

UNDERGROUNDING AGREEMENT

THIS AGREEMENT (this "Agreement"), dated _____, 2005 ("Effective Date"), is made by and between the City of San Diego, California, a municipal corporation (the "City"), and Pacific Bell Telephone Company, a California corporation, doing business as SBC California ("SBC"). The City and SBC shall sometimes be referred to separately as a "Party," and collectively as the "Parties."

RECITALS

A. Beginning in 1967, the Public Utilities Commission of the State of California ("CPUC") instituted a statewide program to convert existing overhead lines to underground service ("CPUC Program"). The CPUC Program has been implemented through the CPUC's rulemaking process and conversion tariffs, including San Diego Gas and Electric's ("SDG&E") Rule 20 and SBC's Rule 32. Both Rule 20 and Rule 32 require underground conversion projects meet "public benefit" criteria.

B. In 1970, the City and SDG&E entered into a fifty (50) year franchise agreement, wherein SDG&E agreed to convert overhead lines to underground service per CPUC Rule 20 at a rate equal to four and five-tenths percent (4.5%) of their gross electric revenues. From 1979 through 2001, the rate of underground conversion of overhead lines gradually declined from four and five-tenths percent (4.5%) to as low as one percent (1%) of SDG&E's gross electric revenue.

C. To address this decline, the City and SDG&E revised the terms of the franchise agreement for the final twenty (20) years to restore the rate of underground conversion of SDG&E's overhead lines to four and five-tenths percent (4.5%) of SDG&E's gross electric revenue. In connection with the foregoing, the City and SDG&E agreed to pursue an electric surcharge on electricity users within the City of San Diego, enabling the City to expand the conversion of overhead lines in residential areas ("Surcharge Program"). In 2002, the City amended the Underground Utility Procedural Ordinance and adopted new City Council Policy 600-08, which requires, among other things, all companies with overhead lines within the City of San Diego, including SBC, to underground lines that do not necessarily meet public benefit criteria under the conversion tariffs implementing the CPUC Program. The CPUC approved the increases to the SDG&E electric franchise fee surcharges in Order One of Resolution E-3788 on December 19, 2002.

D. In Order Two of Resolution E-3788, the CPUC granted a deviation of the CPUC rules governing utility undergrounding (Rule 20 and Rule 32) for SDG&E and SBC in order to implement the SDG&E/City proposed underground conversion program. The CPUC recognized such participation would create additional costs for SBC. The CPUC indicated SBC may seek recovery of its costs associated with the Surcharge Program by filing an application with the CPUC seeking approval of a surcharge and balancing account to track and recover SBC's costs.

E. With the City's active support, SBC desires to participate in the Surcharge Program by securing the necessary funds through an application as recommended by the CPUC. Meanwhile, the Parties desire to proceed with installing underground conduit to accommodate the future relocation of SBC facilities in order to avoid duplicative costs, delays and inconvenience of re-trenching City streets.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and SBC agree as follows:

AGREEMENT

1. Definitions. The words or phrases in this Section shall have the following definitions when appearing in this Agreement:

1.1 "Application" shall mean that certain Application of SBC California for a Surcharge and Balancing Account to Recover Undergrounding Costs in the City of San Diego, in the form and substance attached hereto as Exhibit "A," and incorporated herein by reference.

1.2 "Application Review Period" shall mean the time period commencing on the Effective Date of this Agreement and ending on the effective date of the CPUC's written decision ruling on the Application.

1.3 "Approval of Application" shall mean the CPUC's approval of a cost recovery mechanism that allows SBC to recover one hundred percent (100%) of any and all costs, fees and expenses incurred by SBC arising out of and in connection with its participation in the Surcharge Program.

1.4 "Available Communications Window" shall mean the entire remaining available space in the nine inch (9") by eighteen inch (18") communications window of each joint trench that is left unused by the participating cable and telecommunication companies. As an example only, a communications window in a typical joint trench is generally depicted on Exhibit "C," attached hereto. Notwithstanding the foregoing, the Parties hereby acknowledge and agree that the illustration and other information provided on Exhibit "C" shall under no circumstances be used to alter or contradict the meaning ascribed to the term Available Communications Window in this Section 1.4.

1.5 "City Council" shall mean the San Diego City Council.

1.6 "Claims" shall mean any and all rights, claims or causes of action either Party had or may have asserted against the other Party with respect to the Surcharge Program prior to the Effective Date.

1.7 "Conduit Design" shall mean the written drawings, plans, specifications and other engineering designs for underground conduit and appurtenant facilities sufficient to accommodate the conversion of SBC's overhead wires to underground service for a Surcharge Project, utilizing a joint trench if available.

1.8 "Conduit Design Expenses" shall mean the actual costs, fees and expenses incurred, paid or payable by SBC in connection with preparing or causing the preparation of the Conduit Designs.

1.9 "Conduit Installation" shall mean trenching and installation of the SBC Conduit (utilizing the Conduit Materials) in accordance with the Conduit Design for the applicable Surcharge Project.

1.10 "Conduit Installation Expenses" shall mean the actual costs, fees and expenses incurred, paid or payable by the City in connection with installing the Conduit Materials in accordance with the Conduit Design for the applicable Surcharge Project. The term "Conduit Installation Expenses" includes the Joint Trench Fee, but excludes the Conduit Material Expenses, the Conduit Design Expenses and the Overhead Line Conversion Expenses.

1.11 "Conduit Materials" shall mean all conduit, associated components and all other materials described or otherwise required in the Conduit Designs (including manhole and handhole materials).

1.12 "Conduit Material Expenses" shall mean the actual cost of the Conduit Materials.

1.13 "Conversion Completion Schedule" shall mean the schedule setting forth those Overhead Line Conversions to be completed in the first and second Conversion Completion Years, attached hereto as Exhibit "D," and incorporated herein by reference.

