

**ORDINANCE NO.** \_\_\_\_\_

An ordinance replacing and terminating the gas system franchise granted to Southern California Gas Company by Ordinance No. 168164; and, granting a gas system franchise to Southern California Gas Company (Grantee) to install, retain, operate and maintain its gas system within the City of Los Angeles and requiring Grantee to collect, on behalf of the City a fee on all gas transported for its transportation services customers.

**WHEREAS**, Ordinance No. 168164 granted a gas system franchise to the Southern California Gas Company, which has been extended by ordinance and currently expires on December 31, 2021;

**WHEREAS**, Southern California Gas Company has requested a franchise to continue operating these facilities;

**WHEREAS**, the City advertised for bids for a gas pipeline franchise, which may be awarded to the responsible bidder offering to pay to the City the highest consideration; and the City received at least one bid for the franchise; and

**WHEREAS**, at its meeting held on November 24, 2021, City Council accepted the bid of Southern California Gas Company for a gas system franchise within the City of Los Angeles, and the franchise was struck off, sold, and awarded to Southern California Gas Company at the compensation set forth in the bid.

**NOW, THEREFORE,**

**THE PEOPLE OF THE CITY OF LOS ANGELES  
DO ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council hereby grants the following Gas System Franchise to Southern California Gas Company to install, retain, operate and maintain its Gas System within the City of Los Angeles, subject to the following terms and conditions:

**Section. 1.1. DEFINITIONS**

Unless it is apparent from the context that it has a different meaning, each of the following words and phrases has the meaning stated below wherever it is used in this Franchise:

**ADJUNCT COMMUNICATIONS LINE:** Any facility such as coaxial cable, optical fiber, wire or other transmission lines or forms of transmission, and associated equipment and devices located in, upon, along, across, under or over the Streets of the City, the sole function of which is to monitor or control the operation or safety of the Gas System via the distribution of video, audio, voice or data signals. An Adjunct Communications Line shall not include any facility that distributes, through any means, to subscribers or persons other than Grantee,

the signal of one or more broadcast television or radio stations or other sources of video, audio, voice or data signals for a length in excess of 1,000 feet.

**APPLICABLE LAW:** Applicable Law includes, but is not limited to, any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree, or other legal or regulatory determination or restriction by a court or governmental authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing.

**BOARD OF PUBLIC WORKS (BOARD):** The Board of Public Works, or its designee. Or, where context indicates appropriate, another governmental agency or department of the City or of the County or State, to the extent that it may have jurisdiction over the Street.

**CalGEM:** The California Geologic Energy Management Division.

**CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC):** That body created by State Constitution Article XII, Sec. 1, and given regulatory jurisdiction over public utilities in California, or any successor agency.

**CALIFORNIA STATE FIRE MARSHAL (CSFM):** Office of the California State Fire Marshal.

**CARB:** California Air Resources Board.

**CARE PROGRAM:** California Alternate Rates for Energy Program, or any successor low-income bill discount program.

**CHARTER:** The Los Angeles City Charter in its latest revision.

**CITY:** The City of Los Angeles, a Charter City.

**COUNCIL:** The Los Angeles City Council.

**DEPARTMENT:** The City of Los Angeles Department of Public Works.

**ECONOMIC VALUE OF THE FRANCHISE:** The receipts and other revenues of Grantee arising from the use, operation or possession of the Franchise including, but not limited to or less than, the gross receipts of Grantee derived from the rendition of service to all consumers with points of service within the service area covered by this Franchise. For any franchise payments covered by a surcharge, the Economic Value of the Franchise shall be equal to the gross receipts of Grantee derived from the rendition of service to all consumers with points of service within the service area covered by this Franchise to whom the surcharge

applies. Such gross receipts shall consist of Grantee's receipts from selling, transmitting and distributing gas within the service area covered by this Franchise, or providing other services within the City.

**EFFECTIVE DATE:** The later of (a) the first day of the first customer billing period that incorporates the rates and surcharges provided for in this Franchise in customer bills following CPUC approval of such rates and surcharges without conditions or modifications to the terms hereof and exhaustion of appeals regarding the same; and (b) the Execution Date.

**EXECUTION DATE:** The date Grantee files with the Board a written instrument addressed to the Council accepting this Franchise and agreeing to comply with all its provisions, provided Grantee makes such filing within twenty (20) days after publication of this Ordinance.

**FEDERAL OFFICE OF PIPELINE SAFETY:** United States Department of Transportation Pipeline and Hazardous Materials Safety Administration.

**FORCE MAJEURE:** Natural disasters, including landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events, which are not reasonably within the control of Grantee.

**FRANCHISE:** The rights and privileges granted by the City to Grantee under this Ordinance.

**FRANCHISE PROPERTY:** All property, including, but not limited to, the Gas System or Facilities, retained by Grantee in a Street under authority of this Franchise.

**GAS SYSTEM or FACILITIES:** Gas distribution, transmission and storage facilities composed of, but not limited to, pipe, pipeline, main, service, cathodic protection equipment, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, cable, Adjunct Communications Line, wireless communication facility, field sensor, appliance, attachment, appurtenances and 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 the business of transmission, distribution and storage of gas.

