

**CONTRACT RESULTING FROM REQUEST FOR PROPOSAL NUMBER 10089981-23-E,
Independent Audit of San Diego Gas & Electric (SDG&E) Gas and Electric Franchise**

This Contract (Contract) is entered into by and between the City of San Diego, a municipal corporation (City), and the successful proposer to Request for Proposal (RFP) # 10089981-23-E, Independent Audit of San Diego Gas & Electric (SDG&E) Gas and Electric Franchise (Contractor).

RECITALS

On or about 10/21/2022, City issued an RFP to prospective proposers on services to be provided to the City. The RFP and any addenda and exhibits thereto are collectively referred to as the "RFP." The RFP is attached hereto as Exhibit A.

City has determined that Contractor has the expertise, experience, and personnel necessary to provide the services.

City wishes to retain Contractor to provide auditing consulting services as further described in the Scope of Work, attached hereto as Exhibit B. (Services).

For good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

**ARTICLE I
CONTRACTOR SERVICES**

1.1 Scope of Work. Contractor shall provide the Services to City as described in Exhibit B which is incorporated herein by reference. Contractor will submit all required forms and information described in Exhibit A to the Purchasing Agent before providing Services.

1.2 General Contract Terms and Provisions. This Contract incorporates by reference the General Contract Terms and Provisions, attached hereto as Exhibit C.

1.3 Contract Administrator. The Sustainability and Mobility (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

Heather Werner, Deputy Director
1200 Third Ave, Ste 1800
(858) 492-5082
hwerner@sandiego.gov

**ARTICLE II
DURATION OF CONTRACT**

2.1 Term. This Contract shall be for a period of two (2) years beginning on the Effective Date. City may, in its sole discretion, extend this Contract for one (1) additional two (2) year period(s). Unless otherwise terminated, this Contract shall be effective until completion of the Scope of Service beginning on the Effective Date. The term of this Contract shall not exceed five years unless approved by the City Council by ordinance.

2.2 Effective Date. This Contract shall be effective on the date it is executed by the last Party to sign the Contract, and approved by the City Attorney in accordance with San Diego Charter Section 40.

ARTICLE III COMPENSATION

3.1 Amount of Compensation. City shall pay Contractor for performance of all Services rendered in accordance with this Contract in an amount not to exceed \$500,000.

Contractor must immediately inform the City when the cumulative value of work done under this Agreement exceeds eighty percent (80%) of the total compensation authorized in this paragraph, or when it reasonably appears to Contractor that the cumulative value of work done under this Agreement may exceed the total compensation authorized in this paragraph within forty-five (45) days. The City is not required to pay more than the maximum amount authorized.

ARTICLE IV WAGE REQUIREMENTS

4.1 Reserved.

ARTICLE V CONTRACT DOCUMENTS

5.1 Contract Documents. The following documents comprise the Contract between the City and Contractor: this Contract and all exhibits thereto, the RFP; the Notice to Proceed; and the City's written acceptance of exceptions or clarifications to the RFP, if any.

5.2 Contract Interpretation. The Contract Documents completely describe the Services to be provided. Contractor will provide any Services that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result whether or not specifically called for or identified in the Contract Documents. Words or phrases which have a well-known technical or construction industry or trade meaning and are used to describe Services will be interpreted in accordance with that meaning unless a definition has been provided in the Contract Documents.

5.3 Precedence. In resolving conflicts resulting from errors or discrepancies in any of the Contract Documents, the Parties will use the order of precedence as set forth below. The 1st document has the highest priority. Inconsistent provisions in the Contract Documents that address the same subject, are consistent, and have different degrees of specificity, are not in conflict and the more specific language will control. The order of precedence from highest to lowest is as follows:

1st Any properly executed written amendment to the Contract

2nd The Contract

3rd The RFP and the City's written acceptance of any exceptions or clarifications to the RFP, if any

2.1 Completed and Signed Contract Signature Page

We have provided our Completed and Signed Contract Signature Page below.

4th Contractor's Pricing

5.4 Counterparts. This Contract may be executed in counterparts which, when taken together, shall constitute a single signed original as though all Parties had executed the same page.

5.5 Public Agencies. Other public agencies, as defined by California Government Code section 6500, may choose to use the terms of this Contract, subject to Contractor's acceptance. The City is not liable or responsible for any obligations related to a subsequent Contract between Contractor and another public agency.

IN WITNESS WHEREOF, this Contract is executed by City and Contractor acting by and through their authorized officers.

CONTRACTOR

Crowe LLP
Proposer


650 Town Center Drive, Suite 740
Street Address

Costa Mesa, California 92626
City

630.706.2071
Telephone No.

bert.nuehring@crowe.com
E-Mail

BY:


Signature of Proposer's Authorized Representative


Bert Nuehring
Print Name

Partner
Title

December 1, 2022
Date

CITY OF SAN DIEGO
A Municipal Corporation

BY:



Print Name:
Claudia C. Abarca
Director, Purchasing & Contracting Department

October 9, 2023
Date Signed

Approved as to form this 9th day of
OCTOBER, 2023
MARA W. ELLIOTT, City Attorney

BY: 
Deputy City Attorney

**EXHIBIT A
PROPOSAL SUBMISSION AND REQUIREMENTS**

A. PROPOSAL SUBMISSION

1. Timely Proposal Submittal. Proposals must be submitted as described herein to the Purchasing & Contracting Department (P&C).

1.1 Reserved.

1.2 Paper Proposals. The City will accept paper proposals in lieu of eProposals. Paper proposals must be submitted in a sealed envelope to the Purchasing & Contracting Department (P&C) located at 1200 Third Avenue, Suite 200, San Diego, CA 92101. The Solicitation Number and Closing Date must be referenced in the lower left-hand corner of the outside of the envelope. Faxed proposals will not be accepted.

1.3 Proposal Due Date. Proposals must be submitted prior to the Closing Date indicated on the eBidding System. E-mailed and/or faxed proposals will not be accepted.

1.4 Pre-Proposal Conference. No pre-proposal conference will be held for RFP.

1.4.1 Reserved.

1.5 Questions and Comments. Written questions and comments must be submitted electronically via the eBidding System no later than the date specified on the eBidding System. Only written communications relative to the procurement shall be considered. The City's eBidding System is the only acceptable method for submission of questions. All questions will be answered in writing. The City will distribute questions and answers without identification of the inquirer(s) to all proposers who are on record as having received this RFP, via its eBidding System. No oral communications can be relied upon for this RFP. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this RFP.

1.6 Contact with City Staff. Unless otherwise authorized herein, proposers who are considering submitting a proposal in response to this RFP, or who submit a proposal in response to this RFP, are prohibited from communicating with City staff about this RFP from the date this RFP is issued until a contract is awarded.

2. Proposal Format and Organization. Unless electronically submitted, all proposals should be securely bound and must include the following completed and executed forms and information presented in the manner indicated below:

Tab A - Submission of Information and Forms.

2.1 Completed and signed Contract Signature Page. If any addenda are issued, the latest Addendum Contract Signature Page is required.

2.2 Exceptions requested by proposer, if any. The proposer must present written factual or legal justification for any exception requested to the Scope of Work, the Contract, or the Exhibits thereto. Any exceptions to the Contract that have not been accepted

by the City in writing are deemed rejected. The City, in its sole discretion, may accept some or all of proposer's exceptions, reject proposer's exceptions, and deem the proposal non-responsive, or award the Contract without proposer's proposed exceptions. The City will not consider exceptions addressed elsewhere in the proposal.

2.3 The Contractor Standards Pledge of Compliance Form.

2.4 Equal Opportunity Contracting forms including the Work Force Report and Contractors Certification of Pending Actions.

2.5 Reserved.

2.6 Reserved.

2.7 Reserved.

2.8 Additional Information as required in Exhibit B.

2.9 Reserved.

Tab B - Executive Summary and Responses to Specifications.

2.10 A title page.

2.11 A table of contents.

2.12 An executive summary, limited to one typewritten page, that provides a high-level description of the proposer's ability to meet the requirements of the RFP and the reasons the proposer believes itself to be best qualified to provide the identified services.

2.13 Proposer's response to the RFP.

Tab C - Cost/Price Proposal (if applicable). Proposers shall submit a cost proposal in the form and format described herein. Failure to provide cost(s) in the form and format requested may result in proposal being declared non-responsive and rejected.

3. Proposal Review. Proposers are responsible for carefully examining the RFP, the Specifications, this Contract, and all documents incorporated into the Contract by reference before submitting a proposal. If selected for award of contract, proposer shall be bound by same unless the City has accepted proposer's exceptions, if any, in writing.

4. Addenda. The City may issue addenda to this RFP as necessary. All addenda are incorporated into the Contract. The proposer is responsible for determining whether addenda were issued prior to a proposal submission. Failure to respond to or properly address addenda may result in rejection of a proposal.

5. Quantities. The estimated quantities provided by the City are not guaranteed. These quantities are listed for informational purposes only. Quantities vary depending on the demands of the City. Any variations from the estimated quantities shall not entitle the proposer to an adjustment in the unit price or any additional compensation.

6. Reserved.

7. Modifications, Withdrawals, or Mistakes. Proposer is responsible for verifying all prices and extensions before submitting a proposal.

7.1 Modification or Withdrawal of Proposal Before Proposal Opening. Prior to the Closing Date, the proposer or proposer's authorized representative may modify or withdraw the proposal by providing written notice of the proposal modification or withdrawal to the City Contact via the eBidding System. E-mail or telephonic withdrawals or modifications are not permissible.

7.2 Proposal Modification or Withdrawal of Proposal After Proposal Opening. Any proposer who seeks to modify or withdraw a proposal because of the proposer's inadvertent computational error affecting the proposal price shall notify the City Contact identified on the eBidding System no later than three working days following the Closing Date. The proposer shall provide worksheets and such other information as may be required by the City to substantiate the claim of inadvertent error. Failure to do so may bar relief and allow the City recourse from the bid surety. The burden is upon the proposer to prove the inadvertent error. If, as a result of a proposal modification, the proposer is no longer the apparent successful proposer, the City will award to the newly established apparent successful proposer. The City's decision is final.

8. Incurred Expenses. The City is not responsible for any expenses incurred by proposers in participating in this solicitation process.

9. Public Records. By submitting a proposal, the proposer acknowledges that any information submitted in response to this RFP is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the proposer submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the proposer to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the proposer must provide a specific and detailed legal basis, including applicable case law, that clearly establishes the requested information is exempt from the disclosure under the CPRA. If the proposer does not provide a specific and detailed legal basis for requesting the City to withhold proposer's confidential or proprietary information at the time of proposal submittal, City will release the information as required by the CPRA and proposer will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the proposer's obligation to defend, at proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the proposer's request. Furthermore, the proposer shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at proposer's request. Nothing in the Contract resulting from this proposal creates any obligation on the part of the City to notify the proposer or obtain the proposer's approval or consent before releasing information subject to disclosure under the CPRA.

10. Right to Audit. The City Auditor may access proposer's records as described in San Diego Charter section 39.2 to confirm contract compliance.

B. PRICING

1. Fixed Price. All prices shall be firm, fixed, fully burdened, FOB destination, and include any applicable delivery or freight charges, and any other costs required to provide the requirements as specified in this RFP. The lowest total estimated contract price of all the proposals that meet the requirements of this RFP will receive the maximum assigned points to this category as set forth in this RFP. The other price schedules will be scored based on how much higher their total estimated contract prices compare with the lowest:

$$(1 - \frac{(\text{contract price} - \text{lowest price})}{\text{lowest price}}) \times \text{maximum points} = \text{points received}$$

For example, if the lowest total estimated contract price of all proposals is \$100, that proposal would receive the maximum allowable points for the price category. If the total estimated contract price of another proposal is \$105 and the maximum allowable points is 60 points, then that proposal would receive $(1 - ((105 - 100) / 100) \times 60 = 57$ points, or 95% of the maximum points. The lowest score a proposal can receive for this category is zero points (the score cannot be a negative number). The City will perform this calculation for each Proposal.

2. Taxes and Fees. Taxes and applicable local, state, and federal regulatory fees should not be included in the price proposal. Applicable taxes and regulatory fees will be added to the net amount invoiced. The City is liable for state, city, and county sales taxes but is exempt from Federal Excise Tax and will furnish exemption certificates upon request. All or any portion of the City sales tax returned to the City will be considered in the evaluation of proposals.

3. Escalation. An escalation factor is not allowed unless called for in this RFP. If escalation is allowed, proposer must notify the City in writing in the event of a decline in market price(s) below the proposal price. At that time, the City will make an adjustment in the Contract or may elect to re-solicit.

4. Unit Price. Unless the proposer clearly indicates that the price is based on consideration of being awarded the entire lot and that an adjustment to the price was made based on receiving the entire proposal, any difference between the unit price correctly extended and the total price shown for all items shall be offered shall be resolved in favor of the unit price.

C. EVALUATION OF PROPOSALS

1. Award. The City shall evaluate each responsive proposal to determine which proposal offers the City the best value consistent with the evaluation criteria set forth herein. The proposer offering the lowest overall price will not necessarily be awarded a contract.

2. Sustainable Materials. Consistent with Council Policy 100-14, the City encourages use of readily recyclable submittal materials that contain post-consumer recycled content.

3. Evaluation Process.

3.1 Process for Award. A City-designated evaluation committee (Evaluation Committee) will evaluate and score all responsive proposals. The Evaluation Committee may require proposer to provide additional written or oral information to clarify responses. Upon completion of the evaluation process, the Evaluation Committee will recommend to the Purchasing Agent that award be made to the proposer with the highest scoring proposal.

3.2 Reserved.

3.3 Mandatory Interview/Oral Presentation. The City will require proposers to interview and/or make an oral presentation if one or more proposals score within five (5) points or less of the proposal with the highest score. Only the proposer with the highest scoring proposal and those proposers scoring within five (5) points or less of the highest scoring proposal will be asked to interview and/or make an oral presentation. Interviews and/or oral presentations will be made to the Evaluation Committee in order to clarify the proposals and to answer any questions. The interviews and/or oral presentations will be scored as part of the selection process. The City will complete all reference checks prior to any oral interview. Additionally, the Evaluation Committee may require proposer's key personnel to interview. Interviews may be by telephone and/or in person. Multiple interviews may be required. Proposers are required to complete their oral presentation and/or interviews within seven (7) workdays after the City's request. Proposers should be prepared to discuss and substantiate any of the areas of the proposal submitted, as well as proposer's qualifications to furnish the subject goods and services. Proposer is responsible for any costs incurred for the oral presentation and interview of the key personnel.

3.4 Discussions/Negotiations. The City has the right to accept the proposal that serves the best interest of the City, as submitted, without discussion or negotiation. Contractors should, therefore, not rely on having a chance to discuss, negotiate, and adjust their proposals. The City may negotiate the terms of a contract with the winning proposer based on the RFP and the proposer's proposal, or award the contract without further negotiation.

3.5 Inspection. The City reserves the right to inspect the proposer's equipment and facilities to determine if the proposer is capable of fulfilling this Contract. Inspection will include, but not limited to, survey of proposer's physical assets and financial capability. Proposer, by signing the proposal agrees to the City's right of access to physical assets and financial records for the sole purpose of determining proposer's capability to perform the Contract. Should the City conduct this inspection, the City reserves the right to disqualify a proposer who does not, in the City's judgment, exhibit the sufficient physical and financial resources to perform this Contract.

[Remainder of page intentionally left blank]

3.6 Evaluation Criteria. The following elements represent the evaluation criteria that will be considered during the evaluation process:

	MAXIMUM EVALUATION POINTS
A. Responsiveness to the RFP.	40
1. Requested information included and thoroughness of response	
2. Understanding of the project and ability to deliver as exhibited in the Executive Summary.	
3. Audit process, information gathering methods, workplan, compliance methodologies and assessments	
B. Staffing Plan.	10
1. Qualifications of personnel adequate for requirement	
2. Availability/Geographical location of personnel for required tasks	
3. Clearly defined Roles/Responsibilities of personnel	
C. Firm's Capability to provide the services and expertise and Past Performance.	25
1. Relevant experience of the Firm and subcontractors specific to performance audits of utility operations, franchise terms and conditions, energy infrastructure construction and maintenance.	
2. Other pertinent experience	
3. Past/Prior Performance	
4. Capacity/Capability to meet The City of San Diego needs in a timely manner	
5. Reference checks	
D. Price.	15
E. Mandatory Interview/Oral Presentation (pursuant to Section 3.3 above) at no cost to the City.	10
1. Thoroughness and Clarity of Presentation	
SUB TOTAL MAXIMUM EVALUATION POINTS:	100
F. Participation by Small Local Business Enterprise (SLBE) or Emerging Local Business Enterprise (ELBE) Firms*	12
FINAL MAXIMUM EVALUATION POINTS INCLUDING SLBE/ELBE:	112

*The City shall apply a maximum of an additional 12 percentage points to the proposer's final score for SLBE OR ELBE participation. Refer to Equal Opportunity Contracting Form, Section V.

D. ANNOUNCEMENT OF AWARD

1. Award of Contract. The City will inform all proposers of its intent to award a Contract in writing.

2. Obtaining Proposal Results. No solicitation results can be obtained until the City announces the proposal or proposals best meeting the City's requirements. Proposal results may be obtained by: (1) e-mailing a request to the City Contact identified on the eBidding System or (2) visiting the P&C eBidding System to review the proposal results. To ensure an accurate response, requests should reference the Solicitation Number. Proposal results will not be released over the phone.

3. Multiple Awards. City may award more than one contract by awarding separate items or groups of items to various proposers. Awards will be made for items, or combinations of items, which result in the lowest aggregate price and/or best meet the City's requirements. The additional administrative costs associated with awarding more than one Contract will be considered in the determination.

E. PROTESTS. The City's protest procedures are codified in Chapter 2, Article 2, Division 30 of the San Diego Municipal Code (SDMC). These procedures provide unsuccessful proposers with the opportunity to challenge the City's determination on legal and factual grounds. The City will not consider or otherwise act upon an untimely protest.

F. SUBMITTALS REQUIRED UPON NOTICE TO PROCEED. The successful proposer is required to submit the following documents to P&C **within ten (10) business days** from the date on the Notice to Proceed letter:

1. Insurance Documents. Evidence of all required insurance, including all required endorsements, as specified in Article VII of the General Contract Terms and Provisions.

2. Taxpayer Identification Number. Internal Revenue Service (IRS) regulations require the City to have the correct name, address, and Taxpayer Identification Number (TIN) or Social Security Number (SSN) on file for businesses or persons who provide goods or services to the City. This information is necessary to complete Form 1099 at the end of each tax year. To comply with IRS regulations, the City requires each Contractor to provide a Form W-9 prior to the award of a Contract.

3. Business Tax Certificate. Unless the City Treasurer determines a business is exempt, all businesses that contract with the City must have a current business tax certificate.

4. Reserved.

5. Reserved.

6. COVID Certification Form.

The City may find the proposer to be non-responsive and award the Contract to the next highest scoring responsible and responsive proposer if the apparent successful proposer fails to timely provide the required information or documents.

EXHIBIT B
SCOPE OF SERVICES

A. SPECIFICATIONS

The City of San Diego Department of Sustainability and Mobility is requesting proposals to enter into an agreement with audit firm to provide an independent audit of San Diego Gas & Electric's (SDG&E) performance under the gas and electric franchises awarded in July 2021 for the designated 2-year compliance period. The report will cover performance per the terms of the:

- Franchises – Exhibit D
- Administrative MOU – Exhibit E
- Utility Undergrounding Program MOU – Exhibit F
- Energy Cooperation Agreement associated with the Franchises – Exhibit G

The independent auditor shall perform an audit of SDG&E's conformance and compliance with all conditions of the Franchise and produce a written report documenting the work performed and the conclusions reached. The audit(s) shall address SDG&E's fulfillment of financial, operational, documentary, and cooperative requirements under the Franchise. If SDG&E fails to cooperate with the independent audit(s), the auditor's report shall document the refusal and any reason SDG&E stated for failing to cooperate.

The scope of work also includes development of adjunct materials such as report synopses and presentations to the Franchise Compliance Review Committee, City Council and/or committee meetings, and any additional briefing materials as identified by City staff.

B. TECHNICAL REPRESENTATIVE.

The Technical Representative for this Contract is identified in the notice of award and is responsible for overseeing and monitoring this Contract.

C. REFERENCES

Proposer is required to provide a minimum of three (3) references to demonstrate successful performance for work of similar size and scope as specified in this contract during the past five (5) years. References shall be submitted on the Contractor Standards Pledge of Compliance form attached to this RFP. Proposer cannot provide a current City of San Diego staff member as a reference. If a City staff member is provided, the Proposer will be required to provide an additional reference. The City reserves the right to contact references not provided by the Proposer.

Proposers shall also demonstrate that they are properly equipped to perform the work as specified in this contract. Previous experience in furnishing the services as specified in this RFP will be an important consideration.

The City shall rely on references as part of the evaluation process. If the City does not receive a reference from contact provided, the reference may be classified as unsatisfactory. Alternative contacts may be provided, as determined solely by the City.

Cost / Price Proposal

D. Compensation and Fee Schedule

Our goal in setting fees is simple: to provide long-term, cost-effective pricing for our clients. We are confident that we can work together to achieve an optimized plan for audit services.

We are committed to working with you to make sure the scope of our proposal is appropriate. While we experience cost increases throughout our relationships with our clients, we make every effort to structure an engagement fee arrangement which will meet your needs while providing us with sufficient resources to perform the expected work.

As requested, we have provided our pricing utilizing the City's **Section 1: Task Cost Table** from Exhibit B below.

Our fees above are all-inclusive. They include all out-of-pocket expenses for supplies / materials, postage and travel in the normal course of the audit. We will not bill you for additional expenses beyond the fees noted on these forms, unless specifically agreed to with you in advance.

Section 1: Task Costs

Task 1: 2023 Compliance Audit Report	\$119,842
Task 2: 2023 Compliance Audit Briefing Materials and Meeting Presentations	\$15,898
Task 3: 2025 Compliance Audit Report	\$98,053
Task 4: 2025 Compliance Audit Briefing Materials and Meeting Presentations	\$15,898
Total Cost	\$249,690

EXHIBIT C



THE CITY OF SAN DIEGO
GENERAL CONTRACT TERMS AND PROVISIONS
APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

ARTICLE I
SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective on the last date that the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II
CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Notices to the City shall be sent to:

Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

ARTICLE III COMPENSATION

3.1 Manner of Payment. Contractor will be paid monthly, in arrears, for goods and/or services provided in accordance with the terms and provisions specified in the Contract.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

3.2.6.2 Monthly Invoicing and Payments. Contractor and Contractor's subcontractors and suppliers must submit Monthly Invoicing and Payment Reports by the fifth (5th) day of the subsequent month.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

ARTICLE IV SUSPENSION AND TERMINATION

4.1 City's Right to Suspend for Convenience. City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

4.2 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of

documents and closing of Contractor's affected performance under the Contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this Contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

4.3 City's Right to Terminate for Default. Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

4.3.1 If Contractor fails to satisfactorily cure a default within ten (10) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

4.3.2 If City terminates this Contract, in whole or in part, City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, equivalent goods or services and Contractor shall be liable to City for any excess costs. Contractor shall also continue performance to the extent not terminated.

4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

4.5 Contractor's Right to Payment Following Contract Termination.

4.5.1 Termination for Convenience. If the termination is for the convenience of City an equitable adjustment in the Contract price shall be made. No amount shall be allowed for anticipated profit on unperformed services, and no amount shall be paid for an as needed contract beyond the Contract termination date.

4.5.2 Termination for Default. If, after City gives notice of termination for failure to fulfill Contract obligations to Contractor, it is determined that Contractor had not so failed, the termination shall be deemed to have been effected for the convenience of City. In such event, adjustment in the Contract price shall be made as provided in Section 4.3.2. City's rights and remedies are in addition to any other rights and remedies provided by law or under this Contract.

4.6 Remedies Cumulative. City's remedies are cumulative and are not intended to be exclusive of any other remedies or means of redress to which City may be lawfully entitled in case of any breach or threatened breach of any provision of this Contract.

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Inspection and Acceptance. The City will inspect and accept goods provided under this Contract at the shipment destination unless specified otherwise. Inspection will be made and acceptance will be determined by the City department shown in the shipping address of the Purchase Order or other duly authorized representative of City.

5.2 Responsibility for Lost or Damaged Shipments. Contractor bears the risk of loss or damage to goods prior to the time of their receipt and acceptance by City. City has no obligation to accept damaged shipments and reserves the right to return damaged goods, at Contractor's sole expense, even if the damage was not apparent or discovered until after receipt.

5.3 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its' employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people and/or property to the Contract Administrator.

5.4 Delivery. Delivery shall be made on the delivery day specified in the Contract Documents. The City, in its sole discretion, may extend the time for delivery. The City may order, in writing, the suspension, delay or interruption of delivery of goods and/or services.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Safety Data Sheets. If specified by City in the solicitation or otherwise required by this Contract, Contractor must send with each shipment one (1) copy of the Safety Data Sheet (SDS) for each item shipped. Failure to comply with this procedure will be cause for immediate termination of the Contract for violation of safety procedures.

5.13 Project Personnel. Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Rights in Data. If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Deliverable Materials), all rights of Contractor or its subcontractors in the Deliverable Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Deliverable Materials, are the sole property of City. Contractor, including its employees, agents, and subcontractors, may not use any Deliverable Material for purposes unrelated to Contractor's work on behalf of the City without prior written consent of City. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City, without the prior written consent of the City.

6.2 Intellectual Property Rights Assignment. For no additional compensation, Contractor hereby assigns to City all of Contractor's rights, title, and interest in and to the content of the Deliverable Materials created by Contractor or its employees, agents, or subcontractors, including copyrights, in connection with the services performed under this Contract. Contractor

shall promptly execute and deliver, and shall cause its employees, agents, and subcontractors to promptly execute and deliver, upon request by the City or any of its successors or assigns at any time and without further compensation of any kind, any power of attorney, assignment, application for copyright, patent, trademark or other intellectual property right protection, or other papers or instruments which may be necessary or desirable to fully secure, perfect or otherwise protect to or for the City, its successors and assigns, all right, title and interest in and to the content of the Deliverable Materials. Contractor also shall cooperate and assist in the prosecution of any action or opposition proceeding involving such intellectual property rights and any adjudication of those rights.

6.3 Contractor Works. Contractor Works means tangible and intangible information and material that: (a) had already been conceived, invented, created, developed or acquired by Contractor prior to the effective date of this Contract; or (b) were conceived, invented, created, or developed by Contractor after the effective date of this Contract, but only to the extent such information and material do not constitute part or all of the Deliverable Materials called for in this Contract. All Contractor Works, and all modifications or derivatives of such Contractor Works, including all intellectual property rights in or pertaining to the same, shall be owned solely and exclusively by Contractor.

6.4 Subcontracting. In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a “works for hire” as described in the United States Copyright Act of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

6.5 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor’s own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim

of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.6 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.7 Publication. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

6.8 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods, materials, supplies, or equipment to Contractor under the Contract.

ARTICLE VII INDEMNIFICATION AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any goods provided or performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or

in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

7.2.4 Professional Liability (Errors and Omissions). For consultant contracts, insurance appropriate to Consultant’s profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

7.2.5 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.5.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

7.2.5.2 Primary Coverage. For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.2.5.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

7.2.5.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

7.2.5.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

7.3 Self Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

7.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.5 Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.8 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

ARTICLE VIII BONDS

8.1 Payment and Performance Bond. Prior to the execution of this Contract, City may require Contractor to post a payment and performance bond (Bond). The Bond shall guarantee Contractor's faithful performance of this Contract and assure payment to contractors, subcontractors, and to persons furnishing goods and/or services under this Contract.

8.1.1 Bond Amount. The Bond shall be in a sum equal to twenty-five percent (25%) of the Contract amount, unless otherwise stated in the Specifications. City may file a claim against the Bond if Contractor fails or refuses to fulfill the terms and provisions of the Contract.

8.1.2 Bond Term. The Bond shall remain in full force and effect at least until complete performance of this Contract and payment of all claims for materials and labor, at which time it will convert to a ten percent (10%) warranty bond, which shall remain in place until the end of the warranty periods set forth in this Contract. The Bond shall be renewed annually, at least sixty (60) days in advance of its expiration, and Contractor shall provide timely proof of annual renewal to City.

8.1.3 Bond Surety. The Bond must be furnished by a company authorized by the State of California Department of Insurance to transact surety business in the State of California and which has a current A.M. Best rating of at least "A-, VIII."

8.1.4 Non-Renewal or Cancellation. The Bond must provide that City and Contractor shall be provided with sixty (60) days' advance written notice in the event of non-renewal, cancellation, or material change to its terms. In the event of non-renewal, cancellation, or material change to the Bond terms, Contractor shall provide City with evidence of the new source of surety within twenty-one (21) calendar days after the date of the notice of non-renewal, cancellation, or material change. Failure to maintain the Bond, as required herein, in full force

and effect as required under this Contract, will be a material breach of the Contract subject to termination of the Contract.

8.2 Alternate Security. City may, at its sole discretion, accept alternate security in the form of an endorsed certificate of deposit, a money order, a certified check drawn on a solvent bank, or other security acceptable to the Purchasing Agent in an amount equal to the required Bond.

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result

in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City's Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

9.1.10 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

9.1.11 Equal Pay Ordinance. Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

9.1.11.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or

solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations,

attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

ARTICLE XIII MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract

termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

ORDINANCE NUMBER O- 21327 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 11 2021

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO GRANTING TO SAN DIEGO GAS AND ELECTRIC COMPANY, THE FRANCHISE (1) TO USE, FOR TRANSMITTING AND DISTRIBUTING GAS SUITED FOR LIGHTING BUT FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES OTHER THAN LIGHTING, ALL PIPES AND APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE LAWFULLY PLACED AND MAINTAINED IN THE STREETS WITHIN THE CITY OF SAN DIEGO UNDER THAT CERTAIN FRANCHISE OF GRANTEE ACQUIRED PURSUANT TO SECTION 19 OF ARTICLE XI OF THE CONSTITUTION OF THE STATE OF CALIFORNIA, AS THE SECTION EXISTED PRIOR TO ITS AMENDMENT ON OCTOBER 10, 1911; (2) TO CONSTRUCT, MAINTAIN, AND USE IN THE STREETS ALL PIPES AND APPURTENANCES WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE IS NOT NOW NOR SHALL HEREAFTER BE AVAILABLE THEREFOR, NECESSARY TO TRANSMIT AND DISTRIBUTE GAS SUITED FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES; (3) TO UTILIZE PIPES AND APPURTENANCES IN THE STREETS FOR TRANSMITTING GAS FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR ANY AND ALL LAWFUL PURPOSES; AND (4) FOR COOPERATION WITH CITY CLIMATE ACTION AND CLIMATE JUSTICE GOALS; AND PROVIDING THE TERMS AND CONDITIONS OF THE FRANCHISE SO GRANTED.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. Definitions

The following definitions apply in this Ordinance and are capitalized when they appear:

(a) "Grantee" means San Diego Gas & Electric Company, a California corporation.

