installation of pipe and other facilities owned by Municipality to serve domestic water shall be considered both governmental and proprietary and therefore the actual cost of relocation shall be shared equally by Grantee and Municipality.

D. Where Municipality's facilities or other facilities already occupy a right-of-way under authority of a franchise or Municipality permit or license and conflict with potential facilities sought to be constructed by Grantee, and the conflict can only be resolved expeditiously or economically by relocating the existing facilities, Grantee shall bear the entire cost, including the cost of purchasing new easements or rights-of-way, if necessary, and of relocating the existing facilities, irrespective of the function they served. Municipality shall have full and exclusive right to determine whether the provisions of this subparagraph D are to be invoked.

E. If Municipality participates in the cost of relocating Grantee's facilities for any reason, the cost of relocation to Municipality shall not include any upgrade or improvement of Grantee's facilities as they existed prior to relocation, including

upgrades or improvements required by this Franchise or other lawful act of Municipality.

F. Municipality will not exercise its right to require Grantee's facilities to be relocated in an unreasonable or arbitrary manner. Grantee and Municipality may agree to cooperate on the location and relocation of other facilities in the public rights-of-way.

Section 4 - Indemnification: Municipality, its departments, officers, employees, agents, successors and assigns, shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its appurtenances hereunder provided that any such claim, expense or loss is not caused by the negligence, willful acts or willful omissions of Municipality, its employees or agents. Grantee shall indemnify Municipality, its officers, agents, employees, successors and assigns and hold it harmless from and against any and all liability, loss, costs, legal fees, damage or any other expense which may accrue to Municipality by reason of the negligence, willful act or willful omissions, default or misconduct of Grantee in the construction, installation, operation and maintenance of its lines, facilities and appurtenances hereunder, including the maintenance of barricades and traffic control devices in construction and maintenance areas. Grantee, so long as it maintains,

operates or owns facilities within rights-of-way of Municipality, at its own costs and expense, shall keep, or cause to be kept in force insurance against claims and liability for personal injury, death and property damage arising from the construction operation or maintenance by Grantee of its facilities in a reasonable amount sufficient to insure Grantee's obligations under this paragraph. Grantee shall provide Municipality with thirty (30) days' written notice of material change, cancellation or nonrenewal the insurer. The policy shall be nonassessable and noncontributing with any policy of Municipality.

Grantee shall file with Municipality documentation of such liability insurance within sixty (60) days following the effective date of this Franchise and thereafter at least annually or as otherwise requested by Municipality.

Section 5 - Restoration of Rights-of-Way: Whenever Grantee shall cause any opening or alteration whatsoever to be made for any purpose in any public right-of-way, the work shall be completed with due diligence within a reasonable, prompt time and Grantee shall, upon completion of such work, restore the property disturbed to as good condition as it was prior to such opening or alteration. If Grantee fails to restore the disturbed property to Municipality's satisfaction within ten (10) calendar days of receipt of written

notice to the local office of Grantee, Municipality may restore the property and charge the cost thereof to Grantee.

Section 6 - Franchise Fee: Grantee agrees to pay Municipality in consideration of the grant of this Franchise a sum equal to two percent (2%) of the gross receipts of Grantee from sale by it of gas, whether natural or artificial or a combination thereof, at retail for residential and commercial purposes, as determined by Grantee's tariff classifications as most recently revised, prior to the date hereof, within the present and any future corporate limits of Municipality, as shown by Grantee's billing records. If at any time Grantee pays to any municipality in the State of Arizona a franchise fee greater than 2% of Grantee's gross receipts (not including any in lieu of property tax component) in such municipality, then the percentage set forth in this section shall be increased to match such greater percentage amount payable to such municipality. Such payment shall be in lieu of all fees or charges otherwise payable or assessable with respect to permits and licenses for the construction, installation and/or maintenance (including street cuts and street repairs) of Grantee's gas distribution facilities hereunder, or for inspection thereof, except as provided in Section 3 above. The franchise fee shall be due and payable quarterly on or before the last calendar day of the month next succeeding the month in which the franchise fee accrues.

If Grantee fails to deposit said fees with the Municipality by the twentieth (20th) day of the month immediately succeeding the date the fee became due and payable, Grantee shall be assessed (i) a ten percent (10%) late fee, and (ii) interest at the rate of twelve percent (12%) or two percent (2%) above the prime rate of Bank One Corporation, N.A. (or its successor), whichever is higher, per annum, compounded monthly on any unpaid balance (exclusive of late fees), said interest being calculated from the first day the payment became due.

For the sole purpose of verifying the amounts payable hereunder, the books and records of Grantee shall be subject to inspection and audit by duly authorized officers or representatives of Municipality at reasonable times.

