Caroline Winn
Chief Executive Officer

P.O. Box 129831
San Diego, CA 92112

Tel: (858) 650-6175
CWinn@sdge.com

***Hand Delivered***

October 23, 2020

Elizabeth Maland
City Clerk
City of San Diego
202 "C" Street, MS 2A
San Diego, California 92101

Re: SDG&E RESPONSE TO INVITATION TO BID FOR A FRANCHISE TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS IN THE STREETS OF THE CITY OF SAN DIEGO

Dear City Clerk, Mayor Faulconer and Honorable Members of the City Council,

San Diego Gas & Electric Company ("**SDG&E**") proudly submits this responsive bid for a franchise to construct, maintain and use pipes and appurtenances for transmitting and distributing gas in the streets of the City of San Diego ("**SDG&E Gas Franchise Bid**").

SDG&E would be honored and humbled to be the City's energy partner for the next 20 years. We are a uniquely qualified and responsible bidder to serve the important mission of ensuring clean, safe and reliable energy to San Diego, because we have done so for more than 100 years. Our more than 4,000 employees, including more than 1,350 union members of the International Brotherhood of Electrical Workers, have successfully devoted their lives and careers to this mission.

- SDG&E is a national leader in clean energy efforts. During the past 50 years, SDG&E has put in place a modern and integrated clean energy program that is the pride of California. We are the first utility in the state to use solar and wind resources to deliver more than 40% of the energy required daily by our customers. None of our energy comes from coal. In 2018, we built and began operating one of the world's largest battery storage projects. Simply put, we are a clean energy leader.

- During the past decade, we built an award-winning wildfire mitigation and weather-guided system that protects the cities we serve and reduces critical fire risks for the entire region. The wildfires in 2018, 2019 and 2020 were devastating, and fire season continues to expand beyond summer and fall. SDG&E's wildfire prevention program is now the model for other utilities in California. We have worked effectively and tirelessly to aid regional fire departments and other state and agency partners in their efforts to reduce fire risk.

- SDG&E partnered with the City in its efforts to address climate change and reduce the City's overall GHG (carbon) footprint. The City has repeatedly recognized SDG&E's efforts in connection with the City's own climate action plan. Each year, the progress the City reports as part of its annual Climate Action Plan update is almost exclusively driven by increases in renewable energy facilitated by our procurement practices and grid investments.

- SDG&E has a demonstrated commitment to San Diego, and has a more than 100-year history of participating in building and supporting the community in which our employees live and work. Our recent community involvement includes:

    - In partnership with the San Diego Foundation, launching the *San Diego COVID-19 Community Response Fund*, to which we have contributed $3 million to date.

    - Supporting over 80 environmental nonprofit partners and organizations promoting education, community engagement and stewardship for disadvantaged communities through the SDG&E Environmental Champions initiative.

    - As part of the Regional Resiliency Initiative, SDG&E is working with the American Red Cross to create a sustainable, community wide network that supports preparedness, response and recovery training, and resiliency in the face of disaster. SDG&E's support of the American Red Cross has helped over one million people prepare, plan, or train to respond in an emergency.

    - In 2019 alone, SDG&E employees gave well over $650,000 from their own paychecks to local charities and other non-profit causes.

    - Overall, SDG&E's charitable giving in and around San Diego has totaled $6-8 million per year, and more than two-thirds of our giving helps underserved populations, including diverse ethnic groups, people with disabilities, and low-income families.

I am proud to join SDG&E's employees in our mission to continue building the cleanest, safest and most reliable energy infrastructure company in America. We look forward to playing our part in creating a world-class city for all.

***Bid Details on Following Two Pages***

**Bid Amount:** $10 million

**Bid Amount Payment Structure:** SDG&E shall pay, by wire transfer, 10% of the Bid Amount to the City within ten (10) days of the Commencement of Operations Date. Within ten (10) days of the Commencement of Operations Date SDG&E shall deliver to the City nine (9) equal promissory notes, one note due each following year on the anniversary of the Commencement of Operations Date. Each promissory note shall bear an annual interest rate of 3.38%. If, prior to the maturity of all promissory notes, SDG&E's credit rating is no longer investment grade, SDG&E shall deliver an irrevocable letter of credit to the City in the amount of the non-matured, unpaid promissory notes within ten (10) days. All unpaid promissory notes shall become immediately due and payable if the franchise is terminated by the City for SDG&E's material breach. Any unpaid promissory notes shall be void if the franchise is terminated for any reason other than SDG&E's material breach.

**Bid Amount Not from Ratepayers:** SDG&E agrees that the Bid Amount will not be paid by ratepayers. SDG&E will not request funding from the California Public Utilities Commission to recover the Bid Amount in rates.

**Surety Bond:** SDG&E will file and maintain a surety bond in favor of the City in the sum of $30,000,000 (Thirty million dollars). Such surety bond shall be available to the City for actual damages (not liquidated damages) suffered by the City pursuant to SDG&E's exercise of its rights and obligations under the Gas Franchise.

**Responsible Person:** SDG&E confirms that it is a "responsible person" as defined by the City in the Invitation to Bid. SDG&E is financially responsible, capable and able of constructing, maintaining and using pipes and appurtenances for transmitting and distributing gas in the streets of the City of San Diego, as it has done for more than 100 years.

**Commencement of Operations:** SDG&E is prepared to begin service under the new franchise ordinance on January 18, 2021. SDG&E can continue operations on this date without interruption to the existing franchise fees paid to the City. SDG&E possesses all necessary governmental approvals to exercise its rights under the Gas Franchise, including, without limitation, a Certificate of Public Convenience and Necessity from the California Public Utilities Commission or its equivalent. SDG&E's verified statement is enclosed.

**Insurance:** Enclosed is a letter of self-insurance and certificates of insurance verifying SDG&E's compliance with the insurance requirements specified in Section 12 of Exhibit "A."

**Charter Section 225:** SDG&E falls under the exemption for publicly traded companies described in San Diego Charter section 225. SDG&E is a California corporation wholly owned by Enova Corporation, which is wholly owned by Sempra Energy, a California-based energy-services holding company publicly traded on the New York Stock Exchange (NYSE:SRE). SDG&E files an annual report (10-K) as part of Sempra Energy's filing with the Securities and Exchange Commission.

**Proposed Franchise Ordinance:** Enclosed is a proposed redline of the gas franchise ordinance. These provisos are required to conform to applicable law, regulatory rules and policies, and good and prudent utility practices and procedures. SDG&E's bid submission includes the modifications to the ordinance noted within this submission.

Lastly, please remember that if San Diego were to select another bidder, that bidder would have to (1) obtain a Certificate of Public Convenience and Necessity from the CPUC; (2) pay SDG&E its fair market value for the billions of dollars of gas infrastructure that SDG&E owns; (3) build and pay for infrastructure to separate SDG&E's integrated gas system from its new systems and (4) undergo a potentially time-consuming condemnation process.

In this time of uncertainty in the middle of the COVID-19 crisis, with so many businesses requiring people to work from home, energy reliability and consistency is more important than ever.

We look forward to continuing to provide exceptional service to the City of San Diego under the new Gas Franchise.

Sincerely,

Caroline A. Winn
Chief Executive Officer
San Diego Gas & Electric Company

Caroline Winn
Chief Executive Officer

P.O. Box 129831
San Diego, CA 92112

Tel: (858) 650-6175
CWinn@sdge.com

**VERIFIED STATEMENT OF GOVERNMENTAL APPROVALS FOR GAS FRANCHISE**

October 23, 2020

Dear City Clerk, Mayor Faulconer and Honorable Members of the City Council:

San Diego Gas & Electric Company (SDG&E) verifies that it has the necessary governmental approvals, including, without limitation, a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission or its equivalent, for the purposes of exercising rights granted by the franchise, as of the date of this statement.

Sincerely,

Caroline A. Winn
Chief Executive Officer
San Diego Gas & Electric Company

Loida C. Morrison
Insurance & Risk Advisory Manager

Sempra Energy
Insurance & Risk Advisory
488 8th Avenue, HQ06
San Diego, CA 92101-3017

insurance@sempra.com

October 19, 2020

City of San Diego
Attn: City Clerk
202 C Street, MS2A
San Diego, CA 9211

***Re: City of San Diego Gas Franchise Ordinance***

To Whom It May Concern:

Please accept this letter as compliance with your request for evidence of self-insurance in accordance with the terms of the above-referenced gas franchise ordinance, as dictated under the terms of the ordinance, between San Diego Gas & Electric Company (***"SDG&E"***) and requestor. SDG&E hereby acknowledges that it is permissibly self-insured by the State of California and the following programs are in full force and effect:

| Type of Insurance | Type of Policy | Policy Period | Limit |
|---|---|---|---|
| Automobile Liability | Self-Insured | Continuous | $1,000,000 |
| Workers' Compensation | Self-Insured | Continuous | Statutory |

Attached are evidence of the certificates to self-insure for the above referenced coverages issued by the State of California Department of Industrial Relations and Department of Motor Vehicles.

Any claims resulting from SDG&E's operations may be referred to:

San Diego Gas & Electric Company
Attention: Jennifer Fernandez, Claims Manager
8315 Century Park Court
San Diego, CA 92123

Should you have any questions or require additional coverage information, please feel free to contact me.

By its duly authorized representative,

Loida C. Morrison

Loida C. Morrison
Insurance & Risk Advisory Manager

cc: Hollie Bierman, Sr. Counsel

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR

NUMBER 0133-B

# CERTIFICATE OF CONSENT TO SELF-INSURE

SAN DIEGO GAS & ELECTRIC COMPANY
(a California corporation)

THIS IS TO CERTIFY, That Subsidiary of SEMPRA ENERGY - Certificate No.: 0133 has complied with the requirements of the Director of Industrial Relations under the provisions of Sections 3700 to 3705, inclusive, of the Labor Code of the State of California and is hereby granted this Certificate of Consent to Self-Insure.

This certificate may be revoked at any time for good cause shown.*

EFFECTIVE:

THE 9TH DAY OF December, 19 52

MARK B. ASHCRAFT MANAGER

DEPARTMENT OF INDUSTRIAL RELATIONS
OF THE STATE OF CALIFORNIA

Stephen J. Smith
STEPHEN J SMITH DIRECTOR

* Revocation of Certificate.—"A certificate of consent to self-insure may be revoked by the Director of Industrial Relations at any time for good cause after a hearing. Good cause includes, among other things, the impairment of the solvency of such employer, the inability of the employer to fulfill his obligations, or the practice by such employer or his agent in charge of the administration of obligations under this division of any of the following: *(a)* Habitually and as a matter of practice and custom inducing claimants for compensation to accept less than the compensation due or making it necessary for them to resort to proceedings against the employer to secure the compensation due; *(b)* Discharging his compensation obligations in a dishonest manner: *(c)* Discharging his compensation obligations in such a manner as to cause injury to the public or those dealing with him." (Section 3702 of Labor Code.) The Certificate may be revoked for noncompliance with Title 8, California Administrative Code, Group 2—Administration of Self-Insurance.

FORM A-4-10 A

87 45547

California State Transportation Agency
**DEPARTMENT OF MOTOR VEHICLES**
P. O. BOX 942884
SACRAMENTO, CA 94284-0884
(916) 657-6520

GAVIN NEWSOM, Governor

April 7, 2020

**S.I. # 11**

San Diego Gas & Electric Company
488 8th Avenue, HQ06N1
San Diego, California 92101
Attention: Ms. Melissa Schoening

Dear San Diego Gas & Electric Company,

Your annual report/financial statements have been reviewed and the requirements for renewal of your self-insurance certificate have been met. Your self-insurance status is valid from May 1, 2020, through April 30, 2021.

Vehicle Code Section 16020 requires that every driver and every owner shall at all times be able to establish financial responsibility and shall at all times carry in the vehicle evidence of the form of financial responsibility in effect for the vehicle. A copy of your Certificate of Self-Insurance or a copy of this letter constitutes written evidence of financial responsibility and should be placed in each of your affected vehicles.

If you have any questions or need further information, please call the administrative staff at (916) 657-6520.

Sincerely,

George Torres, Unit Manager
Financial Responsibility Unit

STATE OF CALIFORNIA
DMV
DEPARTMENT OF MOTOR VEHICLES
*A Public Service Agency*

# CERTIFICATE OF SELF-INSURANCE

This is to certify that:

San Diego Gas & Electric Co
NAME OF SELF-INSURER

488 8th Ave, HQ06N1 San Diego, California 92101
ADDRESS, CITY, STATE, ZIP

has been approved as a Self-Insurer under the California Compulsory Financial Responsibility Law and assigned Self-Insurance # 11 pursuant to Section 16053 of the *California Vehicle Code* for the period May 1, 2020 through April 30, 2021.

MANAGER
Financial Responsibility Unit
Department of Motor Vehicles

SR 27 (REV. 10/99) UH

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/20/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
MARSH RISK & INSURANCE SERVICES
FOUR EMBARCADERO CENTER, SUITE 1100
CALIFORNIA LICENSE NO. 0437153
SAN FRANCISCO, CA 94111
Attn: Seattle.Certrequest@marsh.com / Fax: 212-948-0507
CN101763283-STND-GAWU-20-21 SDGE

CONTACT NAME:
PHONE (A/C, No, Ext): FAX (A/C, No):
E-MAIL ADDRESS:

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A : Everest National Insurance Co | 10120 |
| INSURER B : Associated Electric & Gas Ins Services Ltd | |
| INSURER C : N/A | N/A |
| INSURER D : N/A | N/A |
| INSURER E : N/A | N/A |
| INSURER F : | |

INSURED
San Diego Gas & Electric Company
c/o Sempra Insurance & Risk Advisory
488 8th Ave, HQ06N1
San Diego, CA 92101

**COVERAGES** **CERTIFICATE NUMBER:** SEA-003690378-07 **REVISION NUMBER:** 47

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | X COMMERCIAL GENERAL LIABILITY | X | | EN4GL00088201 | 11/01/2020 | 11/01/2021 | EACH OCCURRENCE | $ 1,000,000 |
| | CLAIMS-MADE X OCCUR | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $ 100,000 |
| | | | | | | | MED EXP (Any one person) | $ 5,000 |
| | | | | | | | PERSONAL & ADV INJURY | $ 1,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | GENERAL AGGREGATE | $ 3,000,000 |
| | X POLICY PRO-JECT LOC | | | | | | PRODUCTS - COMP/OP AGG | $ 1,000,000 |
| | OTHER: | | | | | | | $ |
| | AUTOMOBILE LIABILITY | | | | | | COMBINED SINGLE LIMIT (Ea accident) | $ |
| | ANY AUTO | | | | | | BODILY INJURY (Per person) | $ |
| | OWNED AUTOS ONLY / SCHEDULED AUTOS | | | | | | BODILY INJURY (Per accident) | $ |
| | HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | | | | | | | $ |
| B | UMBRELLA LIAB OCCUR | X | | XL5112509P | 06/26/2020 | 06/26/2021 | EACH OCCURRENCE | $ 14,000,000 |
| | X EXCESS LIAB X CLAIMS-MADE | | | | | | AGGREGATE | $ 14,000,000 |
| | DED RETENTION $ | | | | | | | $ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY | | | | | | PER STATUTE OTH-ER | |
| | ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBEREXCLUDED? Y / N (Mandatory in NH) | N / A | | | | | E.L. EACH ACCIDENT | $ |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | E.L. DISEASE - EA EMPLOYEE | $ |
| | | | | | | | E.L. DISEASE - POLICY LIMIT | $ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
SAMPLE CERTIFICATE ONLY

Re: City of San Diego Gas Franchise Agreement
Employers Liability is included in the AEGIS Excess Liability program.
The City of San Diego and its officers, agents, departments, officials and employees are included as additional insured (except employers liability) where required by written contract. This insurance is primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured subject to policy terms and conditions. The above General Liability policy contains a cross liability clause.

**CERTIFICATE HOLDER**

City of San Diego
Attn: City Clerk
202 C Street, MS2A
San Diego, CA 92101

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh Risk & Insurance Services
Van Vong

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AEGIS

# ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED

Endorsement No. 8 Effective date of Endorsement June 26, 2020

Attached to and forming part of POLICY No. XL5112509P

NAMED INSURED: Sempra Energy

It is understood and agreed that this POLICY is hereby amended as indicated. All other terms and conditions of this POLICY remain unchanged.

**ADDITIONAL INSUREDS - BLANKET BASIS**
**(CERTIFICATE HOLDERS)**

Any person or organization to whom a Certificate of Insurance has been issued with respect to this POLICY is included as an additional INSURED under the POLICY, but only if and to the extent the NAMED INSURED has agreed in writing prior to an OCCURRENCE to provide insurance to such person or organization. The coverage afforded the additional INSURED is subject to the terms, exclusions and conditions of this POLICY, including the Limits of Liability, and is further limited to the amount required by the prior written agreement with the NAMED INSURED.

Notwithstanding the foregoing, the following shall not be an additional INSURED under this POLICY:

(a) any organization acquired or formed by the NAMED INSURED after the inception of the POLICY PERIOD;

(b) where such other person or organization has assumed the liability of any other INSURED under contract; or

(c) where such other person or organization is engaged in a JOINT VENTURE with the NAMED INSURED in which the NAMED INSURED is not the operator or managing partner.

Signature of Authorized Representative

AEGIS

# ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED

Endorsement No. 7 Effective date of Endorsement June 26, 2020

Attached to and forming part of POLICY No. XL5112509P

NAMED INSURED: Sempra Energy

It is understood and agreed that this POLICY is hereby amended as indicated. All other terms and conditions of this POLICY remain unchanged.

**PRIMARY INSURANCE ENDORSEMENT**
**(AMENDED CONDITION (H) OTHER INSURANCE)**

Section IV., Conditions, (H) *Other Insurance* is deleted in its entirety and replaced by the following:

(H) *Other Insurance*

If other valid and collectible insurance with any other insurer, whether such insurance is issued before, concurrent with, or after inception of this POLICY, is available to the INSURED covering a CLAIM also covered by this POLICY, other than insurance that is issued specifically as insurance in excess of the insurance afforded by this POLICY, this POLICY shall be in excess of and shall not contribute with such other insurance.

Provided, however, that if the NAMED INSURED has agreed in writing prior to an OCCURRENCE to provide insurance to any person or organization (and such person or organization otherwise qualifies as an INSURED under Definition (L)) and such writing requires the insurance provided by this POLICY to be primary, then the insurance provided by this POLICY shall be primary for such INSURED up to a limit of $1,000,000 or up to the amount required by such writing.
Nothing herein shall be construed to make this POLICY subject to the terms of other insurance.

Nothing in this Endorsement shall reinstate, increase or in any way expand the COMPANY'S Limits of Liability as set forth in Section I (B) of the POLICY.

Signature of Authorized Representative

(J) *Subrogation*

(1) The COMPANY shall have no right of recovery against any person or organization with respect to any OCCURRENCE to the extent that the INSURED has agreed with such person or organization before the OCCURRENCE to:

(a) waive its right of recovery against such person or organization; or

(b) reimburse such person or organization for the cost attributable to such person's or organization's liability for any OCCURRENCE caused in whole or in part by such person or organization.

(2) Inasmuch as this POLICY is excess insurance, the INSURED'S right of recovery against any person or organization cannot be exclusively subrogated to the COMPANY. It is, therefore, understood and agreed that in case of any payment hereunder, the COMPANY will act in concert with all other interests concerned, (including the INSURED'S) in the exercise of such rights of recovery. The apportioning of any amount which may be so recovered shall follow the principle that any interest (including the INSURED'S) which has paid an amount over and above any payment hereunder, shall first be reimbursed up to the amount paid by it; the COMPANY is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interests (including the INSURED'S) of which this coverage is in excess are entitled to claim the residue, if any. Expenses necessary to the recovery of any such amounts shall be apportioned between the interests concerned (including the INSURED'S), in the proportion of their respective recoveries as finally settled.

AEGIS

# ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED

Endorsement No. 51 Effective date of Endorsement June 26, 2020

Attached to and forming part of POLICY No. XL5112509P

NAMED INSURED: Sempra Energy

It is understood and agreed that this POLICY is hereby amended as indicated. All other terms and conditions of this POLICY remain unchanged.