**GRANTEE:** The legal person, corporation or entity to whom this Franchise is granted by the Council, or any person, corporation or entity to which it may thereafter be lawfully transferred as provided in this Franchise and which has filed an acceptance statement with the Council, necessary insurances and bond

requirements with the Office of the City Administrative Officer, Risk Management Section, as required by this Franchise.

**LOS ANGELES ADMINISTRATIVE CODE (LAAC):** The Los Angeles Administrative Code, as amended from time to time.

**LOS ANGELES MUNICIPAL CODE (LAMC):** The Los Angeles Municipal Code, as amended from time to time.

**MAJOR FACILITIES:** Critical operating assets of Grantee located in the Franchise territory that sustain gas transmission infrastructure performance, such as storage fields and compressor stations. At the time of execution of this Franchise, Major Facilities include the Playa Del Rey storage facility and the Sylmar Compressor Station.

**PIPELINE CODE:** The federal, state, and local laws (and the regulations and orders adopted thereunder) to the extent applicable to Grantee's Franchise Property including, but not limited to, CPUC General Order No. 112-F, entitled "Rules Governing Design, Construction, Testing, Operation and Maintenance of Gas Gathering, Transmission, and Distribution Piping Systems," the United States Code of Federal Regulations Title 49, Subchapter D, Parts 190 through 199 as amended from time to time, and, to the extent not preempted by the foregoing, the LAMC, as amended from time to time.

**PIPELINE SAFETY ACT:** The Elder California Pipeline Safety Act of 1981 as set forth in Chapter 5.5 of the California Government Code, as amended from time to time.

**RECORDS:** Grantee's records, regardless of form, including physical, digital, and electronically stored information, including, but not limited to, records of income, expenditures, finance, charts, diagrams, ledgers, pictures, drawings, as well as Geographic Information System (GIS) locational data, photographs, and notes, which relate to the placement, location, operation, and maintenance of Grantee's Franchise Property, which are both for the purpose of, and necessary to, verify Grantee's compliance with the terms in this Franchise.

**SDRF AMOUNTS:** Street Damage Restoration Fee (SDRF) amounts payable pursuant to the statutory framework of LAMC 62.06 in effect as of the Execution Date and codified in City Ordinance No. 185,818. SDRF Amounts shall include any periodic adjustments pursuant to LAMC 62.06(A)(3). Grantee shall be subject to any future applicable reductions or exemptions in SDRF Amounts adopted by the City, and to adjustments in the Bureau of Engineering processing fee set forth in LAMC 62.06(B), provided the amount of such fee does not exceed the actual expense to the City of calculating and collecting the SDRF.

**STREET:** The surface of, and the space above and below, any public street, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, other public place, or any other area under control of the City, now or hereafter existing as under the City's control and within the City, except the Harbor District as that district is defined in the Charter.

**VALUE OF TRANSPORTED GAS:** The value of gas which Grantee transmits or distributes, but does not sell, for its transportation service customers shall be equal to the Adjusted Core Procurement Charge as reported to the CPUC in Grantee's relevant tariff schedule or, in the absence of such a schedule, the cost, or other basis used to determine the value, of such gas used by the City for purposes of calculating a sales or users tax upon such gas.

## **SECTION 2. FRANCHISE GRANT**

### **Section 2.1. NATURE AND EXTENT OF GRANT**

The Franchise authorizes Grantee:

- (a) To install, construct, replace, reconstruct, repair and retain in City Streets its Gas System.
- (b) To maintain and operate said Gas System.
- (c) To engage in the business of the transmission and distribution of gas within the City of Los Angeles.

Any activities or uses of the Gas System not specifically authorized under this Franchise are prohibited under this Franchise. Any proposed telecommunication or other non-Gas System uses must be approved by the City under a separate franchise.

### **Section 2.2. DESIGNATION OF PIPELINES AND OTHER FACILITIES**

Upon written request by the City, Grantee shall provide to the City within ten (10) calendar days, and immediately in the case of a Mayor-declared emergency, GIS flat files, or other locational Records of Grantee's facilities as the City in its reasonable discretion requires for specific City projects or concerns, in a form and type determined by Grantee in its reasonable discretion in accordance with good utility practice, provided that GIS flat files shall be in the form of Grantee's standard GIS map product depicting facilities within a designated grid referred to as a GIS "Atlas Sheet" and provided to the City via shared file site. Although Grantee will make reasonable efforts to provide accurate GIS data to the City for City's design, engineering and planning purposes, Grantee makes no representations or warranties to the City or any of its agents, contractors or representatives that such GIS data may be relied upon for field work. The GIS data shall not be a substitute for the City's required conflict check and dig alert obligations prior to starting any field work.

