

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT by and between the **CITY OF LOUISVILLE**, a municiple corporation of the Commonwealth of Kentucky (the "**CITY**"), and **LOUISVILLE GAS AND ELECTRIC COMPANY**, a Kentucky Corporation, 220 West Main Street, Louisville, Kentucky 40232 (the "**COMPANY**");

WHEREAS, the Board of Aldermen passed Ordinance No. 124, Series 1998, to create a franchise for the transmission, distribution and sale of gas; and

WHEREAS, the Company submitted its bid for said franchise which bid has been determined to be the highest and best bid; and

WHEREAS, the Board of Aldermen passed Resolution 124, Series 1998 accepting the bid of the Company;

NOW, THEREFORE, for good and valuable consideration, the parties hereto, agree as follows:

Section 1. There is hereby created a franchise to acquire, lay, maintain and operate in the public streets, avenues, alleys and other public ways of the City of Louisville, Kentucky, a system of mains, pipes, fixtures and appliances for the transmission, distribution and sale of gas for heating and other purposes, subject to all the provisions of this Franchise Agreement.

Section 2. The company shall have the right and privilege of laying and maintaining gas mains and pipes, and appurtenances necessary or appropriate in connection therewith, in, along, under and across (but not above) the said streets, and to transmit, distribute and sell gas through said pipes, within the corporate boundaries of the City of Louisville as they now exist or may hereafter be extended; subject to the provisions hereof, city regulations or laws on the use of the right of way by utilities, and to all powers (including police power) inherent in, conferred upon or reserved to said City.

Section 3. No pavements or sidewalks shall be disturbed and no excavation in any of the said streets will be made, except in accordance with the City's regulations and laws on the use of the right of way and with the written permission of the Director of Public Works and under his supervision, and such mains, pipes and appurtenances shall be located in such portion of said streets as may be designated by the Director of Public Works, using alleys as far as reasonably feasible, provided that such pavements and sidewalks and excavations shall be replaced and restored by and at the expense of the company to City standards or prior condition, as required by the Director of Public Works. All such replacements shall be maintained by company for five (5) years in as good condition as the remainder of said street. Should the company fail or refuse to replace or restore said pavement, sidewalk or excavation to City standards or condition as required by the Director of Public Works within a reasonable time, then same may be replaced and restored by the City under the direction of the Director of Public Works at the cost and expense of the company. Work by the company hereunder shall be done in a

workmanlike manner and so as not to unnecessarily interfere with public use of any of said streets.

Section 4. Whenever the City or any of its departments or agencies shall grade, regrade, widen or alter any street or shall construct, reconstruct or alter any other municipal public works therein, it shall be the duty of the company, when so ordered by the City, to changes its mains, pipes and appurtenances in the street at its own expense so as to conform to the established grade or line of such street and so as not to interfere with such municipal public works so constructed, reconstructed or altered. However, the company shall not be required to make any such change when the street in which its facilities are located is vacated or when the street is altered for the convenience of abutting property owners or for private purposes and not as an incident to a public improvement, unless the reasonable cost of such relocation and the loss and expense resulting therefrom is first paid to the company.

Section 5. The company, its successors and assigns, shall indemnify the City of Louisville for any and all damage that may legally arise from the presence or operation of its gas pipes, mains or appliances so constructed or maintained on or along said public ways, and defend all actions which may be brought against said City by reason of or arising out of the construction or operation of said gas facilities.

Section 6. When requested to do so by the City of Louisville, company shall make available to the City copies of its regular monthly or annual statements, reports and

records as to heat value and pressure of gas distributed pursuant to this franchise, and such other reports as City may reasonably request.

The City of Louisville reserves the right to make such tests of gas meters, pressure, specific gravity and heat value of the gas furnished by company hereunder as it shall deem necessary or advisable.

The company agrees further to furnish the Mayor and the Director of Law of the City of Louisville written notice, by certified mail, concurrent with its filing an application with the Public Service Commission for an increase in rates; and such notice shall specify amount and type of increase to be sought and alerting to the City that such a filing is being made. The company agrees to maintain "as-built" drawings of all facilities within the right-of-way, and to provide said drawings to the Director of Public Works, as requested.

Section 7. The Company agrees to continue to cooperate with state and local government low-income energy assistance efforts, including state and local government energy assistance programs, and further agrees to the continued operation of a voluntary customer check off system for customer contributions to energy assistance efforts, such as Winterhelp.