(b) "City" means the City of San Diego, a municipal corporation of the State of

California, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

(c) "Administrative MOU" means that certain Administrative Memorandum of Understanding to be negotiated between the City and Grantee to define and promote a cooperative working relationship between the parties and to address the handling of operational issues as more fully described in Section 9. In the event of a conflict between the Administrative MOU and the Franchise, the Franchise shall control.

(d) "Applicable Law" means any law, rule, regulation, requirement, guideline, action, determination, or order of, or legal entitlement issued by, any governmental body having jurisdiction, applicable from time to time to the operation and ownership of Grantee's Gas facilities and to Grantee's business operations, or any other transaction or matter contemplated by the Franchise (including any which concern health, safety, fire, environmental protection, transmission and distribution, metering, billing, quality and use, public records, labor relations, environmental plans, building codes, nondiscrimination, and the payment of minimum and prevailing wages), including without limitation applicable provisions of the San Diego City Charter, the San Diego Municipal Code, the California Constitution, the California Public Utilities Code, the California Labor Code, the Federal Power Act, and orders and decisions of the California Public Utilities Commission (CPUC) and Federal Energy Regulatory Commission (FERC).

(e) "Bid Amount" means ten million dollars (\$10,000,000) plus any interest as provided in Section 4(d).

(f) "Books and Records" means Grantee's records, regardless of form, including physical, digital, and electronically stored information, including but not limited to records of income, expenditures, finance, charts, diagrams, ledgers, pictures, drawings, as well as Geographic Information System (GIS) locational data, photographs, and notes, which relate to

the placement, location, operation, and maintenance of Grantee's facilities in City Streets, which are both for the purpose of, and reasonably necessary to, verify Grantee's compliance with the terms in this Franchise.

(g) "City Manager" means the person defined in Sections 28, 260, and 265 of the Charter of the City of San Diego (San Diego Charter) as those provisions existed on the Effective Date or as those provisions may be hereafter amended, and the meaning shall include any person lawfully delegated rights or responsibilities by such person.

(h) "Commencement of Operations Date" means the date which is thirty (30) days after final passage of this Ordinance by the City Council if the Grantee already possesses a Certificate of Public Convenience and Necessity pursuant to California Public Utilities Code Division 1, Part 1, Chapter 5, Article 1.

(i) "Constitutional Franchise" means the right acquired through acceptance by Grantee or its predecessor in estate of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as the section existed prior to its amendment on October 10, 1911.

(j) "Construct, Maintain, and Use" means to construct, erect, install, operate, maintain, use, repair, relocate, or replace Pipes and Appurtenances thereto in, upon, along, across, under or over the Streets of the City.

(k) "CPUC" means the California Public Utilities Commission or any successor agency.

(l) "Effective Date" means the thirtieth day from and after the final passage of this Ordinance by the City Council pursuant to San Diego Charter section 295.

(m) "Franchise" means the Franchise granted by the City Council to San Diego Gas & Electric Company by Ordinance No. O- 21327, pursuant to San Diego Charter sections 103, 103.1, 104, and 105.

(n) "Gas" means natural, bio, or artificial gas or a mixture of any of them or gases lower in carbon density.

(o) "Gas Franchise Fee Surcharge" means the total amount of surcharges allowed by the Franchise and the CPUC to be levied solely on customers in the City as a consequence of the requirements of the Franchise, consisting prior to the Effective Date of those surcharges previously authorized by CPUC Resolution No. E-3788 and Decision No. 80234, which total 1.03% of Grantee's Gross Receipts as of the Commencement of Operations Date.

(p) "Good Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the natural gas utility industry in the western United States during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be any one of a number of the optimum practices, methods, or acts to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

(q) "Gross Receipts" means all gross operating revenues received by Grantee from the sale of gas to Grantee's customers with points of service within the corporate limits of the City (including, but not limited to, sales to military reservations with points of service within the City's corporate limits) which are credited in Account Nos. 480, 481, and 482 of the current Uniform System of Accounts of FERC as adopted by the CPUC or similar superseding accounts,

plus all revenues collected from CPUC-authorized surcharges rendered solely upon the ratepayers within the City as a result of the Franchise accounted for in Account No. 488 or its superseding account (less any portion of such surcharges which may be approved by the CPUC to capture the franchise fee on these revenues), less uncollectible amounts, and less any refunds or rebates made by Grantee to such customers pursuant to CPUC orders or decisions.

(r) "Pipes and Appurtenances" means pipes, pipelines, mains, services, traps, vents, vaults, manholes, meters, communication circuits, appliances, attachments, appurtenances, and, without limitation to the foregoing, any other equipment or property located or to be located in, upon, along, across, under or over the streets of the City, and used or useful for the purpose of the transmission and distribution of Gas and for internal communication systems, sometimes otherwise referred to as "facilities."

(s) "Streets" means the public freeways, highways, streets, ways, alleys, and places as they now or may hereafter exist within the City, but excludes easements or fees held by Grantee.

Section 2. Purpose

(a) The Franchise (1) to use, for transmitting and distributing Gas suited for lighting but for use by consumers for any and all lawful purposes other than lighting, all Pipes and Appurtenances which are now or may hereafter be lawfully placed and maintained in the Streets within the City under that certain franchise of Grantee acquired pursuant to section 19 of Article XI of the Constitution of the State of California, as the section existed prior to its amendment on October 10, 1911; (2) to Construct, Maintain, and Use in the Streets all Pipes and Appurtenances whenever and wherever said Constitutional franchise is not now nor shall hereafter be available therefor, necessary to transmit and distribute Gas suited for use by

consumers for any and all lawful purposes; (3) to utilize Pipes and Appurtenances in the Streets for transmitting Gas for use outside the boundaries of the City for any and all lawful purposes; (4) to aid in the City's establishment of a Climate Equity Fund; (5) subject to Applicable Law, to provide for Grantee's commitment to cooperate with the City in good faith on principles and policies for the attainment of the City's Climate Action Plan dated December 2015, local energy, energy justice, and climate equity objectives, including but not limited to the reduction of greenhouse gas emissions to the extent practical through energy efficiency measures, cooperation with any community choice aggregation program, the increased use of renewable sources of electric generation, wider deployment of local distributed energy resources, and advancing the electrification of transportation; and (6) meet at the City's request with the shared goal of aligning on climate goals in the City's Climate Action Plan when amended is hereby granted to San Diego Gas & Electric Company, a corporation organized and existing under and by virtue of the laws of the State of California.

(b) If gas and electric franchises are awarded to the same Grantee, the requirements of Sections 6, 9, and 10, need not be duplicated.

(c) Attached as Attachment 1 is a Table of Contents for the Franchise.

Section 3. Term

(a) The right, privilege, and Franchise, subject to each and all of the terms and conditions contained in this Ordinance, is hereby granted to San Diego Gas & Electric Company, a corporation organized and existing under and by virtue of the laws of the State of California, for the primary term of (10) years from and after the Commencement of Operations Date.

(b) Subject to the provisions set forth in Section 13, the primary term provided in Section 3(a) shall automatically be extended for a secondary term of ten (10) years. Grantee and

the City understand and agree that, unless one or more of the provisions set forth in Section 13(c), (d), or (e) apply, the Franchise shall automatically be extended without additional action of any kind by the City or Grantee.

(c) All associated agreements, rights, and obligations under the Franchise shall also expire at the expiration or earlier termination of the Franchise, except for the provisions set forth in Section 14.

Section 4. Consideration

(a) The rights and privileges herein granted are upon the express condition that Grantee, as consideration therefor and as compensation for the use of the Streets of the City as herein authorized and permitted, shall pay compensation to the City in the following amounts and manner: Grantee shall pay the Bid Amount, and shall pay each year in United States dollars, a sum equal to three percent (3%) of Grantee's Gross Receipts during the preceding calendar year, or fractional year, beginning on the Commencement of Operations Date. In addition, Grantee shall pay any applicable statutory surcharge, such as the Municipal Lands Use Surcharge required pursuant to California Public Utilities Code section 6350, *et seq.* Any City-imposed fees for right-of-way usage (Right-of-Way Fee) shall be credited with the consideration paid herein, provided the City will treat Grantee consistently with other applicants. Any revenues that remain after this credit of Right-of-Way Fees will be credited towards any additional fees the City imposes for inspection, trenching, cutting, or deterioration of the right-of-way. The three percent (3%) of Gross Receipts required to be paid to the City pursuant to Section 4(a) shall be deemed to be for Gas revenues for all lawful purposes except for lighting; there shall be no fee for Gas furnished for lighting. In addition, prior to the Commencement of Operations Date, Grantee applied to the CPUC to assess that certain Gas Franchise Fee Surcharge, which was authorized

pursuant to CPUC Resolution E-3788 and Decision No. 80324, and totals 1.03% of Grantee's Gross Receipts. Grantee shall in good faith support the continued effectiveness of Resolution E-3788 as it existed on the Commencement of Operations Date and remit such collections to City as provided in Section 5.

(b) Grantee or any successors shall not at any time apply or request to the CPUC, by application, advice letter, or any other filing, to include in rates or surcharges all or any portion of the Bid Amount, or interest thereon, paid to the City for award of the Franchise. The Bid Amount, and any interest thereon, is for the purpose of acquiring the Franchise and shall be solely an obligation of the Grantee, and no part of it shall be paid by Gas ratepayers. The Bid Amount is separate from and additional to the consideration to be paid for exercise of the Franchise under Sections 4(a) and 4(c), and shall be paid and accepted upon the express condition that Grantee shall not at any time apply to or otherwise request from the CPUC to recover any portion of the Bid Amount, or interest thereon, from Gas ratepayers in rates or surcharges. The Franchise and any previously paid portions of the Bid Amount shall be forfeited, and all future notes will be due and payable, if the Grantee or any successor ever applies to the CPUC or seeks or attempts to recover all or any portion of the Bid Amount or any interest thereon in rates or surcharges charged to customers inside or outside the City.

(c) During the term of the Franchise, Grantee covenants and agrees, that if Grantee agrees to pay another municipality more than three percent (3%) of Grantee's Gross Receipts (including receipts on CPUC authorized Gas surcharges) in a Gas franchise, Grantee shall notify the City of such agreement in writing within thirty (30) calendar days and offer to amend the Franchise to increase the franchise fee to equal the percentage of Gross Receipts in such other franchise. If the City agrees to accept the offer, the City and Grantee will execute and adopt any

documents necessary to amend the Franchise as soon as practicable given the need for regulatory approvals. To make such amendments effective, Grantee shall expeditiously file an application or request with the CPUC, as Grantee deems necessary, to gain approval of the amendments and the resulting increase in the franchise fee surcharge chargeable to the residents of the City. Grantee shall not be in violation of Section 4(c) if the CPUC fails to approve any such application or request.

(d) Section 4(d) applies only if Grantee elected to pay the Bid Amount in installments as consideration for the grant of the Franchise. If the structured promissory note method is selected by Grantee for paying the Bid Amount, then:

(1) On or before August 1 of each year of the term, Grantee shall pay the principal amount of five hundred thousand dollars (\$500,000) to the City Treasurer in lawful money of the United States. City shall provide Grantee with bank wire information upon the grant of this Franchise and Grantee shall wire the payment for 2021 as instructed and shall at the same time deliver promissory notes acceptable to the City Manager pledging payment to City for all subsequent years of the principal amount on or before August 1 of each year. The promissory notes shall bear interest as provided in Section 4(d)(3). The notes shall not be due and payable to the City until the maturity date of each installment on the note.

(2) The maturity dates of the promissory note installments shall be August 1st of each year of the term.

(3) Each promissory note shall provide for the payment of the principal amount plus interest, calculated on an actual/actual basis at the annual rate of three and thirty-eight one hundredths of a percent (3.38%).

(4) If during the term of this Franchise a material change in the creditworthiness of Grantee occurs, the City may demand a letter of credit, in the form, amount, for a term, and from an issuer reasonably acceptable to the City, to secure Grantee's obligation to fulfill any Bid Amount obligation not already paid by Grantee at the time of such material change in the creditworthiness of Grantee, and Grantee shall meet such demand. The City requires a minimum credit rating for the issuing financial institutions providing the letter of credit submitted by Grantee to be and remain of the "A" category or better for its senior unsecured debt, or equivalent. If at any point during the term of the letter of credit, none of the following Nationally Recognized Credit Rating Agencies (Moody's, Standard & Poor's, or Fitch) rate the financial institution with at least an "A" category, then Grantee must immediately replace the submitted letter of credit with one that is acceptable to the City, or pay the remaining notes in full with interest specified herein accrued to that date. All costs associated with the letter of credit shall be the responsibility of Grantee. The letter of credit shall provide that the City may unilaterally draw on the letter of credit to fulfill any Bid Amount obligation not paid by Grantee when due.

(5) Grantee may pay cash in discharge of a promissory note at any time before its maturity date, in which event interest shall be adjusted for early payment. The submission of cash payment shall be upon appointment with the City Treasurer's office.

(6) If the Franchise is not in effect on any future note maturity date due to the termination or forfeiture of the Franchise for any reason, then the promissory notes not yet due shall be void.

Section 5. Reports, Dates of Payment to City, Audits

(a) On or before the 15th day of February of each calendar year during the term of the Franchise, as defined in Section 3, and forty-five (45) calendar days after the expiration of the Franchise term, Grantee shall file with the City Clerk, the original, and with the Chief Financial Officer of the City, one copy, of a statement signed by its chief financial officer evidencing the Gross Receipts during the preceding calendar year or fractional calendar year.

(b) Within ten (10) calendar days after the filing of the statement of Gross Receipts required to be filed on or before the 15th day of February 2022, Grantee shall pay to the City Treasurer the money herein required to be paid by Grantee to the City upon the basis of the data set forth in said statement. For the avoidance of doubt, payment of the Bid Amount shall be governed by Section 4.

(c) Thereafter, no later than the 25th day of February, the 25th day of May, the 25th day of August, and the 25th day of November of each calendar year during the term of the Franchise, Grantee shall pay the City Treasurer one-fourth (1/4) of the money herein required to be paid by Grantee to the City upon the basis of the data set forth in the statement required by Section 5(a). If the first year is a fractional year, Grantee shall pay quarterly amounts not paid by the prior Grantee on the basis of the data in the prior Grantee's Gross Receipts for the preceding year on the dates required herein. By this method of payment it is contemplated and understood that Grantee is in effect paying the money herein required to be paid by Grantee to the City under Section 5(c) on the basis of Gross Receipts for the preceding calendar year and that an adjustment shall be made as more fully set forth in Section 5(d).

(d) Within ten (10) calendar days after the filing of the statement required by Section 5(a), Grantee shall pay the City Treasurer, or receive as a refund from the City, as the

case may be, a sum of money equal to the difference between the sum of the payments of money made in accordance with Section 5(c) and the annual payment of money herein required to be paid by Grantee to the City upon the basis of the data set forth in said statement.

(e) The City Manager, City Auditor, City Attorney, or any designees, at any reasonable time during business hours, may make examination at Grantee's office or offices, or through written electronic request and exchange of its Books and Records, germane to and for the purpose of verifying the data set forth in the statement required by Section 5(a). Grantee shall produce its Books and Records no later than five (5) business days after written request from the City.

(f) All Books and Records subject to examination in the Franchise shall be kept within the County of San Diego, or in such other place as the reasonable convenience of Grantee may require, until at least five (5) years following the termination of the Franchise; and if it becomes necessary for the City Manager, City Auditor, City Attorney, or any representative designated by the City, to make such examination at any place other than within the County, then all increased costs and expenses to the City necessary or incident to such examination and resulting from such Books and Records not being available within the County, shall be paid to the City by Grantee on demand.

(g) Disagreements concerning City's access to Grantee's Books and Records shall be timely referred to the City Manager or specified designee and a designated officer of the Grantee, and the City and Grantee shall attempt to resolve in good faith such disagreement.

(h) Upon request of the City, Grantee shall provide the City with any publicly available reports filed by Grantee with the CPUC.

(i) In addition to the remedies provided in Section 13, if Grantee fails to make the payments for the Franchise on or before the due dates as required in Sections 5(b) through 5(d), Grantee shall pay as additional consideration both of the following amounts:

(1) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by the City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to the City of postponing services and projects necessitated by the delay in receiving revenue; and

(2) A sum of money equal to one percent (1%) of the amount due per month or any portion thereof as interest and for loss of use of the money due.

Section 6. Compliance Review Committee and Report

(a) An audit of Grantee's performance of the conditions of the Franchise shall occur every two (2) years after the Effective Date. The City shall establish a Franchise Compliance Review Committee (Review Committee) that will consist of five (5) members: three (3) appointees selected by the City Council and two (2) appointees selected by the Mayor. No nominee with a conflict of interest shall be appointed to the Review Committee. The Review Committee shall be a citizens' committee, formed pursuant to San Diego Charter section 43(b) and Council Policy 000-13. The Review Committee shall be created and established by City Council resolution every two (2) years only for the clearly defined purpose in the resolution, which shall include the duties in Section 6(b), and shall be temporary in nature and dissolved upon the completion of the objectives for which it was created. The Review Committee shall be created, and appointments shall be made, before the end of the first year of each successive two-year period of the Franchise term. The Review Committee, which shall meet publicly and comply with the Ralph M. Brown

Act, shall establish a mechanism by which members of the public may communicate with the Review Committee concerning the Franchise.

(b) The City shall use a competitive process to retain a qualified, independent, third-party auditor (independent auditor) every two (2) years. The independent auditor shall perform an audit of Grantee's conformance and compliance with all conditions of the Franchise and produce a written report documenting the work performed and the conclusions reached. The audit shall address Grantee's fulfillment of financial, operational, documentary, and cooperative requirements under the Franchise. The Grantee shall appoint an executive level representative to serve as the principal person responsible for coordinating with the independent auditor. The audit shall be completed and provided to the Review Committee no later than sixty (60) calendar days before the outside due date of the Review Committee's report. If Grantee fails to cooperate with the independent audit, the auditor's report shall document the refusal and any reason Grantee stated for failing to cooperate. The Review Committee shall review the independent auditor's report and shall provide the auditor's report and its own written report and recommendations to the City Council within one hundred eighty (180) calendar days of the end of each two-year period of the Franchise term. The Review Committee shall provide a recommendation to the City Council on the question of the automatic renewal for the secondary term of the Franchise, based on compliance with the Franchise and the Energy Cooperation Agreement. Grantee shall be given the opportunity to respond in writing to the Review Committee biennial reports and the recommendation regarding automatic renewal and such written response, if timely received, shall be provided to the City Council contemporaneously with the Review Committee's report or recommendation.

(c) Within ten (10) calendar days, Grantee shall comply and cooperate with all requests made by the City Manager, City Attorney, independent auditor, and City Auditor, or designees, which are reasonably necessary to verify Grantee's compliance with the terms in the Franchise. Upon request, Grantee shall provide to the City Manager, City Attorney, independent auditor, or City Auditor, or their designees, and at no cost to the City, all Books and Records required to be made available to the City under the Franchise, within ten (10) calendar days. If Grantee contends that legal restrictions prevent compliance with any part of the request, Grantee shall provide in writing a specific legal basis that clearly establishes that the law, the CPUC, or other agency with jurisdiction requires or prohibits Grantee from releasing the requested Books and Records. General references to provisions of the law or Grantee business preferences will not suffice. In addition, if Grantee is unable to produce the requested Books and Records within ten (10) calendar days, Grantee shall provide a good faith explanation and a date by which the Books and Records will be produced.

(d) The independent auditor shall be provided access to interview the City and employees of Grantee designated by Grantee regarding any subject which is relevant to confirming Grantee's compliance with the Franchise, within ten (10) business days after any request.

(e) The procedures provided in Section 6 shall be in addition to, and not in lieu of, the City's right to audit under Section 5. Nothing in Section 6 shall limit or impair the right of the City Auditor to conduct its own audits of Grantee's Books and Records needed to verify compliance with the Franchise, pursuant to San Diego Charter section 39.2, or of the City Attorney to perform her responsibilities under San Diego Charter section 40, including confirming compliance with the Franchise.

Section 7. Compliance with Laws

(a) All facilities or equipment of Grantee that Grantee shall Construct, Maintain and Use or remove, pursuant to the provisions of the Franchise, shall be accomplished in accordance with Applicable Law and with the ordinances, rules, and regulations of the City now or as hereafter adopted or prescribed, and such rules or regulations as are promulgated under state law, or orders of the CPUC or other governmental authority having jurisdiction in the premises.

(b) Without limiting the general applicability of the foregoing paragraph, or diminishing in any way the significance and consequence of Grantee's duty to comply with all laws, Grantee shall specifically observe and fully comply with the ordinances and regulations of the City as provided in Sections 8 and 9, and any effective Administrative MOU granted pursuant thereto.

(c) Consistent with Sections 7(a) and (b), all operations of Grantee shall comply with Good Utility Practice at all times.

Section 8. City Reserved Powers

(a) The City reserves the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, or maintain below surface or above surface improvements of any type or description in, upon, along, across, under or over the Streets of the City. The City further reserves the right to relocate, remove, vacate, or replace the Streets themselves. If the necessary exercise of the City's reserved rights conflicts with any Pipes and Appurtenances of Grantee Constructed, Maintained, and Used pursuant to the provisions of the Franchise, whether or not previously Constructed, Maintained, and Used, Grantee shall, without cost or expense to the City within ninety (90) calendar days after a request in writing by the City Manager, containing substantially complete designs for the portion of the work impacting

Grantee's facilities, begin the physical field construction of changing the location of all corresponding conflicting facilities or equipment. The Administrative MOU will include more detailed procedures to promote a cooperative working relationship between Grantee and the City regarding relocations but shall not control over the Franchise. Grantee shall proceed promptly to complete such required work in accordance with the Administrative MOU and within a reasonable time frame as permitted by Good Utility Practice and in accordance with Applicable Law.

(b) The City and Grantee are currently engaged in litigation related to which party bears the cost of relocation of Grantee's facilities in conflict with City water projects. Notwithstanding the language in Section 8(a) of this Franchise, with regard to such costs, the City and Grantee agree that they will abide by the final determination of the California courts or settlement thereof and Section 8(a) shall not supersede any such determination or settlement. Any agreements presently in effect or subsequently executed between the City and Grantee regarding the cost of such relocations shall remain in effect unless and until such final determination by the courts or settlement by the City and Grantee.

Section 9. Administrative Practices

(a) Grantee's exercise of rights to install, maintain, and operate its facilities in the Streets of the City shall at all times be subject to obtaining and maintaining in force an Administrative MOU. The Administrative MOU shall define Grantee's administrative practices throughout the Streets while exercising the Franchise rights; however, the Administrative MOU shall not be in lieu of or relieve Grantee from complying with the Franchise terms or obtaining more particular permits required for Grantee's specific projects or activities, nor shall the Administrative MOU curtail or limit Grantee's rights under the Franchise. The Administrative

MOU shall prescribe the categories of work that Grantee may perform without additional specific permits, and the categories of work that will require additional specific permits. The Administrative MOU shall be granted by the City Manager subject to the terms and procedures of the Franchise and on such other reasonable terms as may be established by the City Manager following consultation with Grantee and other utilities using the Streets. Grantee shall apply for an Administrative MOU within sixty (60) calendar days after the Effective Date, and the initial Administrative MOU shall expire on the second anniversary after the Effective Date. Each successive Administrative MOU shall have a term of two (2) years. Grantee shall not be charged a fee to obtain the Administrative MOU. The Administrative MOU shall be consistent with all terms in the Franchise, specifically including the terms of Sections 8 and 9. If there is any conflict between the provisions of the Franchise and the provisions of the Administrative MOU, the provisions of the Franchise shall control, and the conflicting provisions of the Administrative MOU shall be void.

(b) The Administrative MOU shall include and any additional terms agreed upon by the City and Grantee. Subject to Applicable Law and the requirements of the Franchise, the City Manager may take due consideration of Grantee's requests regarding provisions of each biennial Administrative MOU, provided the requests are consistent with and do not conflict with the terms of the Franchise. The City Manager shall determine if the conditions of the Franchise are fulfilled upon any application for an Administrative MOU and if Grantee's application is complete. The City Manager shall grant an Administrative MOU within thirty (30) calendar days after Grantee's complete application. The application shall contain sufficient information for the City Manager to assure compliance with all the requirements in the Franchise. Grantee shall apply for each successive Administrative MOU not less than one hundred eighty (180) calendar

days prior to expiration of the prior Administrative MOU. Any Administrative MOU granted by the City Manager shall be subject to the following conditions:

(1) Upon written request by the City Engineer or their specific designee, Grantee shall provide to the City within ten (10) calendar days, and immediately in the case of a City Manager-declared emergency, GIS coordinate data, or other locational records of Grantee's facilities as the City in its reasonable discretion requires for specific City projects or concerns, in a form and type determined by Grantee in its reasonable discretion in accordance with Good Utility Practice. In the administrative MOU the City and Grantee may agree on more detailed procedures for the provision of GIS data, including, if feasible, Grantee providing the City secure electronic access to certain GIS information of Grantee either directly or through an approved contractor. Although Grantee will make reasonable efforts to provide accurate GIS data to the City for City's design, engineering and planning purposes, Grantee makes no representations or warranties to the City or any of its agents, contractors or representatives that such GIS data may be relied upon for field work. The GIS data shall not be a substitute for the City's required conflict check and dig alert obligations prior to starting any field work. In cases of emergency, at the request of the City, Grantee shall have the appropriate Grantee staff promptly on site to support the City in emergency operations.

(A) Grantee's contention that information is confidential shall not relieve Grantee from the duty to produce the information to City. Grantee acknowledges that any information required to be submitted or provided in fulfillment of the obligations of the Franchise is a public record subject to disclosure in response to a California Public Records Act (California Government Code sections 6250 – 6276.48) (CPRA) request, unless the City or a court of competent jurisdiction determines that a specific exemption to the CPRA applies. If

Grantee submits information clearly marked confidential or proprietary, the City shall protect such information and treat it with confidentiality to the extent permitted or required by law; provided however, that the City shall assume no liability for having access to Grantee's records for official City purposes except by a judgment in a court of competent jurisdiction upon a claim arising from the established active negligence, sole negligence or willful misconduct of the City, its officers, agents, or employees. It shall be Grantee's responsibility to provide to the City the specific legal grounds on which the City can rely in withholding information from public disclosure should Grantee request that the City withhold such information. General references to sections of the law will not suffice. Rather, Grantee shall provide in writing a specific legal basis, including citations to applicable case law or other law, that reasonably establishes the requested information is exempt from disclosure. Grantee agrees to defend and indemnify City to the extent the City is sued for withholding from disclosure information deemed confidential by Grantee. If, at the time the documents are provided to the City, Grantee does not provide in writing a specific legal basis for requesting the City to treat the information as confidential, to protect it from release, and to withhold alleged confidential or proprietary information from CPRA requests, the City is not required to treat the information as being confidential and may release the information as required by the CPRA. When reviewing any request by Grantee for confidentiality, the City will consider California Government Code section 6254(e), which provides a CPRA exemption for records concerning geological and geophysical data relating to utility systems development that are obtained in confidence from any person.

(B) The City shall not be required to execute any non-disclosure agreement with Grantee to obtain prompt confidential access to Grantee's records for its facilities in City Streets except by order of a state or federal governmental agency or court

having jurisdiction to impose such requirement. Absent such order, the City may, but shall not be required, to execute non-disclosure agreements with Grantee respecting the locations of Grantee's facilities.

(2) Grantee's rights to uses in the Streets exist subject to City uses of the Streets unless Grantee's rights are in easement or fee, in which case the Franchise does not control. At all times the City's superior reserved rights to uses of the Streets shall be preserved under Section 8. No provision of an Administrative MOU may be written or construed to modify that explicit reservation which shall be controlling at all times.

(3) With respect to any and all City work in the Streets, the costs of protecting Grantee's facilities high pressure Gas facilities including any personnel, stand-by safety engineers, or similar service for the protection of Grantee's facilities and employee and public safety which may be necessary for any City-controlled excavation or other work shall be at Grantee's sole expense; provided however the cost of protecting Grantee's low and medium pressure Gas facilities shall be paid by the City. Upon written request from the City or an authorized agent, Grantee shall within ten (10) calendar days, or as soon as practicable in the case of emergency, arrange the on-site presence of any standby safety engineer that Grantee or City deem necessary for the protection of Grantee's facilities. If Grantee provides any other municipality with more favorable terms for the stand-by safety services described in this section, Grantee shall notify City in writing within ten (10) calendar days and thereafter make such terms available to the City.

(4) In its application for an Administrative MOU, Grantee shall submit to the City a list of projects and activities Grantee plans to perform in the two years covered by the Administrative MOU (Two-Year Plan). The Two-Year Plan shall catalog planned activities by

level of disruption and by the amount of coordination with City staff the activity requires. The activities may be classified as: (A) regular maintenance for which no street disruptions or traffic control plans are expected; (B) minor repairs or construction which will require traffic permits and control for less than thirty (30) calendar days; (C) major repairs or construction which are expected to require substantial permitting from the City, impacts to traffic or surrounding properties, or which may persist for more than thirty (30) calendar days; and (D) utilities undergrounding projects to be coordinated with the City. The Two-Year Plan shall constitute the understanding between the City and Grantee as to those activities anticipated to require coordination with the City and other utilities. If there are changed circumstances regarding the use of City Streets, the City Manager may require adjustments to Grantee's scheduled activities to account for such conditions or may allow deviations or changes to Grantee's Two-Year Plan at Grantee's request, and Grantee shall cooperate unless reliability, safety, or compliance obligations make such adjustments impractical. Grantee shall promptly inform the City if its plans materially change under any Two-Year Plan.

(5) Grantee shall fully cooperate with the City's uses of the Streets, including for the City's construction, maintenance, and repair of City utilities. The City will establish or continue to operate a Joint Utilities Coordinating Committee (Coordinating Committee) or similar body in which Grantee shall be a member and active participant. The purpose of the Coordinating Committee shall be to review and make recommendations to all utilities and the City on matters regarding utility installations and operations within the public rights-of-way. The Coordinating Committee shall be chaired by the City Manager or designee. The Coordinating Committee shall meet a minimum of four times each fiscal year. The Coordinating Committee shall give due consideration to Grantee's Two-Year Plan and to activities and projects the City

has planned in the two-year cycle. The City will encourage the participation on the Coordinating Committee of other utility entities lawfully using the Streets, including telephone and cable service companies. Grantee shall recognize that other utilities may have rights of use in the Streets that are not granted by the City, and will endeavor to efficiently communicate and schedule to minimize interferences of utility work with the uses of the Streets and adjoining property, for the public welfare and for the benefit of all parties in the performance of their planned work. The Coordinating Committee may, by agreement of the City and Grantee, establish standing subcommittees and may assign tasks to, and receive recommendations from, such subcommittees as it may deem necessary.

