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(O-2021-128)
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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