

ORDINANCE NO. MC-1621

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN BERNARDINO, CALIFORNIA, GRANTING TO SOUTHERN CALIFORNIA GAS COMPANY, A CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS FOR ANY AND ALL PURPOSES UNDER, ALONG, ACROSS OR UPON THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES, AS THE SAME NOW OR MAY HEREAFTER EXIST, WITHIN SAID MUNICIPALITY.

WHEREAS, the City San Bernardino, California (“City”) is a chartered city and municipal corporation, duly organized under the California Constitution and laws of the State of California; and

WHEREAS, California Public Utilities Code Section 6202 provides that the legislative body of a municipality may grant a franchise to any corporation to lay and use pipe and appurtenances for transmitting and distributing gas under and along public streets within the municipality; and

WHEREAS, California Public Utilities Code Section 6231(c) provides a formula for the amount the grantee shall pay to the municipality during the life of the franchise; and

WHEREAS, the City Council adopted Ordinance No. MC-1149 adopted on August 4, 2003 and effective as of September 4, 2003, granting a franchise to Southern California Gas Company for the transportation and distribution of gas (“Prior Franchise”); and

WHEREAS, the Prior Franchise with Southern California Gas Company expires on September 4, 2023, and the City desires to grant a new franchise to Southern California Gas Company; and

WHEREAS, the City Council duly held a public hearing to receive any protests regarding the proposed Southern California Gas Company franchise agreement on September 6, 2023; and

WHEREAS, the City Council finds that it is in the public interest of its citizens to enter into a new franchise agreement with Southern California Gas Company; and

WHEREAS, the proposed renewed franchise agreement sets the franchise fee at two percent (2%) of Southern California Gas Company’s gross revenues arising from this franchise agreement.

NOW THEREFORE, THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN BERNARDINO UNDER AND PURSUANT TO DIVISION 3, CHAPTER 2 OF THE PUBLIC UTILITIES CODE OF THE STATE OF CALIFORNIA, DO HEREBY GRANT TO SOUTHERN CALIFORNIA GAS COMPANY A RENEWED FRANCHISE

AGREEMENT UPON THE FOLLOWING TERMS AND CONDITIONS:

SECTION ONE

The above recitals are true and correct and are incorporated herein by this reference.

Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

(a) The word "Grantee" shall mean Southern California Gas Company, and its lawful successors or assigns;

(b) The word "City" shall mean the City of San Bernardino, a Charter City and a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated or reincorporated form;

(c) The word "streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within said City;

(d) The word "Engineer" shall mean the City Engineer;

(e) The word "franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license or otherwise to lay and use pipes and appurtenances for transmitting and distributing gas for any and all purposes under, along, across or upon the public streets, ways, alleys and places in the City, as more fully set forth in Section 2(a) below;

(f) The word "gas" shall mean natural or manufactured gas, or a mixture of natural and manufactured gas;

(g) The phrase "pipes and appurtenances" shall mean pipe, pipeline, cable, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, appliance, attachment, adjunct communications line, appurtenance 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, or in carrying on the business of, transmitting and distributing gas; and

(h) The phrase "lay and use" shall mean to lay construct, erect, install, operate, maintain, use, repair, replace, or remove.

(i) The phrase "adjunct communications line" shall mean 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 facilities via the distribution of video, audio, voice or data signals. An adjunct communications line shall not include any facility which 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.

SECTION TWO

(a) That the right, privilege and franchise, subject to each and all of the terms and conditions contained in this ordinance, and pursuant to Chapter 14.04 (Sections 14.04.010-14.04.030) of the San Bernardino Municipal Code, is hereby granted to Grantee to lay and use pipes and appurtenances for transmitting and distributing gas for any and all purposes, under, along, across or upon the streets of the City. Any proposed telecommunication or other non-gas system uses must be approved by the City under a separate franchise or other applicable City permit.

(b) The term or period of this franchise shall be twenty (20) years from and after the effective date hereof; that is to say, this franchise shall endure in full force and effect until the same shall, with the consent of the Public Utilities Commission of the State of California, be voluntarily surrendered or abandoned by its possessor, or until the State of California or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of this franchise, and situated within the territorial limits of the State, municipal or public corporation purchasing or condemning such property, or until this franchise shall be forfeited for noncompliance with its terms by the possessor thereof.

(c) City shall have the right to terminate this Franchise by ordinance, at any time, should any of the following events occur: (i) the Grantee fails to comply with any material provision hereof or (ii) the City purchases (through its power of eminent domain or otherwise) all of the franchise property of Grantee. The Grantee shall be given thirty (30) days written notice prior to the beginning of any termination proceeding.