Section 10. Cooperation with City Climate Action, Local Energy, Energy Justice, and Purchasing of Local Materials

(a) *Climate Action and Local Energy.* Subject to Applicable Law, Grantee shall cooperate in good faith with the City's desire to accomplish the goals set forth in its Climate Action Plan dated December 2015. Subject to Applicable Law, Grantee shall reasonably assist the City in achieving its goals of reducing carbon-based greenhouse gas emissions related to generation of the Gas used by customers in the City's corporate boundaries and reducing other greenhouse gas emissions in the City through increased electrification of transportation. Grantee's acceptance of the Franchise includes Grantee's understanding of the City's policy objectives, and, subject to Applicable Law, its willingness to assist in good faith the City's goal of having all electricity used in the City generated from renewable fuel sources by 2035, including to the greatest extent practical and lawful, through local customer-controlled distributed energy resources. Grantee shall cooperate, subject to Applicable Law, with all the City's efforts to have distributed energy resources located in the City more completely and increasingly integrated with the operation of Grantee's electrical distribution system. Grantee

accepts that the City will support expansion of non-Gas resources and other economic mechanisms to foster development of local renewable fueled electric distributed resources, electric storage, microgrids, electric transportation, and other technologies to be increasingly integrated with the design and operation of Grantee's electric distribution system. Grantee shall cooperate with the City in good faith toward fulfillment of these objectives in an Energy Cooperation Agreement as provided in Section 10(c), on a timetable that meets the City's Climate Action Plan, and with the City's understanding that many of the objectives are or will be subject to factors controlled by State legislation and orders of the CPUC.

(b) *Energy Justice.* Grantee shall cooperate with the City toward attainment of environmental and social justice in the provision of Gas service. Grantee shall support the City's 2019 Climate Equity Index and any subsequent versions or revisions. Grantee shall use good faith efforts to assist the City in fulfillment of Climate Equity Index recommendations, including (1) to assist the City in seeking and providing grant funding opportunities to support community engagement and invest in areas with very low to moderate access to opportunity, or in programs and projects that receive funding from any City fund established to advance climate equity objectives; (2) to support the City in conducting public engagement efforts, in partnership with community-based organizations, in census tracts with very low access to opportunity; (3) to assist the City in exploring the feasibility of establishing a sustainability ambassador program in areas with very low to moderate access to opportunity; (4) to assist the City in the determination of mechanisms to incorporate climate equity into City programs and projects; and (5) to cooperate with the City in periodically updating Climate Equity Index data. Grantee will use its best efforts to provide opportunities to low and moderate income customers for them to reduce energy bills through equitable access to energy efficiency, Gas alternative, and renewable

distributed energy resources, to reduce cost volatility, and to improve access to energy services that empower low and moderate income residents and disadvantaged businesses through efficiency and conservation.

(c) *Energy Cooperation Agreement.* Grantee agrees to comply with and fulfill the terms of the Energy Cooperation Agreement, regarding the subjects provided in Sections 10(a), (b), and (e) herein. The Energy Cooperation Agreement has been signed by Grantee's responsible officer and adopted by the City Council together with this Franchise. The Energy Cooperation Agreement arises from Grantee's proposals in support of City's policies and has been agreed to by the parties to establish reasonable standards for purposes of Sections 3(b) and 10(c). The Energy Cooperation Agreement is at all times subject to Applicable Law, and provides for Grantee's points of alignment and cooperation with the City's policy objectives provided in Sections 10(a), (b), and (e), including the identification of barriers and described measures that Grantee can and will take to support City policies. Grantee's cooperation with Section 10 shall be reported in the periodic compliance report provided in Section 6. The Energy Cooperation Agreement shall give due consideration of any legal or practical impediments cited by Grantee, including legislation, orders, and considerations for all customers (and not only those located in the City or immediately interested in a subject), as to why any policy cannot be implemented. The Energy Cooperation Agreement shall include discussion of opportunities for the City and its citizens, especially those citizens with low or moderate income, to gain access to energy efficiency, distributed energy resources, evolving technology, and transportation electrification programs and grants that are made available by the CPUC and California Energy Commission. The Energy Cooperation Agreement describes (1) Grantee's planned efforts to make opportunities available to City (and to other qualifying customers) to participate in

Grantee's State-authorized energy efficiency, distributed energy, emerging technology (including Electric Program Investment Charge opportunities, as applicable), Gas alternative, and transportation electrification program funding; (2) efforts that Grantee may take to support City's Municipal Energy Strategy and to making building energy efficiency resources as accessible as possible for the City and other customer building owners; (3) available programs and approach to how Grantee's proposals will give due consideration to the City's climate action goals and to the City's position and ability to partner with Grantee toward fulfillment of those goals, including through building codes, building energy benchmarking, deployment of renewable and storage distributed energy resources, microgrids, and electric transportation on City Streets.

(d) *Modification and Continuation of Energy Cooperation Agreement.* The Energy Cooperation Agreement may be modified to adapt to evolving circumstances at the request of Grantee, provided that the request for modification is reasonable and any amendment is approved by the City Council, which modification shall not be unreasonably refused, withheld or delayed. Grantee shall cooperate in good faith with any reasonable request by City for modification to the Energy Cooperation Agreement. The Energy Cooperation Agreement shall remain effective during the secondary term provided in Section 3(b).

(e) *Climate Equity Fund.* City has established a Climate Equity Fund to respond to the climate justice element of general planning pursuant to California Government Code section 65302(h)(4)(A). Any shareholder payments proposed by Grantee in the Energy Cooperation Agreement that are in addition to the consideration paid as a Bid Amount for the grant of the Franchise and the amounts paid pursuant to Section 4 of this Ordinance for exercise of the Franchise shall be paid or performed for the benefit of the Climate Equity Fund. Grantee agrees to support the objectives of the Climate Equity Fund in good faith. Grantee shall not apply

to the CPUC to recover shareholder contributions to the Climate Equity Fund in rates or other charges from Gas customers.

(f) *Purchasing of Local Materials.* Grantee shall use reasonable efforts to operate its business in a manner that the majority of purchasing of materials and supplies used in connection with its business occurs at addresses located in the City of San Diego.

Section 11. Indemnity, Defense, Insurance

(a) Grantee, to the fullest extent permitted by law, shall defend with legal counsel reasonably acceptable to the City, indemnify, and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including death) (including injury to or death of an employee of Grantee, any agent or employee of a subcontractor of any tier), expense and liability (collectively "Claims"), including court costs, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation, that arise out of, in whole or in part, any acts performed, rights exercised, or rights or privileges granted under the Franchise, to or by Grantee, any employee, agent or subcontractor of any tier. Grantee's duty to defend, indemnify, and hold harmless shall not include (1) any Claims or liabilities arising from the active negligence, sole negligence, or willful misconduct of the Indemnified Parties, or (2) any Claims or liabilities regarding the award, amendment, renewal or extension of the Franchise to Grantee.

(b) Concurrent with the acceptance of the Franchise by Grantee, and as a condition precedent to the effectiveness of the Franchise, and in partial performance of the obligations assumed herein, Grantee shall procure and maintain at Grantee's expense for the duration of the Franchise from an insurance company that is admitted to write insurance in California or that has

a rating of or equivalent to A:VIII by A.M. Best & Company the following insurance against Claims for injuries to persons or damage to property which may arise from or in connection with the Franchise by Grantee, its agents, representatives, employees or subcontractors:

(1) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury, with limits no less than twenty-five million dollars (\$25,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Franchise or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Grantee has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than five million dollars (\$5,000,000) per accident for bodily injury and property damage.

(3) Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits no less than one million dollars (\$1,000,000) per accident for bodily injury or disease.

(c) Policies must be endorsed according to the following requirements:

(1) Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Grantee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Grantee's insurance (at least as broad as ISO

Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

(2) Primary Coverage. For any Claims related to the Franchise, Grantee's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Grantee's insurance and shall not contribute with it.

(3) Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

(4) Waiver of Subrogation. Grantee hereby grants to City a waiver of any right to subrogation which any insurer of Grantee may acquire against the City by virtue of the payment of any loss under such insurance. Grantee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

(d) Verification of Coverage. Grantee shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before the Franchise is awarded. However, failure to obtain the required documents prior to the award of the Franchise shall not waive Grantee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(e) Not more frequently than every five (5) years, if in the reasonable opinion of the City's Risk Manager or of an insurance broker retained by the City, the amount of the foregoing insurance coverage is not adequate, Grantee shall increase the insurance coverage as required by the City; provided that such coverage amounts may not increase by more than forty percent (40%) every five (5) years. Grantee shall furnish the City with certificates of insurance and with endorsements provided in Section 11(c) affecting coverage as required above. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any modification or waiver of the insurance requirements contained in the Franchise shall only be made with the written approval of the City's Risk Manager in accordance with established City policy.

(f) Grantee may fulfill the insurance obligations of Sections 11(b) through (d) by self-insurance. Grantee shall provide a certificate to the City evidencing the fulfillment of these requirements.

Section 12. Repair Costs

Grantee shall pay to City on demand the cost of all repairs to City property made necessary by any of the operations of Grantee under the franchise granted hereby, provided however that Grantee shall not be responsible for repairing the Streets to a condition better than existed prior to Grantee's work being performed, except as required by Applicable Law. For the avoidance of doubt, if Grantee's operations cause the need for a repair to a street, sidewalk, curb or gutter, which, because of a change in Applicable Law must be built to new standards, Grantee shall repair or build the street, sidewalk, curb or gutter to such new standards. Grantee may make repairs to streets, sidewalks, curbs and gutters itself at its own cost in accordance with City

specifications if the same can be done without undue inconvenience to the public use of the streets.

Section 13. Forfeiture, Termination and Other Remedies

(a) *Interpretation.* The Franchise is granted upon each and every condition herein contained and shall be strictly construed against Grantee. Nothing shall pass by the Franchise granted to Grantee unless granted in plain and unambiguous terms. Each of the Franchise conditions is a material and essential condition to the granting of the Franchise. The City and Grantee acknowledge the importance of informal dispute resolution procedures as set forth in Section 15(a), including, but not limited to informal discussions and reasonable and good faith attempts to resolve issues at the appropriate level and in the most expeditious manner possible. However, if such informal attempts at resolution described in Section 15(a) and (b) do not resolve the issue, then the remedies in this Section 13(a), (b), (c), (f) and (g) shall apply. If Grantee fails, neglects, or refuses to comply with any of the conditions of the Franchise, and if such failure, neglect, or refusal shall continue for more than thirty (30) calendar days after written demand by the City Manager for compliance, then the City may exercise the remedies provided in Section 13.

(b) *Breach of the Franchise. Remedies Aside from Termination:* If Grantee breaches the Franchise by failing, neglecting, or refusing to comply with any of the conditions of the Franchise, and if such failure, neglect, or refusal shall continue for more than thirty (30) calendar days after written demand by the City Manager for compliance, or as otherwise required by the terms herein, then the City may invoke the procedures set forth in Section 15, and upon obtaining a final and non-appealable judgment that the Franchise has been breached from a court of competent jurisdiction as set forth in Section 15, (1) may obtain all rights and remedies allowed

by law with the exception of termination, including money damages, declaratory relief, specific performance, and mandatory injunction and (2) may also pursue the remedy of termination pursuant to Section 13(c).

(c) *Breach of the Franchise: The Remedy of Termination.* In addition to the rights and remedies set forth in Section 13(b), if the City Manager in consultation with the City Attorney recommends that the City terminate the Franchise, by proposing a resolution to the City Council to terminate the Franchise, the City may then, after obtaining a two-thirds vote of the members of the City Council, terminate the Franchise and all the rights, privileges and the Franchise shall be at an end. If such termination were to occur, the provisions of Section 4 shall apply, including but not limited to those that apply to the Bid Amount. Thereupon and immediately, Grantee shall surrender all rights and privileges in and to the Franchise. The remedies and procedures outlined or provided in this Section 13(c), including termination, shall be deemed to be cumulative.

(d) *The City's Right to Void the Automatic Renewal for Secondary Term.* The Parties agree that the City reserves the right to void the automatic renewal for the secondary term that is described in Section 3(b). Voiding the automatic renewal for the secondary term does not impact the grant of the Franchise for the first ten (10) year term. The City's right to void the automatic renewal only applies to the secondary ten (10) year term of the Franchise. No later than thirty (30) calendar days prior to the tenth anniversary of the Effective Date, and no earlier than the ninth anniversary of the Effective Date, the City may void the automatic renewal if the City, through action of a two-thirds vote of the members of the City Council, votes to void the automatic renewal. Voiding the automatic renewal does not require a finding of any breach by Grantee. If the automatic renewal provision is invoked such that the secondary term is terminated, the

provisions of Section 4 shall apply, including but not limited to those that apply to the Bid Amount.

(e) *Termination due to Municipalization Ordinance.* In addition to the remedies set forth in Section 13(b) and (c), the City also has the right to terminate the Franchise if the City Council, or the electors of the City, adopt an ordinance that authorizes the City of San Diego to municipalize the provision of gas services in the City of San Diego, pursuant to Section 104 of the City Charter or other Applicable Law. The City's right to terminate pursuant to this Section 13(e) shall be a right reserved by Applicable Law to the City Council and City electors and may be exercised at any time during the Franchise term. If such termination were to occur, the provisions of Section 4 shall apply, including but not limited to those that apply to the Bid Amount.

(f) *Liquidated Damages.* The City and Grantee recognize and agree that certain breaches of specified conditions in the Franchise by Grantee will result in damages to the City. The City and Grantee further recognize that the cost of postponing services or projects, or other delay expenses, may not practically warrant termination of the Franchise by City under Section 13(c) or require specific proof of damage by the City under Section 13(b). For such specified conditions and limited periods of Grantee breach, at the City's sole discretion and election, liquidated damages as set forth within Section 13(f) and (g) shall be as an alternative remedy to those provided elsewhere in Section 13, provided that such liquidated damages shall be the sole remedy available to the City for any such breach if City elects to collect liquidated damages. The City, instead of pursuing liquidated damages under Section 13(f), may elect to pursue other remedies available to it under this Section 13, but any such pursuit of other remedies shall be an election. For the absence of doubt, the City may either collect liquidated

damages under Section 13(g) or pursue alternative remedies for breach under Section 13(b) and (c), but may not pursue both. The City-elected liquidated damage assessments shall be applicable only to Grantee breaches of the conditions specified in Section 13(g), and only for the maximum time periods provided in Sections 13(f) and (g).

(1) If the City elects the remedy of liquidated damages for the breach of any of the specified conditions in Section 13(g), it shall deliver written notice to Grantee of the breach and the date on which the breach commenced, and the notice shall provide Grantee the same thirty (30) calendar day right to cure provided in Section 13(a). If after the thirty (30) calendar days from notice of the breach, the condition has not been cured or justified to the satisfaction of the City Manager, at City's election the remedy of liquidated damages shall thereafter be a remedy that shall apply only to the condition of breach specified in the notice and only for a period not-to-exceed one hundred eighty (180) calendar days from the date that is thirty (30) calendar days after each such notice. The liquidated damages provided in Section 13(g) shall accrue and be paid on each uncured unique incident notice even if multiple notices cite the same specified breached condition. For any breach that has not been cured within the notified cure period, Grantee shall be liable to the City for all accumulated assessed liquidated damages during the maximum period of applicability. The City Manager shall assess and bill Grantee for all such damages that shall be accrued during the liquidated damage assessment period and shall carry interest as provided by law from the date of assessment. All assessed liquidated damages and interest shall be payable to the City on the quarterly payment dates provided for fees and surcharge revenue in Section 5. During the pendency of any disputed liquidated damage assessment period, the parties shall engage in dispute resolution as provided in Section 15, and any resulting decision by a court of competent jurisdiction shall control

regarding the payment of the liquidated damages set forth in this Section 13(f). Section 13 shall not be construed to impair the City's right to acquire Grantee's property or facilities at any time as provided by the California Constitution and the San Diego Charter.

(2) By entering the Franchise, Grantee and the City agree that the specified Franchise conditions and liquidated damage amounts provided in Section 13(g) represent a reasonable endeavor by the parties to estimate a fair compensation for any loss that may be sustained by the City as the result of that breach of the specified condition for the period. Jointly foreseeable and reasonably estimable damages to the City of Grantee's breach of conditions in Section 13(g) include, but are not limited to, costs arising from Grantee's interference, disruptions, suspensions, obstructions, and delays to the City's programs, projects, contracts, and the cost to efficiencies in City-reserved uses of the Streets. The City's election of liquidated damages under Sections 13(f) and (g) is an alternative that shall be available to the City in lieu of Section 13(b), and is not and shall not be construed as a penalty. Grantee acknowledges that amounts provided in Sections 13(g) are capped and bear a reasonable relationship to the range of harm that the parties might reasonably have anticipated to follow from the specified breaches when they entered into the Franchise, and thereby provide a complete and final remedy for those violations if the City so elects liquidated damages.

(g) *Liquidated Damages for Breach of Specified Conditions.* If elected by the City pursuant to Sections 13(f), the following events of Grantee breach shall have the corresponding daily liquidated damage charges excepting weekends and holidays:

(1) Failure to deliver facility location records and Gas facility drawings and other engineering record information required by Section 9 without conditions not provided for in the Franchise: fifteen hundred dollars (\$1,500) per calendar day for delay and disruption.

(2) Failure to timely coordinate, bear costs, and physically relocate facilities upon direction of the City Manager as required by Section 8: fifteen hundred dollars (\$1,500) per calendar day for delay and disruption. Actual cost of relocation shall be borne as set forth in Section 8.

(3) Failure to provide and pay for standby safety engineers for protection of Grantee facilities within ten (10) calendar days' notice from the City or its authorized agents as required by Section 9: Cost of standby engineers plus fifteen hundred dollars (\$1,500) per calendar day for delay impacts.

Section 14. Survivability

If the Franchise is terminated for any reason, then the following Sections of the Franchise shall survive that termination: Section 1, Section 4(e)(6), Sections 13(b), (c), (d), and (e), and Sections 15 to 24. In addition, the insurance required of Grantee in Section 11 shall be maintained until any remaining Grantee obligations to the City are fulfilled.

Section 15. Dispute Resolution

(a) If any dispute arises under the Franchise, including any alleged breach, the City and Grantee shall use reasonable efforts to resolve the dispute. The City and Grantee shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to the City and Grantee. If the City and Grantee do not agree on such a solution within fifteen (15) calendar days, then, upon written notice by either party to the other, such dispute shall be referred to the City Manager and a member of Grantee's executive staff for further consultation and negotiation.

(b) If the City Manager and the member of Grantee's executive staff are unable to agree on a solution within fifteen (15) calendar days of such referral, the City and Grantee shall

attempt in good faith to settle the dispute by non-binding mediation administered by a mediator acceptable to both parties. The City and Grantee will cooperate in selecting a mediator. The City and Grantee will share equally in the mediation costs and each party will bear its own attorneys' fees and related costs, including any expert witness fees. The parties will use their best efforts to conclude the non-binding mediation within forty-five (45) calendar days after the City Manager and member of Grantee's executive team conclude their discussions. The parties may extend the dates in Section 15 by mutual agreement.

(c) If the City and Grantee do not agree on a solution through non-binding mediation, then either party may pursue litigation in any court with jurisdiction. Notwithstanding any other provision of Section 15, the City or Grantee may proceed directly to litigation if there is an urgency that renders the preceding dispute resolution process impracticable.

Section 16. Publication Expense

Grantee shall reimburse the City for all publication expenses incurred in connection with granting the Franchise, within thirty (30) calendar days after the City provides Grantee a written statement of the expenses.

Section 17. Authority for Grant

Notwithstanding any other provisions, the Franchise is granted solely and exclusively under Sections 103, 103.1, 104, and 105 of the San Diego Charter.

Section 18. No Transfer Without Consent

Grantee shall not sell, transfer, or assign the Franchise or the rights and privileges granted thereby without the consent of the City Council, as set forth in San Diego Charter Section 103.

Section 19. Right of City's Electors

This grant of Franchise and authority shall be and is subject to the right of the majority of the electors of the City voting at any election at any time thereafter to repeal, change, or modify the grant, and such right is hereby expressly reserved to the electors; and it is expressly agreed that at any election held in the City, a majority of the electors of the City voting at the election shall have the right to repeal, change, or modify the terms of this Franchise and the authority granted hereunder.

Section 20. Performance Bond

Grantee shall file and maintain a faithful performance bond in favor of the City in the sum of five million dollars (\$5,000,000) to guarantee that Grantee shall well and truly observe, fulfill, and perform each and every term and condition of the Franchise. The bond shall be acknowledged by Grantee as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. In case of any breach of any condition of the Franchise causing actual provable damage to the City, up to the whole amount of the sum named in the bond may be taken and shall be recoverable from the principal and sureties upon such bond.

Section 21. Bankruptcy

Grantee and the City acknowledge that if Grantee becomes a debtor in bankruptcy under the bankruptcy laws of the United States (Bankruptcy Code), the Franchise shall be treated as an executory contract pursuant to Bankruptcy Code section 365(c). Grantee and the City further acknowledge that, as a non-assignable contract pursuant to applicable law, including San Diego Charter section 103 and California Public Utilities Code section 6203, the Franchise may not be assumed or assigned by the trustee or the debtor-in-possession without the consent of the City. In

the event that the debtor-in-possession assumes the Franchise and the Franchise is sold pursuant to the Bankruptcy Code, it is the intent of the parties that the City shall have the right of first refusal to match the price of any buyer for the purchase of Grantee's facilities and assets and may acquire Grantee's facilities by matching any bona fide offer of purchase made in bankruptcy. Grantee and City acknowledge that if the City files any petition for bankruptcy pursuant to Chapter 9 of the Bankruptcy Code, Grantee's claims shall be treated consistently with the applicable provisions of that Chapter.

Section 22. Acquisition and Valuation

Nothing in the Ordinance or the Franchise granted hereby shall be construed as in any way impairing the City's rights to acquire property of Grantee through the exercise of the City's power of eminent domain or through voluntary agreement between the City and Grantee. If the City chooses to exercise its power of eminent domain, it shall do so in accordance with the procedures provided by the general law of the State of California. The valuation of such property for condemnation purposes shall be made in accordance with such general law.

Section 23. Severability

If any term, covenant, or condition of the Franchise or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest, by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of the Franchise and their application shall not be affected thereby but shall remain in force and effect. The parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination, unless a court or

governmental agency of competent jurisdiction holds that such provisions are not severable from all other provisions of the Franchise.

Section 24. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day from and after the date of its final passage pursuant to San Diego Charter section 295.

APPROVED AS TO FORM: MARA W. ELLIOTT, City Attorney

By /s/Jean Jordan
Jean Jordan
Assistant City Attorney

FMO:als:jvg
03/28/21
5/24/21 COR. COPY
Or.Dept: Office of the Mayor
Doc. No.: 2666466_2
Attachment: Table of Contents

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 06/08/2021.

ELIZABETH S. MALAND
City Clerk

By /s/ Connie Patterson
Deputy City Clerk

Approved: 6/10/21
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

(Note: The date of final passage is June 11, 2021, which represents the day this ordinance was returned to the Office of the City Clerk with the Mayor's signature of approval.)

ATTACHMENT 1
TO
GAS FRANCHISE

ATTACHMENT 1

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Passed by the Council of The City of San Diego on JUN 08 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 11 2021.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

MAY 25 2021, and on JUN 11 2021.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21327

II 57.8
6/8/2021

(O-2021-129)
COR. COPY

ORDINANCE NUMBER O- 21328 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 11 2021

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO GRANTING TO SAN DIEGO GAS AND ELECTRIC COMPANY, THE FRANCHISE (1) TO USE, FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY SUITED FOR LIGHTING BUT FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES OTHER THAN LIGHTING, ALL POLES, WIRES, CONDUITS, AND APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE LAWFULLY PLACED AND MAINTAINED IN THE STREETS WITHIN THE CITY OF SAN DIEGO UNDER THAT CERTAIN FRANCHISE OF GRANTEE ACQUIRED PURSUANT TO SECTION 19 OF ARTICLE XI OF THE CONSTITUTION OF THE STATE OF CALIFORNIA, AS THE SECTION EXISTED PRIOR TO ITS AMENDMENT ON OCTOBER 10, 1911; (2) TO CONSTRUCT, MAINTAIN, AND USE IN THE STREETS ALL POLES, WIRES, CONDUITS, AND APPURTENANCES WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE IS NOT NOW NOR SHALL HEREAFTER BE AVAILABLE THEREFOR, NECESSARY TO TRANSMIT AND DISTRIBUTE ELECTRICITY SUITED FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES; (3) TO UTILIZE POLES, WIRES, CONDUITS, AND APPURTENANCES IN THE STREETS FOR TRANSMITTING ELECTRICITY FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR ANY AND ALL LAWFUL PURPOSES; (4) TO CONTINUE UNDERGROUNDING OVERHEAD FACILITIES IN THE CITY; AND (5) FOR COOPERATION WITH CITY CLIMATE ACTION AND CLIMATE JUSTICE GOALS; AND PROVIDING THE TERMS AND CONDITIONS OF THE FRANCHISE SO GRANTED.

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. Definitions

The following definitions apply in this Ordinance and are capitalized when they appear:

- (a) "Grantee" means San Diego Gas & Electric Company, a California corporation.

(b) "City" means the City of San Diego, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged, or reincorporated form.

(c) "Administrative MOU" means that certain Administrative Memorandum of Understanding to be negotiated between the City and Grantee to define and promote a cooperative working relationship between the parties and to address the handling of operational issues as more fully described in Section 9. In the event of a conflict between the Administrative MOU and the Franchise, the Franchise shall control.

(d) "Applicable Law" means any law, rule, regulation, requirement, guideline, action, determination, or order of, or legal entitlement issued by, any governmental body having jurisdiction, applicable from time to time to the operation and ownership of Grantee's electrical facilities and to Grantee's business operations, or any other transaction or matter contemplated by the Franchise (including any which concern health, safety, fire, environmental protection, electrical transmission and distribution, metering, billing, quality and use, public records, labor relations, environmental plans, building codes, nondiscrimination, and the payment of minimum and prevailing wages), including without limitation applicable provisions of the San Diego City Charter, the San Diego Municipal Code, the California Constitution, the California Public Utilities Code, the California Labor Code, the Federal Power Act, and orders and decisions of the California Public Utilities Commission (CPUC) and Federal Energy Regulatory Commission (FERC).

(e) "Bid Amount" means seventy million dollars (\$70 million) plus any interest as provided in Section 4(e).

(f) "Books and Records" means Grantee's records, regardless of form, including physical, digital, and electronically stored information, including but not limited to records of

income, expenditures, finance, charts, diagrams, ledgers, pictures, drawings, as well as Geographic Information System (GIS) locational data, photographs, and notes, which relate to the placement, location, operation, and maintenance of Grantee's facilities in City Streets, which are both for the purpose of, and reasonably necessary to, verify Grantee's compliance with the terms in this Franchise. "Books and Records" also includes records of internal and external charges and expenditures for the public Municipal Undergrounding Surcharge funds authorized by the CPUC and collected from electric customers in the City pursuant to CPUC Resolution No. E-3788 or any succeeding order, including records of bidding and contracts, overhead and personnel charges, information to verify the applicable prevailing wage was paid, and the processes for accounting expenditures and charging of costs to the Municipal Undergrounding Surcharge funds.

(g) "City Manager" means the person defined in Sections 28, 260, and 265 of the Charter of the City of San Diego (San Diego Charter) as those provisions existed on the Effective Date or as those provisions may be hereafter amended, and the meaning shall include any person lawfully delegated rights or responsibilities by such person.

(h) "Commencement of Operations Date" means the date which is thirty (30) days after final passage of this Ordinance by the City Council if the Grantee already possesses a Certificate of Public Convenience and Necessity pursuant to California Public Utilities Code Division 1, Part 1, Chapter 5, Article 1.

(i) "Constitutional Franchise" means the right acquired through acceptance by Grantee or its predecessor in estate of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as the section existed prior to its amendment on October 10, 1911.

(j) "Construct, Maintain, and Use" means to construct, erect, install, operate, maintain, use, repair, relocate, or replace Poles, Wires, Conduits, and Appurtenances thereto in, upon, along, across, under or over the Streets of the City.

(k) "CPUC" means the California Public Utilities Commission or any successor agency.

(l) "Effective Date" means the thirtieth day from and after the final passage of this Ordinance by the City Council pursuant to San Diego Charter section 295.

(m) "Electric Franchise Fee Surcharge" means the total amount of surcharges allowed by the Franchise and the CPUC to be levied solely on customers in the City as a consequence of the requirements of the Franchise, consisting prior to the Effective Date of those surcharges previously authorized by CPUC Resolution No. E-3788 and Decision No. 80234, which have as subparts: (a) a differential surcharge of one and nine tenths of a percent (1.9%) approved by Decision No. 80234; (b) a further differential surcharge of thirty-five one hundredths of a percent (0.35%) authorized by CPUC Resolution No. E-3788; and (c) a Municipal Undergrounding Surcharge of three and fifty-three one hundredths of a percent (3.53%), all together totaling five and seventy-eight one hundredths of a percent (5.78%), approved by CPUC Resolution No. E-3788.

(n) "Franchise" means the Franchise granted by the City Council to San Diego Gas & Electric Company by Ordinance No. O-21328, pursuant to San Diego Charter sections 103, 103.1, 104, and 105.

(o) "Good Utility Practice" has the same meaning as in the California Independent System Operator glossary of utility terms, and means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable

judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be any one of a number of the optimum practices, methods, or acts to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

(p) "Gross Receipts" means all gross operating revenues received by Grantee from the sale of electricity to Grantee's customers with points of service within the corporate limits of the City (including, but not limited to, sales to military reservations with points of service within the City's corporate limits) which are credited in Account Nos. 440, 442, 444, 445, and 446 of the current Uniform System of Accounts of FERC as adopted by the CPUC or similar superseding accounts, plus all revenues collected from CPUC-authorized surcharges rendered solely upon the ratepayers within the City as a result of the Franchise accounted for in Account No. 451 or its superseding account (less any portion of such surcharges which may be approved by the CPUC to capture the franchise fee on these revenues), less uncollectible amounts, and less any refunds or rebates made by Grantee to such customers pursuant to CPUC orders or decisions.

(q) "Municipal Undergrounding Surcharge" means that part of the Electric Franchise Fee Surcharge that is specifically designated for the undergrounding of overhead lines in the City and consists of three and fifty-three one hundredths of a percent (3.53%), as approved by CPUC Resolution No. E-3788 as of the Effective Date.

(r) "Poles, Wires, Conduits, and Appurtenances" means poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances, and, without limitation to the foregoing, any other equipment or property located or to be located in, upon, along, across, under or over the streets of the City, and

used or useful for the purpose of the transmission and distribution of electricity and for internal communication systems, sometimes otherwise referred to as “facilities.”