Section 8. If any street is about to be paved or repaved by the City of Louisville, the company shall, on notice from the Director of Public Works, make any extensions of mains and pipes ahead of paving; provided that if company deems it unnecessary to make such an extension, it may refrain from doing so, but shall thereafter be precluded for a

period of five (5) years from disturbing such paving, and if company makes any extensions of mains and pipes, including connections to property lines within such five-year period, same shall be made in the unpaved portion of the street and any connections to property lines shall be tunneled under such paving.

Section 9. The franchise hereby created is not exclusive and shall be of a term of seven years, beginning on the 16th day of October 1996 and continuing until the 15th day of October 2003, unless terminated sooner under the terms of this Franchise Agreement.

Company is hereby given the right to assign the franchise created by this Ordinance to any person, firm or corporation able, ready and willing to carry out the terms of this franchise, but shall, prior to such assignment, obtain consent from the City to such assignment, which consent shall not be unreasonably withheld.

Section 10. In the event that the Public Service Commission of Kentucky shall cease to have jurisdiction over company's gas rates and service and no other regulatory authority shall have by law such jurisdiction over gas rates and service in the City of Louisville, then the Board of Aldermen of the City of Louisville shall have regulatory jurisdiction over company's gas rates and service in the City of Louisville within the limits permitted by law and to the extent that the Public Service Commission of Kentucky presently has such jurisdiction; provided, however, company shall have the right to seek redress in court by appeal or otherwise from any regulatory order or action of the Board of Aldermen of the City of Louisville on the ground that such order or action is unjust, unreasonable, unlawful or confiscatory.

If the Board of Aldermen acquires regulatory jurisdiction as aforesaid, the then existing rules and regulations of the Public Service Commission of Kentucky (or other regulatory authority having jurisdiction) and the rates, rules and regulations of the company as contained in its filing with such Commission or other authority as to matters of rates and service, shall continue in effect unless and until changed, after hearing, by final order of the Board of Aldermen or of court, or unless and until changed by agreement between the City of Louisville and the company.

In the event that the provision of gas service is deregulated by state legislation, then this franchise may be terminated upon ninety (90) days written notice by the City to the Company if it is determined by the City that continuation of the franchise would be unfair and unreasonable to the City or to the customers of the utility, or upon the agreement between the City and the Company.

Section 11. The "base franchise fee" shall be and the same is hereby fixed at Four Hundred Thousand Dollars (\$400,000.00) annually for the term of this franchise, adjusted annually for inflation as set out below. Upon acceptance by the Board of Aldermen, the \$5,000.00 deposit by the successful bidder shall be credited against the first year's payment. During each year of this franchise, the annual franchise fee shall be paid on or before the 15th day of February, and the franchise fee shall be the greater of (i) the base franchise fee, (ii) the franchise fee during the previous year of the franchise, or (iii) the franchise fee during the previous year plus an additional fee adjustment, as calculated herein based on the increase in the Consumer Price Index for all Urban Consumers, U.S.

City Average, all items, not seasonally adjusted ("the CPI"), which is published by the Bureau of Labor Statistics of the United States Department of Labor. During each year of this franchise beginning with the initial year, the additional fee adjustment shall be calculated by multiplying the percentage increase, if any, in the previous year's CPI by the greater of (i) the base franchise fee or (ii) the franchise fee during the previous year, the previous year's CPI increase being defined as the increase in the calendar year immediately preceding the February 15 payment date. If the current CPI is not available at the time of any necessary computation, the adjusted franchise fee shall be estimated by the City of Louisville and readjustment shall be made as soon as the current CPI is available. If the CPI is discontinued or supplemented, then the most nearly comparable successor index thereto shall be used.

Section 12. In case the Company shall fail within thirty (30) days after his bid shall have been accepted to comply with the provisions of this Ordinance, the Director of Public Works shall again advertise such franchise for sale in the manner in which the first sale was made and shall again sell said franchise in the same manner, and upon the same conditions and requirements in all respects as the original sale of said franchise was made, and in case the successful bidder at such sale shall fail or refuse to comply with the terms of said sale within the time prescribed, then the Director of Public Works may again advertise such franchise for sale in the manner prescribed herein and may continue to do so until said franchise is purchased by some bidder who shall comply with the terms of said sale.

IN WITNESS WHEREOF, the Parties have executed this Franchise Agreement

this _____ day of July, 1998.

CITY OF LOUISVILLE, KENTUCKY

LOUISVILLE GAS AND ELECTRIC COMPANY

By: _____

JERRY E. ABRAMSON
MAYOR

By: _____

Robert Stenar

Title: _____

APPROVED AS TO FORM:

Barbara E. Elliott

WILLIAM C. STONE
DIRECTOR OF LAW
CITY OF LOUISVILLE

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