SECTION THREE

(a) The Grantee shall pay to the City at the times hereinafter specified, in lawful money of the United States, a total annual Franchise Fee, calculated in the following manner:

(i) Gross Receipts from the Sale of Gas. A fee that is equal to the higher of:

(A) Two percent (2%) of the gross annual receipts of the Grantee derived from the use, operation or possession of this franchise (Broughton Act Formula); or,

(B) Two percent (2%) of the gross annual receipts of the Grantee derived from the sale, transmission, or distribution of gas within the limits of the City under this franchise.

(C) In the event the legislature amends the Franchise Act of 1937 (Public Utilities Code §6201-6302) or enacts any other state law which increases the franchise payment to cities to a level greater than that provided in this Section 3(a), then the City shall have the option of prospectively employing the legislative formula, which shall apply for the remaining term of this agreement instead of the payments set forth in Section 3(a) herein. If the City exercises said option, the legislative formula shall be prospectively applied hereto on the later of the effective date of the legislation or January 1 of the calendar year in which the City exercised said option.

(ii) The annual amount of the “municipal public lands use surcharge” applicable to this franchise, as set forth in and calculated pursuant to Division 3, Chapter 2.5

of the California Public Utilities Code (as may be amended from time to time, the “Municipal Public Lands Use Surcharge”).

(b) The Franchise Fee (as described in subsections (a)(i) and (a)(ii) above) shall be paid in four installments, each installment being equal to the amount determined by the applicable gross receipts formula in subsection (a)(i) for the preceding calendar quarter only, plus the amount of the Municipal Public Lands Use Surcharge for the preceding calendar quarter only. Each installment shall be paid to the City on or prior to the twenty-fifth (25th) day of the second month following the respective quarter for which payment is made, except for the final quarterly payment for the year, which shall be paid on or prior to March 31st of the subsequent year. For example, the installment for the first quarter of the year (January through March) shall be paid to the City on or before May 25th. Any overpayment shall be recovered by Grantee by setoff against future installments, or, if the franchise has been terminated, such overpayment, or the balance thereof, shall be payable by City to Grantee upon written demand. Notwithstanding the foregoing, any payments calculated and to be paid under this franchise shall be prorated and setoff against any payments calculated and actually paid or payable under the Prior Franchise for the same period.

SECTION FOUR

(a) Any notices shall be in writing and be delivered by courier service or by certified mail, return receipt requested, or by telecopy with a confirming copy mailed (first class mail) by the next business day, to the other party at the address shown below or at such other address as the party may designate by written notice delivered in the manner provided for herein:

City of San Bernardino
290 N. "D" Street
San Bernardino, CA 92418
Telecopy: (909) 384-5158
Telephone: (909) 384-5002

Attn: City Clerk

With a copy to City of San Bernardino
290 N. "D" Street

San Bernardino, CA 92418
Telecopy: (909) 384-5138
Telephone: (909) 384-5122

Attn: City Manager

Southern California Gas Company
555 West Fifth Street
Los Angeles, CA 90013-1011
P.O. Box 3249
Los Angeles, CA 90051-1249

Telecopy number: 213-244-8223
Confirmation number: 213-244-5701

Attn: Senior Vice President, Distribution Operations

and a copy to:

Southern California Gas Company
555 West Fifth Street
Los Angeles, CA 90013-1011
P.O. Box 3249
Los Angeles, CA 90051-1249

Telecopy number: 213-244-4997
Confirmation number: 213-244-2528

Attn: Franchise and Fees Manager, Regional Public Affairs

(b) This grant is made in lieu of all other franchises owned by the Grantee, or by any successor of the Grantee to any rights under this franchise, for transmitting and distributing gas within the limits of the City, as said limits now or may hereafter exist, and the acceptance of the franchise hereby granted shall operate as an abandonment of all such franchises within the limits of this City, as such limits now or may hereafter exist, in lieu of which this franchise is granted.

(c) The Grantee of this franchise shall file with the Clerk of the City within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the grant of this franchise, and within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of the Grantee, its successors or assigns, during the preceding calendar year, or such fractional calendar

year, from the sale of the utility service within the City for which this franchise is granted, and any other information needed to calculate the Franchise Fee in SECTION THREE. Any neglect, omission or refusal by said Grantee to file such verified statement, or to pay said Franchise Fee, at the times or in the manner hereinbefore provided, shall be grounds for the declaration of a forfeiture of this franchise and of all rights thereunder.

SECTION FIVE

The franchise granted hereunder shall not become effective until written acceptance thereof shall have been filed by the Grantee thereof with the Clerk of the City. When so filed, such acceptance shall constitute a continuing agreement of the Grantee that if and when the City shall thereafter annex or consolidate with additional territory, any and all franchise rights and privileges owned by the Grantee therein shall likewise be deemed to be abandoned within the limits of the additional territory.

