

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA GRANTING SOUTHERN CALIFORNIA GAS COMPANY A FRANCHISE TO INSTALL, USE, MAINTAIN, REPAIR AND REPLACE PIPES AND APPURTENANCES FOR THE PURPOSE OF TRANSMITTING AND DISTRIBUTING NATURAL GAS FOR ANY AND ALL PURPOSES WITHIN THE CITY OF SANTA BARBARA.

THE COUNCIL OF THE CITY OF SANTA BARBARA does hereby ordain as follows:

SECTION 1. GRANT OF FRANCHISE. Subject to the terms and conditions contained in this ordinance and pursuant to the provisions of Article XIV of the Charter of the City of Santa Barbara, the City of Santa Barbara hereby grants to Southern California Gas Company, a California corporation, its successors and assigns, a nonexclusive 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 Streets of the City. 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, other than Adjunct Communication Lines owned and used by Grantee, either by Grantee or any person or entity claiming a right under Grantee's franchise, must be authorized separately by the City under a separate agreement.

SECTION 2. INTERPRETATION OF FRANCHISE.

A. As used in this ordinance, the singular number includes the plural and the plural number includes the singular.

B. 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:

1. "Adjunct Communications Line" shall mean any facility such as coaxial cable, optical fiber, wire, wireless devices, 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 and used exclusively by Grantee, the primary 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.

2. "City" means the City of Santa Barbara, a municipal corporation and charter city duly organized under the laws of the State of California.

3. "City Rules" means the City's Charter and all of the City's ordinances, regulations and policies heretofore or hereafter adopted by the Council in the exercise of its police powers as a charter city under Article XI, Section 5 of the Constitution of the State of California and not in conflict with the paramount authority of the State of California, and that are not in conflict with or inconsistent with the authorized General Orders of Grantee, the jurisdiction of the California Public Utilities Commission, or other state or federal agency having jurisdiction over Grantee, and as to state highways, subject to the laws relating to the location and maintenance of such facilities therein.

4. "City Utilities" means all City sewers, City waterlines, City drains, and any other City facilities.

5. "Construct" means to lay, construct, erect, install, maintain, repair, replace, or remove.

6. "Engineer" means the City Engineer of City or his or her designee.

7. "Council" means the Council of the City of Santa Barbara.

8. "Franchise" means all the rights, privileges and responsibilities granted by City pursuant to Article XIV of the Charter of the City of Santa Barbara and subject to each and all of the terms and conditions contained in this Ordinance.

9. "Franchise property or properties" means all property constructed, installed, operated, or maintained by Grantee in or upon the public streets pursuant to any right or privilege granted by this franchise.

10. "Gas" means natural gas meeting the specifications required by the California Public Utilities Commission or other such state or federal agency having jurisdiction over Grantee.

11. "General Orders" means General Orders issued by the Public Utilities Commission of the State of California and applicable to Grantee.

12. "Grantee" means Southern California Gas Company to whom this franchise is granted and any other person, firm, or corporation to which this franchise may hereafter be lawfully transferred as herein provided.

13. "Lay and use" means lay, construct, erect, install, operate, maintain, use, repair, replace, remove, or abandon.

14. "Pipes and appurtenances" or "pipes and appurtenant facilities" means gas distribution and transmission 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, appliance, attachment, appurtenance, and any other property located in, upon, along, across, under, or over the streets of the City, and used or useful in carrying on the business of the transmission or distribution of gas.

15. "Reasonable Satisfaction" means the City will reasonably determine if the work has been done in a manner that is consistent with Grantee's General Orders, the rules and regulations of the California Public Utilities Commission, state and federal law, and City Rules, and if not contained therein, consistent with generally accepted industry standards.

16. "Street" means the surface of, and the space above and below, any public street, road, highway, lane, alley, court, sidewalk, parkway, easement, or similar public place, or any other area under the control of the City, which now exists or which may hereafter exist within the City, including any public highway within the City.

17. "Street, Paved" means a street constructed with a concrete or asphaltic surface.

SECTION 3. TERM OF FRANCHISE.