(s) “Streets” means the public freeways, highways, streets, ways, alleys and places as they now or may hereafter exist within the City, but excludes easements or fees held by Grantee.

(t) “Undergrounding MOU” means that certain Memorandum of Understanding Regarding Implementation of Franchise Undergrounding Obligations to be negotiated between the City and Grantee regarding the management and implementation of the City’s undergrounding program as more fully described in Section 10. In the event of a conflict between the Undergrounding MOU and the Franchise, the Franchise shall control.

Section 2. Purpose

(a) The Franchise (1) to use, for transmitting and distributing electricity suited for lighting but for use by consumers for any and all lawful purposes other than lighting, all Poles, Wires, Conduits, and Appurtenances which are now or may hereafter be lawfully placed and maintained in the Streets within the City under that certain franchise of Grantee acquired pursuant to section 19 of Article XI of the Constitution of the State of California, as the section existed prior to its amendment on October 10, 1911; (2) to Construct, Maintain, and Use in the Streets all Poles, Wires, Conduits, and Appurtenances whenever and wherever said Constitutional franchise is not now nor shall hereafter be available therefor, necessary to transmit and distribute electricity suited for use by consumers for any and all lawful purposes; (3) to utilize Poles, Wires, Conduits, and Appurtenances in the Streets for transmitting electricity for use outside the boundaries of the City for any and all lawful purposes; (4) to provide for an expeditious, efficient, publicly transparent, and accountable program for the conversion of overhead wires and poles in the City to underground facilities; (5) to aid in the City’s establishment of a Climate Equity Fund; (6) subject to Applicable Law, to provide for Grantee’s

commitment to cooperate with the City in good faith on principles and policies for the attainment of the City's Climate Action Plan dated December 2015, local energy, energy justice, and climate equity objectives, including but not limited to the reduction of greenhouse gas emissions to the extent practical through energy efficiency measures, cooperation with any community choice aggregation program, the increased use of renewable sources of electric generation, wider deployment of local distributed energy resources, and advancing the electrification of transportation; and (7) meet at the City's request with the shared goal of aligning on climate goals in the City's Climate Action Plan when amended; is hereby granted to San Diego Gas & Electric Company, a corporation organized and existing under and by virtue of the laws of the State of California.

(b) If gas and electric franchises are awarded to the same Grantee, the requirements of Sections 6, 9, and 12, need not be duplicated.

(c) Attached as Attachment 1 is a Table of Contents for the Franchise.

Section 3. Term

(a) The right, privilege, and Franchise, subject to each and all of the terms and conditions contained in this Ordinance, is hereby granted to San Diego Gas & Electric Company, a corporation organized and existing under and by virtue of the laws of the State of California, for the primary term of (10) years from and after the Commencement of Operations Date.

(b) Subject to the provisions set forth in Section 15, the primary term provided in Section 3(a) shall automatically be extended for a secondary term of ten (10) years. Grantee and the City understand and agree that, unless one or more of the provisions set forth in Section 15(c), (d) or (e) apply, the Franchise shall automatically be extended without additional action of any kind by the City or Grantee.

(c) All associated agreements, rights, and obligations under the Franchise shall also expire at the expiration or earlier termination of the Franchise, except for the provisions set forth in Section 16.

Section 4. Consideration

(a) The rights and privileges herein granted are upon the express condition that Grantee, as consideration therefor and as compensation for the use of the Streets of the City as herein authorized and permitted, shall pay compensation to the City in the following amounts and manner: Grantee shall pay the Bid Amount, and shall pay each year in United States dollars, a sum equal to three percent (3%) of Grantee's Gross Receipts during the preceding calendar year, or fractional year, beginning on the Commencement of Operations Date. In addition, Grantee shall pay any applicable statutory surcharge, such as the Municipal Lands Use Surcharge required pursuant to California Public Utilities Code section 6350, *et seq.* Any City-imposed fees for right-of-way usage (Right-of-Way Fee) shall be credited with the consideration paid herein, provided the City will treat Grantee consistently with other applicants. Any revenues that remain after this credit of Right-of-Way Fees will be credited towards any additional fees the City imposes for inspection, trenching, cutting, or deterioration of the right-of-way. The three percent (3%) of Gross Receipts required to be paid to the City pursuant to Section 4(a) shall be deemed to be for electric revenues for all lawful purposes except for lighting; there shall be no fee for electricity furnished for lighting.

(b) Grantee or any successors shall not at any time apply or request to the CPUC, by application, advice letter, or any other filing, to include in rates or surcharges all or any portion of the Bid Amount, or interest thereon, paid to the City for award of the Franchise. The Bid Amount, and any interest thereon, is for the purpose of acquiring the Franchise and shall be solely an obligation of the Grantee, and no part of it shall be paid by electric ratepayers. The Bid

Amount is separate from and additional to the consideration to be paid for exercise of the Franchise under Sections 4(a) and 4(c), and shall be paid and accepted upon the express condition that Grantee shall not at any time apply to or otherwise request from the CPUC to recover any portion of the Bid Amount, or interest thereon, from electric ratepayers in rates or surcharges. The Franchise and any previously paid portions of the Bid Amount shall be forfeited, and all future notes will be due and payable, if the Grantee or any successor ever applies to the CPUC or seeks or attempts to recover all or any portion of the Bid Amount or any interest thereon in rates or surcharges charged to customers inside or outside the City.

(c) In addition to the franchise fee required by Section 4(a), the portion of Gross Receipts required to be paid for undergrounding, as required by Section 10, shall also be deemed a portion of the consideration for the Franchise.

(d) During the term of the Franchise, Grantee covenants and agrees, that if Grantee agrees to pay another municipality more than three percent (3%) of Grantee's Gross Receipts (including receipts on CPUC-authorized electric surcharges) in an electric franchise, Grantee shall notify the City of such agreement in writing within thirty (30) calendar days and offer to amend the Franchise to increase the franchise fee to equal the percentage of Gross Receipts in such other franchise. If the City agrees to accept the offer, the City and Grantee will execute and adopt any documents necessary to amend the Franchise as soon as practicable given the need for regulatory approvals. To make such amendments effective, Grantee shall expeditiously file an application or request with the CPUC, as Grantee deems necessary, to gain approval of the amendments and the resulting increase in the franchise fee surcharge chargeable to the residents of the City. Grantee shall not be in violation of Section 4(d) if the CPUC fails to approve any such application or request.

(e) Section 4(e) applies only if Grantee elected to pay the Bid Amount in installments as consideration for the grant of the Franchise. If the structured promissory note method is selected by Grantee for paying the Bid Amount, then:

(1) On or before August 1 of each of the years specified in Table 1 of this Section 4(e), Grantee shall pay a portion of the Bid Amount as specified in Table 1 to the City Treasurer in lawful money of the United States. City shall provide Grantee with bank wire information upon the grant of this Franchise and Grantee shall wire the payment for 2021 as instructed and shall at the same time deliver promissory notes acceptable to the City Manager pledging payment to City for all subsequent years and portions of the Bid Amount as specified in Table 1 on or before August 1 of each of the specified years. The promissory notes shall bear interest as provided in Section 4(e)(3). The notes shall not be due and payable to the City until the maturity date of each installment on the note.

Table 1

2021	\$10 million
2022	\$10 million
2023	\$10 million
2024	\$10 million
2025	\$10 million
2026	None
2027	None
2028	None
2029	None
2030	\$10 million
2031	\$10 million

(2) The maturity dates of the promissory note installments shall be August 1st of the year such payment is due as shown in Table 1 above.

(3) Each promissory note shall provide for the payment of the principal amount plus interest, calculated on an actual/actual basis at the annual rate of three and thirty-eight one hundredths of a percent (3.38%).

(4) If during the term of this Franchise a material change in the creditworthiness of Grantee occurs, the City may demand a letter of credit, in the form, amount, for a term, and from an issuer reasonably acceptable to the City, to secure Grantee's obligation to fulfill any Bid Amount obligation not already paid by Grantee at the time of such material change in the creditworthiness of Grantee, and Grantee shall meet such demand. The City requires a minimum credit rating for the issuing financial institutions providing the letter of credit submitted by Grantee to be and remain of the "A" category or better for its senior unsecured debt, or equivalent. If at any point during the term of the letter of credit, none of the following Nationally Recognized Credit Rating Agencies (Moody's, Standard & Poor's, or Fitch) rate the financial institution with at least an "A" category, then Grantee must immediately replace the submitted letter of credit with one that is acceptable to the City, or pay the remaining notes in full with interest specified herein accrued to that date. All costs associated with the letter of credit shall be the responsibility of Grantee. The letter of credit shall provide that the City may unilaterally draw on the letter of credit to fulfill any Bid Amount obligation not paid by Grantee when due.

(5) Grantee may pay cash in discharge of a promissory note at any time before its maturity date, in which event interest shall be adjusted for early payment. The submission of cash payment shall be upon appointment with the City Treasurer's office.

(6) If the Franchise is not in effect through that date 20 years after the Effective Date due to termination or forfeiture of the Franchise for any reason, then any promissory notes not yet due shall be void and the City shall pay Grantee the Pro Rata Partial Refund Amount calculated as follows: the Bid Amount divided by twenty (20) multiplied by each and every year remaining on the Franchise, plus the remainder amount, less any unpaid Bid Amount as of the date of termination or forfeiture, multiplied by 0.75. The remainder amount shall be calculated by dividing the Bid Amount by twenty (20), and then dividing it again by 12, multiplied by the

number of months remaining in the year during which the termination or forfeiture occurs. As an example, if this Franchise were terminated or forfeited 9 years and 3 months after the Effective Date (on Oct. 1, 2030), the total Pro Rata Partial Refund Amount would equal $\$3.5M \times 11 \text{ years} + \$291,667 \times 9 \text{ months} = \$38.5M + \$2.625M - \$10M \times 0.75 = \$23,343,750M$. For the avoidance of doubt, the table below uses the mathematical formula described above and shows the amount of refund due each year, assuming (a) the termination occurs on the anniversary of the Effective Date; and (b) payment of the annual Bid Amount for the previous year has already occurred prior to the date of termination, but the payment due on August 1 (if any) has not yet been made. For terminations that do not occur on an anniversary of the Effective Date, the mathematical formula described above shall apply. If there is a discrepancy between the table below and the mathematical formula described above, the mathematical formula shall control for all purposes.

A	B	C	D	E
Termination Date (Anniversary of Effective Date Prior to Aug. 1 Payment)	Amount Previously Paid by Grantee to City	Amount "Earned" by the City at \$3.5 million per year	Column B Minus Column C	Pro Rata Partial Refund Amount to be paid by City to SDG&E (Column D multiplied by .75)
Anniversary Date, 2022	\$10 million	\$3.5 million	\$6.5 million	\$4.875 million
Anniversary Date, 2023	\$20 million	\$7 million	\$13 million	\$9.75 million
Anniversary Date, 2024	\$30 million	\$10.5 million	\$19.5 million	\$14.625 million
Anniversary Date, 2025	\$40 million	\$14 million	\$26 million	\$19 million
Anniversary Date, 2026	\$50 million	\$17.5 million	\$32.5 million	\$24.375 million
Anniversary Date, 2027	\$50 million	\$21 million	\$29 million	\$21.75 million
Anniversary Date, 2028	\$50 million	\$24.5 million	\$25.5 million	\$19.125 million
Anniversary Date, 2029	\$50 million	\$28 million	\$22 million	\$16.5 million
Anniversary Date, 2030	\$50 million	\$31.5 million	\$18.5 million	\$13.875 million

Anniversary Date, 2031	\$60 million	\$35 million	\$25 million	\$18.75 million
Anniversary Date, 2032	\$70 million	\$38.5 million	\$31.5 million	\$23.625 million
Anniversary Date, 2033	\$70 million	\$42 million	\$28 million	\$21 million
Anniversary Date, 2034	\$70 million	\$45.5 million	\$24.5 million	\$18.375 million
Anniversary Date, 2035	\$70 million	\$49 million	\$21 million	\$15.75 million
Anniversary Date, 2036	\$70 million	\$52.5 million	\$17.5 million	\$13.125 million
Anniversary Date, 2037	\$70 million	\$56 million	\$14 million	\$10.5 million
Anniversary Date, 2038	\$70 million	\$59.5 million	\$10.5 million	\$7.875 million
Anniversary Date, 2039	\$70 million	\$63 million	\$7 million	\$5.25 million
Anniversary Date, 2040	\$70 million	\$66.5 million	\$3.5 million	\$2.625 million
Anniversary Date, 2041	\$70 million	\$70 million	\$0	\$0

(7) In addition to and separate from the Bid Amount, in 2037, 2038, 2039 and 2040, Grantee shall contribute \$5 million per year (a total of \$20 million), to the City's General Fund for the City to use to further the City's Climate Action and Climate Equity goals. Grantee may make such contributions the City's General Fund earlier, but not later, than the years indicated. Such contributions shall not be due if the Franchise is not in effect for any reason in such years.

Section 5. Reports, Dates of Payment to City, Audits

(a) On or before the 15th day of February of each calendar year during the term of the Franchise, as defined in Section 3, and forty-five (45) calendar days after the expiration of the Franchise term, Grantee shall file with the City Clerk, the original, and with the Chief Financial Officer of the City, one copy, of a statement signed by its chief financial officer evidencing the Gross Receipts during the preceding calendar year or fractional calendar year.

(b) Within ten (10) calendar days after the filing of the statement of Gross Receipts required to be filed on or before the 15th day of February 2022, Grantee shall pay to the City Treasurer the money herein required to be paid by Grantee to the City upon the basis of the data set forth in said statement. For the avoidance of doubt, payment of the Bid Amount shall be governed by Section 4.

(c) Thereafter, no later than the 25th day of February, the 25th day of May, the 25th day of August, and the 25th day of November of each calendar year during the term of the Franchise, Grantee shall pay the City Treasurer one-fourth (1/4) of the money herein required to be paid by Grantee to the City upon the basis of the data set forth in the statement required by Section 5(a). If the first year is a fractional year, Grantee shall pay quarterly amounts not paid by the prior Grantee on the basis of the data in the prior Grantee's Gross Receipts for the preceding year on the dates required herein. By this method of payment it is contemplated and understood that Grantee is in effect paying the money herein required to be paid by Grantee to the City under Section 5(c) on the basis of Gross Receipts for the preceding calendar year and that an adjustment shall be made as more fully set forth in Section 5(d).

(d) Within ten (10) calendar days after the filing of the statement required by Section 5(a), Grantee shall pay the City Treasurer, or receive as a refund from the City, as the case may be, a sum of money equal to the difference between the sum of the payments of money made in accordance with Section 5(c) and the annual payment of money herein required to be paid by Grantee to the City upon the basis of the data set forth in said statement.

(e) The City Manager, City Auditor, City Attorney, or any designees, at any reasonable time during business hours, may make examination at Grantee's office or offices, or through written electronic request and exchange of its Books and Records, germane to and for the purpose of verifying the data set forth in the statements required by Sections 5(a) and 10.

Grantee shall produce its Books and Records no later than five (5) business days after written request from the City.

(f) All Books and Records subject to examination in the Franchise shall be kept within the County of San Diego, or in such other place as the reasonable convenience of Grantee may require, until at least five (5) years following the termination of the Franchise; and if it becomes necessary for the City Manager, City Auditor, City Attorney, or any representative designated by the City, to make such examination at any place other than within the County, then all increased costs and expenses to the City necessary or incident to such examination and resulting from such Books and Records not being available within the County, shall be paid to the City by Grantee on demand.

(g) Disagreements concerning City's access to Grantee's Books and Records shall be timely referred to the City Manager or specified designee and a designated officer of the Grantee, and the City and Grantee shall attempt to resolve in good faith such disagreement.

(h) Upon request of the City, Grantee shall provide the City with any publicly available reports filed by Grantee with the CPUC.

(i) In addition to the remedies provided in Section 15, if Grantee fails to make the payments for the Franchise on or before the due dates as required in Sections 5(b) through 5(d), Grantee shall pay as additional consideration both of the following amounts:

(1) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by the City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to the City of postponing services and projects necessitated by the delay in receiving revenue; and

(2) A sum of money equal to one percent (1%) of the amount due per month or any portion thereof as interest and for loss of use of the money due.

Section 6. Compliance Review Committee and Report

(a) An audit of Grantee's performance of the conditions of the Franchise shall occur every two (2) years after the Effective Date. The City shall establish a Franchise Compliance Review Committee (Review Committee) that will consist of five (5) members: three (3) appointees selected by the City Council and two (2) appointees selected by the Mayor. No nominee with a conflict of interest shall be appointed to the Review Committee. The Review Committee shall be a citizens' committee formed pursuant to San Diego Charter section 43(b) and Council Policy 000-13. The Review Committee shall be created and established by City Council resolution every two (2) years only for the clearly defined purpose in the resolution, which shall include the duties in Section 6(b), and shall be temporary in nature and dissolved upon the completion of the objectives for which it was created. The Review Committee shall be created, and appointments shall be made, before the end of the first year of each successive two-year period of the Franchise term. The Review Committee, which shall meet publicly and comply with the Ralph M. Brown Act, shall establish a mechanism by which members of the public may communicate with the Review Committee concerning the Franchise.

(b) The City shall use a competitive process to retain a qualified, independent, third-party auditor (independent auditor) every two (2) years. The independent auditor shall perform an audit of Grantee's conformance and compliance with all conditions of the Franchise and produce a written report documenting the work performed and the conclusions reached. The audit shall address Grantee's fulfillment of financial, operational, documentary, and cooperative requirements under the Franchise. The Grantee shall appoint an executive level representative to serve as the principal person responsible for coordinating with the independent auditor. The audit

shall be completed and provided to the Review Committee no later than sixty (60) calendar days before the outside due date of the Review Committee's report. If Grantee fails to cooperate with the independent audit, the auditor's report shall document the refusal and any reason Grantee stated for failing to cooperate. The Review Committee shall review the independent auditor's report and shall provide the auditor's report and its own written report and recommendations to the City Council within one hundred eighty (180) calendar days of the end of each two-year period of the Franchise term. The Review Committee shall provide a recommendation to the City Council on the question of the automatic renewal for the secondary term of the Franchise, based on compliance with the Franchise and the Energy Cooperation Agreement. Grantee shall be given the opportunity to respond in writing to the Review Committee biennial reports and the recommendation regarding automatic renewal and such written response, if timely received, shall be provided to the City Council contemporaneously with the Review Committee's report or recommendation.

(c) Within ten (10) calendar days, Grantee shall comply and cooperate with all requests made by the City Manager, City Attorney, independent auditor, and City Auditor, or designees, which are reasonably necessary to verify Grantee's compliance with the terms in the Franchise. Upon request, Grantee shall provide to the City Manager, City Attorney, independent auditor, or City Auditor, or their designees, and at no cost to the City, all Books and Records required to be made available to the City under the Franchise, within ten (10) calendar days. If Grantee contends that legal restrictions prevent compliance with any part of the request, Grantee shall provide in writing a specific legal basis that clearly establishes that the law, the CPUC, or other agency with jurisdiction requires or prohibits Grantee from releasing the requested Books and Records. General references to provisions of the law or Grantee business preferences will not suffice. In addition, if Grantee is unable to produce the requested Books and Records within

ten (10) calendar days, Grantee shall provide a good faith explanation and a date by which the Books and Records will be produced.

(d) The independent auditor shall be provided access to interview the City and employees of Grantee designated by Grantee regarding any subject which is relevant to confirming Grantee's compliance with the Franchise within ten (10) business days after any request.

(e) The procedures provided in Section 6 shall be in addition to, and not in lieu of, the City's right to audit under Sections 5 and 10. Nothing in Section 6 shall limit or impair the right of the City Auditor to conduct its own audits of Grantee's Books and Records needed to verify compliance with the Franchise, pursuant to San Diego Charter section 39.2, or of the City Attorney to perform her responsibilities under San Diego Charter section 40, including confirming compliance with the Franchise.

Section 7. Compliance with Laws

(a) All facilities or equipment of Grantee that Grantee shall Construct, Maintain and Use or remove, pursuant to the provisions of the Franchise, shall be accomplished in accordance with Applicable Law and with the ordinances, rules, and regulations of the City now or as hereafter adopted or prescribed, and such rules or regulations as are promulgated under state law, or orders of the CPUC or other governmental authority having jurisdiction in the premises.

(b) Without limiting the general applicability of the foregoing paragraph, or diminishing in any way the significance and consequence of Grantee's duty to comply with all laws, Grantee shall specifically observe and fully comply with the ordinances and regulations of the City as provided in Sections 9 and 10, and any effective Administrative MOU granted pursuant thereto.

(c) Consistent with Sections 7(a) and (b), all operations of Grantee shall comply with Good Utility Practice at all times.

Section 8. City Reserved Powers

(a) The City reserves the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade, or maintain below surface or above surface improvements of any type or description in, upon, along, across, under or over the Streets of the City. The City further reserves the right to relocate, remove, vacate, or replace the Streets themselves. If the necessary exercise of the City's reserved rights conflicts with any Poles, Wires, Conduits, and Appurtenances of Grantee Constructed, Maintained, and Used pursuant to the provisions of the Franchise, whether or not previously Constructed, Maintained, and Used, Grantee shall, without cost or expense to the City within ninety (90) calendar days after a request in writing by the City Manager, containing substantially complete designs for the portion of the work impacting Grantee's facilities, begin the physical field construction of changing the location of all corresponding conflicting facilities or equipment. The Administrative MOU will include more detailed procedures to promote a cooperative working relationship between Grantee and the City regarding relocations, but shall not control over the Franchise. Grantee shall proceed promptly to complete such required work in accordance with the Administrative MOU and within a reasonable time frame as permitted by Good Utility Practice and in accordance with Applicable Law.

(b) The City and Grantee are currently engaged in litigation related to which party bears the cost of relocation of Grantee's facilities in conflict with City water projects. Notwithstanding the language in Section 8(a) of this Franchise, with regard to such costs, the City and Grantee agree that they will abide by the final determination of the California courts or settlement thereof and Section 8(a) shall not supersede any such determination or settlement. Any

agreements presently in effect or subsequently executed between the City and Grantee regarding the cost of such relocations shall remain in effect unless and until such final determination by the courts or settlement by the City and Grantee.

Section 9. Administrative Practices

(a) Grantee's exercise of rights to install, maintain, and operate its facilities in the Streets of the City shall at all times be subject to obtaining and maintaining in force an Administrative MOU. The Administrative MOU shall define Grantee's administrative practices throughout the Streets while exercising the Franchise rights; however, the Administrative MOU shall not be in lieu of or relieve Grantee from complying with the Franchise terms or obtaining more particular permits required for Grantee's specific projects or activities, nor shall the Administrative MOU curtail or limit Grantee's rights under the Franchise. The Administrative MOU shall prescribe the categories of work that Grantee may perform without additional specific permits, and the categories of work that will require additional specific permits. The Administrative MOU shall be granted by the City Manager subject to the terms and procedures of the Franchise and on such other reasonable terms as may be established by the City Manager following consultation with Grantee and other utilities using the Streets. Grantee shall apply for an Administrative MOU within sixty (60) calendar days after the Effective Date, and the initial Administrative MOU shall expire on the second anniversary after the Effective Date. Each successive Administrative MOU shall have a term of two (2) years. Grantee shall not be charged a fee to obtain the Administrative MOU. The Administrative MOU shall be consistent with all terms in the Franchise, specifically including the terms of Sections 8 and 9. If there is any conflict between the provisions of the Franchise and the provisions of the Administrative MOU, the provisions of the Franchise shall control, and the conflicting provisions of the Administrative MOU shall be void.

(b) The Administrative MOU shall include any additional terms agreed upon by the City and Grantee. Subject to Applicable Law and the requirements of the Franchise, the City Manager may take due consideration of Grantee's requests regarding provisions of each biennial Administrative MOU, provided the requests are consistent with and do not conflict with the terms of the Franchise. The City Manager shall determine if the conditions of the Franchise are fulfilled upon any application for an Administrative MOU and if Grantee's application is complete. The City Manager shall grant an Administrative MOU within thirty (30) calendar days after Grantee's complete application. The application shall contain sufficient information for the City Manager to assure compliance with all the requirements in the Franchise. Grantee shall apply for each successive Administrative MOU not less than one hundred eighty (180) calendar days prior to expiration of the prior Administrative MOU. Any Administrative MOU granted by the City Manager shall be subject to the following conditions:

(1) Upon written request by the City Engineer or their specific designee, Grantee shall provide to the City within ten (10) calendar days, and immediately in the case of a City Manager-declared emergency, GIS coordinate data, or other locational records of Grantee's facilities as the City in its reasonable discretion requires for specific City projects or concerns, in a form and type determined by Grantee in its reasonable discretion in accordance with Good Utility Practice. In the Administrative MOU, the City and Grantee may agree on more detailed procedures for the provision of GIS data, including, if feasible, Grantee providing the City secure electronic access to certain GIS information of Grantee either directly or through an approved contractor. Although Grantee will make reasonable efforts to provide accurate GIS data to the City for City's design, engineering and planning purposes, Grantee makes no representations or warranties to the City or any of its agents, contractors or representatives that such GIS data may be relied upon for field work. The GIS data shall not be a substitute for the City's required

conflict check and dig alert obligations prior to starting any field work. In cases of emergency, at the request of the City, Grantee shall have the appropriate Grantee staff promptly on site to support the City in emergency operations.

(A) Grantee's contention that information is confidential shall not relieve Grantee from the duty to produce the information to City. Grantee acknowledges that any information required to be submitted or provided in fulfillment of the obligations of the Franchise is a public record subject to disclosure in response to a California Public Records Act (California Government Code sections 6250 – 6276.48) (CPRA) request, unless the City or a court of competent jurisdiction determines that a specific exemption to the CPRA applies. If Grantee submits information clearly marked confidential or proprietary, the City shall protect such information and treat it with confidentiality to the extent permitted or required by law; provided however, that the City shall assume no liability for having access to Grantee's records for official City purposes except by a judgment in a court of competent jurisdiction upon a claim arising from the established active negligence, sole negligence, or willful misconduct of the City, its officers, agents, or employees. It shall be Grantee's responsibility to provide to the City the specific legal grounds on which the City can rely in withholding information from public disclosure should Grantee request that the City withhold such information. General references to sections of the law will not suffice. Rather, Grantee shall provide in writing a specific legal basis, including citations to applicable case law or other law, that reasonably establishes the requested information is exempt from disclosure. Grantee agrees to defend and indemnify City to the extent the City is sued for withholding from disclosure information deemed confidential by Grantee. If, at the time the documents are provided to the City, Grantee does not provide in writing a specific legal basis for requesting the City to treat the information as confidential, to protect it from release, and to withhold alleged confidential or proprietary information from

CPRA requests, the City is not required to treat the information as being confidential and may release the information as required by the CPRA. When reviewing any request by Grantee for confidentiality, the City will consider California Government Code section 6254(e), which provides a CPRA exemption for records concerning geological and geophysical data relating to utility systems development that are obtained in confidence from any person.

(B) The City shall not be required to execute any non-disclosure agreement with Grantee to obtain prompt confidential access to Grantee's records for its facilities in City Streets except by order of a state or federal governmental agency or court having jurisdiction to impose such requirement. Absent such order, the City may, but shall not be required, to execute non-disclosure agreements with Grantee respecting the locations of Grantee's facilities.

(2) Grantee's rights to uses in the Streets exist subject to City uses of the Streets unless Grantee's rights are in easement or fee, in which case the Franchise does not control. At all times the City's superior reserved rights to uses of the Streets shall be preserved under Section 8. No provision of an Administrative MOU may be written or construed to modify that explicit reservation which shall be controlling at all times.

(3) With respect to any and all City work in the Streets, the costs of protecting Grantee's high voltage transmission facilities including any personnel, stand-by safety engineers or similar service for the protection of Grantee's facilities and employee and public safety which may be necessary for any City-controlled excavation or other work, shall be at Grantee's sole expense; provided however the cost of protecting Grantee's distribution level facilities shall be paid by the City. Upon written request from the City or an authorized agent, Grantee shall within ten (10) calendar days, or as soon as practicable in the case of emergency, arrange the on-site presence of any standby safety engineer that Grantee or City deem necessary for the protection

of Grantee's facilities. If Grantee provides any other municipality with more favorable terms for the stand-by safety services described in this section, Grantee shall notify City in writing within ten (10) calendar days and thereafter make such terms available to the City.

(4) In its application for an Administrative MOU, Grantee shall submit to the City a list of projects and activities Grantee plans to perform in the two years covered by the Administrative MOU (Two-Year Plan). The Two-Year Plan shall catalog planned activities by level of disruption and by the amount of coordination with City staff the activity requires. The activities may be classified as: (A) regular maintenance for which no street disruptions or traffic control plans are expected; (B) minor repairs or construction which will require traffic permits and control for less than thirty (30) calendar days; (C) major repairs or construction which are expected to require substantial permitting from the City, impacts to traffic or surrounding properties, or which may persist for more than thirty (30) calendar days; and (D) utilities undergrounding projects to be coordinated with the City. The Two-Year Plan shall constitute the understanding between the City and Grantee as to those activities anticipated to require coordination with the City and other utilities. If there are changed circumstances regarding the use of City Streets, the City Manager may require adjustments to Grantee's scheduled activities to account for such conditions or may allow deviations or changes to Grantee's Two-Year Plan at Grantee's request, and Grantee shall cooperate unless reliability, safety, or compliance obligations make such adjustments impractical. Grantee shall promptly inform the City if its plans materially change under any Two-Year Plan.

(5) Grantee shall fully cooperate with the City's uses of the Streets, including for the City's construction, maintenance, and repair of City utilities. The City will establish or continue to operate a Joint Utilities Coordinating Committee (Coordinating Committee) or similar body in which Grantee shall be a member and active participant. The purpose of the

Coordinating Committee shall be to review and make recommendations to all utilities and the City on matters regarding utility installations and operations within the public rights-of-way. The Coordinating Committee shall be chaired by the City Manager or designee. The Coordinating Committee shall meet a minimum of four times each fiscal year. The Coordinating Committee shall give due consideration to Grantee's Two-Year Plan and to activities and projects the City has planned in the two-year cycle. The City will encourage the participation on the Coordinating Committee of other utility entities lawfully using the Streets, including telephone and cable service companies. Grantee shall recognize that other utilities may have rights of use in the Streets that are not granted by the City, and will endeavor to efficiently communicate and schedule to minimize interferences of utility work with the uses of the Streets and adjoining property, for the public welfare and for the benefit of all parties in the performance of their planned work. The Coordinating Committee may, by agreement of the City and Grantee, establish standing subcommittees and may assign tasks to, and receive recommendations from, such subcommittees as it may deem necessary.