SECTION SIX

The franchise granted hereunder shall not in any way or to any extent impair or affect the right of the City to acquire the property of the Grantee hereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge, either for a term or in perpetuity, the City's right of eminent domain in respect to the Grantee; nor shall this franchise ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the Grantee of the necessary publication and any other sum paid by it to the City therefor at the time of the acquisition thereof.

SECTION SEVEN

The Grantee of this franchise shall:

(a) Construct, install and maintain all pipes and appurtenances in accordance with and in conformity with all of the ordinances, rules and regulations heretofore, or hereafter adopted by the legislative body of this City in the exercise of its police powers and not in conflict with the paramount authority of the State of California, and, as to State highways, subject to the provisions

of general laws relating to the location and maintenance of such facilities;

(b) Pay to the City, on demand, the cost of all repairs to public property made necessary by any operations of the Grantee under this franchise;

(c) Grantee shall also be liable to the City for all damages proximately resulting from the failure of Grantee to observe and perform the provisions of this Franchise. This subsection (c) shall survive the termination or expiration of this Franchise and shall continue for so long as the franchise property of Grantee is located within the City.

(d) Grantee shall indemnify, defend and hold harmless City and its officers from any and all liability for damages proximately resulting from any operations under this franchise; and be liable to the City for all damages proximately resulting from the failure of said Grantee to well and faithfully observe and perform each and every provision of this franchise and each and every provision of Division 3, Chapter 2 of the Public Utilities Code of the State of California. Grantee acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste as a result of the use or existence of the pipes and appurtenances that are the subject of this Franchise are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity. This subsection (d) shall survive the termination or expiration of this Franchise and shall continue for so long as the franchise property of Grantee is located within the City.

(e) In the event the use of any franchise property is discontinued, Grantee shall promptly notify the Engineer of any material discontinuance and remove from the street all such discontinued property, unless the Engineer permits such property to be abandoned in place in accordance with the requirements of the Engineer (subject to applicable requirements of the California Public Utilities Commission). After abandonment, at the option of City, Grantee shall

submit to the Engineer, an instrument, reasonably approved by the City and Grantee, transferring to the City the ownership of such franchise property.

(f) City shall have the right to change the grade, width or location of any street, or improve any street in any manner, including but not limited to the laying of any sewer, storm drain, drainage facility, or other pipe, or construct and install any pedestrian tunnel, traffic signal, street lighting facility or other public improvement; provided, however, that nothing herein is intended to expand or limit the duty of Grantee to relocate at its expense under Public Utilities Code Section 6297 or common law, and as such law may change from time to time by judicial interpretation or by statutory enactment. If such work shall require a change in the position or location of any of Grantee's facilities or equipment, Grantee, at its sole expense, within ninety (90) days after written notice from the Engineer, shall commence the work of doing any and all things to effect such change in position or location in conformity with the Engineer's written instructions.

(g) This franchise may not be transferred (voluntarily, involuntarily, or by operation of law), leased, or assigned by Grantee except by consent in writing of the Common Council, which shall not be unreasonably withheld or unreasonably conditioned and unless the transferee or assignees thereof shall covenant and agree to perform and be bound by each and all of the terms hereof; provided, however, that the foregoing shall not apply to Grantee's inclusion of the franchise as security under a mortgage, deed of trust or other security agreement securing the repayment of bonds or notes. Grantee shall file with the City Clerk and City Administrator of the City within thirty (30) days after any sale, transfer, assignment, or lease of this Franchise, or any part hereof. or of any of the rights or privileges granted hereby, written evidence of the same, certified thereto by the Grantee or its duly authorized officers.

SECTION EIGHT

The City Treasurer, or any certified public accountant. or qualified person designated by the City, at any reasonable time during business hours, may make examination at Grantee's offices of its books, accounts, computerized data, and records, germane to and for the purpose of verifying

the data set forth in the statement required by SECTION FOUR hereof.

SECTION NINE

(a) Any pipes and appurtenances laid, located or maintained under said franchise shall be so placed as not to interfere with the use of the streets by the traveling public or for public purposes to any greater extent than is reasonably necessary; and in laying said pipes and appurtenances, Grantee shall fill the trench and leave the surface of the streets in as good condition as it was prior to excavating for laying said pipes and appurtenances; and any pipes and appurtenances laid or maintained under said franchise shall be laid, located and maintained in conformity with instructions given by and to the satisfaction of the Engineer; and Grantee, its successors and assigns, shall hold the City harmless from all damage resulting from the laying, use or operation of said pipes and appurtenances.

(b) Where it is necessary to lay any underground pipes and appurtenances through, under or across any portion of a paved or macadamized street, the same, where practicable and economically reasonable, as determined by the Engineer, shall be done by a tunnel or bore, so as not to disturb the foundation of such paved or macadamized street; and in the event that the same cannot be so done, such work shall be done under a permit to be granted by the Engineer upon application therefor, and Grantee shall restore such street, or portion of street, to as good a condition as existed before such work was done and such restoration shall be completed to the reasonable satisfaction of the Engineer.