1.14 "Conversion Completion Year" shall have the meaning ascribed to such term in Section 3.2.1 hereof.

1.15 "CPUC Phase 2 Decision" shall have the meaning ascribed to such term in Section 5 hereof.

1.16 "CPUC Program" shall have the meaning ascribed to such term in Recital A hereof.

1.17 "Disapproval of Application" shall mean the CPUC's denial of the Application, or the CPUC's approval of a cost recovery mechanism that expressly limits SBC's recovery to less than one hundred percent (100%) of all actual costs, fees and expenses incurred by SBC arising out of and in connection with its participation in the Surcharge Program.

1.18 "Effective Date" shall mean _____, 2005.

1.19 "Expense Records" shall have the meaning ascribed to such term in Section 2.3.1 hereof.

1.20 "Joint Trench Fee" shall mean SBC's proportionate share of the total cost to construct the Utility Trench.

1.21 "Minimum Conduit" shall have the meaning ascribed to such term in Section 2.2.1 hereof.

1.22 "Notice of Overpayment" shall have the meaning ascribed to such term in Section 2.3.1 hereof.

1.23 "Overhead Line Conversion" shall mean the conversion of all of SBC's overhead facilities to underground service for each Surcharge Project.

1.24 "Overhead Line Conversion Expenses" shall mean the actual costs, fees and expenses incurred in connection with the Overhead Line Conversion including, without limitation, the cost of any and all SBC inspectors. The term "Overhead Line Conversion Expenses" excludes Conduit Design Expenses, Conduit Material Expenses and Conduit Installation Expenses.

1.25 "Preliminary Undergrounding Activities" shall mean the activities to be performed by SBC and the City during the Application Review Period, as outlined in Section 2 hereof.

1.26 "SBC Conduit" shall mean the Conduit Materials installed or to be installed in the Utility Trench pursuant to the Conduit Design.

1.27 "Surcharge Program" shall have the meaning ascribed to such term in Recital C hereof.

1.28 "Surcharge Project" shall mean an underground utility district where the removal of overhead lines is funded through the Surcharge Program (including, without limitation, those Surcharge Projects approved by City Council prior to the Effective Date, as more fully described on Exhibit "B," attached hereto and incorporated herein by reference ("Pending Surcharge Projects")).

1.29 “Unaccommodated Conduit Expenses” shall have the meaning ascribed to such term in Section 2.2.1 hereof.

1.30 “Undergrounding Schedules” shall have the meaning ascribed to such term in Section 2.1 hereof.

1.31 “Utility Trench” shall mean a single trench designed to accommodate the conversion of all overhead utility lines (including SBC’s overhead facilities) to underground service (“joint trench”) as required pursuant to each Conduit Design, and all other trenches necessary to convert SBC lines (including telephone only) to locations described in any Conduit Design where a joint trench is not available.

2. Preliminary Undergrounding Activities. Notwithstanding that SBC has elected to proceed with filing an Application with the CPUC, during the Application Review Period, the Parties desire to proceed with certain preliminary undergrounding activities with respect to the SBC lines (the “Preliminary Undergrounding Activities”) so as not to delay unnecessarily the continuation and completion of the Surcharge Program, and/or duplicate work (i.e., original trenching by the City and subsequent re-trenching by SBC, if any). The Preliminary Undergrounding Activities shall be limited to designing and installing a system of underground conduit that will be available to SBC for any future undergrounding of SBC lines in the City of San Diego. During the Application Review Period, the Parties hereby agree to and shall cooperate with each other in undertaking the Preliminary Undergrounding Activities (as more fully set forth below), all subject to and in accordance with the terms and conditions of this Agreement.

2.1 Schedule. For Surcharge Projects approved by the City Council after the Effective Date of this Agreement, the City shall establish a schedule for each Surcharge Project subject to and in accordance with the criteria set forth in San Diego Municipal Code Section 61.0509 (“Undergrounding Schedules”). In connection with establishing each Undergrounding Schedule, the City hereby agrees to and shall consult with SBC, and act in good faith to reasonably balance the interests of SBC and all other parties affected by each such Undergrounding Schedule. Each Undergrounding Schedule shall include, among other deadlines and scheduled dates, the date the Conduit Design for each Surcharge Project shall be completed. In connection with the foregoing, the City hereby acknowledges and agrees that, with respect to the Undergrounding Schedules: (a) SBC shall be provided not less than eight (8) weeks from the date SBC receives the final design from SDG&E, to complete each Conduit Design for each Surcharge Project; and (b) the scheduling of all Conduit Designs shall be limited to three (3) concurrent Surcharge Projects at any period of time so that SBC is never required to prepare more than three (3) Conduit Designs for Surcharge Projects at a time.

2.1.1 Pending Surcharge Projects. A comprehensive list of the Pending Surcharge Projects, together with the corresponding Undergrounding Schedule, is set forth on Exhibit “B,” attached hereto. With respect to each Pending Surcharge Project, the Parties hereby agree to and shall perform their respective Preliminary Undergrounding Activities, all subject to in accordance with the terms and conditions of this Agreement.

2.1.2 Changes. Any change to an Undergrounding Schedule may be made by the City subject to and in accordance with the criteria set forth in San Diego Municipal Code Section 61.0509; provided, however, no change shall be effective if it has a material adverse effect on SBC and/or alters the timing or ordering of the Conduit Designs to less than the minimum requirements set forth in Section 2.1 hereof. Any and all changes to the Undergrounding Schedules pursuant to this Section 2.1.2 shall be submitted in writing to SBC. Any dispute between the Parties regarding any such change shall be resolved pursuant to the dispute resolution process set forth in Section 17 hereof.