A. The term of this franchise shall be thirty (30) years from and after the effective date hereof. Grantee shall have a conditional option to extend the term of this franchise for an additional ten (10) years upon same terms and conditions contained herein. If Grantee wishes to exercise the option, Grantee shall, not more than two (2) years and not less than (1) year prior to the expiration of the initial thirty (30) year term, serve written notice of Grantee's intent to exercise the option upon the City Clerk. Upon timely service of Grantee's notice of intent to exercise the option, unless the City Council affirmatively rejects the exercise of the option in writing within one hundred twenty (120) days of receipt of Grantee's notice of intent to exercise the option, this franchise shall extend for an additional ten (10) years for a total of forty (40) years from the effective date hereof. If no timely notice of intent to exercise is submitted or if the City Council rejects the exercise of the option within the one hundred twenty (120) day period, the term of this franchise shall lapse thirty (30) years from and after the effective date hereof. The effective date of this franchise shall be the date Grantee files a written acceptance of this franchise with the City Clerk of City. This franchise may terminate sooner upon any of the following events: (1) With the consent of the Public Utilities Commission of the State of California, this franchise is voluntarily surrendered or abandoned by its possessor; (2) The State of California or a municipal or public corporation, duly authorized by law, purchases by voluntary agreement or condemns and takes 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 (3) This franchise is forfeited for noncompliance with its terms by the possessor thereof.

B. If the Grantee shall at any time fail, neglect, or refuse to comply with or to fulfill any one or more of the terms or conditions of this franchise and shall not within thirty (30) 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 Council may revoke this franchise.

C. If necessary, the City may sue in its own name for the forfeiture of this franchise, in the event of noncompliance or breach of this franchise by the Grantee, its successors or assigns, with any of the conditions thereof.

D. The right of the City to revoke or terminate this franchise pursuant to the terms of this Section shall be in addition to all other rights and remedies which may otherwise accrue to the City by reason of any failure or refusal of the Grantee to perform any obligation imposed by the terms of this franchise.

SECTION 4. DUTIES OF GRANTEE. In addition to other duties set forth in this franchise, Grantee shall:

A. Construct all pipes in accordance and conformance with the City Charter and all ordinances, rules and regulations adopted by City in the exercise of its police powers and not in conflict with the paramount authority of the State of California or in conflict with the authorized General Orders of the California Public Utilities Commission applicable to Grantee, and, as to State highways, subject to the provisions of general laws relating to the location and maintenance of such public utilities.

B. Pay to City on demand, the cost of all repairs to streets and City Utilities made necessary by any operations of Grantee under this franchise.

C. Notify the City Council of City in writing within thirty (30) days of any lawful successor or assignee.

D. Collect any Utility Users' or similar tax related to the consumption of Gas within the City in accordance with applicable ordinances, rules or regulations.

E. Comply with the City Charter and all lawful ordinances and regulations of City.

SECTION 5. LOCATION AND INSTALLATION OF FRANCHISE PROPERTY.

A. Grantee shall have the right to make all necessary excavations in the streets for the laying and using of franchise properties. All excavations and pipeline installations shall be made in compliance with CPUC statutes, regulations and general orders. Street repairs shall be affected in strict compliance with this franchise and the City Rules.

B. Before commencing work to lay and use pipes and appurtenances, Grantee shall file plans with Engineer showing the proposed location of such pipes and appurtenances. The plans shall be subject to review and approval by Engineer.

C. Engineer shall have the power to give Grantee such directions for the location of any pipes or appurtenances as may be reasonably necessary to avoid utilities in or under streets.

D. Where it is necessary to construct any underground pipes and appurtenances through, under or across any portion of a paved street, such construction, 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 or surface of such paved street. In the event that tunneling or boring cannot be done practicably or at a cost that is economically reasonable, any excavation of the paved street shall be done under a permit issued by the Engineer. If a paved street is excavated in order to lay and use pipes and appurtenances, Grantee shall restore the street to as good a condition as existed before such work was done and such restoration shall be completed to the Engineer's Reasonable Satisfaction.

E. All excavations shall be conducted so as not to interfere unreasonably with the free use of the streets by the public except such temporary interference as may be authorized by the Engineer.

