

Memorandum of Understanding  
Between San Diego Gas & Electric Company and the City of San Diego  
Regarding Implementation of Franchise of Underground Obligation

This binding Memorandum of Understanding ("MOU") dated as of December 11, 2001 is entered into by and between the City of San Diego, a municipal corporation (the "City") and San Diego Gas & Electric Company ("SDG&E"), a California corporation (collectively the Parties"), and concerns the fifty year electric and gas franchises entered into by the Parties on January 17, 1971.

RECITALS

WHEREAS, SDG&E was granted a franchise to transmit and distribute electricity by the City effective January 17, 1971 for a period of fifty years (Ordinance No. O-10466, adopted December 17, 1970) ("Electric Franchise"); and

WHEREAS, SDG&E was granted a franchise to transmit and distribute gas by the City effective January 17, 1971 for a period of fifty years (Ordinance No. O-10465, adopted December 17, 1970) ("Gas Franchise"); and

WHEREAS, Section 4 of said Franchises provide that during the first thirty years of the Franchises term, SDG&E shall pay three percent of gross receipts as compensation for the right to use City rights-of-way, for such purposes ("Franchise Fee"); and

WHEREAS, Section 4 of said Franchises further provide that the City and SDG&E shall establish the Franchise Fee for the last twenty years by good faith negotiations or binding arbitration; and

WHEREAS, as a result of public hearings and good faith negotiation, the Parties have agreed that the Franchise Fees shall be three percent of "gross receipts" as defined which definition has been revised and set forth in Section 1 of the Franchises; and

WHEREAS, the Franchises were amended to extend the negotiation period to January 17, 2003 by Ordinances No. O-18957, No. O-18956, No. O-19026 and No. O-19027.

WHEREAS, in Decision No. 80234 dated July 11, 1972, the California Public Utilities Commission ("CPUC") approved SDG&E implementing an electric franchise fee surcharge of 1.9 percent ("Electric Franchise Fee Surcharge") and a gas franchise fee surcharge of 1.0 percent ("Gas Franchise Fee Surcharge") within the City to capture the difference between the City Franchise Fee and the average franchise fee within the SDG&E service territory; and

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WHEREAS, the Parties have agreed that subject to CPUC approval gross receipts as defined in Section 1 of the Franchise shall include revenues from said Franchise Fee Surcharge, as well as other CPUC approved surcharges solely on the ratepayers within the City and as a result of such change, the Electric Franchise Fee Surcharge will be increased by .35% and the Gas Franchise Fee Surcharge shall be increased by .03%; and

WHEREAS, the Parties have agreed that subject to CPUC approval the funding for the obligations of SDG&E to underground its facilities as set forth in Section 9 ("Undergrounding Program"), of the Electric Franchise shall be structured as follows:

- (a) collecting a portion of the funds from ratepayers in base rates (1.15%) as approved by the CPUC;
- (b) with the remainder to be collected from ratepayers in the City through a CPUC approved surcharge (3.53%) which will be paid directly to the City;
- (c) for a total obligation of four and one-half percent (4.5%) of gross receipts plus .18% for 1/19<sup>th</sup> of 2001 allocation (which amount is included in the 3.53%); and

WHEREAS, the Parties have agreed that SDG&E shall be responsible unless and until the City decides to assume the obligation, for ensuring the expenditure of the portion of the allotted four and one-half percent (4.5%) over which it has control within two years of the allocation;

NOW, THEREFORE, the Parties now acknowledge and agree to perform the obligations set forth below as full resolution of all issues associated with the renegotiation provided for in Section 4 of the Franchises:

Section 1. The effective date of this MOU shall be as of the effective date of the adoption by the City Council of the Electric and Gas Franchise Amendments (Ordinance No. O-19030 and Ordinance No. O-19031) setting forth the payment terms for the remaining years of the Franchises which are attached hereto and incorporated herein as Attachment 1 and 2, respectively.

Section 2. In order to meet the City's objectives of increasing the current amount of undergrounding being done in the City above what was previously agreed to by the Parties and satisfy any obligation of SDG&E to apply to the CPUC to underground electric facilities in an amount provided in Section 9 of the Electric Franchise and changing the definition of Gross Receipts, SDG&E will support the City by submitting an Advice Letter to the CPUC asking to increase the Electric Franchise Fee Surcharge (the "Additional Electric Franchise Fee Surcharge") on the residents of the City from 1.9% to 5.78% conditioned upon the City using 3.53% of the Additional Electric Franchise Fee Surcharge solely for undergrounding projects within its geographic territory in conformance with the terms herein with the remainder of .35% to be an increase to the 1.9% Electric Franchise Fee Surcharge. Such Advice Letter shall also ask the CPUC to increase the Gas Franchise Fee Surcharge from 1.0% to 1.03%. The approval by the CPUC must include: (1) approval of the surcharge amounts set forth herein; (2)

authorization to increase the existing surcharges to the ratepayers in the City; and (3) approval to increase its authorized revenues by the amount of the increase in surcharge revenues collected and to provide a flow through of those revenues to the City. Such approval shall be made in terms and language acceptable to both Parties. SDG&E shall request such treatment through an Advice Letter filing which will be substantially in the form set forth in Attachment 3, attached hereto and incorporated herein by this reference.