2.2 Conduit Design. SBC shall, at the City’s sole cost and expense, timely prepare, or cause to be prepared, the Conduit Design for each Surcharge Project, which shall be completed and delivered to the City no later than the corresponding completion date set forth in the applicable Undergrounding Schedule. The Parties hereby acknowledge and agree title to and ownership of the

Conduit Design for each Surcharge Project shall vest with the City upon reimbursement to SBC of all Conduit Design Expenses for such Surcharge Project.

2.2.1 Conduit Design Standards. Each Conduit Design may contain the maximum amount of conduit that SBC deems is reasonably necessary to accommodate SBC's current and future business needs, which determination shall be made in SBC's commercially reasonable business judgment. In connection with the foregoing, the City hereby agrees to and shall reserve, and permit SBC to use, the applicable Available Communications Window for the amount of conduit incorporated into each Conduit Design, which at a minimum shall accommodate not less than six (6) 4-inch diameter conduits ("Minimum Conduit"). For purposes hereof the term "commercially reasonable business judgment" shall mean that SBC prepared the applicable Conduit Design based upon the same sizing criteria guidelines SBC used in its Rule 32 Projects (which sizing criteria guidelines have been established, in part, as a result of a cost/benefit analysis to determine whether the costs associated with the implementation of the applicable Conduit Design are economically justified, assuming that SBC would incur all such costs). For reference purposes only, such sizing criteria guidelines are contained in SBC's Consolidated Loop References, as may be amended, revised and/or replaced from time to time by SBC, in its sole and absolute discretion.

If, after accommodating the Minimum Conduit, any portion of the remaining conduit required by the applicable Conduit Design cannot be accommodated by the applicable Available Communications Window, then the Parties shall negotiate in good faith in an attempt to reach an agreement on the equitable allocation of the incremental increase in Conduit Design Expenses, Conduit Material Expenses and Conduit Installation Expenses attributable to such unaccommodated conduit (collectively, "Unaccommodated Conduit Expenses"). In the event the Parties are unable to agree on an equitable allocation of the Unaccommodated Conduit Expenses, such matter shall be submitted to the dispute resolution process set forth in Section 17 hereof.

2.2.2 Design Review/ Independent Telecommunications Engineer. The City may, at its own expense, retain a consultant to review the Conduit Designs. At the City's request, SBC agrees to provide any documents reasonably necessary to review the Conduit Designs prepared pursuant to this Agreement, and to allow the consultant to contact the designers at SBC for clarification, if necessary.

If, after the City's review of any Conduit Design pursuant to this Section 2.2.2, the City has a reasonable, good faith belief that SBC did not use its commercially reasonable business judgment in preparing the applicable Conduit Design, the Parties shall meet in good faith to resolve the dispute. If the Parties are unable to resolve any such dispute within five (5) calendar days, the Parties shall retain the services of a mutually agreeable, independent telecommunications engineer with at least five (5) years experience in designing telecommunications systems similar to those designed by SBC, whose scope of review and authority shall be limited to determining whether SBC used its commercially reasonable business judgment in determining the amount of conduit that is reasonably necessary to accommodate SBC's current and future business needs for the applicable Surcharge Project. If within five (5) calendar days thereafter, the Parties are unable to mutually agree upon an independent telecommunications engineer, the selection of the engineer shall be decided pursuant to the dispute resolution process set forth in Section 17 hereof. The decision of the independent telecommunications engineer shall not be binding on either Party, and any Party who disagrees with the decision of the independent telecommunications engineer may appeal such decision by submitting the matter to the dispute resolution process set forth in Section 17 hereof. Any and all costs of the independent telecommunications engineer shall be the responsibility of the Party against whom the applicable dispute is resolved.

Notwithstanding the foregoing, the Parties hereby acknowledge and agree that in no event shall the City be entitled to challenge whether or not SBC used its commercially reasonable

business judgment in preparing any Conduit Design if such Conduit Design requires three (3) or less conduits.

2.3 Reimbursement. The City hereby agrees to and shall, whether or not the City actually installs the SBC Conduit, reimburse SBC for all Conduit Design Expenses incurred during the Application Review Period. To receive reimbursement of any Conduit Design Expenses, upon completion of the Conduit Design for each Surcharge Project, SBC shall deliver to the City an invoice containing a complete breakdown of the applicable Conduit Design Expenses, together with appropriate supporting documentation. Within sixty (60) calendar days of receipt of any invoice from SBC, the City shall reimburse directly to SBC the amount of the Conduit Design Expenses shown on the invoice.

2.3.1 Audit. The Parties hereby acknowledge and agree that the City reserves the right to audit the books and records of SBC that relate to any invoiced Conduit Design Expenses including, but not limited to, timesheets, hourly wage data, overhead rates and other related data (collectively "Expense Records"), for the sole purposes of confirming the amount of the invoice and whether such invoiced amounts were actually paid or are payable by SBC; provided, however, the City shall timely reimburse to SBC the full amount of any such invoice, when due, despite the City's election to proceed with an audit of the Conduit Design Expenses set forth on such invoice. SBC shall make available to the City for review, at SBC's San Diego offices during normal business hours, the applicable Expense Records. The City hereby acknowledges and agrees that: (a) the performance by SBC of its obligations under this Section 2.3.1 shall be at no expense to SBC, and any expense incurred by SBC shall be borne by the City; (b) the City shall not be entitled to remove from SBC's offices any original Expense Records; (c) the City shall not be entitled to make, or remove from SBC's offices, any copies of the applicable Expense Records without first entering into a confidentiality agreement that is in form and substance reasonably acceptable to SBC; and (d) except as otherwise required by law, the City shall keep confidential all information contained or disclosed in the Expense Records. In the event any such audit reveals the City over-reimbursed SBC for amounts not actually incurred, paid or payable by SBC in connection with the Conduit Design Expenses reflected on the audited invoice, then SBC shall repay such over-reimbursed amounts to the City within sixty (60) calendar days of SBC's receipt of written notice of such over-payment from the City ("Notice of Overpayment").