**CONDITION (Q) CANCELLATION**

Condition (Q) *Cancellation,* is replaced by the following:

(Q) *Cancellation*

This POLICY may be cancelled:

(1) at any time by the NAMED INSURED by mailing written notice to the COMPANY stating when thereafter cancellation shall be effective; or

(2) at any time by the COMPANY:

(a) by mailing written notice to the NAMED INSURED stating when, not less than ninety (90) days from the date notice was mailed, cancellation shall be effective; except, in the event of cancellation for non-payment of premiums, in which event such cancellation shall become effective ten (10) days after the notice was mailed.

(b) by mailing written notice to any person or organization wherein such notice is required by contract or written agreement with the NAMED INSURED stating when, not less than thirty (30) days from the date notice was mailed, cancellation shall be effective; except, in the event of cancellation for non-payment of premiums, in which event such cancellation shall become effective ten (10) days after the notice was mailed.

Proof of mailing of notice to the respective addresses in Items 7 and 8 of the Declarations and to the respective addresses of persons or organizations provided by the NAMED INSURED to the COMPANY in accordance with paragraph (2) (b) above, shall be sufficient proof of notice and the POLICY PERIOD shall end on the effective date and hour of cancellation stated in the notice. Delivery of such notice either by the NAMED INSURED or the COMPANY shall be equivalent to mailing.

The City of SAN DIEGO

# Invitation to Bid

NOTICE INVITING BIDS FOR A FRANCHISE TO CONSTRUCT, MAINTAIN, AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS IN THE STREETS OF THE CITY OF SAN DIEGO.

NOTICE IS HEREBY GIVEN THAT PURSUANT TO SAN DIEGO CITY CHARTER SECTION 103, SEALED BIDS WILL BE RECEIVED FOR A FRANCHISE TO CONSTRUCT, MAINTAIN, AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS IN THE STREETS OF THE CITY OF SAN DIEGO.

TIME AND PLACE FOR FILING AND OPENING OF BIDS. Each bid, together with an irrevocable letter of credit to secure the Bid Amount, as set forth below, must be submitted in a sealed envelope, addressed to the City Clerk of the City of San Diego, with envelope and bid clearly marked "Bid for a franchise to construct, maintain, and use pipes and appurtenances for transmitting and distributing gas in the streets of the City of San Diego." Bids must be submitted to the City Clerk, up to but not later than **5:00 p.m. on October 23, 2020,** the Closing Date, by one of two options: (1) mailing the bid with proof of delivery to the City Clerk, 202 "C" Street, MS 2A, San Diego, California, 92101, so it is received by the Closing Date; or (2) calling the Office of the City Clerk at (619) 533-4000 to request an in-person appointment to drop off the bid on a specific date and time before the Closing Date at the entrance to the City Administration Building, 202 "C" Street, San Diego, CA 92101. The phone call requesting an appointment must be received at least seventy-two (72) hours prior to the Closing Date.

After the Closing Date, the bids shall remain sealed in the Office of the City Clerk until they are presented to the City Council at a publicly noticed open session meeting on a date and time to be determined by the City. On the designated date and time, the City Council or its designee will, in open session, open and publicly announce the bidding party and amount of all bids. Any bid containing exceptions shall be considered nonresponsive.

The franchise may be awarded by introduction and adoption of an ordinance in the form specified as either Exhibit "A" or "B" attached hereto. The ordinance may be introduced immediately after the bids are publicly opened and announced. The adoption of the ordinance and award of the franchise shall occur at a second City Council meeting, pursuant to San Diego Charter section 275, after the conditions of the award are met. Form A is for bidders who possess a franchise to provide gas service for lighting acquired under Section 19 of Article XI of the California Constitution as the provision

existed prior to its amendment on October 10, 1911, and Form B is for bidders who do not possess such a "constitutional franchise" for lighting. The ordinance will, if adopted, name as Grantee the responsible person, firm, or corporation (collectively referred to as "person") who shall make the highest bid for the franchise in an amount equal to at least the Minimum Bid of $10,000,000 (ten million dollars) as structured and provided in this Notice of Invitation to Bid (Notice); provided that at the time of the opening and declaration of bids, any responsible person present or represented may bid for the franchise a sum no less than ten percent (10%) above the highest sealed bid, and any bid so made may be raised not less than ten percent (10%) by any other responsible bidder, and the bidding may so continue until the franchise shall be struck off at that Bid Amount, sold and awarded by the City Council to the highest bidder as provided by law.

The successful bidder shall pay the full Bid Amount, including the Minimum Bid, to the City in one of two ways: (1) the entire Bid Amount shall be paid in United States dollars by wire transfer acceptable to the City; or (2) no less than ten percent (10%) of the Bid Amount, including the Minimum Bid, shall be paid in United States dollars by wire transfer acceptable to the City, with the remaining balance of the Bid Amount delivered and structured as nine (9) interest-bearing promissory notes in a form acceptable to the City, as set forth below, secured by an irrevocable letter of credit from a bank acceptable to the City. If option 1 is chosen, there shall be a 12.5% discount applied to the Minimum Bid amount at the time of payment; therefore, the Minimum

Bid amount due shall be $8,750,000 (eight million seven hundred-fifty thousand dollars). Any amount bid above the Minimum Bid must be paid in full as part of the wire transfer. The letter of credit required to be submitted with the bid shall be for the entire Minimum Bid amount plus any additional amount bid, with no discount. For purposes of evaluating bids between multiple bidders who select different payment options, the City will apply a 12.5% discount to all Minimum Bid amounts.

The City shall provide wire transfer instructions to the successful bidder within forty-eight (48) business hours after the successful bidder is identified. The successful bidder shall wire the Bid Amount selected from the options above to the City within forty-eight (48) business hours after receiving the wire transfer instructions.

If the structured promissory note method is selected, the City requires a minimum credit rating for the issuing financial institutions of the letter of credit of the "A" category or better for its senior unsecured debt, or equivalent. If at any point during the term of the franchise, 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 the successful bidder 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 replacing the letter of credit shall be the responsibility of the successful bidder. The letter of credit shall provide that the City may unilaterally draw on the letter of credit to fulfill any obligation not paid by the Grantee when due.

The promissory notes and irrevocable letter of credit shall be delivered with the bid; however, each of the nine (9) promissory notes taken together shall provide for a succession of nine (9) annual maturity dates beginning on the first anniversary of the term and ending on the tenth anniversary, and shall not be due and payable to the City until the maturity date of each installment on the note, except as provided below. The maturity dates of the irrevocably secured promissory note installments shall be the annual anniversary date after each successive year following the effective date of the franchise. Each successive promissory note installment shall be in nine (9) equal principal amounts plus interest, calculated on an actual/actual basis at the annual rate of three and thirty-eight one hundredths of a percent (3.38%), so the

Bid Amount is fully paid to the City by the first day of the eleventh year of the franchise term so long as the franchise remains effective to that date. If the franchise is not in effect on any future note maturity date due to early termination of the franchise by the City to acquire the gas distribution system, the notes shall be void, without right of refund for any amounts already paid. If the franchise is not in effect on any future note maturity date due to the Grantee's breach and forfeiture of the franchise, the maturity dates on all the future notes shall be advanced to the date of forfeiture and the principal amount of all such notes will be immediately due and payable to the City.

The Bid Amount, and any interest thereon, is for the purpose of acquiring the franchise and shall be solely an obligation of the responsible person making the bid, 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 itself, and shall be paid and accepted upon the express condition that the successful bidder shall not at any time apply to or otherwise request from the California Public Utilities Commission to recover any portion of the Bid Amount, or interest thereon, from gas ratepayers in rates or surcharges. By submitting a bid under this Notice, the bidder acknowledges and agrees that the franchise and any previously paid portions of the Bid Amount will be forfeited if the Grantee or any successor ever applies to the California Public Utilities Commission or requests 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.

No sealed bid shall be considered unless all requirements in this Notice are met, including that the bid is accompanied by an irrevocable letter of credit to secure the Minimum Bid of $10,000,000 (ten million dollars) or some greater amount; and irrevocably secured promissory notes (if applicable). No condition of this Notice shall prevent the Grantee from paying cash in discharge of a promissory note at any time before its maturity date if the successful bidder so chooses, 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.

All bidders shall provide documentation necessary to satisfy the mandatory requirements for disclosure of business interests in San Diego Charter section 225.

The successful bidder shall file and maintain a surety bond in favor of the City, to be approved by the Council, in the sum of $30,000,000 (thirty million dollars) to guarantee that such bidder shall well and truly observe, fulfill, and perform each and every term and condition of such franchise, and that in the case of any breach of any condition of the franchise, the whole amount of the bond may be taken and deemed to be liquidated damages, and shall be recoverable from the principal and sureties upon such bond. The bond shall be filed with the Council within five (5) business days after the bids are opened and a high bidder identified.

Within the five (5) business days allowed for the delivery of the bond, the City may confirm the responsibility of the bidder, the acceptability of the promissory notes (if any) and letter of credit offered for the Bid Amount, payment of the Bid Amount, acceptability of the insurance required in Section 12 of Exhibits "A" and "B", and compliance with San Diego Charter section 225. If the apparent successful bidder fails to timely provide the required information or documents, the award of the franchise shall be set aside, any money paid therefor shall be forfeited, and the franchise shall, in the discretion of the Council, either be awarded to the second highest responsible bidder, if any, or re-advertised and offered for sale in the same manner provided in this Notice.

A responsible person within the meaning of this Notice shall be a financially responsible person who is capable and able to construct, maintain, and use pipes and appurtenances for transmitting and distributing gas in the streets of the City of San Diego, and fulfills all of the following criteria:

(a) Agrees in the bid to make payment of the Minimum Bid as described above, or some greater amount, and states which of the two payment methods is elected; and

(b) If the person does not currently hold a gas franchise from the City, the person shall demonstrate in the bid, to the reasonable satisfaction of the City Manager, the financial and operational capacity to furnish and maintain just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its employees, customers within the City, and the public within the City; and

(c) Agrees in the bid to commence franchise operations under one of the following two options, stating which option is elected:

(1) On January 18, 2021, including a verified statement attached to the bid stating that all necessary governmental approvals including, without limitation, a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission for the purposes of exercising rights granted by the franchise, will have been obtained by that date; or

(2) The person shall, within sixty (60) calendar days from the effective date of the franchise:

(A) diligently seek all necessary governmental approvals including, without limitation, a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission for the purposes of exercising rights granted by the franchise, and for approval of all surcharges upon customers in the City permitted by the franchise; and

(B) agree to negotiate in good faith a cooperative agreement acceptable to the City to be executed within sixty (60) calendar days to acquire, by condemnation or other lawful means, all or any part or portion of the existing property, facilities, equipment, or appurtenances located in, upon, over, along, across, and under any of the streets in the City, and elsewhere, which are used, useful, or necessary for operations in the transmission and distribution of gas, and for underground signal and communication facilities necessary for gas operations, to all customers inside and outside of the City, including real property interests in private or public property (collectively referred to as "Facilities"), and pay and indemnify the City for all costs of acquisition for the Facilities (without reservation or set-off of any kind), including, without limitation, attorneys' fees, consultant fees, expert fees, appraisal fees, mediation or alternative dispute resolution costs, appeal costs, and such other costs and compensation that may be determined by agreement with the owner of the Facilities, by order of the California Public Utilities Commission, or by the Courts of the State of California, without any right of refund after the monies have been spent, whether or not the Facilities are ultimately acquired; and deposit with the City the acquisition costs estimated by the City Manager, including additional increased estimated costs as determined necessary by the City Manager, who will work cooperatively and in good faith with the Grantee to acquire the Facilities and resolve any disputes over the acquisition costs, with any unspent deposit amount returned when the acquisition is complete, and with the ownership of the acquired Facilities to be transferred to the Grantee after acquisition and upon exhaustion of all rights of appeal. Failure to execute a cooperative agreement acceptable to the City within sixty (60) calendar days of the effective date of the franchise shall be grounds for rescission of the award, without recourse; and

(C) commence operations under the franchise within thirty (30) calendar days of obtaining the governmental approvals and acquisition of the Facilities;

Provided, however, if section (c)(2), above, is selected, and if governmental approvals described in (c)(2)(A) have not been obtained within two (2) years of the effective date of the franchise or if the Facilities described in (c)(2)(B) have not been acquired within three (3) years of the effective date of the franchise, then the City, in its sole discretion, may rescind the award of the franchise without recourse.

(d) Agree in the bid that, subject to applicable law and the terms of any collective bargaining agreement in force on the effective date of the franchise, the person so bidding will, as a condition of being awarded the franchise, retain and employ for two (2) years after the effective date all employees who had been employed for the previous one hundred eighty (180) days by the electrical or gas corporation holding the franchise immediately prior, and provide and pay no less than the wages, benefits, hours, and other terms and conditions of employment provided to these employees in the one hundred eighty (180) days prior to the effective date of the new franchise. This provision shall apply regardless of the status of the new Grantee, subject to applicable law, including the labor provisions of California Assembly Bill 1054 (California Public Utilities Code sections 854 and 854.2). In the event the bidding results in a change of control of the electrical or gas corporation holding the immediately prior franchise, it is the intent of this requirement to provide utility workers more protection and stability than would be afforded under Assembly Bill 1054, provided however, Assembly Bill 1054 shall apply in the event of a change in control if so determined by a court of competent jurisdiction or the California Public Utilities Commission.

Unless otherwise authorized herein, bidders who are considering submitting a bid in response to this Notice, or who submit a bid in response to this Notice, are prohibited from communicating with City staff directly, indirectly, or through an intermediary, about this Notice from the date this Notice is issued until a franchise is awarded.

Written questions and comments must be submitted to Lee Friedman, Attn: Gas/Electric Franchise, at lfriedman@sandiego.gov no later than **5:00 p.m. on October 5, 2020**. Only written communications relative to the solicitation shall be considered. All questions will be answered in writing. The City will post questions and answers without identification of the inquirer(s) to the City's webpage. No oral communications can be relied upon for this Notice. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this Notice.

The City may issue addenda to this Notice as necessary. All addenda are incorporated into the franchise. The bidder is responsible for determining whether addenda were issued prior to a bid submission. Failure to respond to or properly address addenda may result in rejection of a bid.

The City reserves the right to cancel this Notice at any time, and further reserves the right to reject submitted bids, without giving any reason for such action, at its sole discretion and without liability. Costs incurred by the bidder(s) as a result of preparing bids under this Notice shall be the sole responsibility of each bidder. The Notice creates or imposes no obligation upon the City to grant a franchise.

SDG&E addresses the City's proposal to incorporate the ITB into the Franchise in Section 22 below.

# EXHIBIT A

# GAS FRANCHISE

ORDINANCE NUMBER 0-_____(NEW SERIES)

DATE OF FINAL PASSAGE:_____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO GRANTING TO, 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 ~~ELECTRICITY~~ GAS SUITED FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES; AND (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 PROVIDING THE TERMS AND CONDITIONS OF THE FRANCHISE SO GRANTED.

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

**General Comments: SDG&E provides the below comments to the draft franchise ordinance in the event that SDG&E is selected as the winning bidder for the Franchise. SDG&E's comments reflect changes that must be implemented in order for SDG&E to enter into the Franchise. In addition, various provisions of the draft franchise ordinance must be revised to reflect that SDG&E presently operates the electric and gas franchises, has an existing authorization from the CPUC to operate, and has a property interest in the existing utility infrastructure. SDG&E is providing in-text comments in "track changes" format below.**

**Section 1. Definitions**

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

(a) "Grantee" means_____.

(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) "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, gas 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 California Constitution, the California Public Utilities Code, the California Labor Code, and orders and decisions of the CPUC and the Federal Energy Regulatory Commission.

(d) "Bid Amount" means [$X].~~the amount a responsible person agrees to pay to be awarded the Franchise, on terms set forth in the Invitation to Bid for the Franchise titled "Notice Inviting Bids for a Franchise to Construct, Maintain, and Use Pipes and Appurtenances for Transmitting and Distributing Gas in the Streets of the City of San Diego."~~

(e) "Books and Records" means any and all records, physical, digital, and electronically stored information, ~~of any account of Grantee,~~ including but not limited to records of income, expenditures, finance, charts, diagrams, ledgers, pictures, drawings, Geographic Information System (GIS) locational data, photographs, and notes, which relate to ~~Grantee's receipts, or~~ the placement, location, operation, and maintenance of Grantee's gas facilities in City streets, and any other records ~~deemed~~ that are relevant ~~by the City Manager or City Council~~ to enforcement of the Franchise.

(f) "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.

(g) "Commencement of Operations Date" means [insert date].~~the date on which Grantee obtains approval from the CPUC to exercise the Franchise rights by grant of a Certificate of Public Convenience and Necessity pursuant to California Public Utilities Code Division 1, Part 1, Chapter 5, Article 1.~~

(h) "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 said section existed prior to its amendment on October 10,

1911.

(i) "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.

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

(k) "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, or January 18, 2021, whichever is later.

(l) "Franchise" means the Franchise granted by the City Council to _____ by Ordinance No. 0-_____, pursuant to San Diego Charter sections 103, 103.1, 104, and 105.

(m) "Gas" means natural, bio, or artificial gas or a mixture of any of them.

(n) "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 have as subparts: (a) a differential surcharge of one percent (1.0 %) approved by Decision No. 80234; and (b) a further differential surcharge of three one hundredths of a percent (0.03%) authorized by CPUC Resolution No. E-3788.

~~"Good Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the gas 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.~~

(o) "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 the Federal Energy Regulatory Commission 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 (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.

(p) "Pipes and Appurtenances" means pipes, pipelines, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances, and, without limitation to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of the City, and used or useful in transmitting or distributing gas, and for underground signal and communication facilities necessary for gas operations, sometimes otherwise referred to as "facilities."

(q) "Streets" means the public freeways, highways, streets, ways, alleys and places as they now or may hereafter exist within the City.

**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; and (4) subject to Applicable Laws and the terms to Section 10 hereof, 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, local energy, energy justice, and climate equity objectives, including but not limited to the reduction of greenhouse gas emissions ~~to the fullest 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 energy storage, ~~and advancing the electrification of transportation,~~ is hereby granted to_____, a corporation organized and existing under and by virtue of the laws of the State of _____.

(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**

**Comments to Section 3**: The definition of "Commencement of Operations Date," and related provisions in this section, must be revised to the extent that SDG&E is the Grantee because SDG&E already has an existing authorization from CPUC to operate and thus, SDG&E does not need (and the CPUC will not issue) a new authorization. In addition, this section must address SDG&E's interests in the event the City terminates the Franchise before the end of the term for reasons other than those permitted by Section 14, including:

- recognizing SDG&E's property rights in the current utility infrastructure; and
- providing for a pro-rata refund of SDG&E's advanced payments and return of its surety bond.

Further, if the City anticipates terminating the Franchise before the end of the term, such as to municipalize the utility system, the City must disclose these plans so that SDG&E can better evaluate and make proposals regarding the Franchise.

(a) The right, privilege, and Franchise, subject to each and all of the terms and conditions contained in this Ordinance, is hereby granted to _____, a corporation organized and existing under and by virtue of the laws of the State of _____, for the term of twenty (20) years from and after the Commencement of Operations Date.~~ The City will issue a letter confirming the Commencement of Operations Date when the CPUC issues a Certificate of Public Convenience and Necessity permitting Grantee to exercise the rights in the Franchise. The letter will also contain the date the Franchise terminates.~~

(b) All associated agreements, rights and obligations under the Franchise shall also expire at the expiration or earlier termination of the Franchise, except for the completion and discharge of obligations or payments required hereunder and accrued during the term. The bond and insurance requirements shall remain in effect until all obligations or payments required by the Franchise or related documents are completed, and any disputes are resolved. The bond shall remain in

effect until the City issues a letter to Grantee acknowledging discharge of all required obligations and payments.

**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. 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.

(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 to bid for and gain award of the Franchise.