F. Prior to any work, including maintenance, installations, replacements, and relocations within City Streets, Grantee shall obtain any required City permit. In connection with any such permit, Grantee shall pay a permit fee calculated in accordance with the fee schedule most recently and lawfully approved by the City Council. Grantee and City, may, but shall not be obligated to, enter additional agreements regarding the payment of permitting fees for activities contemplated under this franchise on a yearly basis or otherwise.

G. All work in City streets shall be continuously prosecuted in good faith and without unnecessary or reasonably avoidable intermission or delay. It shall be done in a good and workmanlike manner and to the Engineer's Reasonable Satisfaction.

H. In accordance with General Orders of the Public Utilities Commission and applicable state and federal laws and regulations, Grantee shall promptly repair any leaks or breaks in pipes to good order and safe condition, and promptly repair and maintain all appurtenances to good order and safe condition, that are installed, maintained or operated pursuant to this franchise, or by reason of any other cause arising from the operation or existence of any pipes and appurtenances constructed or maintained pursuant to this franchise.

SECTION 6. FIESTA. With the exception of emergency repairs or construction in areas that are exclusively zoned for single-family residential dwellings, Grantee shall not

perform any construction on streets within City during the week of the annual celebration of the Fiesta.

SECTION 7. LAWS TO BE OBSERVED. The Grantee shall lay and use all pipes and appurtenances in accordance with, and in conformity with, all state and federal laws and all City Rules.

SECTION 8. INCIDENT AND EMERGENCY RESPONSE. Grantee shall, after being notified of an emergency that has the potential to affect Grantee's pipes and appurtenances installed in City Streets, cooperate with City and make every effort to respond as soon as possible to protect the public's health, safety, and welfare.

SECTION 9. STREET IMPROVEMENT BY CITY. Grantee shall locate, remove, or relocate, at the request of the City, in a timely manner and without expense to the City, any pipes and appurtenances laid and used under this franchise if and when made necessary by any lawful change of grade, alignment, or width of any public street, way, alley or place, including the construction of any subway or viaduct by the City; provided, however, that Grantee shall not be required to bear the expense of any removal or relocation made at the request of the City on behalf or for the benefit of any private party.

SECTION 10. REMOVAL OR ABANDONMENT OF FRANCHISE PROPERTY.

A. In the event of the permanent discontinuance of the use of any pipeline, or portion thereof, maintained or operated pursuant to this franchise, Grantee shall, within thirty (30) days thereafter, make written application to the Engineer for instructions as to the abandonment or disposal to be made of the franchise property. Such application shall describe said property and shall be accompanied by a map designating its location with respect to street lines and pavements. Engineer shall, within sixty (60) days of the receipt of such application, order the properties to be removed, or, upon request of the Grantee, permit the properties to be abandoned in place; provided, however, that if Engineer shall determine that such removal will materially injure or shorten the life of the remaining portion of the pavement, said properties shall be required to be abandoned in place.

B. When the abandonment of franchise properties shall be permitted or required pursuant to the provisions of the franchise, the pipelines, or portions thereof affected, shall be capped, plugged, removed or otherwise abandoned in such manner as may be prescribed by the Engineer, consistent with state law. In the event of such abandonment, and after the completion of the required work, the City shall have the option, upon request of the Engineer to Grantee, upon terms and conditions mutually agreed upon between City and Grantee, to have the ownership transferred to the City of all franchise facilities so abandoned in place as may be permitted or required by law.

C. All excavation work done pursuant to the provisions of this Section shall be to the Engineer's Reasonable Satisfaction

SECTION 11. FRANCHISE FEES.

A. Grantee shall pay an annual franchise fee to City at the times hereinafter specified and calculated as follows:

Commencing on the first day of the calendar quarter immediately following the effective date of this franchise, an annual sum which shall be equivalent to the higher of the following two formulas:

(1) Two percent (2%) of the gross annual receipts of Grantee from the use, operation or possession of this franchise; or

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

B. In addition to the franchise fee, Grantee shall pay City the fee described in the Municipal Public Lands Use Surcharge Act, Chapter 2.5 of Division 3 of the California Public Utilities Code beginning with Section 6350, as such Act is now or as may be amended from time to time (the "In-Lieu Act").