Section 10. Undergrounding of Facilities

(a) The prior Grantee has been engaged in a program of converting to underground certain of its facilities in accordance with Rule 20 of the CPUC. Grantee must budget prior to the end of each calendar year certain sums of money for said program for the next succeeding year and allocate these sums to undergrounding projects in the various governmental jurisdictions throughout the Grantee's entire electric service territory. In 2002, the prior Grantee increased the amounts of money budgeted for undergrounding as a portion of the consideration for the granting of the rights and privileges contained in this franchise by applying to the CPUC for a Municipal Undergrounding Surcharge. Section 10 provides for the continuation of undergrounding of overhead lines and poles in the City as provided herein. The City and Grantee shall designate

liaisons to coordinate and communicate undergrounding activities within the City for purposes of enhancing communication between the City and SDG&E.

(b) As long as Rule 20 or its successor tariff remains in effect, Grantee shall apply to the CPUC for authority to budget amounts of money for the undergrounding of existing overhead facilities to reach a sum which is equal to four and one-half percent (4.5%) of said Gross Receipts as defined in Section 1(e), with 1.15% of Gross Receipts to be included within the base rates, and 3.35% in the form of a municipal undergrounding surcharge.

(c) Prior to the Commencement of Operations Date, the prior Grantee applied for Municipal Undergrounding Surcharges from the CPUC, resulting in the issuance of Resolution E-3788 which approved a Municipal Undergrounding Surcharge of 3.53%. Resolution E-3788 also approved an additional franchise fee differential surcharge of 0.35%. Grantee shall in good faith support the continued effectiveness of Resolution E-3788 as it existed on the Commencement of Operations Date and remit such collections to City as provided in Section 5.

(d) Grantee shall regularly apply to the CPUC for Rule 20 or successor program funding for the City in amounts equal to 1.15% of Gross Receipts. Grantee shall provide for such amounts in its applications and in good faith support Commission approval, provided Grantee shall not be responsible if the Commission authorizes lesser amounts or modifies or terminates the program. Grantee shall annually report to City in writing the percentage of Gross Receipts received for the City for that year in Rule 20 or successor program funding.

(e) Until and unless City elects to assume the obligation, Grantee shall be responsible, to the extent within the reasonable control of Grantee, for ensuring that all funds allocated for any calendar year, are expended before the end of the succeeding calendar year,

provided that Grantee and City may agree in a writing approved by resolution of the City Council.

(f) Grantee shall provide to the City all system information necessary to plan and design Municipal Undergrounding Surcharge-funded projects, including system information necessary to prepare both planning-level and design-level project cost estimates. Grantee shall cooperate with the City to provide efficient and cost-effective execution of planned projects, including, but not limited to (1) providing timely access to information the City deems relevant and necessary to evaluate pricing for project design services; and (2) ensuring the timely delivery of project support services upon receipt of substantially complete plans from the City, including design review and inspections necessary for the acceptance of infrastructure construction contracted and managed by the City, to the extent mutually agreed by the City and Grantee in the Undergrounding MOU, which agreement shall not be unreasonably withheld or delayed.

(g) The prior Grantee and City entered into a Memorandum of Understanding Regarding Implementation of Franchise Undergrounding Obligations ("Undergrounding MOU") approved by City Council Resolution No. R-295892 on December 11, 2001. Within sixty (60) days of the adoption of the Administrative MOU, the parties shall negotiate a new or amended Undergrounding MOU, which shall be presented to the City Council for approval by resolution. The new or amended Undergrounding MOU shall establish a written protocol for design and construction and for other related materials and services necessary for Municipal Underground Surcharge-funded projects in a manner that complies with both the City's ordinances and policies for procurement, unless otherwise prohibited by Applicable Law, and satisfies Grantee's and CPUC rules and regulations to assure safety and quality, as established in CPUC General Orders. The Undergrounding MOU shall provide for timely access to information, timely delivery of pricing proposals with commercially reasonable assurances, and timely delivery of

project support services. If in the negotiation of the Undergrounding MOU Grantee contends that laws prevent adherence to the City's ordinances and policies, Grantee shall provide in writing a specific legal basis that clearly establishes that the CPUC or other agency with jurisdiction requires or prohibits Grantee from following these ordinances and policies, including, if Grantee so contends, any prohibition on City, CPUC, and public access to Books and Records regarding the charges and expenditures of the Municipal Undergrounding Surcharge funds. General references to provisions of the law or Grantee business preferences will not suffice. If there is any disagreement in the negotiation of the new Undergrounding MOU, the dispute resolution procedures in Section 17 shall apply.

(h) The new or amended Undergrounding MOU provided for in Section 10(g) shall provide for the coordination and execution of the Municipal Undergrounding Surcharge program, including provisions for design and construction by Grantee, for reimbursement of Grantee by City, for design and construction by City in circumstances where City and Grantee agree, or as determined in the Undergrounding MOU, it is more appropriate for the City to contract for work, for compliance with Grantee and CPUC standards, and other appropriate administrative matters.

(i) Expenses directly and exclusively related to undergrounding electric infrastructure and indirect costs reasonably related to the program are reimbursable from Municipal Undergrounding Surcharge funds, but shall exclude payments for executive incentives and bonuses, and any indirect costs not reasonably related to the program. The contracting and accounting for Municipal Undergrounding Surcharge-funded projects shall be separate from and not comingled with the contracting and accounting for any other projects or work. Contracts for projects for which Grantee will apply for payment from Municipal Undergrounding Surcharge funds shall not contain non-disclosure clauses by which Grantee may assert that City may not

confidentially review such contracts and related documents. The Undergrounding MOU shall describe the accounting information and documentation Grantee shall include with all invoices for the undergrounding work submitted by Grantee for payment from the Municipal Undergrounding Surcharge funds.

(j) Grantee shall provide the City access to all Books and Records for Grantee processes and contracting describing costs for which Grantee requests reimbursement from the Municipal Undergrounding Surcharge fund. Grantee shall cooperate with the production of any Books and Records requested by the City to verify payment of Grantee's invoices to be paid from public funds, all in accordance with Section 10(g). Furthermore, Grantee shall submit to the City on an annual basis Grantee's average undergrounding costs per mile under the Municipal Undergrounding Surcharge program, calculating using the "miles installed" methodology further described in the Undergrounding MOU. It is the intent of Section 10(j) to provide and explicitly emphasize that Municipal Undergrounding Surcharge funds as authorized by the CPUC for the Franchise are City funds, and therefore the City shall have access to all Books and Records that it reasonably deems necessary to verify expenditure of said funds. Upon request of the City Manager, City Attorney, City Auditor, or their designee, Grantee shall provide all requested Books and Records reasonably necessary to verify charges to or expenditure of Municipal Undergrounding Surcharge undergrounding funds within ten (10) business days.

(k) The City shall determine and prioritize undergrounding projects, emphasizing undergrounding in communities of concern and high fire threat areas, and will establish project timelines according to the Underground Utilities Procedural Ordinance (San Diego Municipal Code Chapter 6, Article 1, Division 5, sections 61.0501 – 61.0519), in coordination with Grantee. Grantee shall cooperate with the City by including in its Two-Year Plans required by

Section 9 all planned undergrounding district projects as provided by City to Grantee in a manner which reasonably coordinates the schedules of the parties.

(l) Section 10 is intended only to be a portion of the consideration to be paid by Grantee to the City for the rights and privileges granted herein and therefore it does not create or confer any rights or obligations to any person other than the City or Grantee. Section 10 shall not be deemed in any way to be an impairment of the City's rights as more particularly set forth in Section 8.

Section 11. Cooperation with Community Choice Aggregation

Grantee shall cooperate with the City's exercise of its right to provide Community Choice Aggregation (CCA) to customers in the City pursuant to California Public Utilities Code sections 331.1 and 366.2, as may be amended from time to time. Subject to Applicable Law providing for electric commodity cost indifference between CCA customers and Grantee bundled service customers, Grantee shall cooperate with the City in any City decision to be a community choice aggregator, independently or through a joint powers agreement with other municipal authorities, and shall provide all such assistance required by law for the City's implementation of CCA. Grantee shall at all times abide by the CCA Code of Conduct established by Decision D.12-12-036 of the CPUC, as such Code of Conduct and underlying legislation may be amended by the California Legislature and CPUC from time to time. Any Grantee breach of the CCA Code of Conduct through marketing or lobbying with ratepayer funds shall constitute a material breach of the Franchise.

Section 12. Cooperation with City Climate Action, Local Energy, Energy Justice, and Purchasing of Local Materials

(a) *Climate Action and Local Energy.* Subject to Applicable Law, Grantee shall cooperate in good faith with the City's desire to accomplish the goals set forth in its Climate Action Plan dated December 2015. Subject to Applicable Law, Grantee shall reasonably assist

the City in achieving its goals of reducing carbon-based greenhouse gas emissions related to generation of the electricity used by customers in the City's corporate boundaries and reducing other greenhouse gas emissions in the City through increased electrification of transportation. Grantee's acceptance of the Franchise includes Grantee's understanding of the City's policy objectives, and, subject to Applicable Law, its willingness to assist in good faith the City's goal of having all electricity used in the City generated from renewable fuel sources by 2035, including to the greatest extent practical and lawful, through local customer-controlled distributed energy resources. Grantee shall cooperate, subject to Applicable Law, with all the City's efforts to have distributed energy resources located in the City more completely and increasingly integrated with the operation of Grantee's electrical distribution system. Grantee accepts that the City will support economic mechanisms to foster development of local renewable fueled electric distributed resources, electric storage, microgrids, electric transportation, and other technologies to be increasingly integrated with the design and operation of Grantee's electric distribution system. Grantee shall cooperate with the City in good faith toward fulfillment of these objectives in an Energy Cooperation Agreement as provided in Section 12(c), on a timetable that meets the City's Climate Action Plan, and with the City's understanding that many of the objectives are or will be subject to factors controlled by State legislation and orders of the CPUC.

(b) *Energy Justice.* Grantee shall cooperate with the City toward attainment of environmental and social justice in the provision of electric service. Grantee shall support the City's 2019 Climate Equity Index and any subsequent versions or revisions. Grantee shall use good faith efforts to assist the City in fulfillment of Climate Equity Index recommendations, including (1) to assist the City in seeking and providing grant funding opportunities to support community engagement and invest in areas with very low to moderate access to opportunity, or

in programs and projects that receive funding from any City fund established to advance climate equity objectives; (2) to support the City in conducting public engagement efforts, in partnership with community-based organizations, in census tracts with very low access to opportunity; (3) to assist the City in exploring the feasibility of establishing a sustainability ambassador program in areas with very low to moderate access to opportunity; (4) to assist the City in the determination of mechanisms to incorporate climate equity into City programs and projects; and (5) to cooperate with the City in periodically updating Climate Equity Index data. Grantee will use its best efforts to provide opportunities to low and moderate income customers for them to reduce energy bills through equitable access to energy efficiency and renewable distributed energy resources, to reduce cost volatility, and to improve access to energy services that empower low and moderate income residents and disadvantaged businesses through efficiency and conservation.

(c) *Energy Cooperation Agreement.* Grantee agrees to comply with and fulfill the terms of the Energy Cooperation Agreement, regarding the subjects provided in Sections 12(a), (b), and (e) herein. The Energy Cooperation Agreement has been signed by Grantee's responsible officer and adopted by the City Council together with this Franchise. The Energy Cooperation Agreement arises from Grantee's proposals in support of City's policies and has been agreed to by the parties to establish reasonable standards for purposes of Sections 3(b) and 12(c). The Energy Cooperation Agreement is at all times subject to Applicable Law, and provides for Grantee's points of alignment and cooperation with the City's policy objectives provided in Sections 12(a), (b), and (e), including the identification of barriers and described measures that Grantee can and will take to support City policies. Grantee's cooperation with Section 12 shall be reported in the periodic compliance report provided in Section 6. The Energy Cooperation Agreement shall give due consideration of any legal or practical impediments cited

by Grantee, including legislation, orders, and considerations for all customers (and not only those located in the City or immediately interested in a subject), as to why any policy cannot be implemented. The Energy Cooperation Agreement shall include discussion of opportunities for the City and its citizens, especially those citizens with low or moderate income, to gain access to energy efficiency, distributed energy resources, evolving technology, and transportation electrification programs and grants that are made available by the CPUC and California Energy Commission. The Energy Cooperation Agreement describes (1) Grantee's planned efforts to make opportunities available to City (and to other qualifying customers) to participate in Grantee's State-authorized energy efficiency, distributed energy, emerging technology (including Electric Program Investment Charge opportunities, as applicable), and transportation electrification program funding; (2) efforts that Grantee may take to support City's Municipal Energy Strategy and to making building energy efficiency resources as accessible as possible for the City and other customer building owners; (3) available programs and approach to how Grantee's proposals will give due consideration to the City's climate action goals and to the City's position and ability to partner with Grantee toward fulfillment of those goals, including through building codes, building energy benchmarking, deployment of renewable and storage distributed energy resources, microgrids, and electric transportation on City Streets.

(d) *Modification and Continuation of Energy Cooperation Agreement.* The Energy Cooperation Agreement may be modified to adapt to evolving circumstances at the request of Grantee, provided that the request for modification is reasonable and any amendment is approved by the City Council, which modification shall not be unreasonably refused, withheld or delayed. Grantee shall cooperate in good faith with any reasonable request by City for modification to the Energy Cooperation Agreement. The Energy Cooperation Agreement shall remain effective during the secondary term provided in Section 3(b).

(e) *Climate Equity Fund.* City has established a Climate Equity Fund to respond to the climate justice element of general planning pursuant to California Government Code section 65302(h)(4)(A). Any shareholder payments proposed by Grantee in the Energy Cooperation Agreement that are in addition to the consideration paid as a Bid Amount for the grant of the Franchise and the amounts paid pursuant to Section 4 of this Ordinance for exercise of the Franchise shall be paid or performed for the benefit of the Climate Equity Fund. Grantee agrees to support the objectives of the Climate Equity Fund in good faith. Grantee shall not apply to the CPUC to recover shareholder contributions to the Climate Equity Fund in rates or other charges from electric customers.

(f) *Purchasing of Local Materials.* Grantee shall use reasonable efforts to operate its business in a manner that the majority of purchasing of materials and supplies used in connection with its business occurs at addresses located in the City of San Diego.

Section 13. Indemnity, Defense, Insurance

(a) Grantee, to the fullest extent permitted by law, shall defend with legal counsel reasonably acceptable to the City, indemnify, and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including death) (including injury to or death of an employee of Grantee, any agent or employee of a subcontractor of any tier), expense and liability (collectively "Claims"), including court costs, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation, that arise out of, in whole or in part, any acts performed, rights exercised, or rights or privileges granted under the Franchise, to or by Grantee, any employee, agent or subcontractor of any tier. Grantee's duty to defend, indemnify, and hold harmless shall not include (1) any Claims or liabilities arising from the active negligence, sole negligence, or willful misconduct of the Indemnified Parties, or (2)

any Claims or liabilities regarding the award, amendment, renewal or extension of the Franchise to Grantee.

(b) Concurrent with the acceptance of the Franchise by Grantee, and as a condition precedent to the effectiveness of the Franchise, and in partial performance of the obligations assumed herein, Grantee shall procure and maintain at Grantee's expense for the duration of the Franchise from an insurance company that is admitted to write insurance in California or that has a rating of or equivalent to A:VIII by A.M. Best & Company the following insurance against Claims for injuries to persons or damage to property which may arise from or in connection with the Franchise by Grantee, its agents, representatives, employees or subcontractors:

(1) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury, with limits no less than twenty-five million dollars (\$25,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Franchise or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Grantee has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than five million dollars (\$5,000,000) per accident for bodily injury and property damage.

(3) Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits no less than one million dollars (\$1,000,000) per accident for bodily injury or disease.

(c) Policies must be endorsed according to the following requirements:

(1) Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Grantee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Grantee's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

(2) Primary Coverage. For any Claims related to the Franchise, Grantee's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Grantee's insurance and shall not contribute with it.

(3) Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

(4) Waiver of Subrogation. Grantee hereby grants to City a waiver of any right to subrogation which any insurer of Grantee may acquire against the City by virtue of the payment of any loss under such insurance. Grantee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

(d) Verification of Coverage. Grantee shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before the Franchise is awarded. However, failure to obtain the required documents prior to the award of the

Franchise shall not waive Grantee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(e) Not more frequently than every five (5) years, if in the reasonable opinion of the City's Risk Manager or of an insurance broker retained by the City, the amount of the foregoing insurance coverage is not adequate, Grantee shall increase the insurance coverage as required by the City, provided that such coverage amounts may not increase by more than forty percent (40%) every five (5) years. Grantee shall furnish the City with certificates of insurance and with endorsements provided in Section 13(c) affecting coverage as required above. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any modification or waiver of the insurance requirements contained in the Franchise shall only be made with the written approval of the City's Risk Manager in accordance with established City policy.

(f) Grantee may fulfill the insurance obligations of Sections 13(b) through (d) by self-insurance. Grantee shall provide a certificate to the City evidencing the fulfillment of these requirements.

Section 14. Repair Costs

Grantee shall pay to City on demand the cost of all repairs to City property made necessary by any of the operations of Grantee under the franchise granted hereby, provided however that Grantee shall not be responsible for repairing the Streets to a condition better than existed prior to Grantee's work being performed, except as required by Applicable Law. For the avoidance of doubt, if Grantee's operations cause the need for a repair to a street, sidewalk, curb, or gutter, which, because of a change in Applicable Law must be built to new standards, Grantee shall repair or build the street, sidewalk, curb, or gutter to such new standards. Grantee may

make repairs to streets, sidewalks, curbs, and gutters itself at its own cost in accordance with City specifications if the same can be done without undue inconvenience to the public use of the streets.

Section 15. Forfeiture, Termination, and Other Remedies

(a) *Interpretation:* The Franchise is granted upon each and every condition herein contained and shall be strictly construed against Grantee. Nothing shall pass by the Franchise granted to Grantee unless granted in plain and unambiguous terms. Each of the Franchise conditions is a material and essential condition to the granting of the Franchise. The City and Grantee acknowledge the importance of informal dispute resolution procedures as set forth in Section 17(a), including, but not limited to, informal discussions and reasonable and good faith attempts to resolve issues at the appropriate level and in the most expeditious manner possible. However, if such informal attempts at resolution described in Section 17(a) and (b) do not resolve the issue, then the remedies in this Section 15(a)(b)(c)(f) and (g) shall apply. If Grantee fails, neglects, or refuses to comply with any of the conditions of the Franchise, and if such failure, neglect or refusal shall continue for more than thirty (30) calendar days after written demand by the City Manager for compliance, then the City may exercise the remedies provided in Section 15.

(b) *Breach of the Franchise: Remedies Aside from Termination:* If Grantee breaches the Franchise by failing, neglecting, or refusing to comply with any of the conditions of the Franchise, and if such failure, neglect, or refusal shall continue for more than thirty (30) calendar days after written demand by the City Manager for compliance, or as otherwise required by the terms herein, then the City may invoke the procedures set forth in Section 17, and upon obtaining a final and non-appealable judgment that the Franchise has been breached from a court of competent jurisdiction as set forth in Section 17, (1) may obtain all rights and remedies allowed

by law with the exception of termination, including money damages, declaratory relief, specific performance, and mandatory injunction and (2) may also pursue the remedy of termination pursuant to Section 15(c).

(c) *Breach of the Franchise: The Remedy of Termination:* In addition to the rights and remedies set forth in Section 15(b), if the City Manager in consultation with the City Attorney recommends that the City terminate the Franchise, by proposing a resolution to the City Council to terminate the Franchise, the City may then, after obtaining a two-thirds vote of the members of the City Council, terminate the Franchise and all the rights, privileges and the Franchise shall be at an end. If such termination were to occur, the provisions of Section 4 shall apply, including but not limited to those that apply to the Bid Amount. Thereupon and immediately, Grantee shall surrender all rights and privileges in and to the Franchise. The remedies and procedures outlined or provided in this Section 15(c), including termination, shall be deemed to be cumulative.

(d) *The City's Right to Void the Automatic Renewal for Secondary Term:* The Parties agree that the City reserves the right to void the automatic renewal for the secondary term that is described in Section 3(b). Voiding the automatic renewal for the secondary term does not impact the grant of the Franchise for the first ten (10) year term. The City's right to void the automatic renewal only applies to the secondary ten (10) year term of the Franchise. No later than thirty (30) calendar days prior to the tenth anniversary of the Effective Date, and no earlier than the ninth anniversary of the Effective Date, the City may void the automatic renewal if the City, through action of a two-thirds vote of the members of the City Council, votes to void the automatic renewal. Voiding the automatic renewal does not require a finding of any breach by Grantee. If the automatic renewal provision is invoked such that the secondary term is terminated, the

provisions of Section 4 shall apply, including but not limited to those that apply to the Bid Amount.

(e) *Termination due to Municipalization Ordinance:* In addition to the remedies set forth in Section 15(b) and (c), the City also has the right to terminate the Franchise if the City Council, or the electors of the City, adopt an ordinance that authorizes the City of San Diego to municipalize the provision of electric services in the City of San Diego, pursuant to Section 104 of the City Charter or other Applicable Law. The City's right to terminate pursuant to this Section 15(e) shall be a right reserved by Applicable Law to the City Council and City electors and may be exercised at any time during the Franchise term. If such termination were to occur, the provisions of Section 4 shall apply, including but not limited to those that apply to the Bid Amount.

(f) *Liquidated Damages.* The City and Grantee recognize and agree that certain breaches of specified conditions in the Franchise by Grantee will result in damages to the City. The City and Grantee further recognize that the cost of postponing services or projects, or other delay expenses, may not practically warrant termination of the Franchise by the City under Section 15(c) or require specific proof of damage by the City under Section 15(b). For such specified conditions and limited periods of Grantee breach, at the City's sole discretion and election, liquidated damages as set forth within Section 15(f) and (g) shall be as an alternative remedy to those provided elsewhere in Section 15, provided that such liquidated damages shall be the sole remedy available to the City for any such breach if City elects to collect liquidated damages. The City, instead of pursuing liquidated damages under Section 15(f), may elect to pursue other remedies available to it under this Section 15, but any such pursuit of other remedies shall be an election. For the absence of doubt, the City may either collect liquidated damages under Section 15(g) or pursue alternative remedies for breach under Section 15(b) and (c), but

may not pursue both. The City-elected liquidated damage assessments shall be applicable only to Grantee breaches of the conditions specified in Section 15(g), and only for the maximum time periods provided in Sections 15(f) and (g).

(1) If the City elects the remedy of liquidated damages for the breach of any of the specified conditions in Section 15(g), it shall deliver written notice to Grantee of the breach and the date on which the breach commenced, and the notice shall provide Grantee the same thirty (30) calendar day right to cure provided in Section 15(b). If after the thirty (30) calendar days from notice of the breach, the condition has not been cured or justified to the satisfaction of the City Manager, at City's election the remedy of liquidated damages shall thereafter be a remedy that shall apply only to the condition of breach specified in the notice and only for a period not-to-exceed one hundred eighty (180) calendar days from the date that is thirty (30) calendar days after each such notice. The liquidated damages provided in Section 15(g) shall accrue and be paid on each uncured unique incident notice even if multiple notices cite the same specified breached condition. For any breach that has not been cured within the notified cure period, Grantee shall be liable to the City for all accumulated assessed liquidated damages during the maximum period of applicability. The City Manager shall assess and bill Grantee for all such damages that shall be accrued during the liquidated damage assessment period and shall carry interest as provided by law from the date of assessment. All assessed liquidated damages and interest shall be payable to the City on the quarterly payment dates provided for fees and surcharge revenue in Section 5. During the pendency of any disputed liquidated damage assessment period, the parties shall engage in dispute resolution as provided in Section 17, and any resulting decision by a court of competent jurisdiction shall control regarding the payment of the liquidated damages set forth in this Section 15(f). Section 15 shall

not be construed to impair the City's right to acquire Grantee's property or facilities at any time as provided by the California Constitution and the San Diego Charter.

(2) By entering the Franchise, Grantee and the City agree that the specified Franchise conditions and liquidated damage amounts provided in Section 15(g) represent a reasonable endeavor by the parties to estimate a fair compensation for any loss that may be sustained by the City as the result of that breach of the specified condition for the period. Jointly foreseeable and reasonably estimable damages to the City of Grantee's breach of conditions in Section 15(g) include, but are not limited to, costs arising from Grantee's interference, disruptions, suspensions, obstructions, and delays to the City's programs, projects, contracts, and the cost to efficiencies in City-reserved uses of the Streets. The City's election of liquidated damages under Sections 15(f) and (g) is an alternative that shall be available to the City in lieu of Section 15(b), and is not and shall not be construed as a penalty. Grantee acknowledges that amounts provided in Sections 15(g) are capped and bear a reasonable relationship to the range of harm that the parties might reasonably have anticipated to follow from the specified breaches when they entered into the Franchise, and thereby provide a complete and final remedy for those violations if the City so elects liquidated damages.

(g) *Liquidated Damages for Breach of Specified Conditions.*

If elected by the City pursuant to Sections 15(f), the following events of Grantee breach shall have the corresponding daily liquidated damage charges excepting weekends and holidays:

- (1) Failure to deliver facility location records and electric facility drawings and other engineering record information required by Section 9 without conditions not provided for in the Franchise: fifteen hundred dollars (\$1,500) per calendar day for delay and disruption.
- (2) Failure to timely coordinate, bear costs, and physically relocate facilities upon direction of the City Manager as required by Section 8: fifteen hundred dollars (\$1,500) per

calendar day for delay and disruption. Actual cost of relocation shall be borne as set forth in Section 8.

(3) Failure to provide and pay for standby safety engineers for protection of Grantee facilities within ten (10) calendar days' notice from the City or its authorized agents as required by Section 9: Cost of standby engineers plus fifteen hundred dollars (\$1,500) per calendar day for delay impacts.

Section 16. Survivability

If the Franchise is terminated for any reason, then the following Section of the Franchise shall survive that termination: Section 1, Section 4(e)(6), Section 15(b), (c), (d) and (e), and Sections 16 to 26. In addition, the insurance required of Grantee in Section 13 shall be maintained until any remaining Grantee obligations to the City are fulfilled.

Section 17. Dispute Resolution

(a) If any dispute arises under the Franchise, including any alleged breach, the City and Grantee shall use reasonable efforts to resolve the dispute. The City and Grantee shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to the City and Grantee. If the City and Grantee do not agree on such a solution within fifteen (15) calendar days, then, upon written notice by either party to the other, such dispute shall be referred to the City Manager and a member of Grantee's executive staff for further consultation and negotiation.

(b) If the City Manager and the member of Grantee's executive staff are unable to agree on a solution within fifteen (15) calendar days of such referral, the City and Grantee shall attempt in good faith to settle the dispute by non-binding mediation administered by a mediator acceptable to both parties. The City and Grantee will cooperate in selecting a mediator. The City and Grantee will share equally in the mediation costs and each party will bear its own attorneys'

fees and related costs, including any expert witness fees. The parties will use their best efforts to conclude the non-binding mediation within forty-five (45) calendar days after the City Manager and member of Grantee's executive team conclude their discussions. The parties may extend the dates in Section 17 by mutual agreement.

(c) If the City and Grantee do not agree on a solution through non-binding mediation, then either party may pursue litigation in any court with jurisdiction. Notwithstanding any other provision of Section 17, the City or Grantee may proceed directly to litigation if there is an urgency that renders the preceding dispute resolution process impracticable.

Section 18. Publication Expense

Grantee shall reimburse the City for all publication expenses incurred in connection with granting the Franchise, within thirty (30) calendar days after the City provides Grantee a written statement of the expenses.

Section 19. Authority for Grant

Notwithstanding any other provisions, the Franchise is granted solely and exclusively under Sections 103, 103.1, 104, and 105 of the San Diego Charter.

Section 20. No Transfer Without Consent

Grantee shall not sell, transfer, or assign the Franchise or the rights and privileges granted thereby without the consent of the City Council, as set forth in San Diego Charter Section 103.

Section 21. Right of City's Electors

This grant of Franchise and authority shall be and is subject to the right of the majority of the electors of the City voting at any election at any time thereafter to repeal, change, or modify the grant, and such right is hereby expressly reserved to the electors; and it is expressly agreed that at any election held in the City, a majority of the electors of the City voting at the election

shall have the right to repeal, change, or modify the terms of this Franchise and the authority granted hereunder.

Section 22. Performance Bond

Grantee shall file and maintain a faithful performance bond in favor of the City in the sum of five million dollars (\$5,000,000) to guarantee that Grantee shall well and truly observe, fulfill, and perform each and every term and condition of the Franchise. The bond shall be acknowledged by Grantee as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety. In case of any breach of any condition of the Franchise causing actual provable damage to the City, up to the whole amount of the sum named in the bond may be taken and shall be recoverable from the principal and sureties upon such bond.

Section 23. Bankruptcy

Grantee and the City acknowledge that if Grantee becomes a debtor in bankruptcy under the bankruptcy laws of the United States (Bankruptcy Code), the Franchise shall be treated as an executory contract pursuant to Bankruptcy Code section 365(c). Grantee and the City further acknowledge that, as a non-assignable contract pursuant to applicable law, including San Diego Charter section 103 and California Public Utilities Code section 6203, the Franchise may not be assumed or assigned by the trustee or the debtor-in-possession without the consent of the City. In the event that the debtor-in-possession assumes the Franchise and the Franchise is sold pursuant to the Bankruptcy Code, it is the intent of the parties that the City shall have the right of first refusal to match the price of any buyer for the purchase of Grantee's facilities and assets and may acquire Grantee's facilities by matching any bona fide offer of purchase made in bankruptcy. Grantee and City acknowledge that if the City files any petition for bankruptcy

pursuant to Chapter 9 of the Bankruptcy Code, Grantee's claims shall be treated consistently with the applicable provisions of that Chapter.

Section 24. Acquisition and Valuation

Nothing in the Ordinance or the Franchise granted hereby shall be construed as in any way impairing the City's rights to acquire property of Grantee through the exercise of the City's power of eminent domain or through voluntary agreement between the City and Grantee. If the City chooses to exercise its power of eminent domain, it shall do so in accordance with the procedures provided by the general law of the State of California. The valuation of such property for condemnation purposes shall be made in accordance with such general law.

Section 25. Severability

If any term, covenant, or condition of the Franchise or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest, by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of the Franchise and their application shall not be affected thereby but shall remain in force and effect. The parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination, unless a court or governmental agency of competent jurisdiction holds that such provisions are not severable from all other provisions of the Franchise.

Section 26. Effective Date

This Ordinance shall take effect and be in force on the thirtieth day from and after the date of its final passage pursuant to San Diego Charter section 295.

APPROVED AS TO FORM: MARA W. ELLIOTT, City Attorney

By /s/Jean Jordan
Jean Jordan
Assistant City Attorney

FMO:als:jvg
03/28/21
5/24/21 COR. COPY
Or.Dept: Office of the Mayor
Doc. No.: 2666468
Attachments: Table of Contents

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 06/08/2021.

ELIZABETH S. MALAND
City Clerk

By /s/ Connie Patterson
Deputy City Clerk

Approved: 6/10/21
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

(Note: The date of final passage is June 11, 2021, which represents the day this ordinance was returned to the Office of the City Clerk with the Mayor's signature of approval.)