(c) Prior to the grant of the Franchise, the consideration for the gas franchise was three percent (3.0%) of Gross Receipts in the immediately preceding franchise. Of this amount, CPUC Decision No. 80234 and Resolution No. E-3788 together authorized a one and three one hundredths of a percent (1.03%) Gas Franchise Fee Surcharge on gas customers located in the City. Grantee shall by the Franchise be authorized to continue such gas surcharges authorized by Decision No. 80234 and Resolution No. E-3788, or if necessary to seek equivalent surcharges from the CPUC, provided that Grantee shall not without the City's written consent seek approval of additional gas surcharges as a result of the grant of the Franchise in any amount in excess of the one and three one hundredths of a percent (1.03%) approved by the CPUC as the Gas Franchise Fee Surcharge prior to the Effective Date.

(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 gas surcharges) in a gas franchise agreement, Grantee shall notify the City of such agreement in writing within ten (10) 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.

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

**Comments to Section 5**: This section must be revised as follows:

- The definition of "Books and Records," and related provisions in this section regarding the City's access to Books and Records, must be revised to exclude access to certain of the Grantee's records, including those that are legally privileged, those that are restricted or prohibited from disclosure by Applicable Law or third-party agreements, and those that are otherwise highly confidential and proprietary.
- The City must be prohibited from using the Grantee's Books and Records for any purposes other than for enforcement of the Franchise.
- The City also must be required to take steps to protect the Grantee's confidential and proprietary information against unauthorized disclosures and uses.

In addition, subsection (i) implicates California liquidated damages law, which is discussed in SDG&E's comments to Sections 16 and 22 below.

(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 City Auditor, one copy, of a statement signed ~~under penalty of perjury of~~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 2021, 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.

(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). 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 Section 5(a). Grantee shall produce its Books and Records no later than ~~five~~ ten (~~5~~10) 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) Grantee shall file with the City Manager a copy of its annual report to the CPUC, or its successor in authority, as soon as practicable after the original report has been filed with the CPUC, or its successor in authority.

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

(i) In addition to the remedies provided in Section 14, 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.

(j) ~~If the Commencement of Operations Date is later than the Effective Date and Grantee has no recorded prior year Gross Receipts, then Grantee shall pay the Gross Receipts as required in Sections 5(b) through (d) at the next required quarterly interval based on the prior year's receipts from the prior gas corporation. If Section 5(j) is applicable to Grantee, such quarterly payments required by Sections 5(b) through (d) shall be based on receipts of a prior gas corporation only to the extent necessary to establish the prior year Gross Receipts under Section 5(a), and Grantee's own monthly Gross Receipts shall proportionately begin to control determination of prior year Gross Receipts during Grantee's first full year of earning receipts. In such event, Grantee shall provide the City with monthly statements of Gross Receipts until Grantee has a full year of its own operating receipts, and thereafter shall provide the City its Gross Receipts annually according to Section 5(a). Notwithstanding the actual Commencement of Operations Date, Grantee shall make payments to the City in advance based on prior year receipts according to the schedule provided in Section 5.~~

**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. The City Auditor shall nominate one appointee selected by the City Council. No nominee with a conflict of interest shall be selected for the Review Committee. If the Review Committee is a citizens' committee, it shall be formed pursuant to San Diego Charter section 43(b) and Council Policy 000-13. If San Diego Charter section 43(b) is applicable, 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.

(b) The City shall use a competitive process to retain a qualified, independent, third-party auditor every two (2) years. The independent auditor shall perform an audit ~~a complete review~~ 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 a representative Vice President 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 reasonably cooperate with the independent audit in any way, 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 to the City Council within one hundred eighty (180) calendar days of the end of each two-year period of the Franchise term.

(c) Within ~~five~~ ten (~~5~~10) business days, Grantee shall comply and cooperate with all requests made by the City Manager, City Attorney, independent auditor, and City Auditor, or designees, which ~~the requestors may deem~~is germane to verifying Grantee's compliance with the Franchise conditions. Upon request, Grantee shall provide to the City Manager, City Attorney, independent auditor, or City Auditor, or designees, all Books and Records required to be made available to the City under the Franchise, within ~~five~~ ten (~~5~~10) business days. IfGrantee contends that legal restrictions prevent compliance with any part of the request, Grantee must provide a specific ~~and detailed~~ 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.

(d) The independent auditor shall be provided access to interview the City and employees of Grantee designated by Grantee as persons most knowledgeable ~~personnel~~ regarding any subject which ~~the auditor in its sole discretion deems~~is relevant to confirming Grantee's compliance with the Franchise, within ~~five~~ ten (~~5~~10) business days after any request.

(e) The procedures provided in Section 6 shall be in addition to, and not in lieu of, City rights 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.

**Section 7. Compliance with Laws**

**Comments to Section 7**: The definition of "Good Utility Practice," and the related provisions in this section, are not consistent with Applicable Law and practical concerns. SDG&E is willing to discuss these provisions with the City.

(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 Laws 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 Section 9 and any effective Master Administrative Permit granted pursuant thereto.

~~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**

**Comments to Section 8**: The City must disclose all known and planned projects that will cause utility removals and relocations in the near future and over the term, so that the Grantee can better evaluate and make proposals regarding the franchise. The City also must disclose all plans, analyses, cost and financial estimates, and budgets regarding the anticipated utility removals and relocations. With respect to the Pure Water litigation, no aspect of this ordinance can impact the positions of the parties in that litigation in any way.

(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 begin the physical field construction of changing the location of all conflicting facilities or equipment. The request in writing by the City Manager referred to in the prior sentence shall include final designs by the City showing where such conflicts exist. Grantee shall proceed promptly to complete such required work.

(b) Irrespective of any other provision of the Franchise, Grantee's right to Construct, Maintain, and Use, or remove, Pipes and Appurtenances shall be subject at all times to the right of the City, in the exercise of its municipal authority and police power, to require the removal or relocation of Pipes and Appurtenances at the sole cost and expense of Grantee. Relocation of Grantee's facilities located in the Streets at its cost to accommodate City water projects is currently the subject matter of a lawsuit in the Superior Court of California. Grantee and City shall affirmatively comply with the final ruling of the courts in this matter, subject to changes in Applicable Law, and such final ruling shall be incorporated into this Franchise.~~On this absolute reservation, no exception of any kind shall pass to Grantee, including that there shall be no exception for preexisting Grantee construction, for City reconfiguration or vacation of Streets in a previously-served area, for such reconfigurations or vacations being related to development of adjoining property, for the City allegedly acting in a proprietary capacity with respect to water or wastewater service, or for any other contention of exception. If Grantee has no permanent easement and the conflicting Grantee facilities are in a City Street in a service area previously and continuously served by a gas corporation as defined in California Public Utilities Code section 222, and if the City thereafter causes a Street to be used differently for any City uses (including water, wastewater, reclaimed water, storm water, thermal water, communication, or any other City facilities, whether or not previously existing), or causes such Streets to be removed, realigned, widened, narrowed, vacated, regraded, or replaced in such previously-served area, then without any exception and notwithstanding any doctrine of distinction, the cost of relocating or removing Grantee's facilities shall be at Grantee's sole expense.~~

~~In the event that Grantee shall ever assert any exception to its obligations with respect to the City reserved rights provided in Section 8, the City shall not be required to pay any costs for resolving conflicts associated with the presence of Grantee's facilities while any dispute is pending. Notwithstanding any Grantee dispute under Section 8, Grantee shall proceed as provided in Section 8(a) to promptly perform and pay any and all costs of relocations required by Section 8, and the City shall not be required under any circumstances to contribute any amount under reservation of right or otherwise, toward the prompt resolution of such conflicts. It is the express intent of Section 8 that no exceptions shall~~

~~be available to the duty of Grantee to pay all costs, and to promptly and without any conditions not provided herein perform relocation or removal of its facilities that conflict with the City's primary reserved rights to the uses of Streets. The City shall not be required to share Grantee facility relocation costs while any dispute is pending.~~

(c) In the event the City directs Grantee to relocate its conflicting facilities and Grantee believes it cannot reasonably meet the schedule required by Section 8(a), Grantee may apply in writing to the City Manager for a revised schedule. The application shall document the facts as to why Grantee is unable to meet the schedule as required by Section 8(a) and the date on which work would begin. The parties shall cooperate in good faith respecting such applications, and the City's denial of relocation schedule adjustment requests shall not be unreasonable and shall consider the scope and complexity of any project. The City Manager may adjust the schedule provided in Section 8(a) by written instruction to Grantee, and Grantee shall meet the adjusted schedule.

**Section 9. Master Administrative Permit**

**Comments to Section 9**: This section must be revised as follows:

- To protect against any disruption or other impact on gas services, the process for applying to and obtaining the MAP must be ministerial in nature and not prevent or delay the Grantee from accessing its Facilities.
- The City must be limited in its ability to ask for records on the Grantee's Facilities to only those that are necessary for specific projects or work in the Streets.
- The City must be prohibited from using any records obtained from the Grantee pursuant to this section for any purposes other than for enforcement of the MAP.
- The City also must be required to take steps to protect any records obtained from the Grantee pursuant to this section against unauthorized disclosures and uses.
- The City also must be required to coordinate with the Grantee with respect to projects and works in the Streets to ensure the protection of the Grantee's Facilities.

In addition, to the extent that SDG&E is the Grantee, this section must be revised to reflect that SDG&E has certain rights in easement or in fee, which are not controlled by the Franchise. SDG&E and the City further should discuss what value is added by the MAP Coordinating Committee.

(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 a City issued Master Administrative Permit (MAP). The MAP shall approve Grantee's administrative practices throughout the Streets while exercising the Franchise rights; however, the MAP 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. The MAP is a ministerial permit and shall prescribe the categories of work that Grantee may perform without additional specific permits, and the categories of work which will require additional specific permits. The MAP 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 in coordination with other utilities using the Streets. Grantee shall apply for a MAP within thirty (30) calendar days after the Effective Date, and the initial MAP shall expire on the second anniversary after the Effective Date. Each successive MAP shall have a term of two (2) years. Grantee shall not be charged a fee to obtain the MAP. The MAP 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 MAP, the provisions of the Franchise shall control, and the conflicting provisions of the MAP shall be void.

(b) The MAP shall comply with the general terms attached as Attachment 2, and any additional terms established by the City Manager. Subject to Applicable Laws and the requirements of the Franchise, the City Manager may take due consideration of Grantee's requests regarding provisions of each biennial MAP, 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 a MAP and if Grantee's application is complete. The City Manager shall grant a MAP within thirty (30) calendar days after Grantee's complete application. The application shall contain sufficient information for the City Manager to assure material compliance with ~~all~~ the requirements in the Franchise, including Section 9, and the general terms in Attachment 2. Grantee shall apply for each successive MAP not less than one hundred eighty (180) calendar days prior to expiration of the prior MAP. Any MAP granted by the City Manager shall contain the following conditions:

(1) Upon written request by the City Engineer or designee, Grantee shall provide to the City within ~~ten~~ fifteen (~~10~~15) calendar days, and immediately in the case of a City Manager-declared emergency, Geographic Information System (GIS) coordinate data or other locational records as the City ~~in its sole discretion may deem~~reasonably determines is necessary ~~appropriate~~ for the City's requirements. ~~The records provided in response to the City's request shall describe Grantee's facilities in geographical areas of any size that the City determines necessary to coordinate with the City's uses or any other lawful uses of the Streets throughout the City.~~

(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 in 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~~confidentially with at least as much care as the City treats its own confidential information~~; 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 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 a specific and detailed legal basis, including applicable case law or other law, that ~~clearly~~reasonably establishes the requested information is exempt from disclosure. If, at the time the documents are provided to the City, Grantee does not provide a specific and detailed 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~~, and Grantee shall hold the City, its elected officials, officers, and employees harmless for release of this information~~. 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. The City shall make reasonable efforts to notify Grantee if the City receives a CPRA request for Grantee's confidential information.~~It shall be Grantee's obligation to defend, at Grantee's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at Grantee's request. Furthermore, Grantee 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 Grantee's request. Nothing in the Franchise creates any obligation on the part of the City to notify Grantee or obtain Grantee's approval or consent before releasing information subject to disclosure under the CPRA, in response to a CPRA request. This defense and indemnity requirement supplements but does not replace the general indemnity requirement in Section 12.~~

(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 a MAP may be written or construed to reduce or modify the City's uses of the Streets ~~modify that explicit reservation which shall be controlling at all times~~.

~~With respect to any and all City work in the Streets, the costs of protecting Grantee's facilities shall be at Grantee's sole expense. The City and its contractors shall not be required to pay any amount for the services of any personnel, stand-by safety engineers, or similar service for the protection of Grantee's facilities which may be necessary for any City- controlled excavation or other work. Upon written request from the City or an authorized agent, Grantee shall within five (5) 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, and Grantee shall be solely responsible for all related costs.~~

(3) In its application for a MAP, Grantee shall submit to the City a list of projects and activities Grantee plans to perform in the two years covered by the MAP (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; and (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. The Two-Year Plan shall constitute the MAP understanding between the City and Grantee as to those activities anticipated to require coordination with the City and other utilities. In the event of 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. Grantee shall promptly inform the City if its plans materially change under any Two-Year plan ~~request such changes when Grantee discovers that changes are needed~~.

(4) 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 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 Engineer 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 which are not granted by the City, and ~~shall jointly~~ will endeavor to encourage participation of these entities in the Coordinating Committee so that the activities and projects of all entities using the Streets may be efficiently communicated and scheduled 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 Local Materials Sale and Purchase Goals**

(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, and any revised or successive climate plan. Subject to Applicable Law, Grantee shall ~~reasonably~~ endeavor to 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 increasing electrification in the City. ~~Subject to Applicable Law, Grantee shall permit distributed energy resources to deliver all practical excess amounts of electric energy and capacity not used at the sites of distributed generation located within the City to be made available to other customers of Grantee and/or to any operating community choice aggregation program established by the City.~~ Grantee accepts that the City will support policies supportive of renewable fueled electricity~~, and Grantee will not unreasonably oppose~~

~~or obstruct such efforts without good public cause which shall be at Grantee's sole discretion~~. The City recognizes the challenges of transitioning to these preferred resources. ~~Nonetheless, Grantee shall cooperate with the City in good faith toward fulfillment of these objectives in a Joint Policies Guide as provided in Section 10(c), on a timetable which meets the City's Climate 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 the improvement of environmental and social justice in the provision of gas service. Grantee shall recognize and support the City's 2019 Climate Equity Index~~ and any subsequent versions or revisions~~. Grantee shall use best 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~~endeavor to minimize service costs to City residents and businesses where practicable, to provide opportunities to low and moderate income customers for them to reduce energy bills through energy efficiency, to ~~minimize~~reduce cost volatility, and to improve access to energy services that empower low and moderate income residents and disadvantaged businesses through efficiency, conservation, and renewable energy~~, including through the mechanism of on-bill financing~~.

(c) *Joint Policies Guide*. During the first year after the Effective Date, Grantee and the City Manager shall meet and confer for the negotiation and adoption of a Joint Policies Guide regarding the subjects provided in Sections 10(a) and (b). The Joint Policies Guide shall be signed by Grantee's responsible officer and presented to the City Council for adoption within the first year after the Effective Date. The Joint Policies Guide shall be an aspirational document providing for Grantee's points of alignment and cooperation with the City's policy objectives provided in Sections 10(a) and (b), including the identification of barriers. Grantee's cooperation with Section 10 shall be reported in the periodic

compliance report provided in Section 6. In negotiating the Joint Policies Guide, the parties shall take 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~~, or why Grantee may need to take a position before the Legislature or CPUC that is tempered with respect to City policy objectives~~. The Joint Policies Guide 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 generation, and evolving technology~~, and transportation electrification~~ programs and grants that are made available by the CPUC and California Energy Commission. The Joint Policies Guide shall describe Grantee's ~~intended best~~planned efforts to make its State-authorized energy efficiency, distributed energy, and emerging technology~~ (including Electric Program Investment Charge opportunities, as applicable), and transportation electrification~~ program funding available to the City (and to qualifying customers in the City and its other customers) according to orders of the Commission and subject to Applicable Law. ~~Where Commission orders require or invite Grantee to submit proposals to be approved for the expenditure of said program funds, the Joint Policies Guide shall indicate the available programs and how Grantee's proposals will give due consideration to the City's climate action goals and to City's position and ability to partner with Grantee toward fulfillment of those goals, including through building codes, building energy benchmarking, deployment of customer controlled energy storage, microgrids, and electric transportation on City Streets.~~

(d) *Sale and Purchasing of Local Materials*. Grantee shall use ~~good best faith~~reasonable efforts to ~~arrange and~~ operate its business in a manner such that ~~both the retail selling and~~ the majority of purchasing of ~~all~~ materials and supplies used in connection with its business occurs at addresses located in the City of San Diego~~, and that all sales tax from Grantee's material purchases are collected and paid upon retail sales transactions occurring within City boundaries~~.

(e) The provisions in Sections 10(a) through (d) are aspirational goals but shall not be binding legal agreements giving rise to remedies provided in Section 14. The provisions shall be construed only as an indication of Grantee's good faith commitment to the City's policies and preferences and for no other reason.

**Section 11. City Use of Grantee Real Property**

**Comments to Section 11**: This section must be revised as follows:

- This section contains provisions that result in a Constitutional taking of the Grantee's property, or improper impairment of the Grantee's contracts and property rights, and must be revised to avoid such results.
- This section must specify the metrics and process for determining whether Grantee property qualifies as "unused or excess Grantee real property" and must include Grantee's input.
- The section must make clear that the following are excluded from the City's use: Grantee property not held in fee; Grantee property outside of the City's boundaries; and Grantee property related to other jurisdictions.
- The Grantee must be reasonably compensated for the City's use of its property and must be protected from liability arising from the City's use.

In addition, to the extent that SDG&E is the Grantee, if the City has identified any SDG&E properties that it is potentially interested in using, the City must disclose these properties so that SDG&E can better evaluate and make proposals regarding the Franchise.

Subject to Applicable Law, including California Public Utilities Code section 851 and regulations or orders of the CPUC, Federal Energy Regulatory Commission, and Grantee's own safety and security regulations, the City shall have the right to request to lease vacant, unused or excess property of Grantee within the City geographic limits, at fair market value rent, and subject at all times to the prior approval of the Commission and at the discretion of Grantee ~~use any unused or excess Grantee real property for municipal purposes without cost of rent~~. Such City uses shall not be unreasonable or incompatible with Grantee's uses of the property as determined in Grantee's sole discretion. The City's uses may be of temporary or continuing nature and subject at all times to Grantee's right of eviction upon reasonable notice or for cause if at any time the City uses become incompatible with Grantee's uses. Grantee shall reasonably cooperate with the City at the City's request to use such excess property, including applying to the CPUC pursuant to California Public Utilities Code section 851 for authorization of such use. The City shall pay Grantee all administrative costs of such use ~~but free of rent~~. The City's uses of Grantee's property shall meet Grantee's general requirements for use of excess or unused Grantee property and shall be subject to all ~~reasonable~~ usual requirements of Grantee with respect to other parties, including hold harmless and indemnification provisions in favor of Grantee. Section 11 is intended only to apply to compensation for the use of excess real property, not to other reasonable Grantee requirements, limitations, or exclusions. ~~The compensation for such use with no additional cost of rent is provided in the grant of the Franchise.~~

**Section 12. Indemnity, Defense, Insurance**

**Comments to Section 12**: If the Franchise continues to contain provisions that will place the Grantee in potential violation of federal, state or local law, this provision must be revised to indemnify the Grantee for costs of defense and any resulting penalties, fines or damages.

(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 subcontractor, anyone ~~directly or indirectly~~ employed by them~~, or anyone that they control~~), expense and liability (collectively, Claims)~~ of every kind, nature, and description (including incidental and consequential damages, court costs, 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 acts performed, rights exercised, or ~~rights or~~ privileges granted under the Franchise, by or to Grantee, any agent or ~~sub~~contractor of Grantee, anyone directly or indirectly employed by them, or anyone that they control. Grantee's duty to defend, indemnify, and hold harmless shall not include any ~~claims or liabilities~~Claims arising from the active negligence, sole negligence, or willful misconduct of the Indemnified Parties.

(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 performance of the Franchise by the Grantee, its agents, representatives, employees or subcontractors:

(1) Comprehensive general liability insurance naming the City, its officials, , employees, and agents as additional insureds from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out of or in any manner connected with Grantee's operation or performance under the Franchise in an amount not less than five million dollars ($5,000,000) each occurrence and five million dollars ($5,000,000) general aggregate.