1. As used herein:

(a) "Non-proprietary gas" means gas that is conducted, conveyed, transported, supplied and/or distributed, but not sold, by Grantee to the City, to its inhabitants, and/or to any gas customer of Grantee within the City.

(b) "Imputed value" means the product of the actual quantities of such non-proprietary gas conducted, conveyed, transported, supplied and/or distributed, but not sold, to the City and/or to its inhabitants within the City by Grantee during the period of calculation times the weighted average cost of gas ("WACOG") rate authorized by the CPUC for Grantee's use in the calculation of the In-Lieu Fee at the time of the calculation. Currently, it is the adjusted core procurement charge rate (G-CPA) exclusive of any California sourced franchise fee factor.

(c) "In-Lieu Fee" means the fee as calculated pursuant to Section 6353 of the Public Utilities Code, which shall be paid to Grantor as provided by Section 6354 of the Public Utilities Code at the times provided in Section 11(b) above

2. The above descriptions are provided for the convenience of the parties and in no event shall any of the provisions in this Section 11 be construed to enlarge or restrict the duties or rights of Grantee and Grantor under the In-Lieu Act or the definitions of customers, or the volumes of gas subject to the In-Lieu Act.

C. The Franchise Fee shall be paid annually in four installments.

The annual franchise fee shall be paid in four quarterly installments based on the total gross receipts of the preceding calendar quarter employing the gross receipts formula of Subsection A. above, plus the amount of the In Lieu Fee of Subsection B. for such calendar quarter. 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 true-up payment for the year, which shall be paid on or prior to March 31st. For example, the installment for the first quarter of the year (January through March) shall be paid to the City no later than May 25th.

D. If at any time after the effective date of this Franchise, Grantee shall accept a general gas distribution franchise with any city or county that contains a franchise fee formula that provides for a payment in excess of the percentages set forth in Subsection A of this Section 11, as originally set or as may be revised from time to time, then the following provisions will apply:

1. Grantee shall provide written notice of the acceptance of such a franchise to the City together with a copy of any such franchise within thirty (30) days of the effective date of such franchise.

2. At any time during the term of the franchise that triggered this Subsection D, the City may, by resolution of the City Council, elect to have the City's franchise fee formula revised upward to a level not to exceed the formula contained in the franchise that triggered this Subsection D. City shall notify Grantee in writing of its election to revise the franchise fee.

3. If the City elects to revise the franchise fee formula as contemplated in paragraph 2 above, the franchise fee shall be modified as follows:

a. If the city or county franchise which triggers this Subsection D achieves the excess franchise compensation by way of a CPUC approved surcharge on gas service under the triggering city or county franchise, Grantee shall, within sixty (60) days of receiving notice of the City's election pursuant to paragraph 2, make an application to the California Public Utilities Commission requesting the right to impose a customer surcharge upon the same compensation terms as the triggering city or county, in an amount necessary to recoup the difference between the franchise fee formula specified in the City Council resolution under paragraph 2 and the Santa Barbara franchise fee percentages set forth in Subsection A of this Section 11. Grantee's obligation to collect and thereafter deliver the surcharge franchise fees to the City shall be contingent upon CPUC approval. Any revised franchise fee formula provided for under this subparagraph 3(a) shall become effective on the first day of the second calendar quarter following the Grantee's receipt of the California Public Utility Commission Advice Letter approving the franchise fee surcharge, (e.g., if the approval date of the advice letter is January 15, the revised franchise fee formula would become effective on July 1 of the same year).

b. If the city or county franchise which triggers this Subsection D achieves the excess franchise compensation without requiring a CPUC approved surcharge on gas service under the triggering city or county franchise, the franchise fee formula under this franchise shall be revised as specified in the City Council resolution under paragraph 2. Any revised franchise fee formula provided for under this subparagraph 3(b) shall become effective on the first day of the second calendar quarter following the Grantee's receipt of notice of the City's election to revise the franchise fee formula (e.g., if the effective date of the City's notice is January 15, the revised franchise fee would become effective on July 1 of the same year).

E. In the event that the imputed value cannot be determined using the methodology identified in Subsection C. of this Section 11 because such methodology is no longer in use or no longer reasonably reflects the imputed value of non-proprietary gas, the City and Grantee shall agree to the methodology as determined by the California Public Utilities Commission or the state legislature's agreed-upon value.