### **Section 2.2.1. CONFIDENTIALITY**

Grantee's contention that information is confidential shall not relieve Grantee from the duty to produce the information to City. Grantee acknowledges that any information required to be submitted or provided in fulfillment of the obligations of the Franchise is a public record subject to disclosure in response to a California Public Records Act (California Government Code Sections 6250 – 6276.48) (CPRA) request, unless the City or a court of competent jurisdiction determines that a specific exemption to the CPRA applies. If Grantee submits information clearly marked confidential or proprietary, the City shall protect such information and treat it with confidentiality to the extent permitted or required by law; provided, however, that the City shall assume no liability for having access to Grantee's Records for official City purposes except by a judgment in a court of competent jurisdiction upon a claim arising from the established active negligence, sole negligence or willful misconduct of the City, its officers, agents, or employees. It shall be Grantee's responsibility to provide to the City the specific legal grounds on which the City can rely in withholding information from public disclosure should Grantee request that the City withhold such information. General references to sections of the law will not suffice. Rather, Grantee shall provide in writing a specific legal basis, including citations to applicable case law, or other Applicable Law, that reasonably establishes the requested information is exempt from disclosure. Grantee agrees to defend and indemnify the City to the extent the City is sued for withholding from disclosure information deemed confidential by Grantee. If, at the time the documents are provided to the City, Grantee does not provide in writing a specific legal basis for requesting the City to treat the information as confidential, to protect it from release, and to withhold alleged confidential or proprietary information from CPRA requests, the City is not required to treat the information as being confidential and may release the information as required by the CPRA. When reviewing any request by Grantee for confidentiality, the City will consider California Government Code Section 6254(e), which provides a CPRA exemption for records concerning geological and geophysical data relating to utility systems development that are obtained in confidence from any person.

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.

### Section 2.3. SURRENDER OF OTHER FRANCHISES

Upon the Effective Date of this Franchise, Grantee agrees (1) that all of its other pipeline franchises then within the City are thereby surrendered to the extent of any rights of the nature granted herein and the portions of the Gas System authorized by them shall be included under this Franchise; and (2) that upon subsequent additions of areas to the City, either by annexation, consolidation or otherwise, all pipeline franchises of Grantee in those areas are thereby surrendered, and this Franchise shall be operative for those added areas, provided, however, that should this Franchise be declared invalid or be rendered inoperative by final judgment decree or order of any Court of competent jurisdiction, the franchises hereby surrendered shall thereafter have the same force and effect as if the surrender had not occurred.

### Section 2.4. DURATION OF GRANT

- (a) **Binding Nature.** The Franchise shall be effective and binding in all respects as of the Effective Date. From the Execution Date until the Effective Date, the Franchise shall be effective and binding only to the extent required to give full effect to, and enforce, the rights and obligations of the parties under Sections 2.4(a) and 15.
- (b) **Initial Term.** The Initial Term of this Franchise is thirteen (13) years, commencing on the Effective Date followed by one eight-year renewal term ("Renewal Term") as provided in Section 2.4(c). Nothing in this section shall prohibit the Council from exercising its authority under Charter Section 390.
- (c) **Renewal Term.** No later than July 1, 2034, the City Petroleum Administrator and City Administrative Officer will report to the Council and the Mayor with a recommendation for continuation or termination of the Franchise. The report shall present a City customer analysis (number, types and forecast of future energy needs), the effects of any newly implemented policies, Grantee's progress towards its 2045 decarbonization goals, City progress toward 2035 climate goals, the biannual franchise compliance reports, and any franchise compliance or other relevant issues. Upon consideration of the report, the Council may cancel the Renewal Term. The Renewal Term shall be exercised automatically unless Council takes an affirmative action to cancel the Renewal Term. Nothing in this section shall prohibit the Council from exercising its authority under Charter Section 390.
- (d) This Franchise term is thirteen (13) years, commencing on its Effective Date followed by the Renewal Term, unless abandoned or surrendered by Grantee or terminated as provided herein. The Council, by ordinance, may terminate the Franchise in the event the Council finds any of the

following, provided, however, that Grantee shall be given thirty (30) days written notice prior to the beginning of any termination proceedings:

- (i) Grantee has failed to comply with any material provision of this Franchise;
- (ii) Any material provision of this Franchise becomes invalid or unenforceable;
- (iii) Grantee is found by any court of competent jurisdiction to have practiced any fraud upon the City material to this Franchise; or
- (iv) The City purchases all of the Franchise Property of Grantee as provided for in the Charter.

### **SECTION 3. CONSTRUCTION OF FRANCHISE**

#### **Section 3.1. INTERPRETATION**

Unless otherwise specifically prescribed in this Franchise, the following provisions shall govern the interpretation and construction of this Franchise.

- (a) The singular number includes the plural, and the plural number includes the singular.
- (b) Grantee shall not be relieved of its obligation to promptly comply with any provision of this Franchise by failure of the City to enforce prompt compliance.
- (c) Any right or power conferred, or duly imposed upon any officer, employee, department, or board of the City, may be legally transferred to any other officer, employee, department or board of the City.
- (d) Grantee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage arising out of any provision or requirement of this Franchise or its enforcement.
- (e) This Franchise does not relieve Grantee of any requirement of the Charter or of any ordinance, rule, regulation or specification of the City, including, but not limited to, any requirement relating to Street work, Street excavation permits, or the use, removal or relocation of Franchise Property in Streets, except as specifically prescribed in this Franchise.
- (f) The granting of this Franchise or any of the provisions contained in this Franchise shall not be construed to prevent the City from granting any

identical or similar franchise to any person or corporation other than Grantee.

