

ORDINANCE NO. 2001.11

**AN ORDINANCE OF THE VILLAGE OF SALADO, TEXAS, GRANTING THE SALADO WATER SUPPLY CORPORATION CERTAIN POWERS, LICENSES, PRIVILEGES AND FRANCHISE TO OPERATE AND MAINTAIN A WATER UTILITY SYSTEM WITHIN THE VILLAGE; TO USE THE STREETS, AVENUES, EASEMENTS, RIGHTS-OF-WAY, ALLEYS, HIGHWAYS, SIDEWALKS, AND BRIDGES IN SAID VILLAGE FOR A PERIOD OF FIVE (5) YEARS; PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS AND CONDITIONS; PROVIDING FOR THE PAYMENT TO THE VILLAGE OF A PERCENTAGE OF ITS BASE WATER USAGE FEE; PROVIDING FOR ACCEPTANCE; AND PROVIDING FOR CERTAIN RELATED MATTERS.**

WHEREAS, the SALADO WATER SUPPLY CORPORATION (the "SWSC") owns and operates a water utility and delivers water within the VILLAGE OF SALADO (the "Village");

WHEREAS, the Board of Aldermen believes it is in the best interest of the Village to offer SWSC a franchise on the terms and conditions set forth in this ordinance;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE VILLAGE OF SALADO, TEXAS, THAT:**

**Section 1. Definitions.** For the purpose of this ordinance, the following words, terms, phrases and their derivations shall have the meaning given in this Section 1.

1.1. "Village" shall mean the Village of Salado, Texas, a municipal corporation in the State of Texas.

1.2. "SWSC" shall mean the Salado Water Supply Corporation, a Texas corporation, authorized to transact and actually transacting business in the State of Texas, its legal representatives, successors, lessees and assigns.

1.3. "Consumer" or "Customer" shall mean any person or organization receiving and using water utility service from the SWSC.

1.4. "Board of Aldermen" and "Aldermen" shall mean the governing body of the Village.

1.5. "Distribution system" shall mean all interrelated lines, equipment, pumps, and other appurtenances used or necessary for the transmission and distribution of water to consumers or customers in the Village.

1.6. "Franchise" shall mean this Ordinance, and all rights and obligations established herein or as it may be amended.

1.7. "Base water usage fee" shall mean the minimum fee charged to all customers using water supplied by SWSC within the Village.

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1.8. "Public easement" shall mean those easements held, owned or controlled by the Village, the terms, conditions or limitations upon which are not inconsistent with the construction or maintenance of a water distribution and transmission system.

1.9. "Service line" shall mean lines directly connected to the SWSC's distribution system and used to convey water therefrom to the customer meter.

1.10. "Street" or "alley" shall mean a publicly dedicated or maintained right-of-way, a portion of which is open to use by the public for vehicular travel.

1.11. "Water" shall mean potable drinking water.

**Section 2. Grant of Franchise.**

2.1. To the extent allowed by law, there is hereby granted to SWSC a non-exclusive franchise to maintain, construct, equip, extend, replace, alter and otherwise establish and operate in the Village, as constituted as of the effective date of this ordinance, or as may hereafter be constituted, works, systems, plants, distribution lines and all related facilities (including those now in service) necessary or appropriate to sell, distribute, convey or otherwise conduct, serve, supply and furnish the inhabitants of the Village and others, and to the Village, whenever the Village may desire to contract therefor, water and said SWSC is hereby granted passage and right-of-way in, under, along and across the streets, avenues, easements, right-of-way, alleys, highways, sidewalks, bridges and other structures and places of the Village and beneath the surface of same, and the right to occupy and use in any lawful way during the term of this Franchise said streets, avenues, easements, right-of-way, alleys, highways, sidewalks, bridges and other structures and places of the Village, as they now or hereafter may exist, for every and any such service, use, effect, and lawful purpose as herein mentioned; provided that all work, activity and undertakings by the SWSC shall be subject to the terms and provisions of this Franchise and the continuing exercise by the Village of its governmental and police powers; and provided further that nothing herein shall be construed to require or authorize SWSC to exceed any rights granted herein or by state or federal law.

2.2. The SWSC shall be allowed to operate and maintain all lines existing on the effective date of this Franchise within Village parks, or then existing on land hereinafter designated as a Village park, but shall not undertake a replacement of such lines or install new lines within said parks. The SWSC may directly petition the Aldermen for permission to cross park lands; provided that the grant of any such permission shall be in the sole discretion of the Aldermen.

2.3. The construction, maintenance, and operation of the system and property of SWSC within the Village shall be subject to this Franchise and the ordinances and regulations adopted by the Aldermen from time to time in the exercise of the Village's police and regulatory powers.

2.4. The term of this Franchise shall be for a period of <sup>five (5)</sup> ~~one~~ years beginning September 15, 2001, and ending on August 31, 2006.

2.5. The SWSC shall not transfer this Franchise nor any rights and privileges granted herein without the written approval of the Aldermen expressed by Ordinance. Such approval shall not be unreasonably withheld.