(2) Automobile liability in an amount not less than one million dollars ($1,000,000) combined single -limit per accident for bodily injury and property damage covering owned, non-owned and hired vehicles.

(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 one million dollars ($1,000,000) per accident for bodily injury or disease.

(4) Excess liability or Umbrella liability insurance in an amount not less than ten million dollars ($10,000,000) per occurrence.

(c) Each insurance policy shall be endorsed to state that coverage is ~~shall not be suspended, voided or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to the City, and shall be~~ primary and not contributing to any other insurance or self-insurance maintained by the City.

(d) Not more frequently than every five (5) years, if in the reasonable opinion of City 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, which increase shall be on par with coverages required by the City for similar projects. Grantee shall furnish the City with certificates of insurance ~~and with original endorsements~~ 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.

(e) Grantee may fulfill the insurance obligations of Sections 12(b) through (d) by self-insurance. Grantee shall provide a certificate to the City evidencing the fulfillment of these requirements.

**Section 13. Repair Costs**

If Grantee causes damage as part of the exercise of its rights and privileges under the Franchise, Grantee shall repair all such damage to the ~~pay to the City on demand the cost of all repairs to City property made necessary by any of Grantee's operations under the Franchise, provided however, that Grantee may make repairs to~~ Streets, sidewalks, curbs and gutters itself at its own cost in accordance with City specifications, rules, and regulations, provided that Grantee shall not be required to repair such Streets, sidewalks, curbs or gutters to a condition better than previously existed unless separately required by the permitting authority ~~if the repairs can be done without undue inconvenience to the public use of the Streets~~.

**Section 14. Forfeiture and Other Remedies**

**Comment to Sections 14 and 20**: These sections contain provisions that violate California law, which requires a liquidated damages clause to be reasonable under the circumstances. (Civ. Code, § 1671, subd. (b).) California courts have generally considered a liquidated damages clause unreasonable—and thus unenforceable—if it bears no reasonable relationship to the range of actual damages that the parties could have anticipated would flow from a breach. (*Ridgley v. Topa Thrift & Loan Assn.* (1998) 17 Cal.4th 970.) This section must be revised accordingly. This section also must be revised to allow for a cure period, identify the applicable dispute resolution provisions, and state that the City may not take any action with respect to a disputed breach until such dispute is fully resolved.

(a) 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, except Section 10. IfGrantee shall fail, neglect or refuse to materially comply with any of the conditions of the Franchise, and if such failure, neglect or refusal shall continue for more than ~~thirty~~ninety (~~30~~90) calendar days after written demand by the City Manager for compliance and a reasonable period for cure is provided, then the City, by the City Council, in addition to all rights and remedies allowed by law, including but not limited to breach of contract, declaratory relief, specific performance, and mandatory injunction, may terminate the right, privilege and Franchise granted in and by the Franchise, and all the rights, privileges and the Franchise of Grantee shall be at an end; provided, however, that if Grantee or City has invoked the dispute resolution provisions of this Franchise with respect to such failure, neglect or refusal, the City and the City Council may not take any such action until such dispute is fully resolved. Thereupon and immediately, Grantee shall surrender all rights and privileges in and to the Franchise. No Franchise provision made to secure the enforcement of the terms and conditions of the Franchise shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of the Franchise terms and conditions (except the liquidated damages provisions described in Section 14(b), which are exclusive), but the remedies and procedure outlined or provided, including forfeiture, shall be deemed to be cumulative.

(b) Notwithstanding and without waiving the remedies reserved in Section 14(a), the parties recognize and agree that certain Grantee breaches of specified conditions in the Franchise will result in damages to the City~~, as cost of postponing services or projects, or other delay expenses,~~ that may be difficult to precisely estimate and which ~~for a temporary period~~ may not practically warrant forfeiture of the Franchise by Grantee~~ or require specific proof of damage by the City~~. For such specified conditions ~~and limited periods~~ of Grantee breach only, at the City's sole discretion and election, as an alternative remedy to those provided in Section 14(a), Grantee shall be liable to the City for liquidated

damages in lieu of forfeiture or proof of actual damages or other legal remedies. Any failure of the City to not elect liquidated damages under Section 14(b) shall not be a waiver of the City's right to prove and recover actual damages under Section 14(a), provided that such liquidated damages shall be the sole remedy available to the City for any such breach if the City elects to collect liquidated damages. The City ~~elected liquidated damage assessments shall be applicable only to~~ may only collect liquidated damages for Grantee breaches of the conditions specified in Section 14(e), and only for the maximum time periods provided in Section 14(c). All Franchise conditions not stated in Section 14(e) shall expressly and at all times remain reserved to the City to enforce and subject to the termination ~~remedies~~ remedy provided in Section 14(a) and any remedies provided by law.

(c) In the event that the City elects the remedy of liquidated damages for the breach of any of the specified conditions in Section 14(e), 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~~ninety (~~30~~90) calendar day right to cure provided in Section 14(a). If after the ~~thirty~~ninety (~~30~~90) calendar days from notice of the breach, the condition has not been cured or justified to the reasonable satisfaction of the City Manager, 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~~ninety (~~30~~90) calendar days after each such notice. After the one hundred eighty (180) calendar day period, ~~the remedies in Section 14(a) shall remain available to~~ the City may exercise its termination remedy described in Section 14(a) or other remedies provided by law. ~~The liquidated damages provided in Section 14(e) shall accrue and be paid on each uncured incident notice even if multiple notices cite a common 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~~, and thereafter for all City's remedies provided in Section 14(a) for each such breach which extends beyond the maximum liquidated damage assessment period~~. The City Manager shall assess and bill Grantee for all such damages which 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; unless Grantee disputes such liquidated damages pursuant to the dispute resolution procedures in Section 15.~~, and if not so paid, Grantee shall be in default of the Franchise. During the pendency of any disputed liquidated damage assessment period, the parties shall engage in dispute resolution as provided in Section 15~~. Section 14 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.

(d) By entering the Franchise, Grantee and the City agree that the specified Franchise conditions and liquidated damage amounts provided in Section 14(e) 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 14(e) 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 ~~temporary~~ liquidated damages under this Section 14 is~~, if exercised under Sections 14(b) and (c),~~ an alternative that shall be available to the City in lieu of the remedy of immediate Grantee forfeiture or any other legal remedy~~ies~~ reserved to the City under Section 14(a), and is not and shall not be construed as a penalty. Grantee acknowledges that amounts provided in Sections 14(b), (c), and (e) are capped and for the maximum period provided 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. ~~As a temporary alternative to forfeiture of the Franchise by Grantee for the breach of any condition, said liquidated damages are not a penalty.~~

(e) Liquidated Damages for Breach of Specified Conditions. If elected by the City pursuant to Sections 14(b) and (c), 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: six ~~thousand~~hundred ($~~6,000~~600) 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 ~~thousand~~hundred ($~~15,000~~1,500) per calendar day for delay and disruption. Actual cost of relocation shall be borne entirely by Grantee.

~~Failure to provide and pay for standby safety engineers for protection of Grantee facilities within five (5) calendar days' notice from the City or its authorized agents as required by Section 9: Cost of standby engineers plus fifteen thousand ($15,000) per calendar day for delay impacts.~~

**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 the Grantee's Vice President of Gas ~~Engineering~~ Operations and Construction, or equivalent title, for further consultation and negotiation.

(b) If the City Manager and the Grantee's Vice President of Gas ~~Engineering~~ Operations and Construction or equivalent are unable to agree on a solution within fifteen (15) calendar days of such referral, the City and Grantee agree to 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 agree that they will participate in the mediation in good faith and will share equally in the mediation costs, though 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~~ninety (~~45~~90) calendar days after the City Manager and the Grantee's Vice President 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 and under no other authority.

**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**

*See comments to Section 14.*

Grantee shall file and maintain a faithful performance bond in favor of the City in the sum of $30,000,000 (thirty million dollars) to guarantee that Grantee shall well and truly observe, fulfill, and perform each and every term and condition of the Franchise. In case of any breach of any condition of the Franchise, up to the whole amount of the sum named in the bond may be ~~taken and deemed to be liquidated damages and shall be recoverable~~receivable from the principal and sureties upon such bond to compensate the City for any actual damages it may suffer by reason of such breach. 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.

**Section 21. Bankruptcy**

**Comments to Section 21**: Provisions within this section are void under the Bankruptcy Code and must be revised to comply with federal bankruptcy law. This section also must be revised to address the rights of the Grantee in the event that the City files for bankruptcy under chapter 9 of the Bankruptcy Code, including allowing the Grantee to recoup the unamortized amount of advanced payments as a secured-interest claim, cancellation of any payment notes not yet paid, and a refund of such amounts already paid.

If Grantee files any voluntary or involuntary petition for bankruptcy under the laws of the United States, the Franchise may at the City's sole discretion be immediately terminated and forfeited. The Franchise is personal between the City and Grantee and shall not be assignable or salable in bankruptcy without the City's express written consent. No value may be attributed to the Franchise in bankruptcy except for the depreciated value of Grantee's facilities in the City Streets. In any bankruptcy proceeding, 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. If the bankruptcy petition is for reorganization under Chapter 11, the forfeited

Franchise may be reinstated by agreement of the parties or their successors, provided that the City shall have no express or implied duty to so agree.

**Section 22. Incorporation of Notice Inviting Bids, Grantee's Bid; Maturity of Obligations**

**Comments to Section 22**: Rather than incorporate the entire ITB into the Franchise, SDG&E proposes that specific sections that are required should be incorporated into the actual text of the ordinance. Much of the ITB itself is not relevant to an ongoing 20-year franchise ordinance and it would therefore be inappropriate to include the entire ITB by reference. Further, subsection (b) raises concerns regarding compliance and consistency with liquidated damages law, as discussed in SDG&E's comments to Sections 14 and 20 above.

(a) The terms and conditions in the "Notice Inviting Bids for a Franchise to Construct, Maintain, and Use Pipes and Appurtenances for Transmitting and Distributing Gas in the Streets of the City of San Diego" (Noticing Inviting Bids), and Grantee's offer in response, are part of the Franchise and are fully incorporated herein. The Notice Inviting Bids and Grantee's offer are attached as Attachment 3 to the Franchise. Grantee's offer in response to the Notice Inviting Bids constitutes a material inducement for the grant of the Franchise.

(b) Any breach of the terms and conditions in the Notice Inviting Bids and Grantee's offer in response is a breach of the Franchise and shall be subject to the remedies provided in Section 14. If the Franchise is forfeited under Section 14 for any reason, the maturity dates of all promissory notes then remaining unpaid, if any, shall be advanced to the date of forfeiture, and payment of the principal amount on all remaining promissory notes shall be due and payable to City immediately. The provisions of Section 22 shall be in addition to the taking of the full amount of the performance bond as provided in Section 20.

**Section 23. 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 24. 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 25. 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: MARA W. ELLIOTT, City Attorney

By:_____
Frederick M. Ortlieb
Deputy City Attorney

FMO:als
09/22/2020
Or.Dept.: Office of the Mayor
Doc. No.:2486682

Attachments: 1 Table of Contents – Exhibit A – Gas Franchise
2 Master Administrative Permit Key Terms
3 Notice Inviting Bids and Grantee's Offer

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

ELIZABETH S. MALAND
City Clerk

By:_____
Deputy City Clerk

Approved: _____ _____
(date) KEVIN L. FAULCONER, Mayor

Vetoed: _____ _____
(date) KEVIN L. FAULCONER, Mayor

# ATTACHMENTS
# TO
# EXHIBIT A GAS FRANCHISE

**Attachment 1**

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**Attachment 2**

Pursuant to Section 9 of the Franchise, Grantee shall apply for a biennial Master Administrative Permit (MAP) with the City of San Diego's Development Services Department. The general purpose of the MAP is to ensure coordination of work within the City's public right-of-way while maintaining the City's right to manage uses of the public right-of-way. Nothing in the MAP shall relieve Grantee from meeting all of its obligations under the Franchise, including those regarding relocation of Grantee's facilities at Grantee's sole cost in the event of conflicts with City uses. If there is any conflict between the provisions of the Franchise and the provisions of the MAP, the provisions of the Franchise shall control, and the conflicting provisions of the MAP shall be void. The MAP shall include the following key terms:

1. MAPs shall be effective for two years upon approval by the City Manager or designee.

2. Application for the first MAP shall occur soon after the effective date of the Franchise.

3. Grantee shall develop a Two-Year Plan as part of the MAP application (submitted within 30 days after the effective date of the Franchise) to include a list of projects and activities Grantee plans to perform during the term of the MAP.

4. The MAP will distinguish between the categories of work that Grantee may perform without additional specific permits, and categories of work that will require additional specific permits. Maintenance and operation will be defined in the MAP.

5. Grantee shall be responsible for providing the City with Geographic Information Systems (GIS) coordinate data of its assets to determine potential conflicts, relocation, or other coordination. Confidentiality issues are addressed in Section 9 of the Franchise.

6. Grantee shall perform work necessary to eliminate conflicts with the City's uses of the Streets, as provided in Section 8 of the Franchise.

7. All work or equipment located in the public right-of-way which affects traffic flow or safety shall require an approved Traffic Control Permit from the Development Services Department.

8. Standard Work Hour, Notification, and Pre-Construction requirements are required to better maintain coordination between Grantee and the City.

9. Grantee shall provide and pay at Grantee's sole expense all costs necessary for the protection and safety of Grantee's facilities during City-controlled work.

10. Require the protection of survey markers at Grantee's sole expense.

11. Establishes Grantee's participation and cooperation with a Utilities Coordinating Committee that will meet, at minimum, four times a year.

**Attachment 3**

[TO BE PROVIDED AT A FUTURE DATE]

Caroline Winn
Chief Executive Officer

P.O. Box 129831
San Diego, CA 92112

Tel: (858) 650-6175
CWinn@sdge.com

**VERIFIED STATEMENT OF GOVERNMENTAL APPROVALS FOR ELECTRIC FRANCHISE**

October 23, 2020

Dear City Clerk, Mayor Faulconer and Honorable Members of the City Council:

San Diego Gas & Electric Company (SDG&E) verifies that it has the necessary governmental approvals, including, without limitation, a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission or its equivalent, for the purposes of exercising rights granted by the franchise, as of the date of this statement.

Sincerely,

Caroline A. Winn
Chief Executive Officer
San Diego Gas & Electric Company

Loida C. Morrison
Insurance & Risk Advisory Manager

Sempra Energy
Insurance & Risk Advisory
488 8th Avenue, HQ06
San Diego, CA 92101-3017

insurance@sempra.com

October 19, 2020

City of San Diego
Attn: City Clerk
202 C Street, MS2A
San Diego, CA 9211

***Re: City of San Diego Electric Franchise Ordinance***

To Whom It May Concern:

Please accept this letter as compliance with your request for evidence of self-insurance in accordance with the terms of the above-referenced electric franchise ordinance, as dictated under the terms of the ordinance, between San Diego Gas & Electric Company (***"SDG&E"***) and requestor. SDG&E hereby acknowledges that it is permissibly self-insured by the State of California and the following programs are in full force and effect:

| Type of Insurance | Type of Policy | Policy Period | Limit |
|---|---|---|---|
| Automobile Liability | Self-Insured | Continuous | $1,000,000 |
| Workers' Compensation | Self-Insured | Continuous | Statutory |

Attached are evidence of the certificates to self-insure for the above referenced coverages issued by the State of California Department of Industrial Relations and Department of Motor Vehicles.

Any claims resulting from SDG&E's operations may be referred to:

San Diego Gas & Electric Company
Attention: Jennifer Fernandez, Claims Manager
8315 Century Park Court
San Diego, CA 92123

Should you have any questions or require additional coverage information, please feel free to contact me.

By its duly authorized representative,

Loida C. Morrison

Loida C. Morrison
Insurance & Risk Advisory Manager

cc: Hollie Bierman, Sr. Counsel

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR

NUMBER 0133-B

# CERTIFICATE OF CONSENT TO SELF-INSURE

SAN DIEGO GAS & ELECTRIC COMPANY
(a California corporation)

THIS IS TO CERTIFY, That Subsidiary of SEMPRA ENERGY - Certificate No.: 0133 has complied with the requirements of the Director of Industrial Relations under the provisions of Sections 3700 to 3705, inclusive, of the Labor Code of the State of California and is hereby granted this Certificate of Consent to Self-Insure.

This certificate may be revoked at any time for good cause shown.*

EFFECTIVE:

THE 9TH DAY OF December, 19 52

MARK B. ASHCRAFT MANAGER

DEPARTMENT OF INDUSTRIAL RELATIONS
OF THE STATE OF CALIFORNIA

STEPHEN J SMITH DIRECTOR

* Revocation of Certificate.—"A certificate of consent to self-insure may be revoked by the Director of Industrial Relations at any time for good cause after a hearing. Good cause includes, among other things, the impairment of the solvency of such employer, the inability of the employer to fulfill his obligations, or the practice by such employer or his agent in charge of the administration of obligations under this division of any of the following: *(a)* Habitually and as a matter of practice and custom inducing claimants for compensation to accept less than the compensation due or making it necessary for them to resort to proceedings against the employer to secure the compensation due; *(b)* Discharging his compensation obligations in a dishonest manner: *(c)* Discharging his compensation obligations in such a manner as to cause injury to the public or those dealing with him." (Section 3702 of Labor Code.) The Certificate may be revoked for noncompliance with Title 8, California Administrative Code, Group 2—Administration of Self-Insurance.

FORM A-4-10 A

87 45547

California State Transportation Agency
**DEPARTMENT OF MOTOR VEHICLES**
P. O. BOX 942884
SACRAMENTO, CA 94284-0884
(916) 657-6520

GAVIN NEWSOM, Governor

April 7, 2020

**S.I. # 11**

San Diego Gas & Electric Company
488 8th Avenue, HQ06N1
San Diego, California 92101
Attention: Ms. Melissa Schoening

Dear San Diego Gas & Electric Company,

Your annual report/financial statements have been reviewed and the requirements for renewal of your self-insurance certificate have been met. Your self-insurance status is valid from May 1, 2020, through April 30, 2021.

Vehicle Code Section 16020 requires that every driver and every owner shall at all times be able to establish financial responsibility and shall at all times carry in the vehicle evidence of the form of financial responsibility in effect for the vehicle. A copy of your Certificate of Self-Insurance or a copy of this letter constitutes written evidence of financial responsibility and should be placed in each of your affected vehicles.

If you have any questions or need further information, please call the administrative staff at (916) 657-6520.

Sincerely,

George Torres, Unit Manager
Financial Responsibility Unit

STATE OF CALIFORNIA
DMV
DEPARTMENT OF MOTOR VEHICLES
*A Public Service Agency*

# CERTIFICATE OF SELF-INSURANCE

This is to certify that:

San Diego Gas & Electric Co
NAME OF SELF-INSURER

488 8th Ave, HQ06N1 San Diego, California 92101
ADDRESS, CITY, STATE, ZIP

has been approved as a Self-Insurer under the California Compulsory Financial Responsibility Law and assigned Self-Insurance # 11 pursuant to Section 16053 of the *California Vehicle Code* for the period May 1, 2020 through April 30, 2021.