- (g) If Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of force majeure, Grantee shall give the Board prompt notice of the force majeure, describing the same in reasonable detail. Grantee's obligations under this Franchise may not be deemed in violation or default for the duration of the force majeure, upon determination by the Board. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of force majeure, to carry out its responsibility and duties under this Franchise.
  
- (h) The compensation provided for in this Franchise is for (i) the rights and privileges granted by this Franchise, and (ii) the right and privilege of using, opening and excavating within the Streets of the City by Grantee in the course of installing, maintaining or removing Franchise Property and equipment pursuant to this Franchise, provided that the City expressly reserves the right to impose and collect from Grantee, on a non-discriminatory basis (A) SDRF Amounts, (B) processing and inspection fees relating to Street cutting and excavation permits to the extent such fees are imposed generally on all non-governmental applicants for such permits within the City and the amount of such fees does not exceed the actual expense to the City of processing such permits and inspecting the work done thereunder, and (C) a business license tax, on a non-discriminatory basis, based upon the gross receipts of Grantee derived from the sale of gas within the City, so long as such tax does not exceed the lowest mercantile rate in effect at the time such tax is imposed on Grantee. Grantee shall not itself seek and shall oppose, in good faith, any attempt by others to impose a surcharge to residents of the City on account of a business license tax imposed under this section. Grantee is not at any time required to pay any amounts to the City determined to be invalid, void, or unenforceable pursuant to Applicable Law.

### **Section 3.2. LIMITATIONS UPON GRANT**

- (a) No privilege or exemption is granted or conferred by this Franchise except those specifically prescribed in this Franchise.
- (b) Any privilege claimed under this Franchise by Grantee in any Street shall be subordinate to any prior lawful occupancy of the Street.

### **Section 3.3. NON-DISCRIMINATION POLICY**

While engaged in any activity covered by this Franchise, Grantee shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.

### **Section 3.4. RIGHTS RESERVED TO CITY**

- (a) The City reserves every right and power, which is not expressly relinquished by the terms of this Franchise.
- (b) Neither the granting of this Franchise nor any provision of the Franchise shall constitute a waiver or bar to the exercise of any governmental right or power of the City.
- (c) Nothing herein shall preclude Grantee from challenging the legality of the rights and powers reserved by the City.

## **SECTION 4. CONSTRUCTION AND OPERATION OF FACILITIES**

### **Section 4.1. INSTALLATION AND LOCATION OF FACILITIES**

The installation and location of any Franchise Property in a Street area shall be in accordance with the requirements of the Board.

### **Section 4.2. SPECIFICATIONS**

All Franchise Property authorized by this Franchise shall be constructed and operated in accordance with the Pipeline Code, the Pipeline Safety Act, the California Public Utilities Code, CPUC regulations for pipelines, and any other Applicable Law, to the extent applicable to Grantee's Franchise Property, as amended from time to time.

## **Section 4.3. REPORTING**

### **Section 4.3.1. STATE REPORTS**

Grantee shall provide the City with copies of publicly filed reports to state agencies when publicly available, including and not limited to:

- (a) CARB Oil and Gas Methane Regulation reports (Annual leak detection and repair (LDAR) reports for natural gas production, storage, transmission and compressor stations).
- (b) CPUC Senate Bill 1371 natural gas leakage abatement reports.
- (c) Pipeline hydrostatic pressure test results when publicly available.
- (d) CalGEM Title 14 "Requirements for California Underground Gas Storage Projects" reports (including risk management plans, emergency response plans, mechanical integrity testing, monitoring, inspection, maintenance of wellheads and valves, and leak reporting).
- (e) Any other publicly available reports required by California state agencies with jurisdiction over Grantee (including, but not limited to, the CSFM, CARB, CalGEM, and the CPUC), including regarding inspections, inspection plans, and infrastructure maintenance.

The City shall provide to Grantee a list annually and/or as-needed of the documents the City requests. Grantee will provide the City with access to a shared file site to facilitate transfer of these publicly available documents. Failure to timely submit documents shall not constitute a material breach of the agreement.

### **Section 4.3.2. CLIMATE IMPACT REPORTING**

Grantee shall meet annually with the City at City's request to report on progress towards its decarbonization goals to achieve net zero greenhouse gas emissions in its operations and delivery of energy by 2045. Grantee has set a net zero target that includes scopes 1, 2, and 3 GHG emissions (reduction of direct emissions and those generated by customers from energy delivered by Grantee's energy infrastructure).

### **Section 4.3.3. AIR MONITORING**

Grantee shall install air quality monitors to detect methane at sensitivities consistent with guidelines set forth by CARB at its Major Facilities, including, but not limited to, the Playa Del Rey storage facility and Sylmar Compressor Station. All air monitoring data shall be real-time time resolution and publicly available (i.e., internet webpage display).