2.6. Nothing contained in this Franchise shall be construed as granting any exclusive franchise or right.

**Section 3.** **Use of Streets and Easements.** The SWSC is hereby authorized, licensed and empowered to do any and all things necessary and proper to be done and performed in executing the powers and utilizing the privileges herein mentioned and granted by this Franchise, provided the same do not conflict with existing sewers, electric power lines, telephone lines, cable television lines and other authorized installations, and provided that all work done in said streets, avenues, easements, rights-of-way, alleys, highways, sidewalks, bridges and other structures and places and public grounds by the SWSC shall be done with reasonable diligence and without unnecessary inconvenience to the public or individuals.

**Section 4.** **Work by the Village and Others.** The Village reserves the right to lay, and permit to be laid, sewer, cable television, telephone, electric, and other lines, cables and conduits, and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under any street, alley, highway, easement or public place occupied by the SWSC. The Village shall be liable to the SWSC only for any damage to the SWSC's lines, equipment or appurtenances of the SWSC, the producing cause of which is the negligence of the Village or its employees. Damage caused to SWSC as a result of work done by persons other than the Village shall be corrected through payment to the SWSC by the responsible person. Removal and relocation expenses incurred by the SWSC shall be reimbursed by the person for whom the removal or relocation is made.

**Section 5.** **Modification and Relocation of Facilities.**

5.1. If, during the period of this Franchise, the Village shall elect to alter or change the grade or alignment of any street, alley or other public right-of-way, or any water pipe, wastewater pipe, or any overhead or underground structure within the corporate limits or the extraterritorial jurisdiction of the Village, so as to conflict with the transmission or distribution lines, equipment and appurtenances of the SWSC, the SWSC shall remove or relocate, as necessary, all of its transmission or distribution lines, equipment, and appurtenances at the expense of the Village. Schedules for this work shall be developed by designated representatives of the SWSC and the Village. If such representatives cannot agree on the schedules the Mayor of the Village, after consultation with the SWSC, shall establish a schedule. This schedule shall provide for a minimum of thirty (30) days between the time the schedule is furnished to the SWSC and the time that any specific work to be done by the SWSC covered in the schedule is to begin.

5.2. Whenever any such public works project is funded, in whole or in part, with federal or state highway monies, if federal or state law provides compensation for utility adjustments, the Village shall request that compensation be provided to the SWSC by the funding authority. If the Village receives such requested utility adjustment compensation, it shall deliver same to the SWSC.

**Section 6.** **Service to be Provided by SWSC.**

6.1. Service may be provided by means of transmission and distribution lines, equipment, and appurtenances in the streets, alleys, easements, and other public rights-of-way. The SWSC shall not place its transmission or distribution lines, equipment and appurtenances where the same will obstruct or

interfere with motor vehicle traffic, or any existing television cable, electric, drainage, sewer or telephone facilities, traffic control signalization, street lights, fire lines or communication lines.

6.2. The SWSC shall furnish service consistent with the requirements and intent of this Franchise and its "service regulations" as now or hereafter adopted by the SWSC; provided that consistent with such regulations the SWSC shall provide water service to all areas of the Village and within the SWSC's certificated service area.

6.3. The SWSC's system and appurtenances shall be located, installed and maintained so that none of the facilities shall unreasonably endanger the lives of persons, unreasonably interfere with any public improvements the Village may deem proper to make, or unnecessarily obstruct the free use of the streets, alleys, bridges, easements or public property.

6.4. The SWSC shall repair all excavations and work sites by the SWSC in compliance with any applicable Village rules and regulations; provided that in any event the area of excavation or work shall be, at minimum, repaired and replaced to as good or better condition.

#### **Section 7. SWSC Rules and Regulations.**

7.1. The SWSC's rates, rules and regulations shall be and remain in effect as adopted and amended from time to time by its board of directors; subject to the right of the Village to regulate or administratively or judicially contest, appeal or challenge any such rate, rule or regulation to the fullest extent allowed by law.

7.2. SWSC shall be entitled to require from each and every customer to make such deposits and payments as required by SWSC, and to comply with the rules and regulations adopted by the SWSC.

#### **Section 8. Franchise and Rental Fees.**

8.1. The streets, rights-of-way, and public easements to be used by the SWSC in the operation of its system within the boundaries of the Village as such boundaries exist as of the effective date of this ordinance, are valuable public properties acquired and maintained by the Village at great expense to its taxpayers, without which the SWSC would be required to invest in right-of-way costs and acquisitions, and since the Village will incur costs in regulating and administering this Franchise, the SWSC shall through the term of this Franchise pay to the Village two percent (2%) of the base water usage fees collected from customers located within the Village for the duration of the Franchise. The fee shall be payable on or before September 15 of each year of the franchise period, and the fee shall be based upon the total number of users as of July 15 of the previous year. For example, the franchise fee for the period from September 1, 2001, through August 31, 2002, shall be based upon the total number of users as of July 15, 2001.