ATTACHMENT 1
TO
ELECTRIC FRANCHISE

ATTACHMENT 1

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Passed by the Council of The City of San Diego on JUN 08 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 11 2021.

AUTHENTICATED BY:

(Seal)

TODD GLORIA
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

MAY 25 2021, and on JUN 11 2021.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 21328

ORIGINAL

UNDERGROUNDING
MEMORANDUM OF UNDERSTANDING
FOR
CITY OF SAN DIEGO & SDG&E
UTILITY UNDERGROUNDING PROGRAM

February 2022

DOCUMENT NO. 00-21440
FILED MAR 01 2022
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

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**UNDERGROUNDING MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SAN DIEGO AND SAN DIEGO GAS & ELECTRIC
COMPANY**

THIS UNDERGROUNDING MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into by and between **THE CITY OF SAN DIEGO**, a California municipal corporation (“**CITY**”), and **SAN DIEGO GAS & ELECTRIC COMPANY**, a California corporation (“**GRANTEE**”) (**CITY** and **GRANTEE** are collectively referred to herein as the “**Parties**”), to be effective when signed by both Parties, approved by the San Diego City Council (“**Council**”), and approved as to form by the San Diego City Attorney (the “**Effective Date**”).

On July 11, 2021, City of San Diego Ordinance No. 0-21328 became effective, entitled *An Ordinance of the Council of the City of San Diego Granting to San Diego Gas and Electric Company the Franchise for Transmitting and Distributing Electricity and other purposes* (the “**Franchise**”). The Franchise notes that the Parties previously entered into a Memorandum of Understanding Regarding Implementation of Franchise Undergrounding Obligations (“**2001 Undergrounding MOU**”) approved by San Diego City Council Resolution No. R-295892 on December 11, 2001. The Franchise calls for the Parties to negotiate a new or amended Undergrounding Memorandum of Understanding to continue the conversion to underground of **GRANTEE**’s aboveground electric facilities as identified by the Parties.

This MOU is intended to establish a protocol for the design, procurement and construction necessary to convert to underground **GRANTEE**’s electric facilities using Municipal Underground Surcharge funds (as defined in the Franchise) in a manner that complies with both **CITY**’s ordinances and policies for procurement and satisfies **GRANTEE**’s and California Public Utilities Commission rules and regulations to assure safety and quality.

1. Definitions. As used in this MOU, the following terms are defined as follows:

1.1. “**30% Design Baseline**” means **GRANTEE**’s trench and conduit 30% design schedule and 30% design estimate.

1.2. “**Applicable Laws**” has the meaning assigned to such term in the Franchises.

1.3. “**Actual Cost**” means the reporting of a cost value that was previously estimated and is now reported as a confirmation of cost incurred.

1.4. “**As-Builts**” means copies of the final construction drawings for the Improvements. As-Builts shall be notated to verify and record the quantities of all material installed and the physical position of installation. Additionally, As-Builts shall document any change in the actual installation performed as compared to the original drawing. As-Builts shall be provided by **CITY**’s qualified personnel.

1.5. “**Bid Documents**” means construction documents issued out for competitive bidding by **CITY** for a contractor to perform the undergrounding conversion Work.

1.6. “**Books and Records**” has the meaning assigned in the Franchise.

1.7. “**Business Days**” means any day other than a Saturday, Sunday or a Holiday. “**Days**” or “**days**” shall mean calendar days.

1.8. **“CGP”** means the State Water Resources Control Board’s Storm Water Construction General Permit.

1.9. **“CITY”** means the City of San Diego, which includes CITY’s agents, employees, and contractors. CITY shall be responsible for all CITY’s agents, employees and contractors and ensure that they adhere to all conditions as stated in this MOU.

1.10. **“CITY’s Address for Notices”** is:

City of San Diego Transportation Department
Utilities Undergrounding Program
MS 1900
202 C St.
San Diego, CA 92101

1.11. **“CITY Fiscal Year”** or **“Fiscal Year”** means July 1 to June 30.

1.12. **“CITY Liaison”** means the Assistant Deputy Director for the Right of Way Management Division as designated by the CITY to meet the designation requirement found in Section 10(a) of the Franchise.

1.13. **“CMFE”** means CITY’s Engineering and Capital Projects Construction Management Field Engineering Division.

1.14. **“Communities of Concern”** means a census tract that has been identified as having very low, low or moderate access to opportunity as identified in the San Diego Climate Equity Index or as otherwise identified in CITY policies.

1.15. **“Compliance Review Committee”** has the meaning assigned in the Franchise.

1.16. **“CPUC”** means the California Public Utilities Commission.

1.17. **“Defect”** or **“Defective Work”** means any design, engineering, materials, equipment, installation, service or other Work which (a) does not conform or otherwise meets the criteria of GRANTEE’s Specifications; (b) is of improper or inferior workmanship or material; (c) is inconsistent with industry standard generally accepted in the electric industry; or (d) could adversely affect the mechanical, electrical, or structure integrity of the Improvements.

1.18. **“Designated Person of Authority (DPOA)”** means a person identified by a Party to provide clarifications, direction, and approvals on behalf of that Party. The DPOA may hold various titles within each organization, such as “Project Manager”, “Resident Engineer”, or “Contract Administrator” and may be an employee or contractor of the Party, provided that the person has the appropriate level of administrative authority with respect to the requirements of this MOU.

1.19. **“Design Locations”** also known as **“Design By Location”** is a means of identifying smaller components of a distribution electric or gas design whereby a designer limits identifying callouts per smaller component. The callouts focus on equipment, labor, parts and pieces for each small

component of the design. Ultimately, an entire design will be identified by the collective Design Locations.

1.20. **“DSD”** means CITY’s Development Services Department.

1.21. **“Excavation”** means trenching, boring, and removal of soil required for the installation of GRANTEE’s Substructures or conduit, all necessary backfilling including required imported backfill material and removal of trench spoil, and surface repair.

1.22. **“Final Acceptance”** means GRANTEE’s acceptance of any Work performed by CITY on GRANTEE Facilities pursuant to a Project as further defined in Section 6.11.

1.23. **“Final Billing”** means the summary of Actual Costs provided to CITY at the completion of each Project.

1.24. **“Final Grade”** means the grade of the Work after paving and landscaping are complete.

1.25. **“Finish Grade”** means the grade of the Work before paving and landscaping.

1.26. **“Governmental Authorities”** means any local, regional, state or federal governmental entities having jurisdiction over any aspect of this MOU, CITY, GRANTEE or the Work performed pursuant to this MOU.

1.27. **“GRANTEE”** means San Diego Gas & Electric Company, which includes GRANTEE’s agents, employees, and contractors. GRANTEE shall be responsible for all GRANTEE’s agents, employees, and contractors and ensure that they adhere to all conditions as stated in this MOU.

1.28. **“GRANTEE’s Address for Notices”** is:

SDG&E Regional Public Affairs Department
8330 Century Park Ct.
San Diego, CA 92123

1.29. **“GRANTEE’s Construction Standards”** means GRANTEE’s Gas and Electric Construction Standards, including GRANTEE’s Service Standards and Guide, as may be amended from time to time (Gas and Electric Construction Standards and the Service Standards and Guide are available at <https://www.sdge.com/builder-services>).

1.30. **“GRANTEE Facilities”** means any facility, instrument, appurtenance or piece of equipment used for the delivery of energy or in support of the delivery of energy and associated uses thereof by GRANTEE within the ROW.

1.31. **“GRANTEE Inspector”** means the person assigned by GRANTEE to inspect and accept or reject new GRANTEE Facilities based on compliance or lack thereof with GRANTEE’s Construction Standards and Specifications.

1.32. **“GRANTEE Liaison”** means its Regional Public Affairs Manager as designated by the GRANTEE to meet the designation requirement found in Section 10(a) of the Franchise.

1.33. “**GRANTEE Planner**” means the person assigned by GRANTEE to coordinate technical planning activities on Projects in support of the GRANTEE Project Manager

1.34. “**GRANTEE Pre-Construction Meeting**” means a meeting organized by CITY after GRANTEE has hired a contractor to install the trench and conduit for the Project, which shall include, at a minimum, GRANTEE’s contractor, CITY Resident Engineer, GRANTEE Field Construction Advisors and Construction Manager, GRANTEE Project Manager, GRANTEE Planner, communications providers, other utilities and applicable CITY staff.

1.35. “**GRANTEE Project Coordinator**” means the person assigned by GRANTEE to coordinate the Work with CITY in the field.

1.36. “**GRANTEE Project Kickoff**” means the GRANTEE-scheduled kickoff meeting after receipt of Notice to Proceed.

1.37. “**GRANTEE Project Manager**” means the person assigned to manage the entire Project on behalf of GRANTEE.

1.38. “**GRANTEE’s Specifications**” means GRANTEE’s material, equipment and construction drawings and requirements (including any revisions, supplements or GRANTEE approved field changes) detailing the Work to be performed.

1.39. “**High Fire Threat District (HFTD)**” means those areas within California where there is a higher risk for power line fires igniting and spreading rapidly and where additional fire-safety regulations apply, as required by the CPUC and adopted as part of a statewide fire-threat map that outlines the boundaries of the HFTD via Tier 1 Advice Letter on January 19, 2018, as may be amended from time to time.

1.40. “**Improvements**” means those physical improvements or upgrades required by either CITY or GRANTEE to ensure protection of GRANTEE Facilities including, without limitation, curbs, sidewalks, berms, barricades, gutters, bridle or pedestrian paths, raised planters or parking lot berms in residential, commercial, manufacturing, or industrial projects. CITY’s plans for its Improvements shall provide verification of Finish Grade.

1.41. “**Joint Project Pre-Construction Meeting**” means a meeting led by CITY after delivery of the Mobilization Notice for any Joint Project held with GRANTEE Project Manager, GRANTEE Planner and GRANTEE Inspector, CITY’s contractor, and other communication providers and utility owners to discuss construction related questions and responsibilities for a Joint Project.”

1.42. “**Landowner**” means any public or private entity, or a natural person or persons, whose property is affected in any way by Work.

1.43. “**Monthly Invoicing Backup Material**” means those materials described in Appendix B - Invoicing Backup Material.

1.44. “**Municipal Surcharge Program Fund**” means funds collected under the Municipal Undergrounding Surcharge as defined in section 1(q) and 10(c) of the Franchise and remitted to CITY in accordance with section 5 of the Franchise, which are available for budgeting and expenditure exclusively for utility undergrounding purposes.

1.45. “**Notice of Design Acceptance**” means a notice from GRANTEE to CITY that GRANTEE takes no exceptions to a design submitted by CITY.

1.46. “**NPDES**” means a National Pollution Discharge Elimination System

1.47. “**Overheads**” means overhead costs are those activities and services that are associated with direct costs, such as payroll taxes, pension benefits, engineering, administrative and general (A&G) functions, etc. that cannot be economically direct-charged. The overhead allocations adhere to the methodology established by the Federal Energy Regulatory Commission (FERC) and were derived using the same methodology in GRANTEE’s most recent General Rate Case (GRC) filing.

1.48. “**Qualified Designer**” means a person who has both passed qualifying exams administered by GRANTEE in a particular design discipline (overhead design, underground design, gas design, vault design) and has also completed the requisite number of hours demonstrating their capabilities in that discipline.

1.49. “**Qualified Designer List**” means GRANTEE’s updated list of all qualified designers in their respective disciplines. A designer may be qualified in one, two, three or all four disciplines (overhead design, underground design, gas design, and vault design). Qualified Designers only design for disciplines for which they are qualified. The Qualified Designer List is available at <https://www.sdge.com/builder-services> (as may be amended from time to time)

1.50. “**Raceway Release**” means the raceway, inspection and release of customer side service equipment from the point of demarcation at the pull can to the existing weather head, which authorizes GRANTEE to proceed with customer energization.

1.51. “**Resident Engineer**” means the CITY employee or CITY hired Construction Management Consultant assigned to inspect and accept or reject Work.

1.52. “**ROW**” means the publicly-dedicated right-of-way of CITY, which are public easements for streets, alleys, or other uses, as defined in SDMC 113.0103, as may be amended from time to time.

1.53. “**SDMC**” means the San Diego Municipal Code, as may be amended from time to time.

1.54. “**Start Construction Notification**” means GRANTEE’s notification to CITY that GRANTEE is about to begin construction activities on a Project.

1.55. “**Substructures**” means manholes, handholes, vaults, pads (for transformers, terminators or fuse cabinets), grounding grids and other structures needed to accommodate cables, connections, transformers and appurtenances.

1.56. “**Surcharge Program**” means CITY’s Municipal Undergrounding Surcharge Program, as defined in the Franchise.

1.57. “**Utility Undergrounding Advisory Committee**” means the San Diego City Charter section 43(b) Citizens’ Committee formed on February 12, 2014 by Council Resolution R-308721. The Committee issued its final Report and Recommendations on March 23, 2015.

1.58. “**Work**” means all labor, engineering, design, material and equipment to be performed on GRANTEE Facilities or in the ROW with respect to a Project.

1.59. “**Work Order**” means a document describing a task to be completed by CITY or GRANTEE, as applicable, with respect to any type of Work.

2. **Goals, Term and Amendments**

2.1. Goals. The Franchise requires that this MOU “provide for the coordination and execution of the Municipal Undergrounding Surcharge Program, including provisions for design and construction by GRANTEE, for reimbursement of GRANTEE by CITY, for design and construction by CITY in circumstances where CITY and GRANTEE agree, or as determined in the Undergrounding MOU, it is more appropriate for CITY to contract for Work, for compliance with GRANTEE and CPUC standards, and other appropriate administrative matters.” To that end, the Parties have established certain goals for this MOU and the Surcharge Program, as follows:

2.1.1. Maximize the value of the Surcharge Program by:

2.1.1.1. Ensuring Projects are cost effective and that prudent care of public funds is always maintained.

2.1.1.2. Striving for expeditious overall delivery of completed Projects and planning for a practical minimum number of days streets are impacted by construction.

2.1.1.3. Actively pursuing the development of best practices to reduce impacts to communities during the construction process.

2.1.1.4. Delivering Projects that meet all standards for safety, quality, and reliability.

2.1.1.5. Keeping stakeholders informed through transparent information sharing and timely reporting.

2.1.1.6. Keeping residents, business owners and communities informed using proactive communication and outreach with customers prior to and during Project construction.

2.2. Term. This MOU shall become effective on the Effective Date and shall terminate immediately upon the termination, expiration or forfeiture of the Electric Franchise for any reason (“**Term**”). In the event of termination of this MOU, the Parties will meet and confer to discuss how to resolve any active Projects in a manner that will provide for the safety of the public and GRANTEE Facilities.

2.3. Amendments. Either Party may initiate a request for the other Party to review proposed amendments to update the provisions of this MOU and the Parties agree to review all such proposals in good faith. Any changes to this MOU are subject to approval by the Council.

3. Rule 20. GRANTEE will continue to work with CITY to underground certain aboveground utility facilities in accordance with the requirements of the CPUC’s Rule 20 program and CPUC orders. The Parties acknowledge that the CPUC is currently reviewing the Rule 20 program and a decision regarding the continuation of the Rule 20 program is not expected before the execution of this MOU. The Parties

agree to meet and confer if and when the CPUC recommends any significant changes or proposes a decision regarding Rule 20.

4. Program Oversight and Governance. CITY shall act as the overseeing and governing body of the Surcharge Program.

4.1. CITY Program Management Responsibilities. CITY owns and is responsible for managing the Surcharge Program. CITY's responsibilities with respect to management of the Surcharge Program include the following, without limitation:

4.1.1. Project identification and prioritization;

4.1.2. Establishing Underground Utilities Districts where Projects are selected by CITY;

4.1.3. Determining which Projects will be designed and constructed by GRANTEE as defined in Section 7 and which will be designed and constructed as Joint Projects as defined in Section 6;

4.1.4. Managing the Municipal Surcharge Program Fund, including all accounting thereof;

4.1.5. Assigning sufficient Municipal Surcharge Program Fund monies to Projects; and

4.1.6. Managing communication providers and other utilities impacted by any Project.

4.2. Project Identification and Prioritization.

4.2.1. CITY shall prioritize Projects in accordance with CITY Policies, as amended from time to time. Such prioritization shall account for undergrounding needs in Communities of Concern and communities with higher fire risk, as identified in the High Fire Threat District tool, the City's Climate Resilient SD Plan, and intelligence and data from SDG&E meteorology teams and academic research partners.

4.2.2. GRANTEE will supply information reasonably required by CITY to prioritize parts of CITY with aboveground distribution GRANTEE Facilities within the High Fire Threat District, and where undergrounding may be the most beneficial for wildfire mitigation. Upon request, GRANTEE will participate and support CITY staff in making presentations to Council concerning climate risk and public safety.

4.2.3. Upon request, GRANTEE will provide information to CITY regarding existing aboveground GRANTEE Facilities reasonably necessary to allow CITY to generate planning level cost estimates for Projects.

4.3. Underground Utilities Districts.

4.3.1. Underground Utilities Districts are created according to the "**Underground Utilities Procedural Ordinance**" (SDMC Chapter 6, Article 1, Division 5). GRANTEE will participate in the review of draft Underground Utilities District boundaries, including attending field review meetings, and will advise on adjustments to draft boundaries to achieve Project cost efficiencies.

4.3.2. If at any time after creation of an Underground Utility District, GRANTEE discovers a need to modify the boundary, such as to add or remove parcels, or exempt poles, stub poles or anchors, or other similar reasons, GRANTEE will promptly notify CITY.

4.4. Annual Project List. CITY will provide in writing to GRANTEE by July 30 of each year (thirty (30) days after the start of CITY's Fiscal Year), a list of Projects expected to be released to GRANTEE for the following twelve (12) month period with estimated Notice to Proceed (NTP) dates by quarter; and a list of Projects CITY desires to jointly deliver with GRANTEE support with estimated CITY start dates by quarter ("**Project List**").

4.5. Communication Infrastructure Providers. Prior to scheduling a public hearing for creation of an Underground Utilities District, GRANTEE will work with CITY and respective communication infrastructure providers to identify attachments to GRANTEE's poles within the proposed District. CITY will notify all affected persons and utility companies and secure their cooperation in accordance with the Underground Utilities Procedural Ordinance. SDMC 61.0509 governs the Parties' obligations concerning joint trench.

4.6. Non-Program CITY Work and Third-Party Work. CITY will be responsive to GRANTEE requests for utility coordination to facilitate Projects where CITY is the utility provider, CITY is planning or managing work in the ROW unrelated to the Program or has permitted work by a third party that may impact a Project (e.g., CITY Capital Improvement Projects, third-party construction in CITY ROW, etc.), including notifying appropriate CITY departments that may be impacted by a Project and securing CITY department participation for Projects. GRANTEE shall not be responsible for any delays or other impacts arising from other (non-Program) CITY work or third-party work in the ROW or any such party's failure to comply with Project schedules or milestones.

4.7. Safety.

4.7.1. The Parties agree and acknowledge that safety is of the utmost importance for all Work performed under this MOU.

4.7.2. CITY will provide copies of GRANTEE's safety policies to all CITY employees and contractors present at sites. CITY employees and contractors will adhere to GRANTEE's safety policies where doing so does not conflict with CITY requirements or policies. GRANTEE will adhere GRANTEE's safety policy for all employees and contractors under GRANTEE's direct control.

4.7.3. Additionally, either Party reserves the right to suspend any Project for a reasonable safety reason, including without limitation, unstable or dangerous soil conditions. The Parties will meet and confer to explore all reasonable options to mitigate or resolve any such safety issue to enable the Project to move forward if Parties mutually agree regarding mitigation measures.

4.7.4. Payment to GRANTEE will not be withheld for Project expenditures that are reimbursable under this MOU incurred prior to suspending or terminating a Project, nor will GRANTEE be responsible for delays arising from any suspension of Work for safety.

5. Program Level Communications.

5.1. CITY DPOA, GRANTEE DPOA and pertinent staff shall meet on a regular basis, at least monthly, to review Project related information including, but not limited to, the Project List, all open and active Projects, all upcoming Work milestones, potential causes of delay, Project risks, and budget

forecasting. The Parties will submit Project documentation via ProCore or a similar software program that manages document transmittals whenever possible.

5.2. Each Party will have one DPOA for the Surcharge Program, however the assignment of a DPOA will not prohibit or limit any Project communications between the Parties. DPOA assignments will be communicated in writing, including clarification on the scope of that person's authority, and substitution or replacement of an assigned DPOA shall be communicated without delay. The DPOA may not have signature authority on all relevant approvals but serves as the Party's point of contact for obtaining required signatures, and to provide clarification on approval steps and signature authorities within the DPOA's organization.

6. Joint Projects. In accordance with the Project List, the Parties shall manage those Projects to be jointly delivered by CITY with GRANTEE support as follows:

6.1. CITY Design Responsibilities.

6.1.1. CITY will notify GRANTEE of its intention to commence Project design for a specific Project ("CITY Project Initiation Notice") and schedule a kick-off meeting ("CITY Project Kickoff").

6.1.2. CITY will be responsible for all Project designs, in all aspects, including joint trench design and coordination described in SDMC 61.0509. CITY will ensure all GRANTEE Facilities are designed by a Qualified Designer on the Qualified Designer List.

6.1.3. CITY will perform all corrections, edits or modifications to the designs concerning GRANTEE Facilities requested by GRANTEE during the Project lifecycle until GRANTEE accepts ownership of GRANTEE Facilities, in accordance with the procedures specified herein. GRANTEE will exercise care to avoid impacts to individual Project schedules once Final Designs are approved.

6.1.4. CITY will design all GRANTEE Facilities in compliance with GRANTEE's Construction Standards and GRANTEE's Specifications.

6.2. CITY and GRANTEE Cooperation for Design and Project Management of Joint Project

6.2.1. GRANTEE will provide, in a timely manner, the following support to CITY in preparation for the CITY Project Kickoff and as needed for the duration of the Project:

6.2.1.1. Provide CITY the Qualified Designer List, which shall be used exclusively for the design of any GRANTEE Facilities. GRANTEE shall ensure that the Qualified Designer List is updated and available on GRANTEE's Builder Services webpage for CITY's use. GRANTEE will not be responsible for impacts to Project schedules or Project cost if a Qualified Designer contracted by CITY for this Work becomes unavailable.

6.2.1.2. GRANTEE will review components of CITY design bid packages including design scope, references to designs, GRANTEE's Construction Standards, GRANTEE's Specifications and other GRANTEE materials included therein.

6.2.2. GRANTEE will cooperate in the timely scheduling of the CITY Project Kickoff, attend the CITY Project Kickoff, and provide necessary information for the selected Qualified Designer

to start the design. This includes providing CITY's selected Qualified Designer with access to any GRANTEE-controlled software or databases necessary for performing the design.

6.2.3. At the CITY Project Kickoff, CITY's selected Qualified Designer will be present, and the Parties will develop a draft Project schedule that includes all agreed-upon sequencing and durations for the Project. Schedule maintenance, reporting and coordination is described further in Section 6.14 below.

6.2.4. CITY will submit and GRANTEE will review all design submittals, bid package review submittals and other agreed-upon relevant submittals to support CITY, for conformance with GRANTEE Standards, safety and constructability in accordance with the timelines described in Appendix C - GRANTEE Design Review Timelines. For Work Orders consisting of more than 400 Design Locations, or with unique design requirements, including but not limited to boring requirements or bridge attachments, the Parties will discuss and approve appropriate review times.

6.2.5. Once the Project-specific design review timeline is established, if additional time is necessary to perform corrections, edits, or modifications, GRANTEE and CITY will amend the Project schedule accordingly and GRANTEE will make a good faith effort to minimize additional days of review time.

6.2.6. GRANTEE will cooperate with CITY in sequencing Project design approvals as necessary to support CITY's sequencing of construction including CITY's option to sequence the construction Work on private property in advance of construction Work in the ROW.

6.2.7. Parties recognize that these are large and complicated Projects, and the Parties may encounter various challenges regarding the coordination of approval processes for contracts and change orders. As such, GRANTEE agrees to be a good faith partner to CITY and will offer flexibility and cooperation regarding design and construction requirements where feasible and safe.

6.3. GRANTEE Acceptance of Design Performed by CITY.

6.3.1. Notice of Design Acceptance. Upon acceptance of each CITY submittal, GRANTEE will send a written "**Notice of Design Acceptance**" to CITY. Notices of Design Acceptance are valid for a period of six (6) months. CITY designers remain responsible for the quality of their design.

6.3.2. Changes after Notice of Design Acceptance. The Parties recognize that late changes to prior design acceptances can have detrimental impacts on the cost and schedule for delivering a Project. Should GRANTEE discover the need for design changes after a Notice of Design Acceptance has been granted, GRANTEE will inform CITY and provide explanation as to why revision of the prior Notice of Design Acceptance is necessary to ensure safety, reliability, constructability, changes in standards, or compliance with regulatory requirements. GRANTEE will cooperate with CITY in mitigating the impacts on Project cost and schedule to accommodate the revisions and issue a revised Notice of Design Acceptance.

6.3.3. Mitigating Changes After CITY Bid Package Completion. CITY recognizes that designs can become outdated due to subsequent changes in GRANTEE's Specifications, upgrades in the field unrelated to the Project, or changes to site conditions. The Parties also recognize that there are practical challenges to immediately implementing an approved design because of required timelines for bidding and other processes and changes to bid packages during or after the bidding process can impact

the Project with additional costs and delays. CITY procurement practices are to limit Project design changes after bid package preparation. GRANTEE will endeavor to minimize Project design changes or seek appropriate design deviations where practical and safe to do so once CITY bid package preparation is complete, in accordance with the terms of this MOU.

6.4. GRANTEE Easements for Joint Projects.

6.4.1. Where public right-of-way does not provide sufficient space for conduits, equipment, or other GRANTEE Facilities necessary for completing the overhead to underground conversion, CITY will coordinate discussions with the Qualified Designer, GRANTEE and property owners to identify a feasible and viable location for the easement along with alternative feasible and viable locations.

6.4.2. CITY will explain to the property owner of the identified feasible and viable locations for the proposed easement the specific terms and conditions of GRANTEE's easement proposal. Should the property owner agree to the terms, GRANTEE will prepare and process GRANTEE's easement forms to secure easement rights for the benefit of GRANTEE to which CITY is not a party. If the property owner does not agree to GRANTEE's terms and conditions for an easement at the identified location or the alternatives, the responsibility to identify feasible design alternatives remains with CITY.

6.4.3. Design approvals will not be finalized prior to GRANTEE acquiring all easements that are needed for the design to be complete. However, design reviews may continue concurrent with the process of acquiring easements; provided that concurrent Work may result in additional reviews.

6.4.4. CITY will actively manage communications with property owners; however, GRANTEE's land management professionals will handle the review and approval of easement terms and conditions with property owners and the execution of easements. CITY will continue to manage communications until all easements required for the Project are fully executed by GRANTEE and the respective property owners.

6.4.5. If CITY is the public landowner for a needed easement, CITY will be timely in executing approvals if all conditions required by Applicable Laws are met. Council approval may be required for the granting of easements where CITY is the public landowner.

6.4.6. In all cases, if an easement is to be granted to GRANTEE, then GRANTEE will provide for the services of qualified personnel necessary for execution.

6.4.7. Both Parties will cooperatively pursue resolution of all land rights issues to facilitate completion of Projects with a shared interest in reducing cost and timeline impacts to the Project.

6.4.8. In no event shall GRANTEE be held responsible for delays arising from GRANTEE's inability to obtain easements as long as GRANTEE is reasonably pursuing such easements.

6.4.9. Other than those negotiated directly with CITY, the terms and conditions of any such easement shall be at the sole discretion and responsibility of GRANTEE.

6.4.10. Any compensation required with respect to any easement necessary to complete a Project under the Surcharge Program shall be paid for through the Municipal Surcharge Program Fund.

6.5. Environmental Compliance for Joint Projects.

6.5.1. CITY will be responsible for all required environmental compliance for construction Work performed by CITY personnel and CITY contracts, including obtaining all necessary environmental reviews and approvals required by Applicable Laws (including permits).

6.5.2. The Parties agree and acknowledge that CITY controls and is responsible for environmental compliance relating to construction activities under the Surcharge Program, and GRANTEE is responsible for long-term operations and maintenance of GRANTEE Facilities. If CITY is aware or anticipates that any mitigation or monitoring requirements or any applicable permits for any Project may create post-construction impacts, the Parties will work collaboratively to resolve these issues so that no additional mitigation measures will impact GRANTEE Facilities during operations unless GRANTEE consents in writing to manage such measures.

6.6. Compliance with Applicable Laws. CITY will be responsible for obtaining any and all agency permits required for construction on a Joint Project. GRANTEE will support obtaining of agency permits, including but not limited to providing information about methods of construction to be used by GRANTEE and participating in meetings with regulatory authorities. If a governmental agency imposes conditions which necessitate any changes in the trench or conduit system shown on GRANTEE's Specifications for the Project, CITY shall not proceed with any Work affected by such conditions until GRANTEE has completed the necessary approval of redesign of construction drawings and new agreement documents have been signed by an authorized representative of GRANTEE and CITY reflecting such changes in accordance with the terms of this MOU. Construction Work performed by GRANTEE will be subject to all requirements of agency permits obtained for the Project.

6.7. CITY Construction Scope. The scope of construction to be contracted and managed by CITY for Joint Projects is as follows:

6.7.1. CITY will perform electrical service conversion Work on all properties within the Project except where property owners agree to self-perform their own conversion Work.

6.7.2. CITY will perform any customer side electrical Work needed during GRANTEE's execution of service cut-over Work.

6.7.3. CITY will perform all trench and conduit Work in the ROW and on private property. Prior to trench and conduit Work commencing, CITY will perform field markout of utility infrastructure prior to GRANTEE performing field layout as described in Section 6.11.5 herein. Additionally, CITY will be responsible for coordinating all joint trench Work with all communication providers and other utility owners for Joint Projects.

6.7.4. CITY will coordinate with communications providers for wire removal.

6.7.5. CITY will perform all streetlight installations, and installation of all conduit required to service the streetlights. As described in Section 6.13, GRANTEE will be responsible for wiring up to the service points and fulfilling electrical service orders to energize the streetlights.

6.7.6. CITY will have lead responsibility for all customer communications, stakeholder communications and issue resolutions pertaining to the Project. GRANTEE will participate in the resolving of issues when resolution requires GRANTEE involvement, upon CITY notification thereof.

6.8. Streetlight Coordination. CITY will design all streetlights and perform streetlight construction; provided that at CITY's discretion, CITY and GRANTEE may meet and confer regarding the assignment of such Work to GRANTEE, which may require further coordination of the Parties. The Parties acknowledge that there are inherent challenges in coordinating the installation, field approvals and energizing of streetlights that are part of any undergrounding Project. The Parties agree to evaluate opportunities for improved coordination and to pursue changes to contracting and operational practices that lead to increased efficiencies.