#### **Section 4.4. REPAIRS**

- (a) Grantee shall promptly repair any damage, leaks, or breaks in its Franchise Property in accordance with procedures approved by the CPUC. If any Street or other public property is damaged by any damage, leaks, or breaks in Franchise Property, or by reason of any cause arising from the operation or existence of Franchise Property, Grantee shall backfill, place surfacing, and otherwise repair the damaged portions of the Street or other public property in accordance with the LAMC and to notify the Board.

If any private property is damaged by leaks or breaks in Franchise Property, or by reason of any cause arising from the operation or existence of Franchise Property, Grantee shall pay all damages or compensation to which the owners are entitled and repair its Franchise Property to protect the damaged private property from further damage.

#### **Section 4.5. CHANGES REQUIRED BY PUBLIC IMPROVEMENTS**

Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same Street, or remove from any Street any Franchise Property when required by the Board by reason of traffic conditions, public safety, Street vacation, freeway construction, change or establishment of Street grade, Street maintenance requirements, or the construction of any public improvement or structure by the City or any governmental agency of the City, in each case acting in a governmental capacity, provided that with respect to facilities within a State highway, which was not a State highway at the time the facilities were originally installed, the obligations of Grantee shall be as provided by Applicable Law and by any agreements between Grantee and the State as may be applicable, and further provided that with respect to work done for the benefit of any non-governmental entity, Grantee is not precluded from recovering the cost and expense of the work from the entity, unless provided otherwise by Applicable Law. Nothing herein, however, is intended to modify or limit the provisions of California Public Utilities Code §6297 (and as amended) or the judicial appellate decisions of the State of California interpreting California Public Utilities Code §6297 (and as amended).

#### **Section 4.6. REMOVAL OR ABANDONMENT OF FACILITIES**

In the event the use of any Franchise Property is discontinued or if no franchise has been obtained or applied for therefore upon expiration or within eight (8) months after any termination of this Franchise, Grantee shall promptly notify the Board of any material discontinuance and remove from the Streets all Franchise Property involved, other than any the Board may permit to be abandoned.

Franchise property may be abandoned in place in accordance with the requirements of the Board.

Upon abandonment of any Franchise Property and upon request by the Board, Grantee shall submit to the Department an instrument, approved by the City Attorney, transferring to the City the ownership of such Franchise Property.

#### **Section 4.7. TRANSFER/ASSIGNMENT OF FRANCHISE**

This Franchise is a privilege to be held in personal trust by the original Grantee. It cannot in any event be transferred in part, and it is not to be sold, transferred, leased, assigned, or disposed of as a whole, either by forced sale, merger, consolidation, or otherwise, without prior consent of the City expressed by ordinance, and then only under conditions as may be prescribed in the ordinance; provided, however, that no consent shall be required for any transfer in trust, mortgage, or other hypothecation, as a whole, to secure an indebtedness.

### **SECTION 5. INDEMNIFICATION AND INSURANCE**

#### **Section 5.1. INDEMNIFICATION**

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 boards, officers, agents, departments, officials, employees, assigns, and successors in interest (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including death, and including injury to or death of an employee of Grantee or any agent or employee of a subcontractor of any tier), expense and liability (collectively "Claims"), including attorney's fees (both in-house and outside counsel), court costs, litigation expenses (including, but not limited to, fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation), that arise out of, in whole or in part, any acts performed, rights exercised, errors, omissions, or rights or privileges granted under the Franchise, to or by Grantee, any employee, agent or subcontractor of any tier.

Grantee's duty to defend, indemnify, and hold harmless shall not include: (1) any Claims or liabilities arising from the active negligence, sole negligence, or willful misconduct of the Indemnified Parties; or (2) any Claims or liabilities regarding the award, amendment, renewal or extension of the Franchise to Grantee.

Rights and remedies available to the City under this provision are cumulative to those provided for elsewhere in this Franchise and those allowed under the laws of the United States, the State of California, and the City. The provisions of Section 5.1 shall survive expiration or termination of this Franchise.

#### **Section 5.2. INSURANCE REQUIREMENTS**

- (a) Grantee shall obtain, at its own cost: 1) comprehensive general liability insurance, to include contractual liability; 2) worker's compensation/employer's liability insurance; and 3) automobile liability

insurance, each in minimum amounts as required from time to time in accordance with this Section 5.2(a). The minimum amount of general liability insurance initially required by this Franchise is **\$25,000,000**, with **\$1,000,000** workers compensation and employer liability insurance, automobile liability insurance of **\$5,000,000**, and pollution liability insurance of **\$25,000,000**. Pollution liability insurance shall be in an amount of **\$25,000,000** per claim and in the annual aggregate. Pollution liability coverage shall apply to claims for sudden and accidental and gradual pollution incidents that arise from operations of Grantee under the Franchise. This pollution liability coverage may be included in the general liability policy. Grantee has the option of providing self-insurance for the insurance requirements above subject to Section 5.2 (b) below.