8.2. The franchise fee shall be in lieu of any and all other Village imposed rentals or fees for the franchise, license and privilege of occupying the Village streets, and any excise or revenue taxes or fees and all similar rentals or taxes (except as and when applicable ad valorem property taxes, special assessments for local improvements, village sales tax, and such other charges for utility services imposed uniformly upon persons, firms or corporations then engaged in business within the Village) upon or relating to the business, revenue, franchise, transmission and distribution lines, installations and systems,

fixtures, and other facilities of the SWSC and all other property of the SWSC and its activities, or any part thereof, in the Village which relate to the operations of the SWSC's water utility system.

**Section 9. Insurance Provided by SWSC.** The SWSC shall maintain throughout the term of this Franchise property damage coverage, general liability insurance, automobile liability insurance, and worker compensation insurance, with an insurance company, or companies, licensed to do business in the State of Texas insuring against claims for liability and damages; provided that the SWSC may in its continuing discretion provide all required coverage by a funded self-insured program.

**Section 10. Indemnification and Hold Harmless.** The SWSC agrees to save harmless the Village, its agents, officers and employees, against and from any and all claims by or on behalf of any person, firm, corporation or other entity, arising from the SWSC's distribution system or operation within the Village, or arising from any act of negligence of the SWSC, or any of its agents, contractors, servants, employees or licensees. It is understood that it is not the intention of either the Village or the SWSC to create any liability, right or claim for the benefit of third parties and this Franchise is intended and shall be construed for the sole benefit of the Village and the SWSC.

**Section 11. Acceptance of Franchise by SWSC.**

11.1. This Franchise shall not become effective until accepted by SWSC by the SWSC executing a written acceptance on the letterhead of the SWSC in the form and content set forth in Section 11.2 and, within thirty (30) days from the final adoption of this ordinance, filing such properly executed acceptance with the Village Clerk. When accepted by the SWSC in conformance with Sections 11.1 and 11.2, this Franchise shall be a duly executed contract by and between the Village and the SWSC.

11.2. The SWSC shall, if it elects to accept this Franchise, give written notice of acceptance to the Village Clerk within thirty (30) days from the date of this ordinance. Such acceptance shall be typed or printed on the letterhead of the SWSC and, with the blank spaces appropriately completed, shall be as follows:

(insert date of letter)

The Village of Salado  
Salado, Texas

ATTENTION: Village Clerk

The Salado Water Supply Corporation (the "SWSC"), acting by and through the undersigned officer who is acting within his official capacity and authority, hereby accepts the franchise to operate a water supply and distribution system within the Village of Salado (the "Village") as said franchise is set forth and provided in Ordinance No. \_\_\_\_\_ (the "Ordinance"). The SWSC agrees to be bound and governed by each term, provision and condition of the Ordinance, to accept and to give the benefits provided by the Ordinance and to perform each service and duty set forth and provided for in the Ordinance in a businesslike and reasonable manner and in compliance with the Franchise.

Salado Water Supply Corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Section 12. General Provisions.** SWSC shall supply the Village with a map or maps showing the probable location(s) of the Water Supply System to be constructed by the SWSC after the date of this Franchise. Upon the completion of construction of any part or portion of the Water Supply System, or any addition thereto, within the Village, the SWSC shall provide the Village with a map showing the location of such water line, pipe, facility or Water Supply System. With regard to information regarding the location(s) of the portion(s) of the Water Supply System, SWSC shall not be responsible for the accuracy of the information or for providing maps to the Village showing lines or facilities constructed prior to SWSC's acquisition of the Water Supply System. However, to the extent SWSC subsequently determines that such information is inaccurate, it will provide the Village with information regarding the inaccuracy.

**Section 13. Severability.** If any section, paragraph, subdivision, clause, part or provision hereof shall be adjudged invalid or unconstitutional the same shall not affect the validity hereof as a whole or any part or provision other than the part or parts held invalid or unconstitutional.

**Section 14. Governing Law.** This Franchise shall be construed in accordance with the Constitution and laws of the State of Texas. Nothing in this Franchise is intended to expand upon the authorities or rights of either the Village or the SWSC according to the Constitution and laws of the State of Texas. Nothing in this Franchise shall be construed as a waiver by either party of its authority or rights as provided by the Constitution or laws of the State of Texas.

**Section 15. Open Meetings.** It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public, and public notice of the time, place and purpose of said meeting was given, as required by the Open Meeting Act, Chapter 551, Texas Government Code.

**Section 16. Publication.** The full caption of this ordinance shall be published one (1) time in a weekly newspaper published within or in general circulation within the Village. This ordinance shall take effect only upon its acceptance by the SWSC within the time and manner hereinabove provided. In the event this Franchise is not accepted by the SWSC this ordinance shall expire and be and become null and void.

PASSED AND APPROVED on this the 17 day of May, 2001.

THE VILLAGE OF SALADO, TEXAS

BY: Charlott Douglas  
Mayor

ATTEST:

Dianna Zulauf  
Village Clerk