2.3.2 Disputes. Notwithstanding the foregoing, in the event SBC disputes the results of any audit, SBC may submit the matter to the dispute resolution process set forth in Section 17 hereof by delivering written notice of such dispute to the City within thirty (30) calendar days of receipt by SBC of the Notice of Overpayment and, in such a case, SBC shall not be required to pay any amount of the overpayment to the City until the dispute is resolved and the amount of the overpayment, if any, is determined.

2.4 Conduit Materials. Following the completion of each Conduit Design, the City shall purchase or cause to be purchased from a distributor approved by SBC, and deliver or cause to be delivered to the applicable installation site, the Conduit Materials required by the applicable Conduit Design. In connection with the foregoing, all Conduit Material Expenses shall be borne by the City.

2.5 Conduit Installation. Following the purchase and delivery of the Conduit Materials, the City shall complete the Conduit Installation in accordance with the applicable Conduit Design. In connection with the foregoing, all Conduit Installation Expenses shall be borne by the City. SBC may observe and inspect the installation of the SBC Conduit to confirm the work is done properly and in accordance with the applicable Conduit Design. If SBC discovers any discrepancies, SBC shall promptly notify the City, and the Parties shall meet to address the problem. In the event the Parties are unable to resolve the problem within ten (10) calendar days of SBC notifying the City of such problem, the matter shall be submitted to the dispute resolution process set forth in Section 17 hereof. The Parties hereby acknowledge and agree that: (a) the cost of all SBC inspectors shall be deemed to be an Overhead Line Conversion Expense, which shall be paid and/or reimbursed pursuant to the terms and conditions of this Agreement; and (b) the installed SBC Conduit shall remain the property of the City until

conveyed to SBC in accordance with the provisions of Sections 2.6, 3.3.3, 4.2 or 4.3 hereof and, during such time, the SBC Conduit shall at all times remain vacant and available for SBC's sole and exclusive use, and in no event may the City use, or permit any third party to use, the SBC Conduit.

2.6 Overhead Line Conversion. The Parties hereby acknowledge and agree that under no circumstances shall the terms and conditions of this Agreement be interpreted to require SBC to commence Overhead Line Conversion during the Application Review Period. Notwithstanding the foregoing, if, at any time during the Application Review Period, the City delivers a written request to SBC to commence with Overhead Line Conversion for any Surcharge Project, SBC shall timely undertake such activities; provided the City agrees to: (a) cooperate in good faith with SBC in establishing a mutually agreeable schedule for the commencement and completion of the Overhead Line Conversion for the applicable Surcharge Project, without requiring SBC to increase its then existing labor force (including its employees and regular contract labor) to accommodate such Overhead Line Conversions; (b) complete the applicable Conduit Installation in accordance with the corresponding Conduit Design for the applicable Surcharge Project, and rod, prove and otherwise determine that the applicable SBC Conduit is usable and, if not, make all necessary repairs, all at the City's sole cost and expense; (c) immediately prior to SBC commencing the Overhead Line Conversion for the applicable Surcharge Project, convey, set over, transfer and assign to SBC, by bill of sale, free of any fee or any other purchase consideration, all right, title and interest in and to the SBC Conduit (together with the applicable Conduit Designs) used in connection with the applicable Overhead Line Conversion; and (d) reimburse to SBC all Overhead Line Conversion Expenses, following the procedures set forth in Section 2.3 hereof, applying such procedures to the Overhead Line Conversion Expenses rather than the Conduit Design Expenses (it being understood that (i) Overhead Line Conversion Expenses shall be billed monthly by SBC for each Surcharge Project, provided monthly billing may not begin immediately following the commencement, nor cease immediately following the completion, of the Overhead Line Conversion for each Surcharge Project (instead, SBC will commence monthly billing during Overhead Line Conversion for each Surcharge Project as soon as reasonably practicable following SBC's collection of appropriate data and information with respect to the applicable Overhead Line Conversion Expenses, and may continue such monthly billing for as long as necessary following the completion of such Overhead Line Conversion until SBC has been fully reimbursed the applicable Overhead Line Conversion Expenses pursuant to the provisions of this Section 2.6), and (ii) if the Overhead Line Conversion is underway during the occurrence of the Approval of Application, the City shall be obligated to reimburse to SBC all Overhead Line Conversion Expenses necessary to complete such Surcharge Project even if such activities continue after the Approval of Application). In connection with the foregoing, the Parties hereby acknowledge and agree that in no event shall SBC be required to reimburse to the City any portion of the Overhead Line Conversion Expenses required to be paid by the City pursuant to the provisions of this Section 2.6 at any time following the Approval of Application.

3. Application. Within thirty (30) business days following the Effective Date, SBC hereby agrees to and shall file the Application with the CPUC.

3.1 City Support. The City hereby agrees to and shall actively and publicly support the approval of the Application in its entirety, and otherwise assist SBC in securing the CPUC's approval of the Application by, among other means, undertaking the activities described in this Section 3.1.

3.1.1 Staff Participation. The City shall cause appropriate members of the City's staff to attend and participate in community meetings, CPUC proceedings and any other meetings or proceedings concerning the Application, as SBC may request from time to time.

3.1.2 Resolution. The City Council must pass, at a public meeting, a resolution affirmatively supporting the Application, during which public meeting the City Council shall disclose the estimated monthly surcharge that will be included on the SBC bills.

3.1.3 Billing. The City hereby consents to any monthly surcharge approved by the CPUC in connection with the Application being marked on SBC bills as a “City of San Diego Surcharge for Underground Conversion Costs.”