Grantee may deduct from the franchise fee any tax or license paid by it and levied by Municipality exclusively upon utilities, up to the amount payable under the terms of this section, unless Municipality's tax ordinances authorize the utility tax to be offset by the amount of any franchise fees paid pursuant to a franchise agreement, in which event the entire 2% franchise fee shall be paid and the utility tax offset thereby.

The amount payable under the franchise fee shall not be reduced by reason of the payment of any general ad valorem taxes, assessment for special improvements, general sales or transaction

privilege license taxes, or any similar general levy measured by Grantee's receipts or sales within Municipality, provided the amount of such sales tax or similar levy may be lawfully and specifically added to Grantee's customers' bills.

Section 7 - Additional Fees: Notwithstanding any provision contained herein to the contrary, Grantee shall, in addition to the payment provided in Section 6, pay any occupation tax established by Municipality, provided the tax is a flat fee per year and that the annual amount of such fees does not exceed similar fees paid by any other business operated within Municipality.

Section 8 - Term: This Franchise shall continue and exist for a period of twenty-five (25) years from the date of acceptance by the electorate of Municipality. However, Municipality or Grantee shall have the right during each 180-day period immediately prior to the tenth (10th) and fifteenth (15th) anniversaries of the acceptance date of this Franchise to request from Grantee a modified form of this Franchise. If either party fails to comply with the request within ninety (90) days, the other party may terminate this Franchise by giving written notice of termination within one hundred eighty (180) days from the date of failure to comply with such request. If either party terminates this Franchise, this Franchise terminates on the anniversary date immediately subsequent to the termination. If the electors reject any modification the

Franchise in force prior to rejection shall continue for the duration of the twenty-five (25)-year Franchise period.

If either party does not exercise its right to terminate this Franchise, this Franchise remains effective for each successive period until the twenty-fifth (25th) anniversary.

Section 9 - Franchise; Non-Exclusive: This Franchise is not exclusive, and nothing herein contained shall be construed to prevent Municipality from granting other like or similar grants or privileges to any other person, firm or corporation.

Section 10 - Default: Failure of Grantee to comply with the provisions of this Franchise shall be deemed to be a default of this Franchise. Upon default by Grantee of this Franchise, Municipality shall provide written notice to Grantee of the default, specifying in detail the reasons Grantee is in default of this Franchise. Grantee shall have ninety (90) days after Municipality's written notice to begin good faith efforts to cure the default. If, at the end of said ninety (90) day period Grantee has not begun good faith efforts to cure the default, Municipality may, at its option, i) terminate this Franchise, ii) cure the defect and Grantee shall be responsible for all reasonable costs incurred by Municipality in curing said defect; iii) charge Grantee the equivalent of the prior two months' franchise payment because the damages to Municipality as a result of said default are

difficult or impossible to ascertain, or (iv) exercise any appropriate combination of the above. If, however, within said ninety (90) day period, Grantee has begun good faith efforts to cure said default, Municipality shall not have the right to terminate the Franchise. The parties specifically agree that Sections 2, 3, 4, 5, and 6 of this Franchise are material provisions of the Franchise.

The language in this Section 10 is not intended by the City of San Luis to preclude Southwest from seeking judicial resolutions of whether or not (a) a default in fact occurred, and/or (2) timely good faith efforts to cure any particular default in fact began.

Further, in the event of any such litigation, it is the City of San Luis's intention that termination of the Franchise pursuant to this Section 10 would be subject to a judicial determination that a default occurred and that Grantee did not begin good faith efforts to cure the default within ninety (90) days after Municipality's written notice to begin good faith efforts to cure the default.

Section 11 - Conflicting Ordinances: All ordinances and parts of ordinances in conflict with the provisions hereof are hereby repealed to the extent applicable to a franchised gas public service corporation.

The language in this Section 11 is intended (among other stated items) by the City of San Luis to recognize that, in the event of any conflict between the terms of the Franchise and other documents resulting from the adoption of ordinances, resolutions, permits, licenses and contracts otherwise applicable to the operation of Southwest's gas distribution facilities as defined in the Franchise, the terms set forth in the Franchise shall prevail. This provision shall be applicable only to Southwest Gas and not to any other utility or entity to which said ordinance, resolution, permit, license or contract may apply.

Section 12 - Independent Provisions: If any section, paragraph, clause, phrase or provision of this Franchise, other than Section 6, shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Franchise as a whole or any part of the provisions hereof other than the part so adjudged invalid or unconstitutional.

Section 13 - Condemnation; Right Reserved by Municipality: Municipality reserves the right and power to acquire, in any manner permitted by law, the plant and distribution facilities of Grantee within Municipality's corporate limits or any additions thereto, to the extent permitted by law.