F. In the event the City collects or receives from gas transportation customers, transporters, and/or brokers a franchise or other fee or tax ("Commodity Fee"), excluding a utility users tax, on the quantities of gas purchased by inhabitants of the City from parties other than Grantee but transported by Grantee, the In- Lieu Fee shall be reduced by the amount of the Commodity Fee (for such corresponding quantities of gas), which is collected or received by the City.

G. In the event Grantee fails to make the payments required by this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration a sum of money equal to one percent (1%) of the amount not timely paid, per month of each delinquent month or portion thereof as interest and for loss of use of the money due.

H. Any neglect, omission or refusal by said Grantee to pay said percentage at the times or in the manner hereinbefore provided shall be grounds for the declaration of a forfeiture of this franchise and all rights thereunder.

SECTION 12. ANNUAL STATEMENT OF GROSS RECEIPTS.

A. The Grantee of this franchise shall file with the City Clerk of the City of Santa Barbara within three (3) months after the expiration of the calendar year, or fractional year, following the date of the grant of this franchise, and by March 31st 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 year, from the sale of the utility service within the City for which this franchise is granted.

B. Any neglect, omission or refusal by said Grantee to file such verified statement at the times or in the manner hereinbefore provided shall be grounds for the declaration of a forfeiture of this franchise and all rights thereunder.

SECTION 13. INSURANCE.

As part of the consideration of this Agreement, Grantee agrees to purchase and maintain or self insure at its sole cost and expense during the life of this agreement insurance coverage as specified in A) and B) described below. All insurance coverage shall be placed with insurers that have a Best rating of no less than B+: XII; and are admitted insurance companies in the State of California. All other insurers require prior approval of the City.

The insurance coverage limits identified below are the minimum requirements established at the beginning of the franchise term. The City retains the right to revise the minimum insurance coverage limits as reasonably determined by the City Risk Manager during the term of this agreement, provided however, that the City shall not revise the coverage limit more than once every five years during the term of this agreement.

- A. General and Automobile Liability: Commercial General Liability – Insurance Services Office Form CG 00 01 including products and completed operations with limits of no less than Ten Million Dollars (\$10,000,000) per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the aggregate limit shall apply separately to this franchise agreement or the general aggregate limit shall be twice the required occurrence limit. Automobile Liability – Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) with limits of no less than Ten Million Dollars (\$10,000,000) per accident for bodily injury and property damage. Such insurance shall include the following seven (7) items.
1. Extension of coverage to the City of Santa Barbara, its officers, employees, and agents, as an additional insured, with respect to Grantee's liabilities hereunder in insurance coverage identified in item "A." above, but only as respects to the operations of the named insured. A copy of the endorsement evidencing that the City of Santa Barbara has been added as an additional insured on the policy, must be attached to the certificate of insurance.
 2. A provision that coverage will not be cancelled until at least thirty (30) days' prior written notice, and ten (10) days notice for non-payment of premium has been given to the City Clerk, addressed to P.O. Box 1990, Santa Barbara, California 93102-1990.
 3. A provision that Grantee's insurance shall apply as primary, and not excess of, or contributing with the City.
 4. Contractual liability coverage sufficient to include the liability assumed by the Grantee in the indemnity or hold harmless provisions included in this Agreement.

5. A Cross Liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each.
 6. Broad form Property Damage Endorsement.
 7. Policy shall apply on an "occurrence" basis.
- B. Workers' Compensation: In accordance with the provisions of the California Labor Code, Grantee is required to be insured against liability for Workers' Compensation or to undertake self-insurance. Statutory Workers' Compensation and Employers' Liability of at least \$1,000,000 shall cover all Grantee's staff while performing any work incidental to the performance of this agreement. The policy shall provide that no cancellation, major change in coverage or expiration shall be effective or occur until at least thirty (30) days after receipt of such written notice by City.

Grantee hereby agrees to waive rights of subrogation which any insurer of Grantee may acquire from Grantee by virtue of the payment of any loss. Grantee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the Entity for all work performed by the Grantee, its employees, agents and subcontractors.