3.2 Approval of Application. At all times following the date of the Approval of Application:

3.2.1 City Responsibilities. The City shall: (a) continue Conduit Installation as provided in Section 2.5 hereof, and continue paying all Conduit Installation Expenses; and (b) incorporate into the Undergrounding Schedule the Conversion Completion Year (as hereafter defined) for all Overhead Line Conversions (including those previously undertaken pursuant to Section 2.6 hereof). In connection with scheduling Overhead Line Conversions, the City hereby acknowledges and agrees that SBC shall not be required to complete the connection of more than the following number of Service Drops (as hereafter defined) in any given Conversion Completion Year: (i) in the first Conversion Completion Year, not more than the number of Service Drops required to complete those Overhead Line Conversions scheduled for completion in the first Conversion Completion Year, as set forth on the Conversion Completion Schedule attached hereto as Exhibit “D;” (ii) in the second Conversion Completion Year, not more than the number of Service Drops required to complete those Overhead Line Conversions scheduled for completion in the second Conversion Completion Year, as set forth on the Conversion Completion Schedule attached hereto as Exhibit “D;” (iii) in the third Conversion Completion Year, not more than three thousand (3,000) Service Drops; and (iv) in the fourth Conversion Completion Year and in each Conversion Completion Year thereafter during the Term of this Agreement, not more than four thousand (4,000) Service Drops each Conversion Completion Year. The Parties hereby acknowledge and agree that, with respect to the first and second Conversion Completion Years, SBC shall only be required to complete the Overhead Line Conversions described on the Conversion Completion Schedule in accordance with the schedule described in this Section 3.2.1, and no other Overhead Line Conversion projects in lieu thereof.

For purposes of this Section 3.2.1, the term “Service Drop” shall mean all lines and/or cables necessary to connect a single SBC customer (which connection may provide one or more services to such SBC customer) to SBC’s main facilities/trunk line in the applicable Utility Trench (it being understood that a single cable or overhead line may serve more than one SBC customer (i.e., each SBC customer in a multi tenant/occupant building) and, in such a case, each connection of a cable or overhead line to each SBC customer shall be considered a separate Service Drop). Notwithstanding the foregoing, with respect to SBC commercial customers, if the lines and cables connecting any such SBC customer contain, in the aggregate: (A) twenty-five (25) or less pairs (pairs being each set of two (2) twisted wires in a line or cable), then the connection of such SBC customer shall constitute one Service Drop; and (B) more than twenty-five (25) pairs, then the connection of each working pair in the lines and cables connecting such SBC customer shall constitute a separate Service Drop. Commencing in the third Conversion Completion Year and in every Conversion Completion Year thereafter, SBC hereby agrees to and shall provide the City with monthly updates of the total Service Drops completed by SBC for each Surcharge Project.

Additionally, for purposes of this Section 3.2.1, the term: (I) “Commencement Date” shall mean the first day of the first month immediately following the date that SBC has billed and collected six (6) months worth of surcharge funds permitted pursuant to the approved Application; and (II) “Conversion Completion Year” shall mean the twelve (12) month period beginning on the Commencement Date and each consecutive twelve (12) month period thereafter during the Term of this Agreement. Without limiting the foregoing, the Parties hereby acknowledge and agree that the reference to “Year One” on Exhibit “D” shall mean and refer to the first Conversion Completion Year, and the reference to “Year Two” on Exhibit “D” shall mean and refer to the second Conversion Completion Year.

3.2.2 SBC Responsibilities. SBC shall participate in the Surcharge Program as described in this Section 3.2.2.

3.2.2.1 Conduit Design and Conduit Materials. SBC shall (a) continue to prepare, or cause to be prepared, the Conduit Design in accordance with the provisions of Section 2.2 hereof, except SBC shall pay, or cause to be paid, all Conduit Design Expenses without any reimbursement from the City; and (b) assume from the City the responsibility for purchasing, and delivering to the applicable installation site, the Conduit Materials in accordance with the provisions of Section 2.4 hereof, except SBC shall pay, or cause to be paid, all Conduit Material Expenses without any reimbursement from the City.

3.2.2.2 Overhead Line Conversion. SBC shall timely complete all Overhead Line Conversions (including those previously undertaken pursuant to Section 2.6 hereof) by the end of the corresponding Conversion Completion Year set forth in the Undergrounding Schedule; provided, however, in no event shall SBC be required to complete the connection of more than the maximum number of Service Drops set forth in Section 3.2.1 hereof for scheduled Overhead Line Conversions in each Conversion Completion Year. In connection with the foregoing: (a) the City hereby agrees to and shall continue to pay all Overhead Line Conversions Expenses arising out of and in connection with any and all Overhead Line Conversions previously commenced during the Application Review Period pursuant to the provisions of Section 2.6 hereof; and (b) SBC hereby agrees to and shall pay all Overhead Line Conversion Expenses arising out of and in connection with any and all Overhead Line Conversions commenced subsequent to the Approval of Application, without reimbursement from the City. Notwithstanding the foregoing, as a condition precedent to any obligation of SBC to commence and complete the corresponding Overhead Line Conversion, the Parties hereby acknowledge and agree that: (i) the City shall have completed the applicable Conduit Installation in accordance with the corresponding Conduit Design; and (ii) the City shall have conveyed the applicable SBC Conduit to SBC in accordance with the provisions of Section 4.2 hereof and in the condition set forth in Section 4.3 hereof.

3.2.2.3 Restriction Against Double Trenching. For any Surcharge Project for which Conduit Installation has been completed pursuant to this Agreement, if SBC elects or is otherwise required to proceed with Overhead Line Conversion pursuant to the terms and conditions of this Agreement, SBC shall be required to use the installed SBC Conduit for such Overhead Line Conversion. The Parties hereby acknowledge and agree that the foregoing limitation applies only to the initial Overhead Line Conversion, and is not a restriction on future additions to or modifications of such installed SBC Conduit.