MANAGER
Financial Responsibility Unit
Department of Motor Vehicles

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 10/20/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

PRODUCER
MARSH RISK & INSURANCE SERVICES
FOUR EMBARCADERO CENTER, SUITE 1100
CALIFORNIA LICENSE NO. 0437153
SAN FRANCISCO, CA 94111
Attn: Seattle.Certrequest@marsh.com / Fax: 212-948-0507
CN101763283-STND-GAWUP-20- SDGE

CONTACT NAME:
PHONE (A/C, No, Ext):
FAX (A/C, No):
E-MAIL ADDRESS:

| INSURER(S) AFFORDING COVERAGE | NAIC # |
|---|---|
| INSURER A : Everest National Insurance Co | 10120 |
| INSURER B : Associated Electric & Gas Ins Services Ltd | |
| INSURER C : N/A | N/A |
| INSURER D : N/A | N/A |
| INSURER E : | |
| INSURER F : | |

INSURED
San Diego Gas & Electric Company
c/o Sempra Insurance & Risk Advisory
488 8th Ave, HQ06N1
San Diego, CA 92101

**COVERAGES** **CERTIFICATE NUMBER:** SEA-003693084-09 **REVISION NUMBER:** 8

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS | |
|---|---|---|---|---|---|---|---|---|
| A | X COMMERCIAL GENERAL LIABILITY | X | | EN4GL00088201 | 11/01/2020 | 11/01/2021 | EACH OCCURRENCE | $ 1,000,000 |
| | CLAIMS-MADE X OCCUR | | | | | | DAMAGE TO RENTED PREMISES (Ea occurrence) | $ 100,000 |
| | | | | | | | MED EXP (Any one person) | $ 5,000 |
| | | | | | | | PERSONAL & ADV INJURY | $ 1,000,000 |
| | GEN'L AGGREGATE LIMIT APPLIES PER: | | | | | | GENERAL AGGREGATE | $ 3,000,000 |
| | X POLICY PRO-JECT LOC | | | | | | PRODUCTS - COMP/OP AGG | $ 1,000,000 |
| | OTHER: | | | | | | | $ |
| | AUTOMOBILE LIABILITY | | | | | | COMBINED SINGLE LIMIT (Ea accident) | $ |
| | ANY AUTO | | | | | | BODILY INJURY (Per person) | $ |
| | OWNED AUTOS ONLY / SCHEDULED AUTOS | | | | | | BODILY INJURY (Per accident) | $ |
| | HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY | | | | | | PROPERTY DAMAGE (Per accident) | $ |
| | | | | | | | | $ |
| B | UMBRELLA LIAB / OCCUR | X | | XL5112509P | 06/26/2020 | 06/26/2021 | EACH OCCURRENCE | $ 14,000,000 |
| | X EXCESS LIAB / X CLAIMS-MADE | | | | | | AGGREGATE | $ 14,000,000 |
| | DED / RETENTION $ | | | | | | | $ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N | | | | | | PER STATUTE / OTH-ER | |
| | ANYPROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) | N / A | | | | | E.L. EACH ACCIDENT | $ |
| | If yes, describe under DESCRIPTION OF OPERATIONS below | | | | | | E.L. DISEASE - EA EMPLOYEE | $ |
| | | | | | | | E.L. DISEASE - POLICY LIMIT | $ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
SAMPLE CERTIFICATE ONLY

Re: City of San Diego Electric Franchise Agreement
Employers Liability is included in the AEGIS Excess Liability program.
The City of San Diego and its officers, agents, departments, officials and employees are included as additional insured (except employers liability) where required by written contract. This insurance is primary and non-contributory over any existing insurance and limited to liability arising out of the operations of the named insured subject to policy terms and conditions. The above General Liability policy contains a cross liability clause.

**CERTIFICATE HOLDER**

City of San Diego
Attn: City Clerk
202 C Street, MS2A
San Diego, CA 92101

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
of Marsh Risk & Insurance Services
Van Vong

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AEGIS

# ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED

Endorsement No. 8 Effective date of Endorsement June 26, 2020

Attached to and forming part of POLICY No. XL5112509P

NAMED INSURED: Sempra Energy

It is understood and agreed that this POLICY is hereby amended as indicated. All other terms and conditions of this POLICY remain unchanged.

**ADDITIONAL INSUREDS - BLANKET BASIS**
**(CERTIFICATE HOLDERS)**

Any person or organization to whom a Certificate of Insurance has been issued with respect to this POLICY is included as an additional INSURED under the POLICY, but only if and to the extent the NAMED INSURED has agreed in writing prior to an OCCURRENCE to provide insurance to such person or organization. The coverage afforded the additional INSURED is subject to the terms, exclusions and conditions of this POLICY, including the Limits of Liability, and is further limited to the amount required by the prior written agreement with the NAMED INSURED.

Notwithstanding the foregoing, the following shall not be an additional INSURED under this POLICY:

(a) any organization acquired or formed by the NAMED INSURED after the inception of the POLICY PERIOD;

(b) where such other person or organization has assumed the liability of any other INSURED under contract; or

(c) where such other person or organization is engaged in a JOINT VENTURE with the NAMED INSURED in which the NAMED INSURED is not the operator or managing partner.

Signature of Authorized Representative

AEGIS

# ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED

Endorsement No. 7 Effective date of Endorsement June 26, 2020

Attached to and forming part of POLICY No. XL5112509P

NAMED INSURED: Sempra Energy

It is understood and agreed that this POLICY is hereby amended as indicated. All other terms and conditions of this POLICY remain unchanged.

**PRIMARY INSURANCE ENDORSEMENT**
**(AMENDED CONDITION (H) OTHER INSURANCE)**

Section IV., Conditions, (H) *Other Insurance* is deleted in its entirety and replaced by the following:

(H) *Other Insurance*

If other valid and collectible insurance with any other insurer, whether such insurance is issued before, concurrent with, or after inception of this POLICY, is available to the INSURED covering a CLAIM also covered by this POLICY, other than insurance that is issued specifically as insurance in excess of the insurance afforded by this POLICY, this POLICY shall be in excess of and shall not contribute with such other insurance.

Provided, however, that if the NAMED INSURED has agreed in writing prior to an OCCURRENCE to provide insurance to any person or organization (and such person or organization otherwise qualifies as an INSURED under Definition (L)) and such writing requires the insurance provided by this POLICY to be primary, then the insurance provided by this POLICY shall be primary for such INSURED up to a limit of $1,000,000 or up to the amount required by such writing.
Nothing herein shall be construed to make this POLICY subject to the terms of other insurance.

Nothing in this Endorsement shall reinstate, increase or in any way expand the COMPANY'S Limits of Liability as set forth in Section I (B) of the POLICY.

Signature of Authorized Representative

(J) *Subrogation*

(1) The COMPANY shall have no right of recovery against any person or organization with respect to any OCCURRENCE to the extent that the INSURED has agreed with such person or organization before the OCCURRENCE to:

(a) waive its right of recovery against such person or organization; or

(b) reimburse such person or organization for the cost attributable to such person's or organization's liability for any OCCURRENCE caused in whole or in part by such person or organization.

(2) Inasmuch as this POLICY is excess insurance, the INSURED'S right of recovery against any person or organization cannot be exclusively subrogated to the COMPANY. It is, therefore, understood and agreed that in case of any payment hereunder, the COMPANY will act in concert with all other interests concerned, (including the INSURED'S) in the exercise of such rights of recovery. The apportioning of any amount which may be so recovered shall follow the principle that any interest (including the INSURED'S) which has paid an amount over and above any payment hereunder, shall first be reimbursed up to the amount paid by it; the COMPANY is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interests (including the INSURED'S) of which this coverage is in excess are entitled to claim the residue, if any. Expenses necessary to the recovery of any such amounts shall be apportioned between the interests concerned (including the INSURED'S), in the proportion of their respective recoveries as finally settled.

# ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED

Endorsement No. 51 Effective date of Endorsement June 26, 2020

Attached to and forming part of POLICY No. XL5112509P

NAMED INSURED: Sempra Energy

It is understood and agreed that this POLICY is hereby amended as indicated. All other terms and conditions of this POLICY remain unchanged.

**CONDITION (Q) CANCELLATION**

Condition (Q) *Cancellation*, is replaced by the following:

(Q) *Cancellation*

This POLICY may be cancelled:

(1) at any time by the NAMED INSURED by mailing written notice to the COMPANY stating when thereafter cancellation shall be effective; or

(2) at any time by the COMPANY:

(a) by mailing written notice to the NAMED INSURED stating when, not less than ninety (90) days from the date notice was mailed, cancellation shall be effective; except, in the event of cancellation for non-payment of premiums, in which event such cancellation shall become effective ten (10) days after the notice was mailed.

(b) by mailing written notice to any person or organization wherein such notice is required by contract or written agreement with the NAMED INSURED stating when, not less than thirty (30) days from the date notice was mailed, cancellation shall be effective; except, in the event of cancellation for non-payment of premiums, in which event such cancellation shall become effective ten (10) days after the notice was mailed.

Proof of mailing of notice to the respective addresses in Items 7 and 8 of the Declarations and to the respective addresses of persons or organizations provided by the NAMED INSURED to the COMPANY in accordance with paragraph (2) (b) above, shall be sufficient proof of notice and the POLICY PERIOD shall end on the effective date and hour of cancellation stated in the notice. Delivery of such notice either by the NAMED INSURED or the COMPANY shall be equivalent to mailing.

The City of SAN DIEGO

# Invitation to Bid

NOTICE INVITING BIDS FOR A FRANCHISE TO CONSTRUCT, MAINTAIN, AND USE POLES, WIRES, CONDUITS, AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY IN THE STREETS OF THE CITY OF SAN DIEGO.

NOTICE IS HEREBY GIVEN THAT PURSUANT TO SAN DIEGO CITY CHARTER SECTION 103, SEALED BIDS WILL BE RECEIVED FOR A FRANCHISE TO CONSTRUCT, MAINTAIN, AND USE POLES, WIRES, CONDUITS, AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY IN THE STREETS OF THE CITY OF SAN DIEGO.

TIME AND PLACE FOR FILING AND OPENING OF BIDS. Each bid, together with an irrevocable letter of credit to secure the Bid Amount, as set forth below, must be submitted in a sealed envelope, addressed to the City Clerk of the City of San Diego, with envelope and bid clearly marked "Bid for a franchise to construct, maintain, and use poles, wires, conduits, and appurtenances for transmitting and distributing electricity in the streets of the City of San Diego." Bids must be submitted to the City Clerk, up to but not later than **5:00 p.m. on October 23, 2020,** the Closing Date, by one of two options: (1) mailing the bid with proof of delivery to the City Clerk, 202 "C" Street, MS 2A, San Diego, California, 92101, so it is received by the Closing Date; or (2) calling the Office of the City Clerk at (619) 533-4000 to request an in-person appointment to drop off the bid on a specific date and time before the Closing Date at the entrance to the City Administration Building, 202 "C" Street, San Diego, CA 92101. The phone call requesting an appointment must be received at least seventy-two (72) hours prior to the Closing Date.

After the Closing Date, the bids shall remain sealed in the Office of the City Clerk until they are presented to the City Council at a publicly noticed open session meeting on a date and time to be determined by the City. On the designated date and time, the City Council or its designee will, in open session, open and publicly announce the bidding party and amount of all bids. Any bid containing exceptions shall be considered nonresponsive.

The franchise may be awarded by introduction and adoption of an ordinance in the form specified as either Exhibit "A" or "B" attached hereto. The ordinance may be introduced immediately after the bids are publicly opened and announced. The adoption of the ordinance and award of the franchise shall occur at a second City Council meeting, pursuant to San Diego Charter section 275, after the conditions of the award are met. Form A is for bidders who possess a franchise to provide electric service for lighting acquired under Section 19 of Article XI of the California Constitution as the provision existed prior to its

amendment on October 10, 1911, and Form B is for bidders who do not possess such a "constitutional franchise" for lighting. The ordinance will, if adopted, name as Grantee the responsible person, firm, or corporation (collectively referred to as "person") who shall make the highest bid for the franchise in an amount equal to at least the Minimum Bid of $70,000,000 (seventy million dollars) as structured and provided in this Notice of Invitation to Bid (Notice); provided that at the time of the opening and declaration of bids, any responsible person present or represented may bid for the franchise a sum no less than ten percent (10%) above the highest sealed bid, and any bid so made may be raised not less than ten percent (10%) by any other responsible bidder, and the bidding may so continue until the franchise shall be struck off at that Bid Amount, sold and awarded by the City Council to the highest bidder as provided by law.

The successful bidder shall pay the full Bid Amount, including the Minimum Bid, to the City in one of two ways: (1) the entire Bid Amount shall be paid in United States dollars by wire transfer acceptable to the City; or (2) no less than ten percent (10%) of the Bid Amount, including the Minimum Bid, shall be paid in United States dollars by wire transfer acceptable to the City, with the remaining balance of the Bid Amount delivered and structured as nine (9) interest-bearing promissory notes in a form acceptable to the City, as set forth below, secured by an irrevocable letter of credit from a bank acceptable to the City. If option 1 is chosen, there shall be a 12.5% discount applied to the Minimum Bid amount at the time of payment; therefore, the Minimum Bid amount due shall be $61,250,000 (sixty-one million two hundred-fifty thousand dollars). Any amount bid above the Minimum Bid must be paid in full as part of the wire transfer. The letter of credit required to be submitted with the bid shall be for the entire Minimum Bid amount plus any additional amount bid, with no discount. For purposes of evaluating bids between multiple bidders who select different payment options, the City will apply a 12.5% discount to all Minimum Bid amounts.

The City shall provide wire transfer instructions to the successful bidder within forty-eight (48) business hours after the successful bidder is identified. The successful bidder shall wire the Bid Amount selected from the options above to the City within forty-eight (48) business hours after receiving the wire transfer instructions.

If the structured promissory note method is selected, the City requires a minimum credit rating for the issuing financial institutions of the letter of credit of the "A" category or better for its senior unsecured debt, or equivalent. If at any point during the term of the franchise, 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 the successful bidder 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 replacing the letter of credit shall be the responsibility of the successful bidder. The letter of credit shall provide that the City may unilaterally draw on the letter of credit to fulfill any obligation not paid by the Grantee when due.

The promissory notes and irrevocable letter of credit shall be delivered with the bid; however, each of the nine (9) promissory notes taken together shall provide for a succession of nine (9) annual maturity dates beginning on the first anniversary of the term and ending on the tenth anniversary, and shall not be due and payable to the City until the maturity date of each installment on the note, except as provided below. The maturity dates of the irrevocably secured promissory note installments shall be the annual anniversary date after each successive year following the effective date of the franchise. Each successive promissory note installment shall be in nine (9) equal principal amounts plus interest, calculated on an actual/actual basis at the annual rate of three and thirty-eight one hundredths of a percent (3.38%), so the Bid Amount is fully paid to the City by the first day of the eleventh year of the franchise term so long as the franchise remains effective to that date. If the franchise is not in effect on any future note maturity date due to early termination of the franchise by the City to acquire the electrical distribution system, the notes shall be void, without right of refund for any amounts already paid. If the franchise is not in effect on any future note

maturity date due to the Grantee's breach and forfeiture of the franchise, the maturity dates on all the future notes shall be advanced to the date of forfeiture and the principal amount of all such notes will be immediately due and payable to the City.

The Bid Amount, and any interest thereon, is for the purpose of acquiring the franchise and shall be solely an obligation of the responsible person making the bid, 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 itself, and shall be paid and accepted upon the express condition that the successful bidder shall not at any time apply to or otherwise request from the California Public Utilities Commission to recover any portion of the Bid Amount, or interest thereon, from electric ratepayers in rates or surcharges. By submitting a bid under this Notice, the bidder acknowledges and agrees that the franchise and any previously paid portions of the Bid Amount will be forfeited if the Grantee or any successor ever applies to the California Public Utilities Commission or requests 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.

No sealed bid shall be considered unless all requirements in this Notice are met, including that the bid is accompanied by an irrevocable letter of credit to secure the Minimum Bid of $70,000,000 (seventy million dollars) or some greater amount; and irrevocably secured promissory notes (if applicable). No condition of this Notice shall prevent the Grantee from paying cash in discharge of a promissory note at any time before its maturity date if the successful bidder so chooses, 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.

All bidders shall provide documentation necessary to satisfy the mandatory requirements for disclosure of business interests in San Diego Charter section 225.

The successful bidder shall file and maintain a surety bond in favor of the City, to be approved by the Council, in the sum of $30,000,000 (thirty million dollars) to guarantee that such bidder shall well and truly observe, fulfill, and perform each and every term and condition of such franchise, and that in the case of any breach of any condition of the franchise, the whole amount of the bond may be taken and deemed to be liquidated damages, and shall be recoverable from the principal and sureties upon such bond. The bond shall be filed with the Council within five (5) business days after the bids are opened and a high bidder identified.

Within the five (5) business days allowed for the delivery of the bond, the City may confirm the responsibility of the bidder, the acceptability of the promissory notes (if any) and letter of credit offered for the Bid Amount, payment of the Bid Amount, acceptability of the insurance required in Section 14 of Exhibits "A" and "B", and compliance with San Diego Charter section 225. If the apparent successful bidder fails to timely provide the required information or documents, the award of the franchise shall be set aside, any money paid therefor shall be forfeited, and the franchise shall, in the discretion of the Council, either be awarded to the second highest responsible bidder, if any, or re-advertised and offered for sale in the same manner provided in this Notice.

A responsible person within the meaning of this Notice shall be a financially responsible person who is capable and able to construct, maintain, and use poles, wires, conduits, and appurtenances for transmitting and distributing electricity in the streets of the City of San Diego, and fulfills all of the following criteria:

(a) Agrees in the bid to make payment of the Minimum Bid as described above, or some greater amount, and states which of the two payment methods is elected; and

(b) If the person does not currently hold an electric franchise from the City, the person shall demonstrate in the bid, to the reasonable satisfaction of the City Manager, the financial and operational capacity to furnish and maintain just and reasonable service, instrumentalities, equipment, and facilities as

are necessary to promote the safety, health, comfort, and convenience of its employees, customers within the City, and the public within the City; and

(c) Agrees in the bid to commence franchise operations under one of the following two options, stating which option is elected:

(1) On January 18, 2021, including a verified statement attached to the bid stating that all necessary governmental approvals including, without limitation, a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission for the purposes of exercising rights granted by the franchise, will have been obtained by that date; or

(2) The person shall, within sixty (60) calendar days from the effective date of the franchise:

(A) diligently seek all necessary governmental approvals including, without limitation, a Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission for the purposes of exercising rights granted by the franchise, and for approval of all surcharges upon customers in the City permitted by the franchise; and

(B) agree to negotiate in good faith a cooperative agreement acceptable to the City to be executed within sixty (60) calendar days to acquire, by condemnation or other lawful means, all or any part or portion of the existing property, facilities, equipment, or appurtenances located in, upon, over, along, across, and under any of the streets in the City, and elsewhere, which are used, useful, or necessary for operations in the transmission and distribution of electricity and for internal communication systems to all customers inside and outside of the City, including real property interests in private or public property (collectively referred to as "Facilities"), and pay and indemnify the City for all costs of acquisition for the Facilities (without reservation or set-off of any kind), including, without limitation, attorneys' fees, consultant fees, expert fees, appraisal fees, mediation or alternative dispute resolution costs, appeal costs, and such other costs and compensation that may be determined by agreement with the owner of the Facilities, by order of the California Public Utilities Commission, or by the Courts of the State of California, without any right of refund after the monies have been spent, whether or not the Facilities are ultimately acquired; and deposit with the City the acquisition costs estimated by the City Manager, including additional increased estimated costs as determined necessary by the City Manager, who will work cooperatively and in good faith with the Grantee to acquire the Facilities and resolve any disputes over the acquisition costs, with any unspent deposit amount returned when the acquisition is complete, and with the ownership of the acquired Facilities to be transferred to the Grantee after acquisition and upon exhaustion of all rights of appeal. Failure to execute a cooperative agreement acceptable to the City within sixty (60) calendar days of the effective date of the franchise shall be grounds for rescission of the award, without recourse; and

(C) commence operations under the franchise within thirty (30) calendar days of obtaining the governmental approvals and acquisition of the Facilities;

Provided, however, if section (c)(2), above, is selected, and if governmental approvals described in (c)(2)(A) have not been obtained within two (2) years of the effective date of the franchise or if the Facilities described in (c)(2)(B) have not been acquired within three (3) years of the effective date of the franchise, then the City, in its sole discretion, may rescind the award of the franchise without recourse.