Approval of the insurance by City or acceptance of the certificate of insurance by City shall not relieve or decrease the extent to which the Grantee may be held responsible for payment of damages resulting from Grantee's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.

Grantee must provide evidence that it has secured all the required insurance coverage before execution of this agreement and annually thereafter. A Certificate of Insurance or Letter of Self Insurance supplied to the City evidencing the above shall be completed by Grantee's insurer or its agent and submitted to the City prior to execution of this Agreement by the City. Grantee shall exercise due diligence to require all sub-contractors and all tiers of such sub-contractors to provide General and Automobile Liability, Workers' Compensation, and, if applicable, Contractor's Pollution Legal Liability insurance with limits no less than One Million Dollars (\$1,000,000) per occurrence or claim, and Two Million Dollars (\$2,000,000) policy aggregate.

Grantee shall retain the right to self insure any of the insurance requirements above. Grantee retains the sole obligation to pay for such deductibles or self-insured retentions. The City is not obligated under any circumstances to pay for such deductibles or self-insured retentions Grantee maintains. Any deductibles or self-insured retentions shall be set forth on the insurance certificate. Grantee shall deliver to the City the required certificate(s) of insurance and endorsement(s) (unless additional insured is provided within the terms and conditions of the insurance policy) as a condition of granting this franchise.

If, for any reason, Grantee fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from the Grantee resulting from said breach.

SECTION 14. CITY'S RIGHT TO AUDIT AND INSPECT PROPERTY AND RECORDS. At all reasonable times, the Grantee shall permit the City to examine any and all books, accounts, papers, maps, and other records kept or maintained by the Grantee or under its control and necessary for the calculation of payments due to City under this franchise in order for the City to verify the accuracy of the payments made by Grantee or are due to the City as a result of this franchise.

SECTION 15. TRANSFER OF FRANCHISE RIGHTS. Grantee may not sell, lease, or transfer its pipelines or appurtenances located within the City without prior written notice to the City. Grantee may not transfer or assign this franchise except by consent in writing of the City Council and unless the transferee or assignees thereof shall covenant and agree to perform and be bound by each and all of the terms and conditions imposed in the grant or by procedural ordinance and by this Charter.

SECTION 16. TERMINATION OF EXISTING FRANCHISE. This franchise is granted in lieu of all other franchises, rights, or privileges owned by Grantee, or by any successor of Grantee under this franchise, for transmitting and distributing gas within the limits of the City, as said limits now or may hereafter exist. The acceptance of this franchise by Grantee shall operate as an abandonment of all other such franchises, rights, and privileges within the limits of the City, as such limits now or may hereafter exist.

SECTION 17. FUTURE CHANGES IN AREA OF CITY. The acceptance of this franchise constitutes a continuing agreement by the Grantee that if and when the City thereafter annexes, or consolidates with, additional territory, all franchises, rights and privileges owned by Grantee therein shall be deemed abandoned within the limits of the additional territory and shall succeed to this franchise.

SECTION 18. EMINENT DOMAIN. 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 Grantee either by purchase or through the exercise of the right of eminent domain, and nothing hereunder contained shall be construed to contract away or to modify or abridge, either for a term or in perpetuity, the City's right of eminent domain in respect to the Grantee or any public utility. 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 Grantee to the City at the time of the acquisition of this franchise.

SECTION 19. INDEMNIFICATION.

A. General Indemnification. Grantee shall investigate, defend with counsel approved by City, indemnify, and hold harmless the City from any and all liability, loss, damage, cost, expense, and claim of any kind, including reasonable attorneys' and experts' fees incurred by the City in defense thereof, arising out of or related to, directly or indirectly, the installation, construction, operation, use, location, testing, repair, maintenance, or removal of Grantee's pipeline(s) or appurtenant facilities (including actions by its agents, employees, subcontractors, or by anyone Grantee directly or indirectly employs), or from the existence of Grantee's pipeline and appurtenant facilities, including each and every applicable provision of Division 3, Chapter 2 of the Public Utilities Code of the State of California, unless such indemnification is specifically released by the City in writing in conjunction with an abandonment of the pipeline or appurtenant facility. If any action or proceeding is brought against the City by reason of the pipeline(s) or appurtenant facilities, Grantee shall defend the City at the Grantee's complete expense, provided that, for uninsured actions or proceedings, defense attorneys shall first be approved by the City. Any legal counsel selected by Grantee in defense or prosecution of legal matters identified in this agreement shall be mutually acceptable to Grantee and to City and approved by the City Attorney in writing. The City's approval of such counsel will not be unreasonably withheld.