3.3 Disapproval of Application. In the event of Disapproval of Application, then SBC shall neither be required to commence the Overhead Line Conversion, nor shall SBC be required to reimburse to the City any Conduit Design Expenses or Overhead Line Conversion Expenses paid by the City to SBC under the terms of this Agreement.

3.3.1 Termination for Convenience. If Disapproval of Application occurs, either Party may terminate this Agreement, effective thirty (30) days after written notice of termination. Upon any such notice of termination: (a) any Conduit Design in progress on the date of the notice of termination may continue up to the effective date of termination, but no Conduit Designs for new Surcharge Projects may be commenced after the date of such notice of termination; (b) any Conduit Installation in progress on the date of the notice of termination may be completed at the discretion of the City; and (c) any Overhead Line Conversion in progress on the date of the notice of termination may be completed at the discretion of SBC, at the City's sole cost and expense. Upon any termination of this Agreement, the City shall reimburse SBC as set forth in this Agreement for: (i) all Conduit Design Expenses incurred up to the effective date of termination; and (ii) all Overhead Line Conversion Expenses incurred up to the effective date of termination including, without limitation, all Overhead Line Conversion Expenses incurred to complete the Overhead Line Conversions in progress on the date of notice of termination. SBC will deliver any remaining completed or partially completed Conduit Designs to the City after the reimbursement provided in clause (i) above to the extent the City has not previously assigned, transferred

and conveyed to SBC all right, title and interest in and to such Conduit Designs as provided elsewhere in this Agreement.

3.3.2 Meet and Confer. In the event of a termination of this Agreement, the Parties hereby agree to and shall meet and confer, in good faith, in an effort to work toward a mutually acceptable solution with respect to SBC's continued participation in the Surcharge Program.

3.3.3 Option to Purchase Installed SBC Conduit. For a period of one (1) year following the date of termination ("Option Period"), the City shall hold for SBC's use and not use, lease or sell the installed SBC Conduit. In connection with the foregoing, during the Option Period, the City hereby grants to SBC the right and option to purchase and acquire from the City all installed SBC Conduit contained within any Surcharge Project at a purchase price equal to the actual Conduit Design Expenses and Conduit Material Expenses (but excluding Conduit Installation Expenses) incurred by the City in connection with the applicable Surcharge Project. Upon payment of the purchase price to the City, the City shall convey, set over, transfer and assign to SBC, by bill of sale, all right, title and interest in and to the applicable installed SBC Conduit (together with the applicable Conduit Designs). Any installed SBC Conduit purchased by SBC shall be used solely for Overhead Line Conversion and all other purposes for which such SBC Conduit was initially designed (as provided in the applicable Conduit Design) if and when SBC elects to proceed with such activities and, in such a case, any such activities shall be undertaken at SBC's sole cost and expense.

The City shall be under no obligation to rod and prove, or otherwise determine that the applicable SBC Conduit is usable prior to conveying such SBC Conduit to SBC. Notwithstanding the foregoing, if, prior to the conveyance of such SBC Conduit, SBC delivers to the City written notice of its intent to proceed with using the SBC Conduit for the purpose of Overhead Line Conversion and all other purposes for which such SBC Conduit was initially designed (as provided in the applicable Conduit Design), immediately prior to the City conveying any SBC Conduit to SBC pursuant to this Section 3.3.3, the City hereby agrees to and shall rod and prove, and otherwise determine that the applicable SBC Conduit is usable and, if not, make all necessary repairs, all at the City's sole cost and expense. SBC's written notice of intent to use the SBC Conduit shall contain an estimated commencement date upon which SBC will proceed with undertaking such activities (it being understood that the actual commencement date may not occur on the exact date set forth in SBC's written notice, and the setting of such commencement date and any adjustments thereto shall be at the sole and absolute discretion of SBC; provided, however, such commencement date shall not be later than the date which corresponds to the third (3rd) anniversary following the date the applicable SBC Conduit is conveyed to SBC. After the City rods, proves and makes any necessary repairs to the SBC Conduit, conveyance is "as is" without guarantee or warranty, and the City is not responsible for additional maintenance or repair.

Following the expiration of the Option Period and full reimbursement to SBC of all Conduit Design Expenses and Overhead Line Conversion Expenses, the City is no longer obligated to hold for SBC's use any SBC Conduit not currently used as part of a previous Overhead Line Conversion, and the City may use, retain, lease or sell such SBC Conduit in its sole discretion.

3.3.4 Survival. The provisions of Sections 3.3, 3.3.1, 3.3.2 and 3.3.3 hereof shall survive any termination of this Agreement.

4. Conveyance of SBC Conduit. Except as otherwise provided in this Agreement (including, without limitation, Sections 2.6 and 3.3.3 hereof), ownership of the SBC Conduit shall be conveyed to SBC in accordance with the provisions of this Section 4.

4.1 During the Application Review Period. At any time during the Application Review Period, SBC may elect to purchase the installed SBC Conduit contained within any Surcharge Project. Any installed SBC Conduit purchased by SBC shall be used solely for Overhead Line Conversion and all other purposes for which such SBC Conduit was initially designed (as provided in the applicable Conduit Design) if and when SBC elects to proceed with such activities. The purchase price for any installed SBC

Conduit shall be an amount equal to the actual Conduit Design Expenses and Conduit Material Expenses (but excluding Conduit Installation Expenses) incurred by the City in connection with the applicable Surcharge Project. Upon payment of the purchase price to the City, the City shall convey, set over, transfer and assign to SBC, by bill of sale, all right, title and interest in and to the applicable installed SBC Conduit (together with the applicable Conduit Designs).