SECTION TEN

If any portion of any street shall be damaged by reason of defects in any of the pipes and appurtenances maintained or constructed under this grant, or by reason of any other cause arising from the operation or existence of any pipes and appurtenances constructed or maintained under this grant, Grantee shall, at its own cost and expense, immediately repair any such damage and restore such portion of such damaged street to as good condition as existed before such defect or other cause of damage occurred, such work to be done under the direction of the Engineer, and to his reasonable satisfaction.

SECTION ELEVEN

(a) If the Grantee of this franchise shall fail, neglect or refuse to comply with any of the provisions or conditions hereof, and shall not, within ten (10) days after written demand for compliance, begin the work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then the City, by its legislative body, may declare this franchise forfeited.

(b) The City may sue in its own name for the forfeiture of this franchise, in the event of noncompliance by the Grantee, its successors or assigns, with any of the conditions thereof. The remedy of forfeiture shall be in addition to any other legal rights, remedies, or causes of action the City may have, including but not limited to, the right to terminate under Section Two (c).

SECTION TWELVE

The Grantee of this franchise shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting of this franchise; such payment to be made within thirty (30) days after the City shall furnish such Grantee with a written statement of such expenses.

SECTION THIRTEEN

After the publication of this ordinance, the Grantee shall file with the City Clerk a written acceptance of the franchise hereby granted, and an agreement to comply with the terms and conditions hereof.

SECTION FOURTEEN

The City Clerk of the City of San Bernardino shall certify to the adoption of this ordinance and, within 15 days after its adoption, shall cause the same (with a list of the Council members voting for and against) to be published once in a newspaper of general circulation and published and circulated in the City in a manner permitted under section 36933 of the Government Code of the State of California.

SECTION FIFTEEN

For purposes of this franchise, the City Council finds that this franchise agreement with

Southern California Gas Company does not constitute a “project” for purposes of the California Environmental Quality Act (Pub. Resources Code, § 21000 et. seq.) (“CEQA”) and the State CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.) and, therefore, does not require environmental review. Specifically, under State CEQA Guidelines section 15378, “project” does not include administrative activities or government fiscal activities that do not involve any commitment to any specific project which may result in a physical change in the environment. For purposes of this franchise agreement, the City Council further finds that even if this franchise agreement constituted a “project” for purposes of CEQA, the project would be exempt from environmental review under State CEQA Guidelines section 15301 (Existing Facilities), 15320 (Organization of Local Agencies), and 15061(b)(3), which exempts projects for which it can be seen with certainty will not result in significant environmental impacts. None of the exceptions found in State CEQA Guidelines section 15300.2 to the use of these exemptions are present. The City Council hereby directs staff to file a Notice of Exemption with the County Clerk within five (5) working days of the adoption of this Ordinance.

SECTION SIXTEEN

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional or invalid. If for any reason any portion of this ordinance is found to be invalid by a court of competent jurisdiction, the balance of this ordinance shall not be affected.

SECTION SEVENTEEN

This Ordinance shall take effect thirty (30) days after its adoption.

APPROVED and **ADOPTED** by the City Council and signed by the Mayor and attested by the City Clerk this ____ day of _____, 2023.

Helen Tran, Mayor
City of San Bernardino

Attest:

Genoveva Rocha, CMC, City Clerk

Approved as to form:

City Attorney

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO) ss
CITY OF SAN BERNARDINO)

I, Genoveva Rocha, CMC, City Clerk, hereby certify that the attached is a true copy of Ordinance No. MC-_____, introduced by the City Council of the City of San Bernardino, California, at a regular meeting held the XX day of _____, 2023. Ordinance No. MC-_____ was approve passed and adopted at a regular meeting held the XX day of _____, 2023 by the following vote:

| <u>Council Members:</u> | <u>AYES</u> | <u>NAYS</u> | <u>ABSTAIN</u> | <u>ABSENT</u> |
|-------------------------|-------------|-------------|----------------|---------------|
| SANCHEZ | _____ | _____ | _____ | _____ |
| IBARRA | _____ | _____ | _____ | _____ |
| FIGUEROA | _____ | _____ | _____ | _____ |
| SHORETT | _____ | _____ | _____ | _____ |
| REYNOSO | _____ | _____ | _____ | _____ |
| CALVIN | _____ | _____ | _____ | _____ |
| ALEXANDER | _____ | _____ | _____ | _____ |

WITNESS my hand and official seal of the City of San Bernardino this ____ day of _____ 2023.

Genoveva Rocha, CMC, City Clerk