6.9. Construction Scheduling and Coordination.

6.9.1. CITY will provide notice to GRANTEE of CITY mobilizing their contractor for construction of a Project ("**Mobilization Notice**").

6.9.2. After delivery of the Mobilization Notice, CITY will arrange a Joint Project Pre-Construction Meeting with CITY's contractor, GRANTEE Project Coordinator, Inspector, Planner and Project Manager. GRANTEE will be provided at least ten (10) Business Days' notice of such Joint Project Pre-Construction Meeting.

6.9.3. GRANTEE and impacted communications and other utilities providers shall be invited to the Joint Project Pre-Construction Meeting and given an opportunity to discuss safety and other construction-related compliance issues.

6.9.4. CITY will report to GRANTEE Inspector immediately regarding any damage to any GRANTEE Facilities resulting from CITY's Work and will file a complete written report with GRANTEE of the surrounding circumstances within 24 hours of the incident or by the end of the next working day, whichever is later.

6.10. Field Change Orders: CITY will retain design services necessary to process any Field Change Orders (FCO) or other design support that may be necessary during construction. GRANTEE will review and comment on all design changes and shall endeavor to do so without delay.

6.11. GRANTEE Inspection and Acceptance of Construction Performed by CITY.

6.11.1. GRANTEE shall provide construction inspections in a timely manner consistent with 6.13.1.3.

6.11.2. GRANTEE will supply to the jobsite in a timely manner any required line workers or other specialty personnel that are required by GRANTEE and which GRANTEE does not allow CITY to supply.

6.11.3. Three months prior to CITY's release of its advertisement for construction bids for a Project, GRANTEE shall deliver to CITY an initial written schedule of days and hours in which GRANTEE's Inspector will be available at the Project job site, and GRANTEE shall cooperate with CITY to finalize an agreed-upon schedule. When inspection is requested outside of the agreed-upon schedule, GRANTEE will supply a qualified inspector to the job site within a reasonable time frame.

6.11.4. For any source of potential delays to CITY Work, GRANTEE will notify CITY about the potential delay at the earliest opportunity and will cooperate with CITY to attempt to prevent or mitigate the impact of the delay.

6.11.5. GRANTEE will perform field layouts in accordance with the approved design prior to CITY commencing construction Work. CITY will accept GRANTEE's layout as provided.

6.11.6. Any portion of the Work that is Defective may be rejected by GRANTEE, at the expense of CITY, at any time prior to Final Acceptance. Any Defective Work, or Work rejected for legitimate non-compliance with GRANTEE's Specifications, GRANTEE's Construction Standards, Applicable Laws (including permits), or the terms of this MOU, will be corrected or re-performed at CITY's sole expense prior to Final Acceptance.

6.11.7. Upon conclusion of Work by CITY and correction or re-performance of any Defective Work, CITY will provide red lined As-Built of the new GRANTEE Facilities installed to the GRANTEE Inspector. CITY will maintain a set of the current GRANTEE's Specifications at each Project job site, which will always be available for review by the GRANTEE Inspector and Project Coordinator upon request. CITY will also maintain at each Project job site any related Project plans (e.g., alignment and Finish Grade of Improvements) approved by other governmental authorities with jurisdiction over the Work.

6.11.8. Final Acceptance shall occur when the GRANTEE Inspector verifies that the new GRANTEE Facilities meet GRANTEE's Specifications and GRANTEE's Construction Standards. GRANTEE shall accept, reject or request more information from CITY within ten (10) Business Days after receiving the Final Acceptance inspection request from CITY in writing.

6.11.9. GRANTEE will notify CITY in writing of Final Acceptance of the Work. Failure of GRANTEE to reject Defective Work during construction shall not be construed to imply Final Acceptance of such Work nor preclude GRANTEE's rights to reject Work as described in this MOU. CITY will be required to correct all legitimately claimed Defects which become evident at any time prior to Final Acceptance by GRANTEE. The cost of all such repairs, material, labor, and Overheads necessary to correct Defective Work shall be borne by CITY.

6.11.10. CITY will retain full title, risk of loss and responsibility for the ownership, custody, and control of Work performed by CITY until Final Acceptance and ownership, custody, and control of the new GRANTEE Facilities shall pass to GRANTEE only upon Final Acceptance.

6.12. CITY Work Warranties.

6.12.1. CITY represents and warrants that all Work performed by CITY, and all materials used in any Joint Project, will be new, of good quality and condition, free from Defects in workmanship and will conform to GRANTEE's Specifications. This warranty, except with respect to conduit Work, will begin at Final Acceptance of the Work by GRANTEE as described in Section 6.11 and will end one (1) year later. The warranty for conduit Work will start at Final Acceptance by GRANTEE and will end when the primary and secondary underground electrical system is energized. Furthermore, CITY will be responsible for any correction activities needed on the trench Work until new excavation occurs in that area (collectively, the "**Warranty Period**").

6.12.2. During the Warranty Period, CITY will correct any Defective Work arising from a breach of this warranty within ninety (90) days of notification by GRANTEE. If CITY is unable or unwilling to correct the Defective Work within such time period (or such extended time period agreed upon by the Parties), GRANTEE may notify CITY that GRANTEE will correct the Defective Work and will invoice CITY for the costs of such Work in accordance with the invoicing requirements of this MOU. Notwithstanding the foregoing, GRANTEE may immediately perform any emergency corrective Work if the Defect creates a hazardous condition or otherwise threatens the health or safety of persons or property without prior notice to CITY.

6.13. GRANTEE Construction for Joint Projects.

6.13.1. The following are conditions precedent prior to GRANTEE performing GRANTEE construction Work for a Joint Project:

6.13.1.1. Inspection and Final Acceptance by GRANTEE of all CITY-installed trench, conduit and substructures, including service trenches.

6.13.1.2. CITY Building Inspector has verified that all inspections and releases required for all cutovers have been completed.

6.13.1.3. GRANTEE has obtained all applicable permits from CITY and other applicable governmental agencies necessary to perform the Work described in Section 6.13.2.

6.13.1.4. CITY has installed and has approved for energizing all streetlights not in conflict with any overhead facilities.

6.13.2. Upon completion of the conditions precedent described above, GRANTEE will coordinate all outages and install all necessary electric materials to energize a primary underground facility and all secondary stations, cutover all customers to the new GRANTEE Facilities, perform all intercepts with existing GRANTEE Facilities, energize all installed streetlights, remove all overhead GRANTEE Facilities and upon vacation of poles by communications providers, and remove vacated poles from service. Once the primary underground facility and secondary stations are energized, GRANTEE will begin energizing streetlights, which will take approximately twenty (20) to thirty (30) Business Days after energization.

6.14. Project Schedules for Joint Projects.

6.14.1. GRANTEE and CITY will cooperate to create an initial Project schedule within thirty (30) days following CITY Project Kickoff. The initial Project schedule will be reviewed and updated regularly by CITY throughout the Project life cycle. GRANTEE will provide schedule updates to CITY for GRANTEE activities.

6.14.2. CITY will provide GRANTEE a milestone report every month for each Joint Project for which a CITY Project Kickoff has occurred, using the scheduled and actual start and completion dates for the Work ("**Monthly Milestone Report**"). The Monthly Milestone Report will be developed jointly and will include major design, bid and award, and construction milestones.

6.14.3. CITY will provide updated estimates and changes for milestones that affect GRANTEE's planning of Work and resources on a timely basis, particularly with respect to significant changes. GRANTEE will maintain such data in GRANTEE's Project scheduling system.

6.15. CITY Insurance Requirements. GRANTEE and CITY will confer on insurance requirements imposed during CITY's procurement process to ensure that insurance levels for CITY-performed Work are appropriate based on the nature of the Project, considering factors such as the scope, location, and complexity of Work.

6.16. Indemnity. CITY shall be solely responsible for all Work performed on a Project by any CITY employee, contractor, consultant, affiliate, agent or representative ("CITY Contractor") prior to Final Acceptance by GRANTEE. This shall not preclude CITY from seeking indemnification from any CITY Contractor. During the period prior to Final Acceptance of such Project, and extending for three (3) years from Final Acceptance, CITY shall indemnify, defend and hold GRANTEE, and its current and future parent company, subsidiaries, affiliates and their respective directors, officers, shareholders, employees, representatives, successors and assigns (collectively, "Indemnitees"), harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, fines, damages, costs or expenses (collectively, "Claims") resulting from: (a) injuries to or death of any and all individuals, including, without limitation, members of the general public, or any employee, contractor, consultant, representative, agent or affiliate of either Party, arising out of or connected in any manner with the performance of the Work by CITY or any CITY Contractor; (b) damage to, loss, and/or destruction of property of any type arising out of or connected in any manner with the performance of the Work by CITY or any CITY Contractor; or (c) third party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected in any manner to CITY or any CITY Contractor's acts or omissions in breach of this Agreement. This indemnification obligation shall not apply to the extent that such Claims are caused by either the willful misconduct of an Indemnitee or an Indemnitee's sole or active negligence. CITY agrees to pay all costs and expenses incurred by GRANTEE in enforcing CITY's indemnity and defense obligations as specifically set forth above.

7. Projects Executed by GRANTEE.

7.1. Notice to Proceed. For each Project CITY decides to release to GRANTEE ("GRANTEE Projects"), in accordance with the Project List, CITY shall deliver a written notice to proceed ("NTP") to GRANTEE's DPOA. The NTP shall contain all documents necessary to allow GRANTEE to commence design and construction of the Project, which shall include, at a minimum:

7.1.1. Council Resolution creating the respective Underground Utility District.

7.1.2. Underground Utility District Boundary Map.

7.1.3. CITY Approved Environmental Documents, including, without limitation, the certified CEQA determinations, and any mitigation and monitoring requirements.

7.1.4. Locations for new streetlighting locations.

7.1.5. Preliminary scoping information CITY possesses regarding the Project that may assist GRANTEE in developing Project estimates.

7.1.6. CITY scheduling considerations (moratoriums, Capital Improvement Project timelines, etc.).

7.2. Project Kick-Off.

7.2.1. Upon receipt of the NTP, GRANTEE shall within thirty (30) days, or as otherwise agreed upon with CITY, schedule a kick-off meeting with the DPOAs and assigned Project resources to review all documents, further scope the Project, discuss draft schedule milestones, and identify potential Project risks (“**GRANTEE Project Kickoff**”).

7.2.2. Within thirty (30) days of the GRANTEE Project Kickoff, or as otherwise agreed upon, GRANTEE will provide a draft milestone schedule and updated Project estimate as part of its regular monthly reporting.

7.3. GRANTEE Responsibilities. To support the goal of Project efficiency and minimizing community impact, GRANTEE shall be responsible for all Project level design and construction execution activities, including, without limitation, mapping, customer services, designs, third-party coordination, permitting, construction, cabling, outages and energizations, cutovers, removals from service, street Work and communications.

7.4. CITY Oversight of GRANTEE Executed Projects.

7.4.1. 30% Design Baseline. Upon GRANTEE’s completion of trench and conduit 30% design, GRANTEE will schedule a meeting to review the “**30% Design Baseline**,” which includes review of the schedule and estimate. The meeting will include any updates regarding finalizing Project scope and risks. Within five (5) Business Days of GRANTEE providing the final 30% Design Baseline resulting from the meeting, CITY shall provide any comments or concerns in writing.

7.4.2. Start Construction Notification. GRANTEE will notify CITY of its intent to start construction by issuing CITY the “**Start Construction Notification**.” CITY will have fifteen (15) Business Days from delivery of the Start Construction Notification to inform GRANTEE in writing of any concerns. GRANTEE may commence construction on the Project any time after that period. Construction costs will accrue to such Project after such date.

7.4.3. Construction Baseline. Upon GRANTEE awarding the trench and conduit Work to its contractor, GRANTEE will schedule a meeting to review the “**Construction Baseline**” with CITY to present a construction baseline schedule and estimate. The meeting will include any updates regarding finalizing Project scope and risks. Within five (5) Business Days of GRANTEE providing the final Construction Baseline resulting from the meeting, CITY shall provide any comments or concerns in writing.

7.4.4. Electric Construction Notification. GRANTEE will notify CITY at least twenty (20) Business Days in advance of the start of electric construction Work.

7.4.5. GRANTEE and CITY will incorporate mutually agreeable quality management checkpoints into the Project schedule.

7.5. CITY Permitting Requirements.

7.5.1. GRANTEE will obtain CITY permits for Project Work in the ROW from DSD; provided that the Parties shall endeavor to work towards an alternate construction authorization method. GRANTEE’s reporting requirements to CITY regarding GRANTEE’s permit activity are described in that certain Administrative Memorandum of Understanding between the Parties dated November 1, 2021 (as

may be modified or amended from time to time). GRANTEE shall provide CITY with a full listing of DSD permit numbers on a monthly basis.

7.5.2. GRANTEE and CITY will meet and confer within 90 days of the Effective Date to discuss potential process changes regarding CITY traffic control permits that may enable the Parties to reduce Project costs.

7.6. GRANTEE Design. GRANTEE shall perform all necessary designs for GRANTEE Facilities. GRANTEE will consider options to reduce the size of aboveground equipment as technology, reliability and safety allow, as requested by the Utility Undergrounding Advisory Committee.

7.7. GRANTEE Construction. GRANTEE shall execute construction and coordinate all aspects of Work on all GRANTEE Facilities and customer service panel conversions, provided that SDMC 61.0509 will govern the Parties' obligations concerning joint trench for GRANTEE Projects. In accordance with SDMC 61.0509, GRANTEE will not have any control or responsibility arising from any action required to be taken by any communication infrastructure provider or other utility involved in any Project.

7.8. Streetlight Coordination. CITY will design all streetlights and perform streetlight construction; provided that at CITY's discretion, CITY and GRANTEE may meet and confer regarding the assignment of such Work to GRANTEE, which may require further coordination of the Parties. The Parties acknowledge that there are inherent challenges in coordinating the installation, field approvals and energizing of streetlights that are part of any undergrounding Project. The Parties agree to evaluate opportunities for improved coordination and to pursue changes to contracting and operational practices that lead to increased efficiencies.

7.9. GRANTEE Pre-Construction Meeting. Once GRANTEE has hired a contractor to install the trench and conduit for the Project, GRANTEE shall inform CITY, and CITY shall arrange the "**GRANTEE Pre-Construction Meeting**" within ten (10) Business Days. All attendees shall wear appropriate personal protective equipment.

7.10. Service Panel Conversions and Inspections.

7.10.1. At customer direction, GRANTEE will convert customers' electrical service using one of the following options:

7.10.2. Default options: "Meyers Adaptor" or "Direct Feed" are used if the existing customer-side equipment meets the requirements for such options, or the property owner agrees to pay for repair or upgrade of customer-side equipment necessary to use such options, without delaying the Project. GRANTEE will plan the Project schedule such that a responsive property owner interested in pursuing the repair or upgrade be allowed a reasonable amount of time to hire an electrician, pull permits, meet with GRANTEE Planner, perform the repair or upgrade, and complete the permit approvals, without causing Project delays.

7.10.3. Alternative option: the "Overhead Loop and Bond" conversion method is used for those customers who do not meet the minimum requirements to use the default options or where using the default options will put the Project at risk for delays. When the "Overhead Loop and Bond" conversion method is used, CITY will issue a Raceway Release protecting the customer-side electrical service conductors from the point of demarcation at the pull can to the existing weather head, provided

that it has passed inspection including compliance with the grounding requirements of 2017 NEC 250.24(A)(1), *see EXHIBIT 250.8*.¹ Upon receiving the CITY Raceway Release, GRANTEE may proceed with energizing conduits within the released raceway for purposes of performing the service cutover. Unless the CITY Building Official instructs otherwise, services may be cutover while CITY action to correct code compliance on existing customer-side equipment is still in progress.

7.10.4. For property owners who do not wish to have GRANTEE perform service conversion or wish to perform a voluntary panel upgrade, GRANTEE will coordinate with property owner and their contractors.

7.10.5. GRANTEE may provide and install grounding rods and related appurtenances as a reimbursable Project cost where such Work is needed to ensure the safety of the service conversion Work performed by GRANTEE.

7.10.6. GRANTEE will obtain building inspection permits from CITY prior to performing underground conversion of electrical services and will comply with all inspection requirements necessary to close the permit. Intake of GRANTEE requests for these permits will be handled by CITY's Transportation Department.

7.10.7. GRANTEE will request service panel conversion inspections according to instructions provided by DSD. As needed, CITY's Transportation Department will convene meetings with DSD and GRANTEE to verify that communications and efficiencies of the permit inspection process are consistent with the goals stated in Section 2 of this MOU.

7.10.8. GRANTEE shall not remove overhead power from any CITY-owned streetlight until GRANTEE receives written authorization from CITY.

7.10.9. CITY may request GRANTEE provide documentation concerning any such safety, reliability or structural integrity issues. CITY may additionally request GRANTEE participate in informational presentations to Council and the Compliance Review Committee describing the extent the Parties have actively pursued solutions.

7.11. GRANTEE Easements.

7.11.1. Where the ROW does not provide sufficient space for conduits, equipment, or other GRANTEE Facilities necessary for completing the overhead to underground conversion, GRANTEE shall approach property owners to obtain easements as required. Such easements shall be written for the limited purposes required for GRANTEE to construct, own, operate, repair, maintain and remove GRANTEE Facilities.

7.11.2. Any compensation required with respect to any easement necessary to complete a Project under the Surcharge Program shall be paid for through the Municipal Surcharge Program Fund.

7.11.3. No Project-specific construction contracts may be entered into by either CITY or GRANTEE until all required easements are identified and procured.

¹The grounding electrode conductor shall be protected from physical damage.

7.11.4. GRANTEE will manage communications with property owners until all easements are obtained.

7.11.5. If CITY is the public landowner for a needed easement, CITY will be timely in executing approvals if all conditions required by Applicable Laws are met. Council approval may be required for the granting of easements where CITY is the public landowner.

7.11.6. In all cases, if an easement is to be granted to GRANTEE, then GRANTEE will provide for the services of qualified personnel necessary for execution.

7.11.7. Both Parties will actively pursue resolution of all land rights issues to facilitate completion of Projects.

7.11.8. In no event shall GRANTEE be held responsible for delays arising from GRANTEE's inability to obtain easements as long as GRANTEE is reasonably pursuing such easements.

7.11.9. Other than those negotiated directly with CITY, the terms and conditions of any such easement shall be at the sole discretion of GRANTEE.

7.12. Other Project Coordination Requested by CITY.

7.12.1. GRANTEE will deliver to CITY prior to completion of design the proposed location of GRANTEE Facilities that have potential for conflicting with applicable federal, state and local accessibility requirements. GRANTEE will cooperate with CITY requests to further study these conflicts to ensure compliance concerns are addressed early to avoid impacting the pace of construction.

7.12.2. GRANTEE will notify CITY as early as possible of potential construction impacts to a street tree or street tree roots. GRANTEE acknowledges that CITY policies prioritize the protection and retention of existing street trees within the right of way. Tree removal must be approved by a City horticulturist or arborist and is only an option after all other reasonable options have been considered. CITY will provide assessment and recommendations in coordination with GRANTEE. When, following consultation with a CITY horticulturist or arborist, it is unreasonable to perform the undergrounding construction without removal or loss of a tree, the CITY will provide for the installation of a new street tree.

7.13. Environmental Compliance for GRANTEE Projects.

7.13.1. GRANTEE will ensure its construction complies with applicable environmental requirements including any mitigation, monitoring and reporting requirements established under CEQA. CITY will, unless otherwise noticed to GRANTEE, provide the qualified personnel for monitoring, curation and other specialized activities specified in the mitigation, monitoring and reporting requirements. GRANTEE may provide certain environmental support upon request of CITY, which will be documented by the Parties upon occurrence.

7.13.2. GRANTEE will cooperate with CITY by:

7.13.2.1. Including all applicable compliance requirements in construction contracts and right-of-way permit submittals.

7.13.2.2. Providing CITY environmental monitors a minimum notice of 24 hours (48 hours preferably) before construction starts and throughout the construction process when monitoring is required

7.13.2.3. Supporting CITY in obtaining agency permits when required for the Project. Such support may include, but is not limited to, providing information about GRANTEE construction processes and participating in meetings with resource agencies.

7.14. Stormwater. GRANTEE will perform construction under its own NPDES permit for stormwater pollution prevention. GRANTEE is aware that construction activity is also regulated by a municipal NPDES permit and enrollment in the CGP does not exempt a Project from the current and future municipal NPDES requirements. GRANTEE will have lead responsibility for all customer communications, stakeholder communications and issue resolution pertaining to the Project. Such communications and engagement will include GRANTEE contact information for the Project. Materials and communications will be co-branded with CITY logos upon CITY request.

7.15. Waste Disposal. GRANTEE will adhere to CITY Whitebook requirements for disposal of construction and demolition wastes as required by applicable permits, unless superseded by other Applicable Laws.

8. GRANTEE Project Cost Estimates

8.1. The Parties recognize that Projects are comprised of a series of individual Work Orders that have their own design, procurement, and construction lifecycle, as well as their own estimates, which change throughout the Work Order lifecycle. Each Work Order is issued at a different stage. Thus, the total Project estimate at any given time will be comprised of a group of individual Work Order estimates that are each at different stages of their lifecycle.

8.2. GRANTEE will provide the most up to date Estimated Cost at Completion (EAC) for all Project Work Orders monthly as part of the Monthly Invoicing Backup Material in accordance with Appendix B – Invoicing Backup Material. The EAC will be a dynamic estimate continually adjusted to reflect the current total estimated cost to complete the Work Order. The dynamic nature and monthly true-up of the estimate to actuals will allow the Work Order at completion to reflect the total estimate which will equal total Actual Costs.

8.3. GRANTEE will provide the following estimates throughout the Project lifecycle:

8.3.1. Preliminary Estimate. Upon request GRANTEE will provide preliminary estimates based on scoping information provided by CITY. These would be estimates provided in advance of any Notice to Proceed to GRANTEE.

8.3.2. Initial Estimate. GRANTEE will provide an Initial Estimate based off the initial kickoff meeting for the Project. This estimate will be adjusted by GRANTEE as new information becomes known but will still be referred to as the Initial Estimate on the Monthly Invoicing Backup Material until such time as the 30% Design Estimate is provided. Adjustments greater than 10% will be accompanied by an explanation.

8.3.3. 30% Design Estimate. Upon completion of the 30% Design Estimate for the trench and conduit Work Order design, GRANTEE will meet with CITY to discuss the 30% Design Estimate. The 30% Design Estimate will be baselined and reported on the Monthly Invoicing Backup

Material as the 30% Design Baseline. The 30% Design Estimate will be adjusted by GRANTEE as information becomes known but will still be referred to as the 30% Design Estimate on the Monthly Invoicing Backup Material until such time as the 90% Design Estimate is provided.

8.3.4. 90% Design Estimate. Upon completion of the 90% Design Estimate for any Work Order design, GRANTEE will update the Monthly Invoicing Backup Material to reflect the Design Estimate for that Work Order. The 90% Design Estimate for any Work Order will be adjusted by GRANTEE as new information becomes known but will still be referred to as the 90% Design Estimate on the Monthly Invoicing Backup Material until such time as an Issue for Construction (IFC) Estimate is provided. Adjustments greater than 10% will be accompanied by an explanation.

8.3.5. Issue for Construction (IFC) Estimate. Upon award of the trench & conduit Work Order to GRANTEE's construction contractor, GRANTEE will meet with CITY to discuss the IFC Estimate. The IFC Estimate will be baselined and reported on the Monthly Invoicing Backup material as the IFC Baseline. Upon award of subsequent Work Orders to construction contractors the estimates will be shown on the Monthly Invoicing Backup Material as IFC Estimates as well. All IFC Estimates will be adjusted by GRANTEE as new information becomes known but will still be referred to as the IFC Estimate on the Monthly Invoicing Backup Material. Adjustments greater than 10% will be accompanied by an explanation.

8.4. For all estimates, should an estimate increase by 10% or greater month over month, GRANTEE will provide CITY a detailed explanation concerning such change unless such change is the result of the advancement of the design Work Order in the Project lifecycle (e.g., the Work Order has moved from 30% Design Estimate to 90% Design Estimate).

8.5. The Parties understand that in accordance with the Franchise, new accounting practices will govern the Surcharge Program. As such, the Parties acknowledge the accuracy and predictability of Project estimates will take time to perfect and may not reflect average historical estimates or total Project costs. All estimates will include direct labor, material, Overheads and contingencies.

9. Verifying Competitive Procurement.

9.1. Design & Engineering Procurement

9.1.1. GRANTEE shall procure Design and Engineering Work in support of the Surcharge Program, which Work shall be managed under individual master services agreements ("MSAs"). "Design and Engineering" refers to any "consultant contract" in support of Surcharge Program Work, as described in SDMC 22.3202, which may include, without limitation, design, engineering, survey and other consultant Work. MSA sourcing efforts will occur no less than every five years.

9.1.2. GRANTEE's sourcing efforts for Design and Engineering Work shall be posted on GRANTEE's sourcing site for at least ten (10) days and in CITY's paper of record (or as otherwise required by Applicable Laws).

9.1.3. GRANTEE and CITY will collaborate during the Term of this MOU to create standard evaluation matrices to evaluate the competitive sourcing of Design and Engineering Work, which shall address, at a minimum, the following aspects of the Work:

- (a) Rates, Adjustments, Third Party Markup Percentage
- (b) Ability to meet scope of work requirements

- (c) Experience and technical ability
- (d) Experience with GRANTEE Standards and GRANTEE Facilities
- (e) Use of Diverse Business Enterprises (DBE)
- (f) Sustainability
- (g) Exceptions to GRANTEE Terms and Conditions

The evaluation matrices developed by the Parties will assign percentages and/or scoring to each aspect of the Work appropriate for the scope of Work at issue. Prior to GRANTEE advertising a sourcing effort for Design and Engineering Work in support of the Surcharge Program, GRANTEE shall provide a draft evaluation matrix for CITY's review. CITY will provide comments on the matrix within ten (10) days of receipt. If GRANTEE does not receive comments from CITY within such period, GRANTEE will move forward with the proposed matrix for the sourcing effort.

9.1.4. GRANTEE will review all bids for Design and Engineering Work (1) from a technical perspective to determine whether the consultant has the appropriate level of expertise for the specific subset of Work at issue to perform the Work, and (2) from a commercial and risk perspective to determine consultant's ability and capacity to perform the Work. Design and Engineering bidders will be disqualified automatically if the bidder does not employ at least one Qualified Designer (if scope includes Design), carry required levels of insurance, answer all material bid questions, submit all required documents and carry appropriate certifications and licensure required for the scope of Work being sourced. Bidders must also be in good standing to do business in California.

9.1.5. GRANTEE will issue Surcharge Program Work to consultants with MSAs based on consultant's workload, lead times, geographic coverage and performance metrics on previous Projects at the discretion of GRANTEE.

9.1.6. GRANTEE will maintain documentation of standard processes for evaluating Design and Engineering bids and selecting the contract award recipients and will make documentation describing such processes available to CITY upon request.

9.1.7. Upon CITY's request, GRANTEE will provide all Design and Engineering contracts to CITY for Surcharge Program Work, which may include MSAs and Releases.

9.2. Construction Procurement

9.2.1. To bid or perform any Civil or Electrical Construction Work in support of the Surcharge Program, contractors must hold a valid MSA with GRANTEE. GRANTEE will hold a competitive sourcing effort not less than every five (5) years to grant MSAs to prime contractors. "Civil and Electric Construction" refers to any civil or electric construction Work performed in support of the Surcharge Program.

9.2.2. To be eligible to be awarded an MSA with GRANTEE for Civil or Electric Construction Work, contractors must be pre-qualified by GRANTEE to determine whether they have the capability to perform the scope of Work for which they are requesting prequalification, which may be one or multiple scopes. Opportunities for prequalification will be published with information concerning GRANTEE's processes for prequalification on GRANTEE's sourcing site and in CITY's paper of record for at least ten (10) days and will be provided to CITY for review prior to posting. GRANTEE will provide opportunities for contractors to become prequalified from time to time and prior to any MSA sourcing effort for Civil or Electric Construction Work.

9.2.3. When GRANTEE initiates a sourcing effort for Civil or Electric Construction Work, such sourcing effort will be posted for at least ten (10) days on GRANTEE's sourcing site and in CITY's paper of record (or as otherwise required by Applicable Laws).

9.2.4. GRANTEE's sourcing effort for Civil or Electric Construction MSAs will include, at a minimum, the following requirements:

- (a) Bidder must carry or obtain insurance that meets minimum GRANTEE requirements
- (b) Bidder must have valid and current ISNetWorld ("ISN") membership (or successor safety program)
- (c) Bidder must have a passing score or approved variance from GRANTEE in ISN based on bidder's safety metrics as reported in ISN (or successor safety program)
- (d) Bidder must satisfy or be exempted from the requirements of GRANTEE's collective bargaining agreements, as applicable
- (e) Bidding prime contractors must carry a current and valid general contractor's license (A or B) from the Contractor's State License Board (or as otherwise required by Applicable Laws)
- (f) Bidder must be in good standing to do business in California
- (g) Bidder must meet GRANTEE's minimum experience requirements for performing Work on electric utility systems in California

9.2.5. GRANTEE and CITY will collaborate to create standard MSA evaluation matrices to evaluate the competitive sourcing of Civil and Electric Construction Work as part of any such sourcing effort, in accordance with the requirements of the San Diego City Charter, which shall address, at a minimum, the following aspects of the Work:

- (a) Safety record
- (b) Rates, Adjustments, Third Party Markup Percentage
- (c) Ability to meet scope of work requirements
- (d) Experience and technical ability
- (e) Experience with GRANTEE's Construction Standards and GRANTEE Facilities
- (f) Use of Diverse Business Enterprises (DBE)
- (g) Sustainability
- (h) Exceptions to GRANTEE Terms and Conditions

The evaluation matrices developed by the Parties will assign percentages and/or scoring to each aspect of the Work appropriate for the scope of Work at issue. Prior to GRANTEE advertising for a sourcing effort for Civil or Electric Construction Work, GRANTEE shall provide a draft evaluation matrix for CITY's review. CITY will provide comments on the matrix within ten (10) days of receipt. If GRANTEE does not receive comments from CITY within such period, GRANTEE will move forward with the proposed matrix for the sourcing effort.

Additionally, the Parties will develop evaluation matrices to be used on a regular basis to evaluate Construction Project Bids, as further described in Section 9.3.2 below. Such Construction Project Bid matrices shall be reviewed by the Parties not less than every three (3) years.

9.2.6. If GRANTEE deviates from the standard scoring and selection criteria agreed upon by the Parties in a specific matrix by more than 10% for any category, GRANTEE will provide CITY revised scoring and selection criteria proposed for use for that specific Project prior to advertising. CITY will maintain confidentiality similarly to any CITY bid advertisements.

9.2.7. GRANTEE will maintain documentation of standard processes for evaluating Civil or Electric Construction bids and selecting the contract award recipients and will make documentation describing such processes available to CITY upon request.