(d) Agree in the bid that, subject to applicable law and the terms of any collective bargaining agreement in force on the effective date of the franchise, the person so bidding will, as a condition of being awarded the franchise, retain and employ for two (2) years after the effective date all employees who had

been employed for the previous one hundred eighty (180) days by the electrical or gas corporation holding the franchise immediately prior, and provide and pay no less than the wages, benefits, hours, and other terms and conditions of employment provided to these employees in the one hundred eighty (180) days prior to the effective date of the new franchise. This provision shall apply regardless of the status of the new Grantee, subject to applicable law, including the labor provisions of California Assembly Bill 1054 (California Public Utilities Code sections 854 and 854.2). In the event the bidding results in a change of control of the electrical or gas corporation holding the immediately prior franchise, it is the intent of this requirement to provide utility workers more protection and stability than would be afforded under Assembly Bill 1054, provided however, Assembly Bill 1054 shall apply in the event of a change in control if so determined by a court of competent jurisdiction or the California Public Utilities Commission.

Unless otherwise authorized herein, bidders who are considering submitting a bid in response to this Notice, or who submit a bid in response to this Notice, are prohibited from communicating with City staff directly, indirectly, or through an intermediary, about this Notice from the date this Notice is issued until a franchise is awarded.

Written questions and comments must be submitted to Lee Friedman, Attn: Gas/Electric Franchise, at lfriedman @sandiego.gov no later than **5:00 p.m. on October 5, 2020.** Only written communications relative to the solicitation shall be considered. All questions will be answered in writing. The City will post questions and answers without identification of the inquirer(s) to the City's webpage. No oral communications can be relied upon for this Notice. Addenda will be issued addressing questions or comments that are determined by the City to cause a change to any part of this Notice.

The City may issue addenda to this Notice as necessary. All addenda are incorporated into the franchise. The bidder is responsible for determining whether addenda were issued prior to a bid submission. Failure to respond to or properly address addenda may result in rejection of a bid.

The City reserves the right to cancel this Notice at any time, and further reserves the right to reject submitted bids, without giving any reason for such action, at its sole discretion and without liability. Costs incurred by the bidder(s) as a result of preparing bids under this Notice shall be the sole responsibility of each bidder. The Notice creates or imposes no obligation upon the City to grant a franchise.

SDG&E addresses the City's proposal to incorporate the ITB into the Franchise in Section 25 below.

# EXHIBIT A

# ELECTRIC FRANCHISE

ORDINANCE NUMBER 0-

_____

(NEW SERIES) DATE OF FINAL PASSAGE:

_____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO GRANTING TO, _____ 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; AND (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; 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:

**General Comments: SDG&E provides the below comments to the draft franchise ordinance in the event that SDG&E is selected as the winning bidder for the Franchise. SDG&E's comments reflect changes that must be implemented in order for SDG&E to enter into the Franchise. In addition, various provisions of the draft franchise ordinance must be revised to reflect that SDG&E presently operates the electric and gas franchises, has an existing authorization from the CPUC to operate, and has a property interest in the existing utility infrastructure. SDG&E is providing in-text comments in "track changes" format below.**

**Section 1. Definitions**

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

(a) "Grantee" means _____.

(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) "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 California Constitution, the California Public Utilities Code, the California Labor Code, and orders and decisions of the CPUC and the Federal Energy Regulatory Commission.

(d) "Bid Amount" means [$X]. ~~the amount a responsible person agrees to pay to be awarded the Franchise, on terms set forth in the Invitation to Bid for the Franchise titled "Notice Inviting Bids for a Franchise to Construct, Maintain, and Use Poles, Wires, Conduits, and Appurtenances for Transmitting and Distributing Electricity in the Streets of the City of San Diego."~~

(e) "Books and Records" means any and all records, physical, digital, and electronically stored information, ~~of any account of Grantee,~~ including but not limited to records of income, expenditures, finance, 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, bid and contract documents related to Municipal Undergrounding Surcharge projects, overhead and personnel charges for Municipal Undergrounding Surcharge projects, processes for accounting expenditures of Municipal Undergrounding Surcharge funds, contract worker payroll records for Municipal Undergrounding Surcharge projects, charts, diagrams, ledgers, pictures, drawings, Geographic Information System (GIS) locational data, photographs, and notes, which relate to ~~Grantee's receipts, or~~ the placement, location, operation, and maintenance of Grantee's facilities in City streets, and any other records ~~deemed~~ that are relevant ~~by the City Manager or City Council~~ to enforcement of the Franchise.

(f) "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.

(g) "Commencement of Operations Date" means [insert date]. ~~the date on which Grantee~~

~~obtains approval from the CPUC to exercise the Franchise rights by grant of a Certificate of Public Convenience and Necessity pursuant to California Public Utilities Code Division 1, Part 1, Chapter 5, Article 1.~~

(h) "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.

(i) "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.

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

(k) "Effective Date" means the thirtieth from and after the final passage of this Ordinance by the City Council pursuant to San Diego Charter section 295, or January 18, 2021, whichever is later.

(l) "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~~, which amount is to be requested to be reduced to no more than five and forty-three one hundredths of a percent (5.43%) according to the requirements of Section 4~~.

(m) "Franchise" means the Franchise granted by the City Council to _by Ordinance No. 0-_____, pursuant to San Diego Charter sections 103,103.1, 104, and 105.

~~(n) "Good Utility Practice" 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.~~

~~(o)~~(n) "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 the Federal Energy Regulatory Commission 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 (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.

~~(p)~~(o) "Municipal Undergrounding Surcharge" means that part of the Electric Franchise Surcharge Fee that is specifically designated for the undergrounding of overhead lines in the City 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.

~~(q)~~(p) "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".

~~(r)~~(q) "Streets" means the public freeways, highways, streets, ways, alleys and places as they now or may hereafter exist within the City.

**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; and (5) subject to Applicable Laws and the terms to Section 12 hereof, 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, local energy, energy justice, and climate equity objectives, including but not limited to the reduction of greenhouse gas emissions ~~to the fullest 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 energy storage, and advancing the electrification of transportation, is hereby granted to _____, a corporation organized and existing under and by virtue of the laws of the State of _____. If gas and electric franchises are awarded to the same Grantee, the requirements of Sections 6, 9, and 12, need not be duplicated.

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

**Section 3. Term**

**Comments to Section 3**: The definition of "Commencement of Operations Date," and related provisions in this section, must be revised to the extent that SDG&E is the Grantee because SDG&E already has an existing authorization from CPUC to operate and thus, SDG&E does not need (and the CPUC will not issue) a new authorization. In addition, this section must address SDG&E's interests in the event the City terminates the Franchise before the end of the term for reasons other than those permitted by Section 16, including:

- recognizing SDG&E's property rights in the current utility infrastructure; and
- providing for a pro-rata refund of SDG&E's advanced payments and return of its surety bond.

Further, if the City anticipates terminating the Franchise before the end of the term, such as to municipalize the utility system, the City must disclose these plans so that SDG&E can better evaluate and make proposals regarding the Franchise.

(a) The right, privilege, and Franchise, subject to each and all of the terms and conditions

contained in this Ordinance, is hereby granted to _____, a corporation organized and existing under and by virtue of the laws of the State of _____, for the term of twenty (20) years from and after the Commencement of Operations Date. ~~The City will issue a letter confirming the Commencement of Operations Date when the CPUC issues a Certificate of Public Convenience and Necessity permitting Grantee to exercise the rights in the Franchise. The letter will also contain the date the Franchise terminates.~~

(b) All associated agreements, rights and obligations under the Franchise shall also expire at the expiration or earlier termination of the Franchise, except for the completion and discharge of obligations or payments required hereunder and accrued during the term. The bond and insurance requirements shall remain in effect until all obligations or payments required by the Franchise or related documents are completed, and any disputes are resolved. The bond shall remain in effect until the City issues a letter to Grantee acknowledging discharge of all required obligations and payments.

**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. 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. In paying three percent (3%) of Gross Receipts annually, Grantee shall fulfill the following additional conditions:

~~(1) If CPUC Decision No. 80234 and CPUC Resolution No. E-3788 and associated tariffs shall both remain in effect on the Effective Date, then Grantee shall, within sixty (60) calendar days of the Effective Date, file an application, advice letter, or any other filing (as Grantee deems appropriate) with the CPUC, and take all actions necessary to support such application and~~

~~have it approved, for the CPUC to modify as soon as possible its Resolution No. E-3788 to reduce the total differential surcharges authorized therein by an amount equal to thirty-five one hundredths of a percent (0.35%) of Gross Receipts, such that upon approval, the total differential surcharges for customers in the City, as previously authorized by the CPUC as a consequence of the municipal franchise, are reduced from five and seventy-eight one hundredths of a percent (5.78%) to five and forty-three one hundredths of a percent (5.43%). Grantee's application, advice letter, or any other filing to the CPUC for the reduction of the franchise fee differential surcharge shall clearly state that the request for a reduction is a condition of the grant of the Franchise and that Grantee agrees to and supports such reduction. Regardless of the CPUC's decision on Grantee's request to reduce the surcharge by an amount equal to thirty-five one hundredths of a percent (0.35%) of Gross Receipts, Grantee is still obligated to pay three percent (3%) of Gross Receipts to the City as a franchise fee, and four and one-half percent (4.5%) of Gross Receipts to the City as an undergrounding fee, under Sections 4(a) and 1O(a), respectively, and the definition of Gross Receipts in Section 1 shall remain unchanged; and~~

~~(2) If CPUC Decision No. 80234 and CPUC Resolution No. E-3788 shall either not be in effect on the Effective Date or if either is not applicable to Grantee, in paying three percent (3%) of Gross Receipts to the City, Grantee shall not apply to the CPUC for municipal franchise fee differential surcharges to be imposed on customers in the City that exceed a total of five and forty-three one hundredths of a percent (5.43%), with one and nine one hundredths of a percent (1.9%) maximum as a franchise fee "differential" surcharge and three and fifty-three one hundreds of a percent (3.53%) dedicated for underground conversion costs as provided in Section 10; and~~

~~(3)~~(1) 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 to bid for and gain award of the Franchise.

(b) In addition to the franchise fee required by Section 4(a), the ~~four and one-half percent (4.5%)~~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.

(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 electric surcharges) in an electric franchise, Grantee shall notify the City of such agreement in writing within ten (10) 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.

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

**Comments to Section 5**: This section must be revised as follows:

- The definition of "Books and Records," and related provisions in this section regarding the City's access to Books and Records, must be revised to exclude access to certain of the Grantee's records, including those that are legally privileged, those that are restricted or prohibited from disclosure by Applicable Law or third-party agreements, and those that are otherwise highly confidential and proprietary.
- The City must be prohibited from using the Grantee's Books and Records for any purposes other than for enforcement of the Franchise.
- The City also must be required to take steps to protect the Grantee's confidential and proprietary information against unauthorized disclosures and uses.

In addition, subsection (i) implicates California liquidated damages law, which is discussed in SDG&E's comments to Sections 16 and 22 below.

(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 City Auditor, one copy, of a statement signed ~~under penalty of perjury of~~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 2021, 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.

(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). 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~~ ten (~~5~~10) 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) Grantee shall file with the City Manager a copy of its annual report to the CPUC, or its successor in authority, as soon as practicable after the original report has been filed with the CPUC, or its successor in authority.

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

(i) In addition to the remedies provided in Section 16, 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.

~~(j) If the Commencement of Operations Date is later than the Effective Date and Grantee has no recorded prior year Gross Receipts, then Grantee shall pay the Gross Receipts as required in Sections 5(b) through (d) at the next required quarterly interval based on the prior year's receipts from the prior electrical corporation. If Section 5(j) is applicable to Grantee, such quarterly payments required by Sections 5(b) through (d) shall be based on receipts of a prior electrical corporation only to the extent necessary to establish the prior year Gross Receipts under Section 5(a), and Grantee's own monthly Gross Receipts shall proportionately begin to control determination of prior year Gross Receipts during Grantee's first full year of earning receipts. In such event, Grantee shall provide the City with monthly statements of Gross Receipts until Grantee has a full year of its own operating receipts, and thereafter shall provide the City its Gross Receipts annually according to Section 5(a). Notwithstanding the actual Commencement of Operations Date, Grantee shall make payments to the City in advance based on prior year receipts according to the schedule provided in Section 5.~~

**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. The City Auditor shall nominate one appointee selected by the City Council. No nominee with a conflict of interest shall be selected for the Review Committee. If the Review Committee is a citizens' committee, it shall be formed pursuant to San Diego Charter section 43(b) and Council Policy 000-13. If San Diego Charter section 43(b) is applicable, 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.

(b) The City shall use a competitive process to retain a qualified, independent, third- party auditor every two (2) years. The independent auditor shall perform an audit~~a complete review~~ 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 a representative Vice President 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 reasonably cooperate with the independent audit in any way, 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 to the City Council within one hundred eighty (180) calendar days of the end of each two-year period of the Franchise term.

(c) Within ~~five~~ ten (~~5~~10) business days, Grantee shall comply and cooperate with all requests made by the City Manager, City Attorney, independent auditor, and City Auditor, or designees, which ~~the requestors may deem~~is germane to verifying Grantee's compliance with the Franchise conditions. Upon request, Grantee shall provide to the City Manager, City Attorney, independent auditor, or City Auditor, or designees, all Books and Records required to be made available to the City under the Franchise, within ~~five~~ ten (~~5~~10) business days. If Grantee contends that legal restrictions prevent compliance with any part of the request, Grantee must provide a specific ~~and detailed~~ 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.

(d) The independent auditor shall be provided access to interview the City and employees of Grantee designated by Grantee as persons most knowledgeable~~personnel~~ regarding any subject which ~~the auditor in its sole discretion deems~~is relevant to confirming Grantee's compliance with the Franchise, within ~~five~~ ten (~~5~~10) business days after any request.

(e) The procedures provided in Section 6 shall be in addition to, and not in lieu of, City rights 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.

**Section 7. Compliance with Laws**

**Comments to Section 7**: The definition of "Good Utility Practice," and the related provisions in this section, are not consistent with Applicable Law and practical concerns. SDG&E is willing to discuss these provisions with the City.

(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 Laws 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 Master Administrative Permit 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**

**Comments to Section 8**: The City must disclose all known and planned projects that will cause utility removals and relocations in the near future and over the term, so that the Grantee can better evaluate and make proposals regarding the franchise. The City also must disclose all plans, analyses, cost and financial estimates, and budgets regarding the anticipated utility removals and relocations. With respect to the Pure Water litigation, no aspect of this ordinance can impact the positions of the parties in that litigation in any way.

(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 begin the physical field construction of changing the

location of all conflicting facilities or equipment. The request in writing by the City Manager referred to in the prior sentence shall include final designs by the City showing where such conflicts exist. Grantee shall proceed promptly to complete such required work.

(b) Irrespective of any other provision of the Franchise, Grantee's right to Construct, Maintain, and Use, or remove, Poles, Wires, Conduits, and Appurtenances shall be subject at all times to the right of the City, in the exercise of its municipal authority and police power, to require the removal or relocation of Poles, Wires, Conduits, and Appurtenances at the sole cost and expense of Grantee. Relocation of Grantee's facilities located in the Streets at its cost to accommodate City water projects is currently the subject matter of a lawsuit in the Superior Court of California. Grantee and City shall affirmatively comply with the final ruling of the courts in this matter, subject to changes in Applicable Law, and such final ruling shall be incorporated into this Franchise.~~On this absolute reservation, no exception of any kind shall pass to Grantee, including that there shall be no exception for preexisting Grantee construction, for City reconfiguration or vacation of Streets in a previously-served area, for such reconfigurations or vacations being related to development of adjoining property, for the City allegedly acting in a proprietary capacity with respect to water or wastewater service, or for any other contention of exception. If Grantee has no permanent easement and the conflicting Grantee facilities are in a City Street in a service area previously and continuously served by an electrical corporation as defined in California Public Utilities Code section 218, and if the City thereafter causes a Street to be used differently for any City uses (including water, wastewater, reclaimed water, storm water, thermal water, communication, or any other City facilities, whether or not previously existing), or causes such Streets to be removed, realigned, widened, narrowed, vacated, regraded, or replaced in such previously-served area, then without any exception and notwithstanding any doctrine of distinction, the cost of relocating or removing Grantee's facilities shall be at Grantee's sole expense.~~

~~(c) In the event that Grantee shall ever assert any exception to its obligations with respect to the City-reserved rights provided in Section 8, the City shall not be required to pay any costs for resolving conflicts associated with the presence of Grantee's facilities while any dispute is pending. Notwithstanding any Grantee dispute under Section 8, Grantee shall proceed as provided in Section 8(a) to promptly perform and pay any and all costs of relocations required by Section 8, and the City shall not be required under any circumstances to contribute any amount under reservation of right or otherwise, toward the prompt resolution of such conflicts. It is the express intent of Section 8 that no exceptions shall be available to the duty of Grantee to pay all costs, and to promptly and without any conditions not provided herein perform relocation or removal of its facilities that conflict with the City's primary~~

~~reserved rights to the uses of Streets. The City shall not be required to share Grantee facility relocation costs while any dispute is pending.~~

~~(d)~~(c) In the event the City directs Grantee to relocate its conflicting facilities and Grantee believes it cannot reasonably meet the schedule required by Section 8(a), Grantee may apply in writing to the City Manager for a revised schedule. The application shall document the facts as to why Grantee is unable to meet the schedule as required by Section 8(a) and the date on which work would begin. The parties shall cooperate in good faith respecting such applications, and the City's denial of relocation schedule adjustment requests shall not be unreasonable and shall consider the scope and complexity of any project. The City Manager may adjust the schedule provided in Section 8(a) by written instruction to Grantee, and Grantee shall meet the adjusted schedule.

**Section 9. Master Administrative Permit**

**Comments to Section 9**: This section must be revised as follows:

- To protect against any disruption or other impact on electric services, the process for applying to and obtaining the MAP must be ministerial in nature and not prevent or delay the Grantee from accessing its Facilities.
- The City must be limited in its ability to ask for records on the Grantee's Facilities to only those that are necessary for specific projects or work in the Streets.
- The City must be prohibited from using any records obtained from the Grantee pursuant to this section for any purposes other than for enforcement of the MAP.
- The City also must be required to take steps to protect any records obtained from the Grantee pursuant to this section against unauthorized disclosures and uses.
- The City also must be required to coordinate with the Grantee with respect to projects and works in the Streets to ensure the protection of the Grantee's Facilities.

In addition, to the extent that SDG&E is the Grantee, this section must be revised to reflect that SDG&E has certain rights in easement or in fee, which are not controlled by the Franchise. SDG&E and the City further should discuss what value is added by the MAP Coordinating Committee.

(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 a City-issued Master Administrative Permit (MAP). The MAP shall approve Grantee's administrative practices throughout the Streets while exercising the Franchise rights; however, the MAP 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. The MAP is a ministerial permit and shall prescribe the categories of work that Grantee may perform without additional specific permits, and the categories of work which will require additional specific permits. The MAP 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 in coordination with other utilities using the Streets. Grantee shall apply for a MAP within thirty (30) calendar days after the Effective Date, and the initial MAP shall expire on the second anniversary after the Effective Date. Each successive MAP shall have a term of two (2) years. Grantee shall not be charged a fee to obtain the MAP. The MAP 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 MAP, the provisions of the Franchise shall control, and the conflicting provisions of the MAP shall be void.