Section 14 - Expiration: Municipality and Grantee hereby expressly agree that the following provision shall survive the termination or expiration of this Franchise:

Upon the termination or expiration of the Franchise, if Grantee shall not have acquired and accepted an extension or renewal hereof, it may remove its facilities and system within Municipality or, with Municipality's express written consent, or as permitted law, Grantee may continue operating its facilities and system within Municipality until a new franchise can be effected with Municipality, but it shall be required to obtain proper permits each time it makes additional extensions upon, over, along, across, and under the public rights-of-way within Municipality unless or until such time as a new franchise is obtained or the system and facilities are removed or are acquired by Municipality through the exercise of its power of eminent domain.

Section 15 - Utility Planning and Coordination Committee: Municipality and Grantee jointly desire and will endeavor to promote the coordination between Grantee and Municipality in the operation of Grantee's and Municipality's utility systems to encourage the efficient and orderly operation of those utility systems, to avoid arbitrary or reasonably avoidable interference with utility facilities of others, and to minimize costs occasioned by changes, relocations or other modifications to utility systems which affect presently existing facilities of Municipality and Grantee. Grantee shall participate in a Utility Planning & Coordinating Committee if established by Municipality.

Nothing contained in this Section 15 shall be construed to prohibit Grantee from going forward with any activity which is otherwise in conformance with this Franchise and the orders, rules and regulations of the Arizona Corporation Commission and other applicable legal requirements.

Section 16 - Annexation: Grantee hereby agrees to execute any and all petitions for annexation of territory to Municipality that may be presented to it by Municipality during the term of this Franchise, provided that at least fifty per cent (50%) of the private property owners have consented to the annexation and no municipal entity opposes the same.

Section 17 - Assignment: The right, privilege and Franchise hereby granted may not be transferred in whole or in part by the Grantee, its successors and assigns without the prior consent of the Council of the Municipality. No consent shall be required in connection with an assignment made as security pursuant to a mortgage or deed of trust or in connection with subsequent transfers made pursuant to any such instrument. Upon the approval of an assignment as required by this section, Grantee shall pay as a transfer fee Municipality's actual reasonable expenses in evaluating the proposed assignment. For the sole purpose of verifying the amount payable under this Section 17, the books and records of Municipality shall be subject to inspection and audit by duly

authorized officers or representatives of Grantee at reasonable times.

Section 18 - Entire Agreement: This Franchise represents the entire agreement of the parties with respect to its subject matter and all prior agreements and/or franchises, whether written or oral, and all negotiations and other discussions (including, without limitation, oral promises regarding the terms hereof) related to such subject matter are merged herein. However, nothing contained in this Franchise shall be construed to affect the application or construction of the ordinances, resolutions, rules and regulations of Municipality applicable to Grantee's business to the extent that such ordinances, resolutions, rules and regulations are not inconsistent with this Franchise. This Franchise may be amended only by an agreement executed by Grantee and Municipality and approved by the electors of the City of San Luis.

The language in this Section 18 is intended (among other stated items) by the City of San Luis to recognize that, in the event of any conflict between the terms of the Franchise and other documents resulting from the adoption of ordinances, resolutions, permits, licenses and contracts otherwise applicable to the operation of Southwest's gas distribution facilities as defined in the Franchise, the terms set forth in the Franchise shall prevail. This provision shall be applicable only to Southwest Gas and not to

any other utility or entity to which said ordinance, resolution, permit, license or contract may apply.

Section 19 - Governing Law: This Franchise shall be governed by Arizona Law.

Section 20 - Notices: A notice required or permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed given i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or ii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

Municipality: City Manager  
City of San Luis  
P. O. Box 1170  
San Luis, Arizona 85349

Grantee: District Manager  
Southern Arizona Division  
Southwest Gas Corporation  
3820 South 4th Avenue - Suite B  
Yuma, AZ 85365

Section 21 - Litigation: Should any party to this Franchise bring an action to enforce its terms or for damages with respect to its alleged breach, the successful party in such action shall be entitled to receive, in addition to such other relief as is awarded

to such party by the court, its reasonable attorney fees and court costs incurred in bringing or defending such civil action.

Section 22 - Headings: The headings of the sections and subsections hereof are intended only for assistance in locating provisions herein and shall not be used to interpret the language used in the section or subsection to which such heading relates.

PASSED AND ADOPTED this 26th day of May, ~~1998~~.  
1999.

CITY OF SAN LUIS, ARIZONA

  
\_\_\_\_\_  
Alex Joe Harper, Mayor


ATTEST:

  
\_\_\_\_\_  
Alex Ruiz, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Gerald W. Hunt  
City Attorney

SOUTHWEST GAS CORPORATION

By   
\_\_\_\_\_  
Christine Palacios  
Vice President