9.2.8. **Material Procurement.** To the extent materials used on a Project are not obtained by the construction contractor hired to perform Work on such Project, such materials will be sourced directly from stock provided through GRANTEE's materials department and will be charged to the Project in accordance with Section 10.1.2 below. GRANTEE's materials department procures materials for GRANTEE's construction efforts service-territory wide to obtain the best value by achieving economies of scale and efficient materials management.

9.3. Construction Project Bidding

9.3.1. GRANTEE may elect to issue Civil or Electric Construction Work on a time and equipment basis to any MSA holder resulting from a sourcing effort, using the rate structure described in the MSA, for Work scopes that do not exceed GRANTEE's established bidding threshold, set annually by GRANTEE and communicated to CITY ("**Bid Threshold**"). Surcharge Program Work shall be assigned to MSA holders based on workload, lead times, geographic coverage and performance metrics on previous Projects at the discretion of GRANTEE.

9.3.2. Project Work scopes that exceed the Bid Threshold will be competitively bid to all existing qualified MSA holders for such scope as a fixed bid Work package ("**Construction Project Bid**") and will result in a Construction Project Release. GRANTEE will utilize the standard evaluation matrices and bid evaluation processes identified in Section 9.2. Notwithstanding the foregoing, GRANTEE may request CITY approve the assignment by GRANTEE of an MSA holder to a specific Work scope above the Bid Threshold when emergent circumstances warrant such exception.

9.3.3. Prior to advertising any Construction Project Bid to MSA holders, GRANTEE will inform CITY of any known information about the proposed Construction Project Bid that could impact bid pricing. Such inform may include, without limitation, working days limitations, alley work, hard digging, unique design criteria, etc. GRANTEE will disclose such information to CITY at least thirty (30) days prior to advertisement to allow CITY to make suggestions regarding modifying the Project to attract lower-priced bids or more competition. CITY will maintain confidentiality similarly to any CITY bid advertisements.

9.3.4. Prior to awarding a Construction Project Release under an MSA, GRANTEE will provide CITY with a bid summary that includes the completed bid evaluation matrix, list of bid evaluators by title, and bid evaluation meeting minutes.

9.3.5. Should CITY oppose an award, CITY and GRANTEE shall meet in a timely manner regarding further advancement of the Project. The Parties may decide to re-advertise the Construction Project Bid, modify the Project, cancel, or suspend the Project.

9.3.6. At CITY request, GRANTEE will provide to CITY all Civil and Electric Construction contracts pertaining to the Surcharge Program.

9.4. Diverse Business Enterprises

9.4.1. DBE Contracting Requirements. In accordance with CPUC General Order 156 and Cal. Pub. Util. Code sections 366.2 and 8283, as may be further amended from time to time, GRANTEE is required to track its yearly utility expenditures with certified minority, women, service-disabled veteran and LGBT business enterprises (collectively, “DBEs”), and tracks expenditures with disadvantaged small businesses qualified under the U.S. Small Business Administration’s 8(a) Business Development Program. General Order 156 also requires GRANTEE to encourage the participation of DBEs in its contracting processes, perform external outreach to DBE suppliers and encourage prime contractors to utilize DBE subcontractors. Notwithstanding the foregoing, GRANTEE is not authorized or permitted to use quotas or set-asides to achieve its DBE goals.

9.4.2. DBE Classifications. The CPUC, pursuant to General Order 156 and other Applicable Laws, establishes the requirements and classifications for the types of DBEs for which GRANTEE must track and report its yearly utility expenditures, which may be amended by the CPUC from time to time. Such DBEs must be certified by the CPUC Clearinghouse or other method approved by the CPUC.

9.4.3. As of the Effective Date, GRANTEE seeks to secure at least 40% of GRANTEE’s total yearly procurement through DBEs, including Surcharge Program Work, utilizing direct contracting with DBE and certified DBE subcontractors. GRANTEE’s yearly goal may adjust over time.

9.4.4. Each of GRANTEE’s MSAs includes the MSA holder’s DBE procurement commitment for the scope of Work described therein, including direct and subcontracted Work.

9.4.5. MSA holders are required to provide GRANTEE monthly reports on payments made to certified DBE subcontractors in accordance with such MSA holder’s agreed DBE subcontracting goal using GRANTEE’s online subcontracting reporting system (or successor system).

9.4.6. GRANTEE files an annual DBE report with the CPUC describing GRANTEE’s DBE contracting and subcontracting efforts. This is a public document and will be shared with CITY after filing.

9.5. Minimum Contracting Requirements.

9.5.1. MSAs for Surcharge Program Work shall contain, at a minimum, the following CITY requirements, to the extent applicable to the scope of Work covered by such MSA, and as may be amended from time to time:

9.5.1.1. Equal Employment Opportunity Requirements as described in SDMC Article 2, Chapter 2, Division 27:

- a. Submittal of Work Force Report and/or Equal Employment Opportunity Plan (SDMC 22.2705).
- b. Subcontractors must comply with CITY’s equal employment opportunity outreach program (SDMC 22.2704).

9.5.1.2. Mandatory Non-Discrimination Contract Clause requirement (SDMC 22.3512).

9.5.1.3. Equal Benefits Requirements, as described in SDMC, Article 2, Chapter 2, Division 43).

9.5.1.4. Payment of Prevailing Wages, as described in SDMC, Article 2, Chapter 2, Division 30).

9.5.2. When GRANTEE informs CITY that GRANTEE plans to initiate a sourcing effort for any Surcharge Program Work, CITY shall provide GRANTEE with the applicable and current prevailing wage language for the Work scopes at issue to be included as part of the sourcing effort and in the resulting MSA.

9.5.3. Nothing herein shall restrict GRANTEE from negotiating or adopting its own requirements for MSAs for Surcharge Program Work, including any amendments to such MSAs, provided such requirements do not conflict with or are less stringent than applicable CITY requirements as described in this Section 9.5. Furthermore, GRANTEE shall have the right to terminate any MSA in accordance with its terms.

10. Accounting for GRANTEE Project Expenses.

10.1. GRANTEE monthly billing backup to support invoices for Surcharge Program Projects will subdivide Project costs into the following categories:

10.1.1. Direct Costs. Costs included in this category consist of labor and nonlabor charges including but not limited to contractor costs for engineering and design, construction, survey, etc.

10.1.2. Materials. Costs included in this category consist of cable, equipment, and other items included on the Project material list as required by the design not otherwise procured directly by contractors working on the Project. Such materials will be direct charged to the Project.

10.1.3. Overhead Costs.

10.1.3.1. Costs included in this category relate to those activities and services that are associated with direct costs, such as payroll taxes, pension and benefits, engineering, and administrative and general (A&G) functions, etc. that cannot be economically direct charged.

10.1.3.2. Overhead costs will include program-specific costs as defined in Section 10.2, as well as an allocation of costs from administrative and general utility support functions.

10.1.3.3. In alignment with the audit requirements described in the Franchise, or at the request of CITY, GRANTEE shall provide a breakdown of the costs included in the Surcharge Specific Cost Pool (as defined below) as follows:

- a. Design & Engineering
- b. Project Management
- c. Contract Administration
- d. Other

10.2. Surcharge Specific Cost Pool. The “**Surcharge Specific Cost Pool**” has been implemented exclusively for the Surcharge Program. The Surcharge Specific Cost Pool includes costs that are directly related to Surcharge Program Projects that cannot economically be direct charged to individual Projects. This may include, but is not limited to, design and engineering, Project management, and contract administration costs. An allocation of support costs associated with these services will also be charged to this pool.

10.2.1. The Parties acknowledge that the Surcharge Specific Cost Pool was implemented to ensure Municipal Surcharge Program Funds are directly and exclusively related to the Projects. The new accounting structure could have a significant impact on Project overhead costs in comparison to historical overhead costs and may result in either an increase or a decrease in Project costs.

10.2.2. Parties acknowledge that the methodology utilized by overhead pools to collect costs and allocate those costs to Projects may result in timing differences between when costs are incurred and when they are allocated to Projects.

10.3. Breakdown of Overheads. In alignment with the audit requirements described in the Franchise, or at request of CITY, GRANTEE shall provide a breakdown of costs allocated from general and administrative utility functions as follows:

10.3.1. Labor Overheads. Labor Overheads include payroll taxes, employee (excluding executives) incentive compensation plan, worker’s compensation, public liability/property damage, post-retirement benefits and vacation and sick costs.

10.3.2. Purchasing and Warehousing Overheads. The Purchasing and Warehousing Overheads are used to capture costs related to GRANTEE’s procurement activity in obtaining goods and services and costs associated with warehousing materials used in the operation of the business.

10.3.3. A&G and Construction Support Overheads. The A&G and Construction Support Overheads include Capital Administrative & General (A&G) Costs and Electric Department Overheads (construction and operational general expenses, such as management time). These costs are reasonably related to the Surcharge Program.

10.3.4. Other Overheads. Other Overheads incurred by Projects include charges for small tools and shop expenses.

11. Invoicing.

11.1. Monthly invoices shall be accompanied by the Monthly Billing Backup support documentation, which will include updated cost estimates for that month, the previous month as well as the percentage changed since last reported. Invoices are payable upon receipt, net thirty (30) days.

11.2. Within ten (10) Business Days of receiving a monthly invoice, CITY will notify GRANTEE of any request to review Books and Records associated with that Project prior to authorizing payment. If no request for Books and Records is made, invoice is due.

11.3. Within ten (10) Business Days of a request from CITY to review Books and Records as a condition of authorizing payment, GRANTEE will provide the requested supporting documentation.

11.4. Within ten (10) Business Days of receipt of Books and Records, CITY shall commence payment on the invoice in full or notify GRANTEE of potential dispute regarding certain charges included in the invoice. If CITY does dispute an invoice, but the dispute does not relate to the entire invoice, GRANTEE will re-invoice CITY with two invoices separating the verified amount from the amount in dispute to avoid significant delays in payment due to GRANTEE. CITY will pay the amount owed on the undisputed invoice promptly while the dispute is resolved on the disputed invoice in accordance with the terms of this MOU.

11.5. Monthly invoices are considered progress payments for all outstanding Actual Costs incurred by GRANTEE which shall be accompanied by the Monthly Billing Backup supporting documentation to demonstrate that the amount of monthly charges align with the estimated cost at completion and the percent of progress toward completion. Progress is measured as a ratio of working days completed to total working days of a Project activity.

11.6. A determination by CITY not to proceed to construction for a Project does not relieve CITY from the costs associated with the design and preparation for such Project.

11.7. Final Billing shall be provided to CITY no later than twelve months after Project completion.

12. Budget Coordination

12.1. CITY acknowledges that GRANTEE relies on CITY's obligation to reimburse costs for Work under this MOU incurred by GRANTEE and passed through to CITY without markup for profit in accordance with Section 10 herein. As such, this Section 12 establishes coordination requirements of the Parties in support of CITY's budgeting for the Surcharge Program.

12.2. CITY will be responsible for ensuring all Projects for which CITY has issued GRANTEE a Notice to Proceed or Mobilization Notice have been allocated funding from the Municipal Undergrounding Surcharge Fund to cover the total estimated costs to be incurred by GRANTEE in support of the Program in the upcoming CITY Fiscal Year. CITY will promptly notify GRANTEE if such funding is later restricted, is no longer available, or if CITY becomes aware that its funding commitments are at risk, at which time the Parties will meet and confer to discuss additional funding or Project suspensions, as needed.

12.3. GRANTEE acknowledges that CITY relies on Project expenditure forecasts to achieve long-term management of cash-flow reserves in the Municipal Surcharge Program Fund. For all Projects for which CITY has assigned GRANTEE Work under this MOU, GRANTEE will provide CITY updated monthly Project estimates and cashflows per requirements of this MOU and GRANTEE will be timely in informing CITY of any changes in Project costs or schedules that may affect the accuracy of such forecasts.

12.4. CITY and GRANTEE will confer no later than thirty (30) days prior to each CITY annual budget process milestone to ensure Municipal Surcharge Program Funding is available for all planned Projects on the Project List, as updated, during each CITY Fiscal Year. CITY budget projections are due on the following dates, which may change at CITY's direction:

- (a) Proposed Budget: December 1 for the next CITY Fiscal Year's Budget.
- (b) May Revision: April 1 for the next CITY Fiscal Year's Budget.

- (c) Mid-Year Projection: December 1 for the current CITY Fiscal Year.
- (d) Year-End Projection: April 1 for the current CITY Fiscal Year.

12.5. GRANTEE may suspend Work on a Project without penalty and will not be responsible for delays due to suspension of such Work if CITY does not allocate or cannot make sufficient funding available from the Municipal Surcharge Program Fund to cover the Work in accordance with Project estimates.

13. Reporting Requirements.

13.1. Cost Per Mile. GRANTEE shall submit to CITY on an annual basis GRANTEE’s average underground cost per mile for the Surcharge Program, calculated using the “Miles Installed” methodology described in the Franchise. The “Miles Installed” methodology reflects length of mainline trench and service trench installed as referenced in Appendix A – Cost Per Mile.

13.2. Project Monthly Milestone Reporting. GRANTEE will provide CITY a Monthly Milestone Report, Project Estimate Report and a forecasted Monthly Cashflow Estimate for all Projects where CITY has issued GRANTEE an NTP. The reports will be developed jointly and will include major design and construction milestones, Project estimates and cashflow forecasts such as but not limited to:

DESIGN ACTIVITIES	PRE-CONSTRUCTION ACTIVITIES	CONSTRUCTION ACTIVITIES
Trench & Conduit & One-Line 30%	City ROW/ TCP Permit	Service Panel Modifications
Trench & Conduit & One-Line 60%	Other Permits	Trench and Conduit
Trench & Conduit & One-Line 90%	All Easements Received*	Cable & Connections
Cable Pole 30%	All Joint Trench Offers Received*	Customer Cut-Over
Cable Pole 60%	NTP Construction Start (panel conversions)	Streetlights Phase 1
Cable Pole 90%	Trench & Conduit RFP & Award	Overhead Removals
Cable & Connections 60%	Electric RFP & Award	Pole Removals
Cable & Connections 90%	Other construction award	Streetlights Phase 2
Streetlighting 60%		Other construction
Streetlighting 90%		
OH Remove From Service 30%		
OH Remove From Service 60%		
OH Remove From Service 90%		
Other Misc. Job Levels 30%		
Other Misc. Job Levels 60%		
Other Misc. Job Levels 90%		

*To be reported as a milestone date only

Notes:

- 1 Not all activities are applicable to all projects and additional milestones may be added as necessary.
- 2 4kV - 12kV Cutover and SCADA are not required on every project so are included in "Other Misc."
- 3 Streetlight Phase 1 are lights not in conflict with overhead facilities, Streetlight Phase 2 are lights that were in conflict

13.3. At CITY’s request, GRANTEE will provide additional data or reports as jointly developed and agreed upon by the Parties during the Term of this MOU.

13.4. CITY will promptly provide GRANTEE the amount of electric Surcharge fees spent by the CITY when such information is required of the GRANTEE by the CPUC.

14. Enhanced Communication between CITY and GRANTEE.

14.1. Parties will actively pursue ways to minimize Parties' communications involving CITY personnel above the rank of Transportation Department Director. This includes establishing oversight procedures that can be largely performed by CITY DPOA. This also includes establishing steps for resolving problems of compliance with this MOU that can be largely managed by a CITY DPOA.

14.2. Parties will provide contact information for Project-assigned resources (for example, contact information for coordination of service cutover Work, street light energization, etc.).

14.3. Parties will ensure that appropriately knowledgeable personnel attend the monthly Underground Conversion Coordination meetings, or successor meetings.

14.4. If at any time CITY wants to cancel or suspend Work on any Project, CITY agrees to notify GRANTEE immediately to avoid unnecessary costs or delays. Similarly, GRANTEE shall inform CITY immediately in the event of any serious delay or barrier to Project development. Cancelling an approved Underground Utility District requires action by Council.

15. Outreach.

15.1. Parties will establish an open process of communication and coordination with the public and Council District offices. Additional coordination and communication may be needed with the Mayor's Office and Community Planning Groups. Formal Project communication plans shall be shared and coordinated between all Parties to ensure accurate and comprehensive information is provided.

15.2. CITY will facilitate community forum meetings in accordance with Utility Undergrounding Advisory Committee and Council District office recommendations and other CITY policies. GRANTEE will participate in meeting preparation including providing timely information for public notices and presentation materials. GRANTEE will provide appropriate personnel to speak for both formal presentations and information tables. The personnel representing GRANTEE will be prepared to communicate Project details relevant to a public audience including Project timelines.

15.3. Community forum dates will be set per the Project schedule to allow the greatest design flexibility for accommodating public input without delaying the design completion date or incurring avoidable costs for design changes.

15.4. GRANTEE will consult with CITY, including Council District offices, on community sensitivity to Project visual impacts and will plan accordingly to accommodate additional meetings with the community.

16. Dispute Resolution. In the event that a dispute arises between the Parties relating to the performance of a Party's obligations under this MOU, which may include, without limitation, interpretation of the terms of this MOU, reporting obligations, Project delays, invoices, or information sharing, either Party may notify the other Party, and the Parties shall confer promptly to manage such concerns. If the Parties' concerns cannot be satisfied through informal communications, the Party desiring formal resolution of the dispute shall notify the other Party in writing to request a meeting. The Parties will promptly identify the appropriate persons internal to the Party to resolve such dispute based on the nature of the dispute, and at a minimum, must include each Party's DPOA. Those persons will meet within seven (7) calendar days to attempt to resolve the dispute, provided that the Parties can mutually agree to extend such time if necessary. If the dispute cannot be resolved as a result of such

meeting, either Party may invoke the dispute resolution procedures described in section 17 of the Franchise.

17. Performance. GRANTEE and CITY will meet annually to review the operations of the Surcharge Program. At that meeting, the Parties will, at a minimum, (a) determine the level of funding needed in the following CITY Fiscal Year to support the targets, as agreed upon by the Parties, being set for undergrounding progress within that upcoming Fiscal Year, and (b) discuss ways to increase efficiencies and collaborate effectively. Furthermore, CITY may develop and maintain Project performance records. GRANTEE will have access to review those records on a regular, timely basis and may provide comments to CITY at its discretion, which comments shall be included directly in such records. The Parties agree and acknowledge that GRANTEE will not be held responsible for Project delays that arise out of or result from delays in the performance of any CITY obligation. Overall performance of GRANTEE related to this MOU will be monitored and reported to Council using such records and annual reviews as part of the two (2) year Compliance Review Committee cycle.

18. Legacy Projects. For Projects for which substantial Work was completed prior to adoption of this MOU, the Parties have agreed that it is in the best interest of the Surcharge Program to continue such Projects to completion under the terms of the previous MOU. For these Projects, the requirements of this MOU will be followed where doing so will not delay the completion date of such Projects or create other barriers to performance. These exceptions shall only apply to the following in-progress Projects:

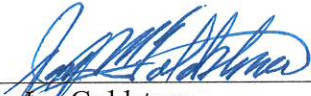
- (a) Chollas 4J1
- (b) Clairemont Mesa 6DD1
- (c) Clairemont Mesa 6H
- (d) Golden Hills 8C
- (e) La Jolla 1J Job 1
- (f) La Jolla 1J Job 2
- (g) Lomita Block 4Y
- (h) Muirlands 1M-J1
- (i) Rolando Blk 7G2
- (j) S. Mission Beach 2S1

UNDERGROUNDING MEMORANDUM OF UNDERSTANDING between THE CITY OF SAN DIEGO and SAN DIEGO GAS & ELECTRIC COMPANY

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed as of the last date below:


CITY OF SAN DIEGO

City Council Ordinance No. 0-21440


By: Jay Goldstone
Its: Chief Operating Officer


3/29/2022
Date

Approved as to form:


By: Ryan Gerrity
Its: Deputy City Attorney


4/6/2022
Date

SAN DIEGO GAS & ELECTRIC COMPANY


By: Bruce A. Folkmann
Its: President and Chief Financial Officer

2/4/2022
Date

Approved as to form:


By: James W. Baker
Its: Assistant General Counsel

2/4/2022
Date

APPENDICES

Appendix A – Cost Per Mile

“**Cost Per Mile**” is defined as the total cost (design, materials, construction, etc.) to build one mile of a new underground system that will replace the overhead system. Total miles are determined by the trench footage (including service trenches) required to build the total underground system. The cost of removing the old overhead system (known as “**Remove From Service**” or “**RFS**”) is not included in the Cost Per Mile calculation. Generally, the number of underground miles of electric conduit that must be installed to replace overhead wires occurs at a factor of 1.5 to 3.0x. Items that impact cost include work hours, urban density, alleyways, environmental issues, hard digging, etc.

Project Example of Cost Per Mile Calculation:

Total overhead miles to be removed: 3 miles

Total underground miles constructed: 6 miles

Total cost of the new underground system: \$18M

Demolition and removal of old overhead system: \$1M (*removal of overhead system not included in Cost Per Mile*)

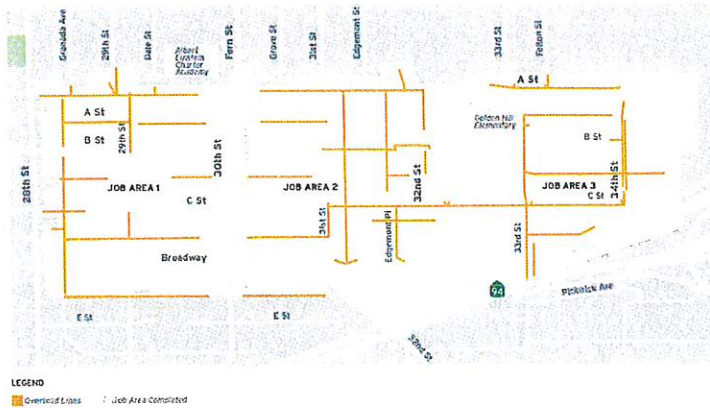
Total project cost: \$19M

Cost Per Mile: \$18M/6 miles = **\$3M per mile**

For illustrative purposes only, below is a summary of an underground conversion project called Golden Hills 8C, depicting (1) the overhead lines removed and (2) the underground miles installed. Individual Projects are not representative of all Projects; each Project has its own features that dictate cost and schedule.

Example: Golden Hills 8C

Linear Mileage of Overhead Line to be Removed

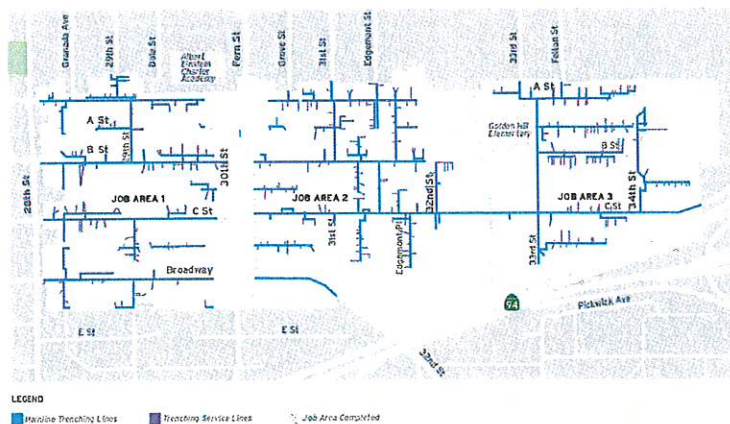


- Overhead Lines to be Removed*:
 - **2.44 miles**
- Total Cost Removal of Overhead Lines
 - **\$1.5M (not included in cost per mile calculation)**

* Sometimes referred to as street miles or center lane miles, although it would include pole footage for facilities not in the ROW such as back lot lines. This is a point A to point B measurement of overhead facilities and does not include service drop lengths, consideration for multiple circuits on same pole line or distances of undergrounded street crossings of minimal distances.

Example: Golden Hills 8C

Linear Mileage of Constructed Underground System



- New Underground Trench:
 - **5.81 miles Mainline**
 - **1.60 miles Service Trench**
- Total New Underground Trench:
 - **7.41 miles**
- Cost of New Underground System:
 - **\$40.1M**
- New Underground System:
 - **\$5.41M/ mile**

Appendix B – Invoicing Backup Material

In accordance with Section 11 – Invoicing, monthly invoices will be accompanied with Monthly Invoicing Backup Material. Details for each Project will be broken down as follows:

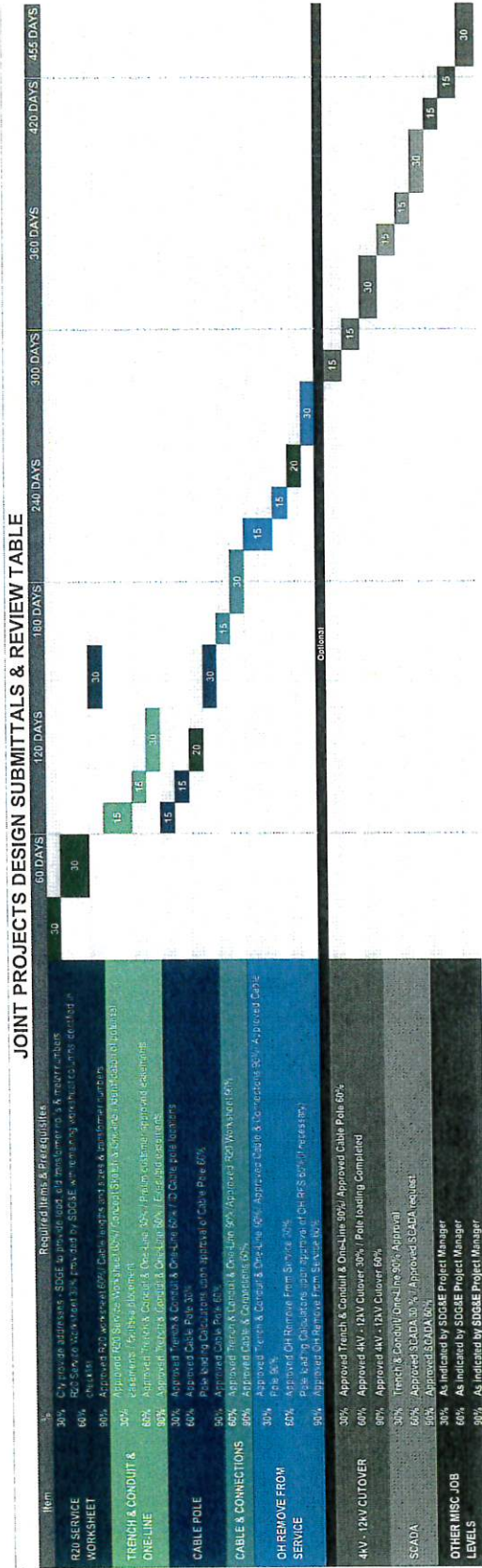
1. Project Name
2. UUP #
3. Work Order #
4. Project Detail (description of job level)
5. Status
6. Estimate Phase
7. Estimated Cost at Completion
8. Previous Estimated Cost at Completion
9. Estimate % Change
10. Job To Date Costs
11. Year To Date Costs
12. Directs
13. Materials
14. Overheads
15. Depreciation and Salvage Credit
16. Prior Charges Not Previously Billed
17. Monthly Net Billable Amount

Appendix C – GRANTEE Design Review Timelines

This table applies to design review times for Work Orders of up to 400 Design Locations with no unique scope items, which may include boring requirements, bridge attachments, transmission lines or other unique design elements.

Submittal	Design %	Required Items and Pre-Requisites	Review Time	Resubmittal Review Time	Full Submittal Requirements
R20 Service Worksheet	30%	City provide addresses - SDGE to provide load, old transformer no.'s & meter numbers	30	N/A	N/A
R20 Service Worksheet	60%	R20 Service Worksheet 30% provided by SDG&E with remaining worksheet columns identified in checklist	30	15 D	Checklist
R20 Service Worksheet	90%	Approved R20 worksheet 60%/ Cable lengths and sizes & transformer numbers			
Trench & Conduit & One-Line	30%	Approved R20 Service Worksheet 60%/ Concept Sketch & One-line / Identification of potential easements / facilities placement	15	15 D	Checklist
Trench & Conduit & One-Line	60%	Approved Trench & Conduit & One-Line 30% / Prelim customer approved easements	15	15 D	Checklist
Trench & Conduit & One-Line	90%	Approved Trench & Conduit & One-Line 60% / Executed easements	30	15D-30 D	Checklist
Cable Pole	30%	Approved Trench & Conduit & One-Line 60% / ID Cable pole	15	15 D	Checklist
Cable Pole	60%	Approved Cable Pole 30%	15	15 D	Checklist
Cable Pole		Pole loading Calculations upon approval of Cable Pole 60%	20		N/A
Cable Pole	90%	Approved Cable Pole 60%	30	15D-30 D	Checklist
Cable & Connections	60%	Approved Trench & Conduit & One-Line 90%/ Approved R20 Worksheet 90%	15	15 D	Checklist
Cable & Connections	90%	Approved Cable & Connections 60%	30	15D-30 D	Checklist
OH Remove From Service	30%	Approved Trench & Conduit & One-Line 90%/ Approved Cable & Connections 90%/ Approved Cable Pole 90%	15	15 D	Checklist
OH Remove From Service	60%	Approved OH Remove From Service 30%	15	15 D	Checklist
OH Remove From Service		Pole loading Calculations upon approval of OH RFS 60%(If	20		N/A
OH Remove From Service	90%	Approved OH Remove From Service 60%	30	15D-30 D	Checklist
4kV - 12kV Cutover	30%	Approved Trench & Conduit & One-Line 90%/ Approved Cable Pole	15	15 D	Checklist
4kV - 12kV Cutover	60%	Approved 4kV - 12kV Cutover 30% / Pole loading Completed	15	15 D	Checklist
4kV - 12kV Cutover	90%	Approved 4kV - 12kV Cutover 60%	30	15D-30 D	Checklist
SCADA	30%	Trench & Conduit/ One-Line 90% Approval	15	15 D	Checklist
SCADA	60%	Approved SCADA 30 % / Approved SCADA request	15	15 D	Checklist
SCADA	90%	Approved SCADA 60%	30	15D-30 D	Checklist
Other Misc. Job Levels	30%	As indicated by SDG&E Project Manager	15	15 D	Checklist
Other Misc. Job Levels	60%	As indicated by SDG&E Project Manager	15	15 D	Checklist
Other Misc. Job Levels	90%	As indicated by SDG&E Project Manager	30	15D-30 D	Checklist

Undergrounding MOU



NOTES:

1. ACTIVITIES SDG&E MANAGES
2. 4KV - 12KV CUTOVER & SCADA (IF NECESSARY) WOULD HAPPEN AFTER CABLE & CONNECTIONS (PRIOR TO RFS) - THIS IS INCLUDED IN TOTAL TIMELINE
3. INCLUDES CONSTRUCTABILITY REVIEWS (PERFORMED BY SEPARATE GROUP)
4. ACTUAL PROJECT SCHEDULES VARY