Grantee agrees to submit and keep current for the duration of this Franchise, evidence of adequate insurance satisfactory to the City Attorney and the City Risk Manager.

Not more frequently than every five (5) years, if in the reasonable opinion of the City's Risk Manager or of an insurance broker retained by the City, the amount of the comprehensive general liability and pollution liability insurance coverage is not adequate, Grantee shall increase the insurance coverage as reasonably required by the City; provided that such coverage amounts may not increase by more than twenty-five percent (25%) every five (5) years, and only to the extent any such additional insurances are available on a commercially reasonable basis.

- (b) Self-insurance programs and self-insured retentions in insurance policies are subject to separate approval by the City upon review of evidence of Grantee's financial capacity to respond. Additionally, these programs or retentions must provide the City with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance. These programs or retentions may require special Board or City conditions as part of their approval.
- (c) Grantee shall file evidence of insurance policy, bond or program of self-insurance with the Department, in a form as the City requires, conforming to City Charter, ordinance or policy, for approval by the Office of the City Administrative Officer, Risk Management Section prior to the commencement of operation under this Franchise. Grantee shall maintain continuous uninterrupted insurance coverage and shall maintain evidence of coverage on file with the Department for the duration of this Franchise and thereafter until Grantee has liquidated all of its obligations with the City that may have arisen from the acceptance of this Franchise by Grantee or from its exercise of any privilege granted in this Franchise.

- (d) Grantee shall provide the City with at least thirty (30) days' written notice prior to a change or cancellation of insurance coverage, and for general liability insurance, automobile liability insurance and pollution liability insurance, Grantee shall include the City of Los Angeles, its officers, agents and employees as additional insureds with regard to liability and defense of suits arising from the performance of this Franchise.
- (e) Grantee's failure to procure and maintain required insurance or bond or to establish and adhere to a program of self-insurance shall constitute a material breach of contract and may result in the immediate and automatic termination of this Franchise. The date of the breach under this section may be the effective date of termination of this Franchise, regardless of whether notification to the City was provided or whether the City was aware of the breach or not. Upon termination of this Franchise, operation of the Franchise Property covered by this Franchise is no longer authorized and Grantee will be liable for costs associated with abandonment and any other related costs.

### **Section 5.3. WAIVER OF SUBROGATION**

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

## **SECTION 6. COMPENSATION AND GUARANTEE TO CITY**

### **Section 6.1. FRANCHISE PAYMENTS TO THE CITY**

Grantee shall pay an annual Franchise payment to the City each year for the duration of this Franchise, and thereafter, until Grantee has liquidated all of its obligations with the City that may have arisen from the acceptance of this Franchise by Grantee or from its exercise of any privilege herein granted.

- (a) Upon the Effective Date of this Franchise, Grantee, for the duration of and for the use, operation and possession of this Franchise, shall pay to the City, in calendar quarterly installments, five and one-half percent (5.5%) of the Economic Value of the Franchise ("Franchise Fee"); and, as additional consideration commencing not later than forty-five (45) days after the Effective Date of this Franchise, Grantee shall, subject to the exceptions provided for in Section 6.1(b), collect from Grantee's transportation service customers within the area covered by this Franchise, and pay to the City on behalf of such customers, an amount equal to four percent (4%) of the Value of Transported Gas or other commodity consumed within the area

covered by this Franchise; provided, however, that any delay, failure or refusal of such customers in paying the amounts to be collected by Grantee shall not be deemed a default by Grantee, or failure by Grantee to make the payments required under the Franchise for purposes of this section. Grantee shall notify and assist the City in collecting any City imposed charges from any transportation customer who refuses to pay.

- (b) Grantee shall be permitted, upon CPUC approval, to designate three and one-half percent (3.5%) of the five and one-half percent (5.5%) Franchise payment as a surcharge to Grantee's customers with points of service within the area covered by this Franchise, except that in no event shall this surcharge be assessed to customers in the CARE Program. Grantee shall also be permitted, upon CPUC approval, to designate any portion of the four percent (4%) transportation charge that is above the current statutory rate as a surcharge to Grantee's transportation service customers within the area covered by this Franchise, except that in no event shall this surcharge be assessed to customers in the CARE Program.
- (c) Each quarterly installment shall be paid to the City in U.S. dollars and prior to the 25th day of the second month following the respective quarter for which payment is made. For example, the installment for the first quarter of the calendar year (January through March) shall be paid to the City prior to May 25th. Payment for the last calendar quarter is due prior to February 25th of the following year.
- (d) The Grantee shall submit each quarterly payment to the City of Los Angeles along with a statement to the City Petroleum Administrator and City Administrative Officer, verified by a general officer or other duly authorized representative of Grantee, showing in such form and detail as the Board may require from time to time, the calculations used to derive the payment. Any neglect, omission or refusal of Grantee to make the quarterly payment or to file a verified statement, shall be grounds for the declaration by the Board of a forfeiture of this Franchise and of all rights so granted.
- (e) All payments due hereunder shall be deemed paid upon receipt by the City or, if made electronically in accordance with the practices of banks belonging to the Federal Reserve System, upon timely transmission to such authorized depository in accordance with such practices. The City shall, upon Grantee's request, furnish Grantee with such information as may be necessary for Grantee to make such payments electronically to the City's authorized depository and shall, from time to time, provide Grantee with written notice of any changes thereto.