4.2 After Approval of Application. After Approval of Application, but not earlier than immediately prior to commencing the Overhead Line Conversion with respect to any Surcharge Project, SBC shall purchase all installed SBC Conduit for such Surcharge Project that has not been previously conveyed to SBC pursuant to this Agreement. The purchase price for the installed SBC Conduit shall be determined as in Section 4.1 hereof. Upon payment of the purchase price to the City, the City shall convey, set over, transfer and assign to SBC, by bill of sale, all right, title and interest in and to the applicable installed SBC Conduit (together with the applicable Conduit Designs). Notwithstanding the foregoing, the Parties hereby acknowledge and agree that title to and ownership of all Conduit Designs prepared, all Conduit Materials purchased and all SBC Conduit installed on and after the date of the Approval of Application shall vest with SBC, and in no event shall SBC be required to pay any purchase consideration to the City with respect thereto.

4.3 Condition of SBC Conduit. Immediately prior to the City conveying any SBC Conduit to SBC pursuant to Section 4.1 or 4.2 hereof, the City hereby agrees to and shall rod and prove, and otherwise determine that the applicable SBC Conduit is usable and, if not, make all necessary repairs, all at the City's sole cost and expense.

5. CPUC Phase 2 Decision. The CPUC, in Phase 2 of the CPUC Order Instituting Rulemaking R.00-01-005 into Implementation of Assembly Bill 1149 Regarding Underground Electric and Communications Facilities, may issue a decision determining, among other things, whether there is an equitable, competitively-neutral mechanism through which SBC and other telecommunications companies throughout the State of California may recover their undergrounding costs ("CPUC Phase 2 Decision"). The Parties hereby agree the issuance of the CPUC Phase 2 Decision shall have no impact or effect whatsoever on this Agreement or any of the rights, duties or obligations of either Party hereunder.

6. Rule 20A and Rule 32.1 Projects/CPUC Program. This Agreement does not affect SBC's obligations with regard to the Rule 20A or Rule 32.1 Projects or the City's obligations with regard to the CPUC Program.

7. Reservation of Rights. Nothing in this Agreement, or the performance of the Parties' respective obligations hereunder, shall constitute a waiver of any Claims, and all such Claims are hereby expressly reserved.

8. Statute of Limitations Tolloed. By their execution of this Agreement, the Parties agree any statute of limitations and/or any equitable doctrine based upon the passage of time applicable to any Claims either Party may have against the other Party, or any defense in law or equity to any such Claims, shall be and remain tolled until the earlier to occur of the following: (a) Approval of Application; or (b) expiration or termination of this Agreement.

9. Representations and Warranties. This Agreement is executed acknowledging the following representations and warranties:

9.1 The City represents and warrants the Office of the City Attorney for the City of San Diego represents the City with respect to this Agreement and all matters covered by it and the City has been fully advised by its attorneys with respect to its rights and obligations under this Agreement.

9.2 SBC represents and warrants Ross, Dixon & Bell, LLP, represents SBC with respect to this Agreement and all matters covered by it and SBC has been fully advised by its attorneys with respect to its rights and obligations under this Agreement.

9.3 Each Party represents and warrants it has read this Agreement and knows and understands its contents fully.

9.4 Each Party represents and warrants it has voluntarily executed this Agreement without being pressured or influenced by any statement or representation of any person, acting on behalf of the other Party, including the other Party's officers, directors, partners, principals, managers, members, employees, agents or attorneys, as applicable, and this Agreement was the result of extensive good faith negotiations between the Parties through their respective counsel.

9.5 Each Party agrees it will execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.

10. Interest. In the event either Party fails to timely pay when due any amount owed to the other Party pursuant to this Agreement, such unpaid amount shall accrue interest at the lesser of ten percent (10%) per annum or the maximum rate allowed by law.

11. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective past and present partners, principals, managers, members, City Council members, officers, directors, shareholders, agents, employees, attorneys, successors, devisees, assigns and any parents, subsidiaries or affiliated corporations, partnerships, or entities, as applicable.

12. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way, except to the extent that enforcement of this Agreement without the invalidated provision would materially and adversely frustrate either or both Parties' essential objectives set forth in this Agreement. Additionally, if a court of competent jurisdiction or the CPUC issues an order, ruling, judgment or other determination holding the use of Surcharge Program funds as provided by this Agreement is improper or illegal, either Party may immediately terminate this Agreement subject to the terms and conditions of Sections 3.3.1, 3.3.2 and 3.3.3 hereof.

13. No Presumption Against Preparer of Agreement. The Parties acknowledge and agree each of the Parties has contributed to the drafting of this Agreement, and no provision shall be construed against any Party as being the drafter. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted.

14. Attorneys' Fees. In the event of any legal action between the Parties with respect to this Agreement, the prevailing Party shall be entitled to recover from the other Party reasonable attorneys' fees in addition to costs and expenses it incurs in that legal action. For purposes of this Section 14, the term "legal action" excludes mediation and proceedings before the CPUC.

15. Amendment. This Agreement may be amended or modified only by a written instrument executed by both Parties.

16. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California.

17. Dispute Resolution. Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties, and use of a mediator when such discussions have failed. Accordingly, the Parties agree to resolve all disputes arising in the administration of this Agreement in accordance with the following procedures:

17.1 Designated Representatives. Each Party shall designate a representative responsible for overseeing the day-to-day implementation of this Agreement as its "Dispute Coordinator"

and a more senior representative as its "Review Manager." Each Party shall notify the other in writing of such designations and may change such designations from time to time by written notice to the other Party.

17.2 Notice. Within ten (10) calendar days after a dispute arises, the Dispute Coordinator for the aggrieved party shall provide the Dispute Coordinator for the other Party written notice of the disagreement or dispute.

17.3 Dispute Coordinators. If the Dispute Coordinators are unable to resolve the dispute within thirty (30) calendar days after such written notice, the Parties shall refer such dispute to their respective Review Managers.

17.4 Review Managers. The Review Managers shall meet within fifteen (15) calendar days of such referral. The Review Managers shall exercise best efforts to resolve the dispute and may use non-binding mediation to assist in the negotiations.

