

Introduced by Council member _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF PASADENA GRANTING TO THE SOUTHERN CALIFORNIA GAS COMPANY, ITS SUCCESSORS AND ASSIGNS THE FRANCHISE TO CONSTRUCT, MAINTAIN, USE, REPAIR AND REPLACE GAS PIPES AND APPURTENANCES THERETO, ALONG, UPON, AND ACROSS ALL PUBLIC STREETS, LANES, ALLEYS, COURTS, OR OTHER PUBLIC PLACES IN THE CITY OF PASADENA, FOR THE PURPOSE OF TRANSMITTING AND OR DISTRIBUTING GAS FOR ANY AND ALL OTHER PURPOSES

The City Council of the City of Pasadena ordains as follows:

SECTION 1. Ordinance No. _____, due to its length and corresponding cost of publication, will be published by title and summary as permitted by Section 508 of the Pasadena City Charter. The approved summary of this Ordinance is as follows:

“Summary

“In its uncodified sections, Ordinance No. _____ will give permission for Southern California Gas Company (SoCal Gas) to operate within the City Limits of Pasadena for a period of twenty (20) years and to construct, maintain, and repair any gas facilities in and along the public streets for the purpose of conducting its utility businesses.

Ordinance No. _____ shall take effect upon publication.”

SECTION 1. Whenever in this ordinance, the words or phrases defined in this SECTION are used, they shall have the 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 "City" shall mean the City of Pasadena, a municipal corporation, in its present incorporated form, or in any later reorganized, consolidated or reincorporated form, including any future annexation.

(b) The word "Commission" shall mean the Public Utilities Commission of the State of California or its successor in interest having general rate-making and regulatory purview with respect to Grantee.

(c) The word "Engineer" shall mean the City Engineer of the City.

(d) The phrase "facilities or equipment" shall mean pipe, pipeline, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, cable, appliance, attachment, appurtenance, and any other personal property located or to be located in, upon, along, across, under or over the streets used or useful in the service of gas.

(e) The word "franchise" shall mean and include any authorization granted hereunder in terms of a franchise, privilege, permit, license, or otherwise to construct, maintain, and use facilities or equipment for transmitting and distributing gas for all purposes under, along, across or upon the public streets, ways, alleys, and places in the City, and shall include and be in lieu of any existing or future City requirement to

obtain a license or permit for the privilege of transacting and carrying on a business within the City.

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

(g) The word "Grantee" shall mean the corporation to which the franchise contemplated in this ordinance is granted, and its lawful successors or assigns.

(h) The phrase "gross annual receipts" shall mean all gross operating receipts received by Grantee from the sale of gas to Grantee's customers within its service territory less uncollectable amounts and less any refunds or rebates made by Grantee to such customers pursuant to California Public Utility Commission orders or decrees.

(i) The word "streets" shall mean the public streets, lanes, alleys, courts, or other public places in the City as they now exist, or as they may be established at any time during the term of this franchise in the City.

SECTION 2. That the right, privilege and franchise, subject to each and all of the terms and conditions contained in this ordinance, be and the same hereby is granted to the Southern California Gas Company, a corporation organized and existing under and by virtue of the laws of the State of California, herein referred to as the Grantee, for the term of twenty (20) years from and after the effective date hereof (August 18, 2017), to lay, construct, erect, install, operate, maintain, use, repair, or replace in, upon, along, across, under or over the streets of the city or remove from the streets of the City its facilities or equipment:

(1) For the purpose of distributing and selling gas to the City and its residents.

(2) For the purpose of conducting, conveying and transporting gas through the City for use outside of the boundaries of the City.

SECTION 3. The City reserves the right at any time during the term of this franchise, to require the Grantee, at its own cost and expense, to remove any or all of its facilities or equipment above the surface of the streets, and to place and locate the same below the surface of the streets, when feasible and the function of the facilities or equipment is not compromised, whenever such right is exercised and enforced by the City alike against the erection, maintenance or use above the surface of the street of all telephone, telegraph and electric poles or wires within the City.

SECTION 4. All work undertaken or performed, all service rendered, and all facilities or equipment operated, maintained or used pursuant to the provisions of this franchise shall be of the standard required by law.

SECTION 5. All facilities or equipment of the Grantee to be laid, constructed, erected, installed, or repaired in, upon, along, across, under or over the streets of the City, or removed from the streets of the City pursuant to the provisions of this franchise, shall be laid, constructed, erected, installed, repaired or removed in accordance with the ordinances, rules and regulations of the City now or hereafter adopted or prescribed, except where in conflict with the terms of this franchise, State law, orders of the Commission, or other governmental authority.

SECTION 6. The Grantee of this franchise shall not lay, construct, erect or install its facilities or equipment in, upon, along, across, under or over the streets of the City

until and unless the proposed location of such facilities or equipment shall have been approved by the Engineer, or such other officer the City may direct, which approval shall not be unreasonably withheld, conditioned or delayed.