(b) The MAP shall comply with the general terms attached as Attachment 2, and any additional terms established by the City Manager. Subject to Applicable Laws and the requirements of the Franchise, the City Manager may take due consideration of Grantee's requests regarding provisions of each biennial MAP, 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 a MAP and if Grantee's application is complete. The City Manager shall grant a MAP within thirty (30) calendar days after Grantee's complete application. The application shall contain sufficient information for the City Manager to assure material compliance with ~~all~~ the requirements in the Franchise, including Section 9, and the general terms in Attachment 2. Grantee shall apply for each successive MAP not less than one hundred eighty (180) calendar days prior to expiration of the prior MAP. Any MAP granted by the City Manager shall contain the following conditions:

(1) Upon written request by the City Engineer or designee, Grantee shall provide to the City within ~~ten~~ fifteen (~~10~~15) calendar days, and immediately in the case of a City Manager-declared emergency, Geographic Information System (GIS) coordinate data or other locational records as the City ~~in its sole discretion may deem~~reasonably determines is necessary ~~appropriate~~ for the City's requirements. ~~The records provided in response to the City's request shall describe Grantee's facilities in geographical areas of any size that the City determines necessary to coordinate with the City's uses or any other lawful uses of the Streets throughout the City.~~

(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 in 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~~confidentially with at least as much care as the City treats its own confidential information~~; 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 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 a specific and detailed legal basis, including applicable case law or other law, that ~~clearly~~ reasonably establishes the requested information is exempt from disclosure. If, at the time the documents are provided to the City, Grantee does not provide a specific and detailed 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~~, and Grantee shall hold the City, its elected officials, officers, and employees harmless for release of this information~~. 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. The City shall make reasonable efforts to notify Grantee if the City receives a CPRA request for Grantee's confidential information.~~It shall be Grantee's obligation to defend, at Grantee's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at Grantee's request. Furthermore, Grantee 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 Grantee's request. Nothing in the Franchise creates any obligation on the part of the City to notify Grantee or obtain Grantee's approval or consent before releasing information subject to disclosure under the CPRA, in response to a CPRA request. This defense and indemnity requirement supplements but does not replace the general indemnity requirement in Section 14.~~

(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 a MAP may be written or construed to reduce or modify the City's uses of the Streets. ~~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 shall be at Grantee's sole expense. The City and its contractors shall not be required to pay any amount for the services of any personnel, stand-by safety engineers, or similar service for the protection of Grantee's facilities which may be necessary for any City-controlled excavation or other work. Upon written request from the City or an authorized agent, Grantee shall within five (5) 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, and Grantee shall be solely responsible for all related costs.~~

~~(4)~~(3) In its application for a MAP, Grantee shall submit to the City a list of projects and activities Grantee plans to perform in the two years covered by the MAP (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 MAP understanding between the City and Grantee as to those activities anticipated to require coordination with the City and other utilities. In the event of 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. Grantee shall promptly inform the City if its plans materially change under any Two-Year plan. ~~request such changes when Grantee discovers that changes are needed~~.

~~(5)~~(4) 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 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 Engineer 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 which are not granted by the City, and ~~shall jointly~~will endeavor to encourage participation of these entities in the Coordinating Committee so that the activities and projects of all entities using the Streets may be efficiently communicated and scheduled 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**

**Comments to Section 10**: This section must be revised as follows:

- The calculation in subsection (c) below is incorrect and should instead result in a payment of 0.97% of Gross Receipts, not 1.15%.
- SDG&E cannot agree to guarantee the City Rule 20 revenue if the Rule 20 program is terminated or modified by the CPUC.
- This section must address how the Grantee and the City will treat the construction, undergrounding, and installing – and the means and methods of such work – of Facilities owned by Grantee and governed by the CPUC.

Further, under the auspices of the existing franchise and the Memorandum of Understanding regarding undergrounding, SDG&E and City Staff have met extensively to resolve ongoing issues with the current undergrounding surcharge program. We believe those meetings culminated in a tentative agreement of City Staff and SDG&E that will achieve the City's undergrounding goals prior to the issuance of the ITB. Rather than markup the process and procedures in subsections (d) through (q) below, we believe the conceptual agreement with City Staff should be reduced to writing in the sixty (60) days following the Commencement of Operations Date.

(a) *General.* Section 10 describes obligations of Grantee to support the City program to convert existing overhead poles and wires to underground facilities. These obligations are part. of the consideration for the Franchise. At the Effective Date, the City has established the Utilities Undergrounding Program which is funded through two categorical sources described in Sections l O(c)

and (d) which are, respectively, rate-based undergrounding revenue, and municipal surcharge revenue. For purposes of undergrounding Poles, Wires, Conduits, and Appurtenances, Grantee shall pay the City four and one-half percent (4.5%) of its Gross Receipts each year for the term of the Franchise. Of the four and one-half percent (4.5%) of Gross Receipts, three and fifty-three hundredths of a percent (3.53%) was approved specifically for municipal undergrounding by CPUC Resolution No. E-3788 prior to the Effective Date. The three and fifty-three hundredths of a percent (3.53%) undergrounding-specific surcharge collection and payment may-be-continued by Grantee, by new application to the CPUC, if necessary, for continuation retroactive to the Effective Date. The difference between this surcharge revenue and four and one-half percent (4.5%) of Gross Receipts shall be funded by CPUC-approved rates (including Tariff Rule 20 (Rule 20) revenue) or any successor program, to the extent a successor program exists~~, or by Grantee itself should there be any rate and surcharge shortfall~~. Grantee does not guarantee Rule 20 revenue.

(b) *Pace of Undergrounding.* ~~Grantee shall cooperate with and support~~ City policy ~~which~~ intends that all overhead facility locations within the City be converted at the fastest pace that can be achieved through a publicly transparent, efficient, and accountable use of existing available funding mechanisms subject to annual funding authorizations by the City and available funds. Any agreement between Grantee and the City about the pace of undergrounding projects shall be approved by the City Council; any such agreement not approved by the City Council shall be void.

(c) *Rate-based or Rule 20 Fund.* Rule 20 or successor funding program provides Grantee with an allocation from rates for undergrounding overhead facilities on eligible Streets in the City. Grantee shall apply regularly as part of its rate case applications to the CPUC for authority to budget amounts of money for the undergrounding of existing overhead facilities in the City pursuant to Rule 20 or successor program-eligible projects. On the Effective Date, per existing criteria of the CPUC, collections from the ratepayers, in base rates, amount to ninety-seven ~~one and fifteen one-~~ hundredths of a percent (~~1.15~~0.97%) of Gross Receipts for undergrounding Rule 20- eligible projects in the City. Grantee shall annually certify this level to the City with its remittances and in the event that Grantee's system average rate-based (Rule 20 or successor program) undergrounding receipts for the City fall below this amount, Grantee shall notify the City~~ and may file for the replacement of such revenue difference by application, advice letter, or other filing to the CPUC for a surcharge adjustment in an equivalent amount. The City shall not oppose such application but, should such application not be granted, Grantee shall not be relieved from the requirement of paying the City a total of four and one-half percent (4.5%) of Gross Receipts annually for undergrounding of Grantee's facilities~~.

(d) *Municipal Undergrounding Surcharge Funds.* City of San Diego Municipal Undergrounding Surcharge revenue has previously been collected by the Grantee (or prior Grantee) in accordance with CPUC Resolution No. E-3788 and associated tariffs as existing *prior* to the Effective Date. The San Diego Municipal Undergrounding Surcharge constitutes three and fifty-three hundredths of a percent (3.53%) of the five and seventy-eight one hundredths of a percent (5.78%) municipal differential surcharge previously authorized by CPUC Resolution No. E-3788 at the Effective Date. Said revenue shall be preserved, subject to orders of the CPUC, from the Effective Date and shall be remitted by Grantee as provided in Section 5 to the City and deposited into the Municipal Undergrounding Surcharge Fund which shall be managed by the City. Said funds are City funds (and as such, public funds) and notwithstanding Grantee's private ownership of the affected facilities, Grantee shall be publicly accountable to the City for charges to these public funds according to Section 10 and shall provide all Books and Records requested by the City for all costs sought for reimbursement from said funds.

(e) *Grantee Required Cooperation.* 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, including design review and inspections necessary for the acceptance of infrastructure construction contracted and managed by the City. Grantee and the City 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 law, and satisfies Grantee's and CPUC rules and regulations to assure safety and quality, as established in CPUC General Orders. The written protocol shall define timely access to information, timely delivery of pricing proposals, and timely delivery of project support services. If Grantee contends that other laws prevent adherence to the City's ordinances and policies, Grantee must provide a specific and detailed 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.

(f) *Reimbursable Costs for Planning, Design, and Project Administration.* The written protocol required by Section 10(e) shall provide, subject to revision by the parties from time to time, for a standard schedule of Grantee's reasonable cost rates for planning and predesign, and for review and administrative services for the entire range of project activities. Grantee's reasonable internal rates including overhead and burden shall be substantiated in the schedule and shall not be inconsistent with prevailing rates for similar services customarily charged by third-party engineers. The parties shall negotiate the cost incurrence protocol in good faith and take all reasonable steps to avoid potential disputes over specific project costs. Any disputes about either the reasonableness of the rates to be charged by Grantee or the efficiency of time and effort estimated or charged shall be resolved through the dispute resolution process provided in Section 17. The schedule of costs shall be applicable to all Grantee work in the planning stage and for administration of any discrete project. The protocol shall provide that for each scheduled underground conversion project Grantee shall provide to the City, upon the conclusion of the planning stage, as determined by the City, a not-to-exceed cost proposal for the design and engineering of the project by Grantee or by qualified engineers of its selection, and the proposal shall include Grantee's own charges. The City may accept Grantee's design proposal or in its sole discretion the City may perform design with the engineers of its choosing, provided that design shall conform to all applicable Grantee and CPUC standards and requirements, and final design shall be subject to Grantee review and approval. The protocol will provide that at or near the completion of design, Grantee shall, at request of the City, provide the City with a preliminary construction cost estimate and schedule. Grantee shall provide sufficient information and cost assurances to inform a City decision whether to accept Grantee's proposal to proceed with construction procurement for any or all phases of a project including trench and conduit, panel conversion, cabling, cutover, and removal from service. The City may upon this information authorize Grantee to proceed with bidding of construction contracts or the City may in its sole discretion proceed to procure its own contractors to perform any or all phases of construction.

(g) *Construction by Grantee.* If the City elects to have Grantee proceed with bidding of contracts for the construction services, Grantee shall notify the City in writing of the processes it intends to follow to comply with City requirements and shall openly solicit written bids from qualified contractors, which bidding shall be documented to the City for each contract and shall be made available to the City as Books and Records, as provided in Sections 10 (n) and (o). Grantee shall advise the City of all of its own and its contractors' offered change order terms in advance to assist the City's decision on authorizing Grantee to proceed with bidding. In bidding for construction contracts, Grantee shall conform to the City's procurement laws and regulations and shall comply with applicable prevailing wage

requirements of the California Labor Code as provided in Section 10(1). If Grantee contends that other laws prevent adherence to the City's procurement laws and regulations or applicable prevailing wage requirements of the California Labor Code, Grantee shall provide a specific and detailed legal basis that clearly establishes that the CPUC or other agency with jurisdiction requires or prohibits Grantee from following these laws and regulations. General references to provisions of the law or Grantee business preferences will not suffice. Grantee shall not proceed with execution of construction contracts for Municipal Undergrounding Surcharge-funded projects without written approval from the City Engineer or designee upon complying with the provision of all required documentation of Grantee's procurement process and the City's approval of Grantee's change order terms, if applicable. After Grantee receives bids and recommends that the City approve Grantee's contracting for construction, Grantee shall therewith negotiate with the City a not-to-exceed pricing agreement for the project, subject to any provisions for changes, which shall also include Grantee's own not-to-exceed charges for the project.

(h) *Construction by City.* If Grantee's construction cost estimate and pricing agreement assurances are not acceptable to the City, the City in its sole discretion may elect to hire qualified contractors for all or any part of the Municipal Undergrounding Surcharge-funded construction work including trench and conduit, panel conversion, cabling, cutover, and removal from service. Contractors shall meet Grantee's qualifying criteria as specified by Grantee who shall give the City a list of qualifications and construction standards applicable to Grantee's facilities that the City will utilize when hiring construction contractors for undergrounding projects. If the City contracts for construction, Grantee shall perform design plan check, inspections, and system energizing to assure compliance with CPUC General Orders and Grantee's safety; engineering, and construction standards and procedures. Grantee's charges for said services shall conform to those established rates in the written protocol provided in Section 10(f). Grantee shall cooperate with the City to coordinate the timely delivery of the necessary Grantee services. If the City elects to have Grantee contract for some elements of the construction work and with the City for other elements, the parties shall coordinate the timely performance of all elements.

(i) *Pole Disposal.* Whichever party contracts for pole removal and disposal shall use best efforts, based on diligent *mutual* research, to provide in such contracts that the poles will be recycled at locations mutually agreed to by the parties. If in the City's discretion recycling is impractical or cost prohibitive, the poles shall be disposed of by other legal means, provided that none of Grantee's poles may be disposed of in the City's Miramar Landfill.

(j) *City Audit and Confidentiality of Municipal Undergrounding Records.* For purposes of the Municipal *Undergrounding* Surcharge Program, for City reimbursement of expenditures to Grantee,

Grantee shall be deemed a "vendor" under San Diego Charter section 39.2 and subject to the audit provisions therein. 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 public records request pursuant to the CPRA, unless the City or a court of competent jurisdiction determines that a specific exemption in 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 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 a specific and detailed legal basis, including applicable case law or other law, that clearly establishes the requested information is exempt from disclosure. If, at the time the documents are provided to the City, Grantee does not provide a specific and detailed 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, and Grantee shall hold the City, its elected officials, officers, and employees harmless for release of this information. It shall be Grantee's obligation to defend, at Grantee's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at Grantee's request. Furthermore, Grantee 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 Grantee's request. Nothing in the Franchise creates any obligation on the part of the City to notify Grantee or obtain Grantee's approval or consent before releasing information subject to disclosure under the CPRA, in response to a CPRA request. This defense and indemnity requirement supplements but does not replace the general indemnity requirement in Section 14.

(k) *No Non-Disclosure Agreements.* The City shall not be required to execute any non-disclosure agreement with Grantee to obtain prompt and complete access to Grantee's financial Books and Records related to work on the Municipal Undergrounding Program except by order of a state or federal governmental agency or court having jurisdiction to impose such requirement.

(l) *State Laws and City Policies for Procurement.* All payments to Grantee using Municipal *Undergrounding* Surcharge funds shall be subject to Grantee's compliance with applicable State laws, and the City's laws and policies, including competitive bidding (San Diego Municipal Code Chapter 2, Article 2, Division 31); prevailing wage law (California Labor Code sections 1720 - 1784); City nondiscrimination requirements (San Diego Municipal Code Chapter 2, Article 2, Division 35); City Equal Employment Opportunity Outreach Program (San Diego Municipal Code Chapter 2, Article 2, Division 27); California Public Records Act, and any applicable provisions that relate to the expenditure of public funds, unless otherwise prohibited by law. If Grantee contends that other laws prevent adherence to applicable State laws, City laws or policies, Grantee must provide a specific and detailed legal basis that clearly establishes that the CPUC or other agency with jurisdiction requires or prohibits Grantee from following these rules. General references to provisions of the law or Grantee business preferences will not suffice. For Municipal Undergrounding Surcharge-funded projects, Grantee shall adhere to the City's regulations for Grantee's Executive Officer to certify justification of any sole source contracts for provision of any of the materials, services, or construction needed to complete these projects, and such justification shall be provided to the City for its own approval, which shall not be unreasonably withheld.

(m) *Remittance and Use of Surcharge Revenues.* All surcharge revenues shall be paid to the City with the quarterly remittance of Franchise fees as provided in Section 5. The quarterly payment shall *include* a detailed accounting of the amount of the payment which is attributed to the Franchise fee provided for in Section 4 and which portion is attributed to the undergrounding component of Section 10 and CPUC Resolution No. E-3788, or any successor decision as required to be sought herein if necessary. The City will use three and fifty-three hundredths of a percent (3.53%) of the total surcharge revenues to fund expenses directly and exclusively related to replacing existing overhead electric facilities to underground, including but not limited to, design, engineering, construction, the City and Grantee construction management, repaving Streets, lateral connections to ratepayers, and streetlights. Expenses directly and exclusively related to undergrounding electric infrastructure shall exclude payments for employee bonuses, executive compensation and bonuses, and any other indirect costs not directly and 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.

(n) *Records Required for Planning, Decisions, and Payment.* No later than five (5) business days after written request from the City Manager, City Attorney, City Auditor, or designees, Grantee shall provide all Books and Records that the City deems relevant to the City's understanding of *Grantee's*

business in the operation of the Municipal Undergrounding Surcharge program, including records the City deems necessary to perform value engineering studies for planning, to aid decisions on contracting, to verify expenditure reimbursement requests, and to perform audit reviews. Grantee shall provide the following documentation to the City before the City shall be obligated to render payment to Grantee: proof of competitive bids for construction; all invoices submitted by suppliers and subcontractors (and if requested, proof of payment and delivery of goods and services); proof of compliance with laws and policies provided in Section 10(1); proof that Municipal Undergrounding Surcharge work charge accounting is separate from all other Grantee business accounting; detailed accounting of Grantee's overhead charges showing that rates in protocol provided in Sections 10(e) and (f) are followed and supported; and any other documentation requested by the City to validate project costs and proper expenditure of public funds. At least quarterly or at the written request of the City Manager, Grantee shall provide a detailed analysis of expenditures and participate in any City Council meeting to report on the status of the undergrounding projects. Grantee shall maintain and make available to the City all Books and Records that are necessary to determine the costs for the Municipal Undergrounding Surcharge program, no later than five (5) business days after written request from the City. The City Manager, City Attorney, City Auditor, or designees, shall have the right at any reasonable time during business hours to examine and audit such business records to verify the costs of the Municipal Undergrounding Surcharge program.

(o) *Cooperation with Records Requests.* Grantee shall cooperate with the production of any Books and Records requested by the City to justify payment of Grantee's invoices from public funds. It is the intent of Section 10(o) 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 deems necessary to verify expenditure of said funds. Upon request of the City Manager, City Attorney, City Auditor, or designees, Grantee shall provide all requested Books and Records in any way relating to charges to or expenditure of Municipal Undergrounding Surcharge undergrounding funds within five (5) business days.

(p) *Project Timeline Obligation.* The City shall determine and prioritize the projects 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). Grantee shall cooperate with the City by including in its Two-Year Plans required by Section 9 all planned undergrounding district projects in a manner which coordinates the schedules of the parties. Any dispute regarding reimbursement of costs shall not alter the obligation of Grantee to adhere to timelines.

(q) *No Third-Party Rights.* 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 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 Laws of the State providing for electric commodity cost indifference between community choice aggregation 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 community choice aggregation. Grantee shall at all times abide by the Community Choice Aggregation 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 material Grantee breach of the Community Choice Aggregation 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 Local Materials Sale and Purchase Goals**

(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, and any revised or successive climate plan. Subject to Applicable Law, Grantee shall ~~reasonably~~ endeavor to 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~~ will reasonably 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. ~~Subject to Applicable Law, Grantee shall permit distributed energy resources to deliver all practical excess amounts of electric energy and capacity not used at the sites of distributed generation located within the City to be made available to other customers of Grantee and/or to any operating community choice aggregation program established by the City.~~ Grantee accepts that the City will support expansion of net energy metering, feed-in tariffs, and other economic mechanisms to foster development of local renewable fueled electric distributed resources, electric storage, microgrids, electric transportation, and other technologies to be more increasingly integrated with the design and operation of Grantee's electric distribution system~~, and Grantee will not unreasonably oppose or obstruct such efforts without good public cause which shall be at Grantee's sole discretion~~. The City recognizes that transition of electric service delivery to these preferred resources, including necessary distribution system adaptations, requires that customers who do not or cannot adapt to these technologies, or are not required by the California Legislature to do so, cannot be required to subsidize the cost of customers who do make these changes. ~~Nonetheless, Grantee shall cooperate with the City in good faith toward fulfillment of these objectives in a Joint Policies Guide as provided in Section 12(e), on a timetable which meets the City's Climate 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 the improvement of environmental and social justice in the provision of electric service. Grantee shall recognize and support the City's 2019 Climate Equity Index~~ and any subsequent versions or revisions~~. Grantee shall use best 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~~endeavor to minimize service costs to City residents and businesses where practicable, to provide opportunities to low and moderate income customers for them to reduce energy bills through energy efficiency, to ~~minimize~~

reduce cost volatility, and to improve access to energy services that empower low and moderate income residents and disadvantaged businesses through efficiency, conservation, and renewable energy~~, including through the mechanism of on-bill financing~~.