Section 3. The commencement date for SDG&E to increase the surcharge to the electric and gas ratepayers in the City and be obligated to payment as contemplated herein shall be on the first day of the month following occurrences of both of the following events, receipt of: (1) approval of the Franchise Amendments by City Council; and (2) the effective date of the CPUC approval of the Advice Letter filed by SDG&E as set forth above.

Section 4. The City will actively support approval of each of the requests in the Advice Letter at the CPUC through written comments and appropriate advocacy in order to achieve the necessary CPUC approvals.

Section 5. SDG&E will seek authorization in its CPUC approved base rates for an amount of money equivalent to 1.15% of gross receipts (as defined in the Electric Franchise Amendment) for Rule 20 capital projects (currently approximately \$10 million per year) to fund all City requests for any Rule 20 A, B and/or C projects including all costs described herein. Any additional Rule 20 A, B or C projects or associated work done by SDG&E as described in the proposed City Council Policy on Underground Conversion of Utility Lines by Utility Company 600-08 (attached hereto as Attachment No. 4 and incorporated herein by this reference) will be funded from the revenue collected from the undergrounding portion of the Additional Electric Franchise Fee Surcharge.

Section 6. The franchise fees percentages for both the Gas and Electric Franchises shall remain at 3% for the remaining terms of the Franchises. Franchise Fees will be credited to payment of any City imposed right-of-way fees, or inspection, trenching, cutting or deterioration fees. The Gas Franchise Fee Surcharge shall be increased from 1% to 1.03%. This change reflects the increased revenues, which result from including revenues from the Gas Franchise Fee Surcharge in the definition of "gross receipts" for the Gas Franchise. The Electric Franchise Fee Surcharge will be calculated by using the percentage mutually agreed upon by the Parties to be 5.78%. This Surcharge includes the existing 1.9% Franchise Fee Surcharge plus the mutually agreed upon Additional Electric Franchise Fee Surcharge of 3.88% which captures the increased revenues which would result from collecting the Electric Franchise Fees on the Electric Franchise Fee Surcharge revenues collected from the City ratepayers within the City, an allocation for undergrounding projects and an allocation for undergrounding not completed in 2001 amortized over the remaining nineteen years of the Electric Franchise. In the event the Advice Letter is not approved by the CPUC in 2003 the percentage will be amended in the Advice Letter to seek to collect the revenue allocation for 2001 and 2002 amortized over the remaining eighteen years of the Electric Franchise, or as otherwise mutually agreed.

Section 7. The amount of the Additional Electric Franchise Fee Surcharge allocated to undergrounding and the amount for undergrounding embedded in rates requested from the CPUC shall total 4.5% of "gross receipts" as defined in Section 1(g) of the Amended Electric Franchise each year for the remaining term of the Electric Franchise as required in Section 9 thereof plus .18% for 1/19<sup>th</sup> of the 2001 allocation obligation, (which is included within the Additional Electric Franchise Fee).

Section 8. All surcharge revenues will be paid directly to the City with the quarterly remittance of Franchise Fees. The quarterly payment shall include an accounting of the amount of the payment which is attributed to the Gas Franchise Fee Surcharge, Electric Franchise Fee Surcharge and Additional Electric Franchise Fee Surcharge. The City will use 3.53% of the Additional Electric Franchise Fee Surcharge revenues to fund expenses directly and exclusively related to replacing existing infrastructure related to electric undergrounding projects including, but not limited to, design, engineering, construction, City and SDG&E construction management, repaving streets, lateral connection to ratepayers and street lights.

Section 9. The Parties agree that after the initial ramp up period of 2 years, each Party shall perform its obligation herein and work cooperatively to ensure compliance with the undergrounding obligations in Section 9(b) of the Electric Franchise Amendment attached hereto. The City shall appropriate undergrounding projects for a calendar year by June 30 of the prior year with the obligation that both Parties cooperate to ensure that the expenditure of that appropriation occurs by the end of the calendar year following the allocation year. Any obligations of SDG&E pursuant to Section 9(b) of the Electric Franchise Amendment through 2001 will be satisfied by fulfillment of the terms of this MOU, through the payment and collection of revenues to take place as described in Section 2.