- (f) In order to facilitate the review of the Franchise payment computation by the City, Grantee agrees to maintain copies of all company Records, work papers and other information used in preparing said computation for a period of seven (7) years following the end date of the Franchise. The payment shall be calculated using Generally Accepted Accounting Principles for utilities as approved by the CPUC.
- (g) No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for further or additional sums payable.
- (h) The City shall not refund any portion of a Franchise payment that has been properly paid.
- (i) During the term of the Franchise, Grantee covenants and agrees, that if Grantee agrees to pay another comparable municipality (based on franchise term and revenue per capita) more than five and one-half percent (5.5%) of Grantee's Gross Receipts (including receipts on CPUC authorized Gas surcharges) in a gas franchise, Grantee shall notify the City of such agreement in writing within thirty (30) calendar days and offer to amend the Franchise to increase the Franchise payment 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 to be effective as soon as practicable given the need for regulatory approvals. To make such amendments effective, Grantee shall expeditiously file a request with the CPUC, as Grantee deems necessary, to request approval of the amendments and the resulting increase in the Franchise fee surcharge described under Section 6.1(b) chargeable to the residents of the City, subject to the CARE Program limitations in Section 6.1(b). Grantee shall not be in violation of Section 6.1(j) if the CPUC fails to approve any such application or request, and such amendments shall not be effective until the first day of the first customer billing period that incorporates the additional surcharge amount provided for in this section in customer bills following CPUC approval of the same without conditions or modifications and exhaustion of appeals regarding the same.
- (j) In the event Grantee fails (other than as the result of force majeure) to make the payments required by this Franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:
  - (i) A sum of money equal to two percent (2%) of the amount not timely paid. This sum of money 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

- (ii) A sum of money equal to one percent (1%) of the amount not timely paid, per month for each delinquent month, or portion thereof, as interest and for loss of use of the money due.

## **Section 6.2. CLIMATE EQUITY FUND PAYMENTS**

As compensation for the City offering this Franchise for sale at a time prior to expiration of the existing franchise of Southern California Gas Company, Grantee shall provide the City with a shareholder-funded payment of \$21 million for the Franchise that the City will use to establish a climate equity fund, payable in two equal installments as follows:

- (1) \$10.5 million within 30 days of the Effective Date of this Franchise; and,
- (2) \$10.5 million within 30 days of commencement of the eight-year Renewal Term.

Grantee shall not apply to the CPUC to recover such amounts in rates or other charges from gas customers.

City shall separate these funds from the City general fund to provide transparency regarding the use of the funds. Grantee shall have no rights or obligations with respect to the establishment of such fund, or the distribution of amounts to or from such fund; provided that the Grantee may request annual reports from the City Petroleum Administrator on the use of the funds.

## **Section 6.3. FAITHFUL PERFORMANCE BOND**

- (a) Grantee shall, on or before the Effective Date, file with the City Clerk, and at all times thereafter maintain in full force and effect, an acceptable corporate surety bond, in duplicate, running to the City in the penal sum equal to \$1,000,000. Grantee shall at all times during the term of this Franchise maintain the bond in full force and effect, effective for the entire term of this Franchise, and conditioned that in the event Grantee shall fail to comply with any one or more of the provisions of this Franchise, then there shall be recoverable jointly and severally from the principal and surety of the bond, any damages suffered by the City as a result of Grantee's failure to comply, including, but not limited to, the full amount of compensation due the City, indemnification or cost of removal or abandonment of Franchise Property of this Franchise, which may be in default, up to the full amount of the bond. Grantee is obligated to maintain, in full force and effect, the performance bond for the duration of

this Franchise and thereafter until Grantee has liquidated all of its obligations with the City that may have arisen from the acceptance of this Franchise by Grantee or from its exercise of any privilege granted in this Franchise.

- (b) The Department may accept cash, a Certificate of Deposit, or an Irrevocable Letter of Credit in lieu of a surety bond provided it is conditioned and submitted in accordance with an agreement containing all the requirements of the bond as required above and any other requirements deemed necessary by the Los Angeles City Attorney, in a format acceptable to the City and the Department, including banking or funding institution approval.
- (c) If at any time during the term of this Franchise the condition of the corporate surety or any other type of bond allowed shall change in a manner as to render the bond unsatisfactory to the City, Grantee shall forthwith replace the bond with a bond of like amount and similarly conditioned, issued by a corporate surety or other method as deemed satisfactory by the City. The bond shall be cancelable only by the City and Grantee shall give a minimum 90-day written notice to both the Board and the Los Angeles City Attorney prior to replacement or request for cancellation of the bond.
- (d) Neither the provisions of this Section 6.4, any bond accepted by the City pursuant to this Franchise, nor any damages recovered by the City under the bond shall be construed to excuse faithful performance by Grantee or limit the liability of Grantee under this Franchise for damages, either to the full amount of the bond or otherwise.