B. Environmental Indemnification. Grantee shall indemnify, defend and save the City harmless from and against any and all liability, loss, damage, expense, actions, and claims, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by the City in defense thereof, arising directly or indirectly from (1) Grantee's breach of any environmental laws applicable to the pipeline, or (2) from any release of any hazardous substances attributable to the pipeline. This indemnity includes but is not limited to (1) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (2) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (3) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; and (4) liability for personal injury or property damage arising under any statutory or common-law theory.

C. Grantee's failure to comply with this section's provisions, after a thirty (30) day notice from Grantor to Grantee to cure such failure, shall constitute a material breach upon which City may immediately terminate or suspend this franchise.

D. Except as otherwise agreed to in writing by City and Grantee, Grantee's obligation to indemnify, defend and hold harmless as set forth in this Section 19 shall remain in effect and shall be binding upon Grantee to the extent that such injury or damage accrues during the term of this franchise, but is discovered after termination of this franchise.

SECTION 20. MISCELLANEOUS PROVISIONS.

A. The granting of this franchise or any of the terms or conditions contained herein shall not be construed to prevent the City from granting any identical or similar franchise to any person, firm or corporation other than the Grantee.

B. Any right or power conferred, or duty imposed upon any officer, employee, department, or board of the City, shall be subject to transfer by operation of law to any other officer, employee, department, or board of the City.

C. Time is declared to be of the essence of this franchise. By accepting or permitting performance of any obligation due from the Grantee under this franchise after the due date thereof, the City shall not waive or bar its right to require prompt performance, when due, of all other obligations of the Grantee arising under this franchise.

D. The waiver of either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

E. The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of California.

F. Should any part, term, or provision of this Agreement or any document required herein to be executed be declared invalid, void, or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby; unless the City Council finds that the invalid or unenforceable term or condition constituted a consideration material to the grant of this franchise, in which case the City Council may by ordinance terminate this franchise.

G. This franchise supersedes any and all other franchises or agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other franchise, agreement, statement, or promise relating to the subject matter of this franchise which is not contained herein shall be valid or binding.

H. All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date either personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. Postal mailbox or at any U.S. Post Office; or when sent via facsimile to a party at the facsimile number set forth below, or to such other or further facsimile number provided in a notice sent under the terms of this paragraph, on the date of transmission of that facsimile. Should City or Grantee have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a

street address and not merely a post office box. All notices, demands, or requests from Grantee to the City shall be given to the City addressed as follows:

CITY: City of Santa Barbara
Attn: City Clerk
735 Anacapa Street
Santa Barbara, CA 93102

Tel. No. (805) 654-7800
Fax. No. (805) 641-0253

GRANTEE: Southern California Gas Company
Attn: Fees and Tax Manager
555 W. 5th Street, Mail Code GT26E2
Los Angeles, CA 90013-1011
Tel. No. (213) 244-2522
Fax. No. (213) 244-4997

SECTION 21. ACCEPTANCE OF FRANCHISE. The granting of this franchise is conditioned upon the Grantee filing with the City Clerk within thirty (30) days after this ordinance becomes effective, a written instrument accepting this franchise and agreeing to perform and be bound by each and all of the terms and conditions hereof. The franchise granted hereunder shall not become effective until said written acceptance thereof shall have been filed by the Grantee with the City Clerk.

SECTION 22. ADVERTISING AND OTHER PRELIMINARY EXPENSE. The cost of advertising and other preliminary expenses in connection with the offering for sale of this franchise shall be paid by Grantee prior to the effective date, and such payment shall be a condition precedent to the vesting of this franchise.

SECTION 23. The City Clerk shall certify to the passage of this ordinance, and shall cause the same to be published once in the official newspaper, and the same shall take effect and be in force on the thirty-first (31st) day after its passage.