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Section 10. The City may contract with SDG&E, or other qualified contractors, to have additional undergrounding projects completed using the funds from the Additional Electric Franchise Fee Surcharge. Any such project must meet all federal, state, local, and CPUC laws, regulations and SDG&E safety and reliability standards and procedures. The City will compensate SDG&E for all reasonable charges and costs incurred, including but not limited to labor charges customarily charged to third parties such as associated overheads, subcontractors, materials, supplies, permits, and other directly related costs of any such projects.

Section 11. The work may be done by SDG&E employees and/or qualified subcontractors under the supervision of SDG&E. To the extent the work is not able to be performed by SDG&E employees, SDG&E will request quotes for work on these projects from at least three qualified contractors if available, in order to obtain competitive pricing. SDG&E shall approve the qualifications of any contractor prior to such contractor commencing any work to be performed on SDG&E facilities. SDG&E will manage the work to encourage diverse participation and award contracts to the low qualified responsible bidder who can meet the schedule requirements.

Section 12. SDG&E will make all business records directly relevant to the undergrounding program available to the City upon request, including records the City deems necessary to perform value engineering studies for planning and implementation of future projects and not for retroactive reviews. At least quarterly, at the written request of the City, SDG&E will provide a detailed analysis of expenditures and participate in any City Council meeting to report on the status of the undergrounding projects. SDG&E will maintain all business records that are necessary to determine the costs for the undergrounding program. The City shall have the right at any reasonable time to examine and audit such business records to verify the costs of the undergrounding program.

Section 13. The City and SDG&E will cooperate to develop and implement an Undergrounding Program to maximize the value of the undergrounding surcharge. Initially SDG&E shall act as lead utility over all electric line undergrounding projects including design, engineering and construction. In the event that the City wants to assume this responsibility it will provide a minimum of 24 months prior written notice. If the City assumes this responsibility, design plan check, inspection requirements and system energizing will still be required from SDG&E to assure compliance with SDG&E's engineering and construction standards and procedures. The Parties understand that it will take time for the City and SDG&E to initially acquire resources necessary to accomplish the level of projects contemplated herein.

Section 14. The City will determine and prioritize the projects. In the event the City fails to provide timely notice of projects or take any action which delays or impedes a project, the Parties will negotiate revised schedules and SDG&E will not be subject to fines or penalties.


Section 15. The City will continue its current role of providing direction, in coordinating activities of all utilities through the Undergrounding Joint Utility Commission or other mechanisms established by the City. If requested by SDG&E, the City will coordinate with third parties, including other utilities, in order for SDG&E to be able to meet the scheduled milestones. Project delay due to action or inaction by third parties shall extend the scheduled milestones by the amount of time necessary to make up for the delay, without penalty to SDG&E.

Section 16. In the event the CPUC does not approve the Advice Letter filing in a manner acceptable to each Party or does not act on the Advice Letter filing on or before December 31, 2002, the Parties will mutually agree to either extend the negotiating period, or in the alternative either Party can require arbitration as provided in Section 4 of the Franchises. The Parties agree that SDG&E shall continue payment of Franchise Fees in the same amount and manner as calculated and paid in calendar year 2000 until the effective date of such acceptable CPUC approval or other finally agreed upon negotiated or arbitrated decision.

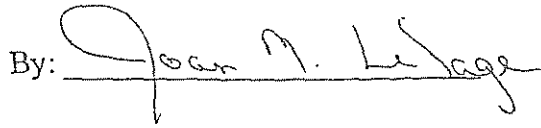
IN WITNESS WHEREOF, this MOU is executed by the City of San Diego, acting by and through its City Manager, pursuant to Resolution No. R-295892 authorizing such execution, and by SDG&E.

Date: April 9, 2007

SDG&E, a California Corporation

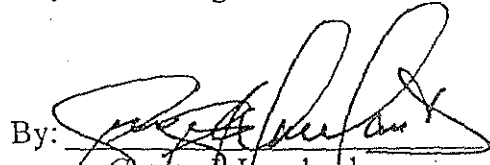
By: 

Approved as to form and legality

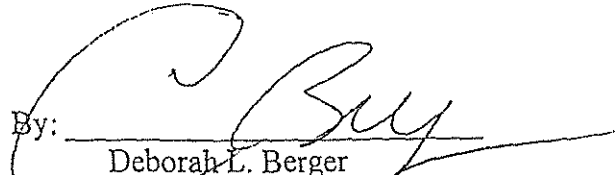
By: 

Date: \_\_\_\_\_

City of San Diego

By:   
George P. Loveland  
Sr. Deputy City Manager

Approved as to form and legality

By:   
Deborah L. Berger  
Deputy City Attorney