#### **Section 6.4. COLLECTION/REMITTANCE OF GAS USERS TAX**

Grantee shall collect the tax specified in LAMC 21.1, et seq., at the rates specified therein, except as otherwise required by Applicable Law, for all gas delivered through the Gas System for transportation service customers and consumed within the area covered by this Franchise. The rate specified in the above sections shall be applied to the Value of Transported Gas in determining the tax to be paid. Grantee shall remit the tax to the City in accordance with the provisions of LAMC 21.1, et. seq., Grantee shall notify and assist the City in collecting from any transportation service customer who refuses to pay the tax.

#### **SECTION 7. STREET DAMAGE RESTORATION FEE (SDRF) CREDIT**

Grantee shall comply with the Street Damage Restoration Fee, codified at LAMC 62.06, including the payment of all SDRF Amounts assessed, subject to the conditions set forth in the definition of SDRF Amounts.

Grantee and the City will use good faith efforts to mitigate the financial impact of the SDRF on the residents of the City, including, but not limited to, cooperating in applying for, and planning for the application of, statutory exemptions to the SDRF.

For Street cuts that result from specific customer requests (i.e., customers requesting service from Grantee that requires Grantee to perform Street cuts and from whom such SDRF Amounts are recoverable by Grantee through means other than the Franchise fee surcharge described in Section 6.1(b)), Grantee may ask the City to bill the SDRF directly to the customer, or Grantee may choose to bill the customer and remit the SDRF to the City.

For Street cuts that are required to maintain the overall system of infrastructure under the Franchise in a state of good repair and are not related to specific customer requests, Grantee may accumulate a credit equal to the sum of SDRF fees paid to the City. This credit may be applied against quarterly payments to the City made under Section 6.1(a) of this Franchise. This credit must be detailed in statements submitted under Section 6.1(d) of this Franchise. Records supporting the application of this credit must be retained and made available in compliance with Section 6.1(f) of this Franchise.

## **SECTION 8. INSPECTION OF FACILITIES AND RECORDS**

At all reasonable times, Grantee shall permit any duly authorized representative of the Board or authorized officer, employee, or contractor of the City to examine all Franchise Property, together with any appurtenant property of Grantee situated in or outside the City, and to examine and transcribe any and all maps, and other Records kept or maintained by Grantee or under its control, which respect to the operations, affairs, transactions, or facilities of Grantee, with respect thereto. If any such maps, or other Records are not kept in the City, or upon reasonable request made available in the City, and if the Board determines that an examination of these is necessary or appropriate to the performance of any of its duties, then all travel and maintenance expense necessarily incurred in making the examination shall be paid by Grantee.

Grantee shall prepare and furnish to the Board, at all times and in the form prescribed by the Board, data and reports, with respect to its operations, affairs, transactions, finances or Franchise Property, as may be reasonably necessary or appropriate to the performance of any of the duties of the Board or the Department in connection with this Franchise.

## **SECTION 9. EMERGENCY PREPAREDNESS/RESPONSE COORDINATION**

The Grantee and the City will continue to share information to facilitate accurate emergency preparedness planning and emergency response. The Grantee will continue to coordinate with City first responder agencies and the City Emergency Operations Center for these purposes.

## **SECTION 10. SURVIVABILITY**

If the Franchise is terminated for any reason, then the following Sections of the Franchise shall survive that termination: Sections 4.6, 5, and 6.3. In addition, the insurance and performance bond required of Grantee shall be maintained until any remaining Grantee obligations to the City are fulfilled.

## **SECTION 11. 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 12. WAIVER**

A waiver of a default of any part, term or provision of this Franchise shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

## **SECTION 13. CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION CERTIFICATE REQUIRED**

For the duration of this Franchise, Grantee shall maintain valid Business Tax Registration Certificate(s) as required by the City Business Tax Ordinance, LAMC 21.00, et seq., and shall not allow the Certificate to lapse or be revoked or suspended.


## **SECTION 14. POSSESSORY INTERESTS TAX**

Rights granted to Grantee by City may create a possessory interest. Grantee agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, Grantee shall pay the property tax. Grantee acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

Sec. 15. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  For  
EDWARD JORDAN  
Assistant City Attorney

Date 1/11/22

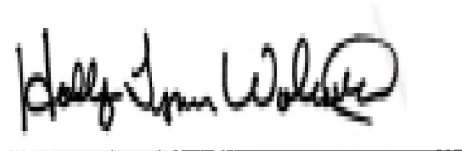
File No. 21-1267

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The Clerk of the City of Los Angeles hereby certifies that the foregoing ordinance was passed by the Council of the City of Los Angeles.

CITY CLERK

MAYOR





Ordinance Passed January 19, 2022

Approved 01/25/2022

Published Date: 1-28-22  
Ordinance Effective Date: 2-28-22