17.5 Confidentiality. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in any forum without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence.

17.6 Condition Precedent. Completion of the dispute resolution process set forth in this Section 17 is a condition precedent to either Party proceeding to litigation.

18. Entire Agreement. This Agreement represents the entire agreement between the Parties with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements and/or representations of or between the Parties regarding the subject matter hereof. In connection with the foregoing, the Parties hereby acknowledge and agree that, as of the Effective Date, the Interim Agreement, dated March 1, 2004, by and between the City and SBC ("Interim Agreement") shall be deemed terminated and of no further force or effect, except for those provisions in the Interim Agreement which expressly survive its termination.

19. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

20. Notices. Any tender, delivery, notice, demand or other communication ("Notice") required or permitted under this Agreement shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, overnight mailed, delivered or sent by telecopier or telefacsimile machine capable of confirming transmission and receipt, and shall be deemed delivered, given and received upon the earlier of: (a) if personally served, the date of delivery to the person to receive such notice; (b) if given by telecopier or telefacsimile, when sent, provided a follow-up copy of the notice is sent by United States Mail, postage prepaid, as of the date of the transmission of the telecopier or telefacsimile; (c) if mailed, four (4) business days after the date of posting by the United States Postal Service; or (d) if sent by Federal Express or other comparable overnight delivery service, upon delivery as documented by the service's delivery records, all in accordance with the following:

If to City: City of San Diego
 Underground Utility Conversion Program
 1010 Second Avenue, Suite 1400
 San Diego, California 92101

Attn: Nathan Bruner, Underground Program Manager
 FAX: (619) 533-3071

If to SBC: SBC California
 101 West Broadway, Suite 1440
 San Diego, California 92101
 Attn: Frances Astuto
 FAX: (619) 296-0133

21. Force Majeure. In the event either Party shall be delayed or hindered in, or prevented from, the performance of any work, service or other act required under this Agreement to be performed by the Party and such delay or hindrance is due to strikes, work-stoppages, lockouts, acts of God, governmental restrictions, enemy act, civil commotion, unavoidable fire or other casualty, or other causes of a like nature beyond the control of the Party so delayed or hindered, then performance of such work, service or other act shall be excused for the period of such delay and the period for the performance of such work, service or other act shall be extended for a period equivalent to the period of such delay. In addition, if the preparation of any Conduit Design is delayed, hindered or prevented due to inability to secure any necessary rights-of-way, easements or licenses, at no cost to SBC, then completion of such Conduit Design shall be excused for the period of such delay and the deadline for completion of such Conduit Design shall be extended for a period equivalent to the period of such delay. In no event shall any delay contemplated in this Section 21 constitute a termination of this Agreement. The provisions of this Section 21 shall not operate to excuse any Party from the prompt payment of any sums due under any provision hereof.

22. Limitation on Powers. Nothing in this Agreement shall be construed as a limitation upon the powers of City as a chartered city of the State of California.

23. Assignment. Neither party shall assign this Agreement, in whole or in part, without the prior written consent of the other party, which shall not be unreasonably withheld.

24. Waiver. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

25. Conveyances. The Parties hereby acknowledge and agree that throughout this Agreement the City is required to convey right, title and interest in and to Conduit Designs, Conduit Materials and installed SBC Conduit to SBC by bill of sale if certain conditions are met. When such conveyances occur, the City hereby agrees to and shall execute and deliver to SBC any and all agreements, documents and instruments that may be necessary: (a) to evidence ownership and the vesting of title to such Conduit Designs, Conduit Materials and installed SBC Conduit in SBC; and (b) grant to SBC any and all easements in favor of the City necessary to permit the placement and existence of the SBC Conduit (together with SBC lines and facilities contained therein) in the Utility Trench, to permit access into the Utility Trench for maintenance purposes, and to permit all other activities reasonably related to the SBC Conduit.

26. City Assistance. In the event SBC is ever required to secure a private right-of-way, easement and/or license to perform its obligations under this Agreement (including, without limitation, the preparation of the Conduit Designs), the City hereby agrees to and shall cooperate with and otherwise assist SBC in its efforts to secure such rights including, without limitation, seeking City Council approval to initiate a condemnation proceeding. In the event that SBC is unable to secure any such right-of-way, easement and/or license at no cost to SBC, after utilizing all other commercially reasonable efforts to do so, the City hereby agrees to and shall waive SBC's obligations under this Agreement for that portion of the Surcharge Project that is dependent on securing such rights.

IN WITNESS WHEREOF, this Agreement is executed by the City, acting by and through the City Manager or his designee pursuant to Resolution No. R-299901 authorizing such execution, and by SBC, acting by and through its lawfully authorized officer.

City:

THE CITY OF SAN DIEGO, CALIFORNIA,
a municipal corporation

By_____

Its_____

SBC:

PACIFIC BELL TELEPHONE COMPANY,
a California corporation,
doing business as SBC California

By_____

Byron McDaniel
Vice President Construction and
Engineering, SBC West

I HEREBY APPROVE the form and legality of this Agreement this __ day of _____ 2005.

MICHAEL J. AGUIRRE, City Attorney

By_____

Deputy City Attorney

EXHIBIT "A"

**APPLICATION OF SBC CALIFORNIA FOR A SURCHARGE AND BALANCING ACCOUNT TO
RECOVER UNDERGROUNDING COSTS IN THE CITY OF SAN DIEGO**

EXHIBIT "B"

UNDERGROUNDING SCHEDULE FOR SURCHARGE PROJECTS
APPROVED PRIOR TO EFFECTIVE DATE

EXHIBIT "C"

DEPICTION OF AVAILABLE TELECOMMUNICATIONS WINDOW

EXHIBIT "D"

CONVERSION COMPLETION SCHEDULE