(c) *Joint Policies Guide.* During the first year after the Effective Date, Grantee and the City Manager shall meet and confer for the negotiation and adoption of a Joint Policies Guide *regarding* the subjects provided in Sections 12(a) and (b). The Joint Policies Guide shall be signed by Grantee's responsible officer and presented to the City Council for adoption within the first year after the Effective Date. The Joint Policies Guide shall be an aspirational document providing for Grantee's points of alignment and cooperation with the City's policy objectives provided in Sections 12(a) and (b), including the identification of barriers. Grantee's cooperation with Section 12 shall be reported in the periodic compliance report provided in Section 6. In negotiating the Joint Policies Guide, the parties shall take 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~~, or why Grantee may need to take a position before the Legislature or CPUC that is tempered with respect to City policy objectives~~. The Joint Policies Guide 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 generation, evolving technology, and transportation electrification programs and grants that are made available by the CPUC and California Energy Commission. The Joint Policies Guide shall describe Grantee's ~~intended best~~planned efforts to make its State-authorized energy efficiency, distributed energy, emerging technology (including Electric Program Investment Charge opportunities, as applicable); and transportation electrification program funding available to the City (and to qualifying customers in the City and its other customers) according to orders of the Commission~~s~~ and subject to Applicable Law. ~~Where Commission orders require or invite Grantee to submit proposals to be approved for the expenditure of said program funds, the Joint Policies Guide shall indicate the available programs and how Grantee's proposals will give due consideration to the City's climate action goals and to City's position and ability to partner with Grantee toward fulfillment of those goals, including through building codes, building energy benchmarking, deployment of customer controlled energy storage, microgrids, and electric transportation on City Streets.~~

(d) *Sale and Purchasing of Local Materials.* Grantee shall use ~~good best faith~~reasonable efforts to ~~arrange and~~ operate its business in a manner such that ~~both the retail selling and~~ the majority of purchasing of ~~all~~ materials and supplies used in connection with its business occurs at addresses

located in the City of San Diego~~, and that all sales tax from Grantee's material purchases are collected and paid upon retail sales transactions occurring within City boundaries~~.

(e) The provisions in Sections 12(a) through (d) are aspirational goals but shall not be *binding* legal agreements giving rise to remedies provided in Section 16. The provisions shall be construed only as an indication of Grantee's good faith commitment to the City's policies and preferences and for no other reason.

**Section 13. City Use of Grantee Real Property**

**Comments to Section 13**: This section must be revised as follows:

- This section contains provisions that result in a Constitutional taking of the Grantee's property, or improper impairment of the Grantee's contracts and property rights, and must be revised to avoid such results.
- This section must specify the metrics and process for determining whether Grantee property qualifies as "unused or excess Grantee real property" and must include Grantee's input.
- The section must make clear that the following are excluded from the City's use: Grantee property not held in fee; Grantee property outside of the City's boundaries; and Grantee property related to other jurisdictions.
- The Grantee must be reasonably compensated for the City's use of its property and must be protected from liability arising from the City's use.

In addition, to the extent that SDG&E is the Grantee, if the City has identified any SDG&E properties that it is potentially interested in using, the City must disclose these properties so that SDG&E can better evaluate and make proposals regarding the Franchise.

(a) Subject to Applicable Law, including California Public Utilities Code section 851 and regulations or orders of the CPUC, Federal Energy Regulatory Commission, and Grantee's own safety and security regulations, the City shall have the right to request to lease vacant, unused or excess property of Grantee within the City geographic limits, at fair market value rent, and subject at all times to the prior approval of the Commission and at the discretion of Grantee ~~use any unused or excess Grantee real property for municipal purposes without cost of rent~~. Such City uses shall not be unreasonable or incompatible with Grantee's uses of the property as determined in Grantee's sole discretion. The City's uses may be of temporary or continuing nature and subject at all times to Grantee's right of eviction upon reasonable notice or for cause if at any time the City uses become incompatible with Grantee's uses. Grantee shall reasonably cooperate with the City at the City's request to use such excess property, including applying to the CPUC pursuant to California Public Utilities Code section 851 for authorization of such use. The City shall pay Grantee all administrative costs of such use ~~but free of rent~~. The City's uses of Grantee's property shall meet Grantee's general requirements for use of excess or unused Grantee property and shall be subject to all ~~reasonable~~ usual requirements of Grantee with

respect to other parties, -including hold harmless and indemnification provisions in favor of Grantee. Section 13(a) is intended only to apply to compensation for the use of excess real property, not to other reasonable Grantee requirements, limitations, or exclusions. ~~The compensation for such use with no additional cost of rent is provided in the grant of the Franchise.~~

(b) Subject to Applicable Law including regulations or orders of the CPUC, Federal Energy Regulatory Commission, and Grantee's own safety and security regulations, the City shall have the right ~~without cost of rent~~ to use all poles and suitable overhead structures and underground utilities facilities owned by Grantee upon and within Streets for City wires used in connection with its fire alarms, police signal systems, or other public safety communication lines used for governmental purposes in accordance with Grantee's standard pole attachment requirements, rules and regulations, to the extent such regulations permit such attachments. Such City uses shall not be unreasonable or incompatible with Grantee's uses of the property. The City's uses may be of temporary or continuing nature and subject at all times to Grantee's right of eviction upon reasonable notice or for cause if at any time the City's uses become incompatible with Grantee's uses. Provided further, that Grantee shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City shall be in conformance with regulations and orders of the CPUC and in such a manner as to prevent safety hazards or interferences with Grantee's use. Nothing herein shall be construed to require Grantee to increase pole size, replace any pole, or alter the manner in which Grantee attaches its equipment to poles or alter the manner in which it operates and maintains its electric facilities. City attachments shall be installed and maintained in accordance with the ~~reasonable~~ requirements of Grantee and the CPUC pertaining.to such construction, including hold harmless and indemnity provisions in favor of Grantee. Further, City attachments shall be attached or installed only after written approval by Grantee in conjunction with Grantee's ~~standard~~ pole attachment application process. Grantee shall have the right to inspect, at the City's expense, such attachments to ensure compliance with Section 13 and to require the City to remedy any defective attachments promptly and in accordance with Grantee's standards. ~~The compensation for such use of poles at no additional cost of rent is provided in the grant of the Franchise.~~

**Section 14. Indemnity, Defense, Insurance**

**Comments to Section 14**: If the Franchise continues to contain provisions that will place the Grantee in potential violation of federal, state or local law, this provision must be revised to indemnify the Grantee for costs of defense and any resulting penalties, fines or damages.

(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 subcontractor, anyone ~~directly or indirectly~~ employed by them~~, or anyone that they control~~), expense and liability (collectively, Claims) ~~of every kind, nature, and description (including incidental and consequential damages, court costs, 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 acts performed, rights exercised; or ~~rights or~~ privileges granted under the Franchise, by or to Grantee, any agent or ~~sub~~contractor of Grantee, anyone directly or indirectly employed by them, or anyone that they control. Grantee's duty to defend, indemnify, and hold harmless shall not include any ~~claims or liabilities~~Claims arising from the active negligence, sole negligence, or willful misconduct of the Indemnified Parties.

(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 performance of the Franchise by the Grantee, its agents, representatives, employees or subcontractors:

(1) Comprehensive general liability insurance naming the City, its officials, employees, and agents as additional insureds from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out of or in any manner connected with Grantee's operation or performance under the Franchise in an amount not less than five million dollars ($5,000,000) each occurrence and five million dollars ($5,000,000) general aggregate.

(2) Automobile liability in an amount not less than one million dollars ($1,000,000) combined single limit per accident for bodily injury and property damage covering owned, non-owned and hired vehicles.

(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 one million

dollars ($1,000,000) per accident for bodily injury or disease.

(4) Excess liability or Umbrella liability insurance in an amount not less than ten million dollars ($10,000,000) per occurrence.

(c) Each insurance policy shall be endorsed to state that coverage is ~~shall not be suspended, voided or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to the City, and shall be~~ primary and not contributing to any other insurance or self-insurance maintained by the City.

(d) Not more frequently than every five (5) years, if in the reasonable opinion of City 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, which increase shall be on par with coverages required by the City for similar projects. Grantee shall furnish the City with certificates of insurance ~~and with original endorsements~~ 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.

(e) Grantee may fulfill the insurance obligations of Sections 14(b) through (d) by self-insurance. Grantee shall provide a certificate to the City evidencing the fulfillment of these requirements.

**Section 15. Repair Costs**

If Grantee causes damage as part of the exercise of its rights and privileges under the Franchise, Grantee shall repair all such damage to the ~~pay to the City on demand the cost of all repairs to City property made necessary by any of Grantee's operations under the Franchise, provided however, that Grantee may make repairs to~~ Streets, sidewalks, curbs and gutters itself at its own cost in accordance with City specifications, rules, and regulations, provided that Grantee shall not be required to repair such Streets, sidewalks, curbs or gutters to a condition better than previously existed unless separately required by the permitting authority ~~if the repairs can be done without undue inconvenience to the public use of the Streets~~.

**Section 16. Forfeiture and Other Remedies**

**Comment to Sections 16 and 22**: These sections contain provisions that violate California law, which requires a liquidated damages clause to be reasonable under the circumstances. (Civ. Code, § 1671, subd. (b).) California courts have generally considered a liquidated damages clause unreasonable—and thus unenforceable—if it bears no reasonable relationship to the range of actual damages that the parties could have anticipated would flow from a breach. (*Ridgley v. Topa Thrift & Loan Assn.* (1998) 17 Cal.4th 970.) This section must be revised accordingly. This section also must be revised to allow for a cure period, identify the applicable dispute resolution provisions, and state that the City may not take any action with respect to a disputed breach until such dispute is fully resolved.

(a) 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, except Section 12. If Grantee shall fail, neglect or refuse to materially comply with any of the conditions of the Franchise, and if such failure, neglect or refusal shall continue for more than ~~thirty~~ ninety (~~30~~90) calendar days after written demand by the City Manager for compliance and a reasonable period for cure is provided, then the City, by the City Council, in addition to all rights and remedies allowed by law, including but not limited to breach of contract, declaratory relief, specific performance, and mandatory injunction, may terminate the right, privilege and Franchise granted in and by the Franchise, and all the rights, privileges and the Franchise of Grantee shall be at an end; provided, however, that if Grantee or City has invoked the dispute resolution provisions of this Franchise with respect to such failure, neglect or refusal, the City and the City Council may not take any such action until such dispute is fully resolved. Thereupon and immediately, Grantee shall surrender all rights and privileges in and to the Franchise. No Franchise provision made to secure the enforcement of the terms and conditions of the Franchise shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of the Franchise terms and conditions (except the liquidated damages provisions described in Section 16(b), which are exclusive), but the remedies and procedure outlined or provided, including forfeiture, shall be deemed to be cumulative.

(b) Notwithstanding and without waiving the remedies reserved in Section 16(a), the parties recognize and agree that certain Grantee breaches of specified conditions in the Franchise will result in damages to the City~~, as cost of postponing services or projects, or other delay expenses,~~that may be difficult to precisely estimate and which ~~for a temporary period~~ may not practically warrant forfeiture of the Franchise by Grantee~~ or require specific proof of damage by the City~~. For such specified conditions ~~and limited periods~~ of Grantee breach only, at the City's sole discretion and election, as an alternative remedy to those provided in Section 16(a), Grantee shall be liable to the City

for liquidated damages in lieu of forfeiture or proof of actual damages or other legal remedies. Any failure of the City to not elect liquidated damages under Section 16(b) shall not be a waiver of the City's right to prove and recover actual damages under Section 16(a), provided that such liquidated damages shall be the sole remedy available to the City for any such breach if the City elects to collect liquidated damages. The City-elected liquidated damage assessments shall be applicable only tomay only collect liquidated damages for Grantee breaches of the conditions specified in Section 16(e), and only for the maximum time periods provided in Section 16(c). All Franchise conditions not stated in Section 16(e) shall expressly and at all times remain reserved to the City to enforce and subject to the termination remedyies provided in Section 16(a) and any remedies provided by law.

(c) In the event that the City elects the remedy of liquidated damages for the breach of any of the specified conditions in Section 16(e), 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-ninety (3090) calendar day right to cure provided in Section 16(a). If after the thirty-ninety (3090) calendar days from notice of the breach, the condition has not been cured or justified to the reasonable satisfaction of the City Manager, 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-ninety (3090) calendar days after each such notice. After the one hundred eighty (180) calendar day period, the remedies in Section 16(a) shall remain available to thethe City may exercise its termination remedy described in Section 16(a) or other remedies provided by law. The liquidated damages provided in Section 16(e) shall accrue and be paid on each uncured incident notice even if multiple notices cite a common 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, and thereafter for all City's remedies provided in Section 16(a) for each such breach which extends beyond the maximum liquidated damage assessment period. The City Manager shall assess and bill Grantee for all such damages which 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, ; unless Grantee disputes such liquidated damages pursuant to the dispute resolution procedures in Section 17.and if not so paid, Grantee shall be in default of the Franchise. During the pendency of any disputed liquidated damage assessment period, the parties shall engage in dispute resolution as provided in Section 17. Section 16

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.

(d) By entering the Franchise, Grantee and the City agree that the specified Franchise conditions and liquidated damage amounts provided in Section 16(e) 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 16(e) 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 ~~temporary~~ liquidated damages under this Section 16 ~~is, if exercised under Sections 16(b) and (c),~~ an alternative that shall be available to the City in lieu of the remedy of immediate Grantee forfeiture or any other legal remedy~~ies~~ reserved to the City under Section 16(a), and is not and shall not be construed as a penalty. Grantee acknowledges that amounts provided in Sections 16(b), (c), and (e) are capped and for the maximum period provided 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. ~~As a temporary alternative to forfeiture of the Franchise by Grantee for the breach of any condition, said liquidated damages are not a penalty.~~

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

If elected by the City pursuant to Sections 16(b) and (c), 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: six ~~thousand~~ hundred ($~~6,000~~600) 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 ~~thousand~~ hundred ($~~15,000~~1,500) per calendar day for delay and disruption. Actual cost of relocation shall be borne entirely by Grantee.

~~(3) Failure to provide and pay for standby safety engineers for protection of Grantee facilities within five (5) calendar days' notice from the City or its authorized agents as required by Section 9: Cost of standby engineers plus fifteen thousand ($15,000) per calendar day for delay~~

~~impacts.~~

**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 the Grantee's Vice President of Electric Engineering and Construction, or equivalent title, for further consultation and negotiation.

(b) If the City Manager and the Grantee's Vice President of Electric Engineering and Construction or equivalent are unable to agree on a solution within fifteen (15) calendar days of such referral, the City and Grantee agree to 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 agree that they will participate in the mediation in good faith and will share equally in the mediation costs, though 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~~ninety (~~45~~90) calendar days after the City Manager and the Grantee's Vice President 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 and under no other authority.

**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**

*See comments to Section 16.*

Grantee shall file and maintain a faithful performance bond in favor of the City in the sum of $30,000,000 (thirty million dollars) to guarantee that Grantee shall well and truly observe, fulfill, and perform each and every term and condition of the Franchise. In case of any breach of any condition of the Franchise, up to the whole amount of the sum named in the bond may be ~~taken and deemed to be liquidated damages and shall be recoverable~~receivable from the principal and sureties upon such bond to compensate the City for any actual damages it may suffer by reason of such breach. 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.

**Section 23. Bankruptcy**

**Comments to Section 23**: Provisions within this section are void under the Bankruptcy Code and must be revised to comply with federal bankruptcy law. This section also must be revised to address the rights of the Grantee in the event that the City files for bankruptcy under chapter 9 of the Bankruptcy Code, including allowing the Grantee to recoup the unamortized amount of advanced payments as a secured-interest claim, cancellation of any payment notes not yet paid, and a refund of such amounts already paid.

If Grantee files any voluntary or involuntary petition for bankruptcy under the laws of the United

States, the Franchise may at the City's sole discretion be immediately terminated and forfeited. The Franchise is personal between the City and Grantee and shall not be assignable or salable in bankruptcy without the City's express written consent. No value may be attributed to the Franchise in bankruptcy except for the depreciated value of Grantee's facilities in the City Streets, In any bankruptcy proceeding, 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. If the bankruptcy petition is for reorganization under Chapter 11, the forfeited Franchise may be reinstated by agreement of the parties or their successors, provided that the City shall have no express or implied duty to so agree.

**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. Incorporation of Notice Inviting Bids, Grantee's Bid; Maturity of Obligations**

**Comments to Section 25**: Rather than incorporate the entire ITB into the Franchise, SDG&E proposes that specific sections that are required should be incorporated into the actual text of the ordinance. Much of the ITB itself is not relevant to an ongoing 20-year franchise ordinance and it would therefore be inappropriate to include the entire ITB by reference. Further, subsection (b) raises concerns regarding compliance and consistency with liquidated damages law, as discussed in SDG&E's comments to Sections 16 and 22 above.

(a) The terms and conditions in the "Notice Inviting Bids for a Franchise to Construct, Maintain, and Use Poles, Wires, Conduits, and Appurtenances for Transmitting and Distributing Electricity in the Streets of the City of San Diego" (Noticing Inviting Bids), and Grantee's offer in response, are part of the Franchise and are fully incorporated herein. The Notice Inviting Bids and Grantee's offer are attached as Attachment 3 to the Franchise. Grantee's offer in response to the Notice Inviting Bids constitutes a material inducement for the grant of the Franchise.

(b) Any breach of the terms and conditions in the Notice Inviting Bids and Grantee's offer in response is a breach of the Franchise and shall be subject to the remedies provided in Section 16. If the Franchise is forfeited under Section 16 for any reason, the maturity dates of all promissory notes then remaining unpaid, if any, shall be advanced to the date of forfeiture, and payment of the principal amount on all remaining promissory notes shall be due and payable to City immediately. The provisions of Section 25 shall be in addition to the taking of the full amount of the performance bond as provided in Section 22.

**Section 26. 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 27. 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: MARA W. ELLIOTT, City Attorney

By:_____
Frederick M. Ortlieb
Deputy City Attorney

FMO:als
09/22/2020
Or.Dept.: Office of the Mayor
Doc. No.:2486776

Attachments: 1 Table of Contents – Exhibit A – Electric Franchise
2 Master Administrative Permit Key Terms
3 Notice Inviting Bids and Grantee's Offer

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

ELIZABETH S. MALAND
City Clerk

By:_____
Deputy City Clerk

Approved: _____
(date)

_____
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

_____
KEVIN L. FAULCONER, Mayor

ATTACHMENTS

TO

EXHIBIT A ELECTRIC FRANCHISE

**Attachment 1**

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**Attachment 2**

Pursuant to Section 9 of the Franchise, Grantee shall apply for a biennial Master Administrative Permit (MAP) with the City of San Diego's Development Services Department. The general purpose of the MAP is to ensure coordination of work within the City's public right-of-way while maintaining the City's right to manage uses of the public right-of-way. Nothing in the MAP shall relieve Grantee from meeting all of its obligations under the Franchise, including those regarding relocation of Grantee's facilities at Grantee's sole cost in the event of conflicts with City uses. If there is any conflict between the provisions of the Franchise and the provisions of the MAP, the provisions of the Franchise shall control, and the conflicting provisions of the MAP shall be void. The MAP shall include the following key terms:

1. MAPs shall be effective for two years upon approval by the City Manager or designee.
2. Application for the first MAP shall occur soon after the effective date of the Franchise.
3. Grantee shall develop a Two-Year Plan as part of the MAP application (submitted within 30 days after the effective date of the Franchise) to include a list of projects and activities Grantee plans to perform during the term of the MAP.
4. The MAP will distinguish between the categories of work that Grantee may perform without additional specific permits, and categories of work that will require additional specific permits. Maintenance and operation will be defined in the MAP.
5. Grantee shall be responsible for providing the City with Geographic Information Systems (GIS) coordinate data of its assets to determine potential conflicts, relocation, or other coordination. Confidentiality issues are addressed in Section 9 of the Franchise.
6. Grantee shall perform work necessary to eliminate conflicts with the City's uses of the Streets, as provided in Section 8 of the Franchise.
7. All work or equipment located in the public right-of-way which affects traffic flow or safety shall require an approved Traffic Control Permit from the Development Services Department.
8. Standard Work Hour, Notification, and Pre-Construction requirements are required to better maintain coordination between Grantee and the City.
9. Grantee shall provide and pay at Grantee's sole expense all costs necessary for the protection and safety of Grantee's facilities during City-controlled work.
10. Require the protection of survey markers at Grantee's sole expense.
11. Establishes Grantee's participation and cooperation with a Utilities Coordinating Committee that will meet, at minimum, four times a year.

**Attachment 3**

[TO BE PROVIDED AT A FUTURE DATE]