SECTION 7. (a) Before making any opening or excavation in any street, regardless of whether the surface thereof is damaged or removed or not, except in case of emergency, the Grantee shall do and perform each of the following:

(1) File with the Engineer a drawing or plat showing the proposed location, elevation above or below the established grade of the center line of the street, and the character of its facilities or equipment to be laid, constructed, erected, installed, used, repaired, or replaced in, upon, along, across, under and over the streets of the City, or removed from the streets of the City.

(2) Make application to the Engineer in accordance with the provisions of the procedural ordinances of the City in force and effect at the time of making such application, and secure a permit therefor which shall indicate the time, manner and place of laying, constructing, erecting or installing said facilities or equipment (except where in conflict with the terms of this franchise, State law, orders of the Commission, or other governmental authority having jurisdiction in the premises).

(3) Make such deposit of money with or execute and deliver such corporate surety bond to the appropriate officer of the City as may from time to time be required by the ordinances of the City in force and effect at the time of making such application, which said deposit or said bond shall be made to guarantee the payment to the City of any and all charges in connection with or resulting from the granting of

said application (except where in conflict with the terms of this franchise, State law, orders of the Commission, or other governmental authority having jurisdiction in the premises) .

(b) The proposed location of any facilities or equipment to be laid, constructed, erected, used, repaired, or replaced by the Grantee in, upon, along, across, under or over the streets of the City, or removed from the streets of the City by the Grantee, must receive prior written approval from the Engineer and the Engineer, upon granting such approval, shall issue a permit or permits therefor.

SECTION 8. The work of laying, constructing, erecting, installing, using, operating, maintaining, repairing or replacing in, upon, along, across, under or over the streets of the City, or removing from the streets of the City, any facilities or equipment of the Grantee, shall be done, performed or conducted with the least possible hindrance to the use of the streets for the purpose of travel or any other public purpose.

SECTION 9. (a) When any opening or excavation is made, or work done in, upon, along, across, under, or over any street for any purpose whatsoever by the Grantee, in connection with the exercise of any right or privilege granted by this franchise, any portion of said street affected or damaged thereby shall be restored per the City's standards within thirty (30) calendar days by the Grantee to as useful, safe, durable and good condition as existed prior to the making of such opening or such excavation or the doing of such work, and the same shall be in conformity with the provisions of the ordinances of the City in force and effect at the time of the performance thereof and shall be to the reasonable satisfaction of the Engineer

(except where in conflict with the terms of this franchise, State law, orders of the Commission, or other governmental authority having jurisdiction in the premises) .

(b) By the acceptance of this franchise the Grantee agrees that after the work of restoring such portion of said street has been completed as provided in the paragraph next hereinabove, it will keep such portion of said street so restored in as useful, safe, durable and good condition as existed prior to the making of such opening or excavation or the doing of such work, ordinary wear, tear and use excepted, as long as the Engineer determines that such portion of said street is affected or damaged by such opening or excavation made, or such work done in, upon , along, across, under or over said street by the Grantee.

SECTION 10. If any portion of any street shall be damaged by reason of, growing out of, or resulting from, the exercise by the Grantee of any or all of the rights or privileges granted by this franchise, or by reason of any act or acts of the Grantee, or its servants or agents, in exercising this franchise, and not as the result of ordinary wear and tear through use of the street by the public generally, the Grantee, at its own cost and expense, shall immediately repair such damage and restore the damaged portion of said street to as useful, safe, durable and good condition as existed before such damage; such work to be done under the direction of the Engineer and to his/her reasonable satisfaction.

SECTION 11. [Intentionally omitted.]

SECTION 12. After any work has been commenced by the Grantee in, upon, along, across, under or over the streets of the City, pursuant to the provisions of this

franchise, the same shall be prosecuted in good faith and with due diligence until completed.

SECTION 13. (a) Any pipe, pipe line, main, service, conduit, duct or other structures laid, constructed, erected, or installed pursuant to the provisions of this franchise, or any tunnel or bore dug or made in the streets of the City in connection with the laying, constructing, erecting or installation of the property above mentioned in this SECTION, shall be laid, constructed, erected or installed not less than thirty-six (36) inches below the established grade of the center line of such street measured from said established grade to the nearest point to said property, tunnel or bore as the case may be.

(b) Where, however, such depths are infeasible due to safety concerns, conflicts with existing facilities of other parties, or conflicts with State and Federal requirements, the Grantee shall secure the approval of the Engineer or other duly authorized officer of the City, as to the suitable depth or location of said property, tunnel or bore, and the same shall be placed in conformity with such approved location or depth, and in a manner satisfactory to the Engineer or other duly authorized officer of the City.

(c) All manholes, vaults, traps, or other structures, shall be so capped and covered as to be flush with the surface of the street, and shall not interfere in any way with the use of the streets for the purpose of travel.

(d) The Grantee shall not lay, construct, erect or install in the streets of the City any vent pipe from any vault, manhole or other structure of the Grantee except in the manner and at the location or locations approved by the Engineer.

(e) Not more than one main pipe line shall be laid, constructed, erected or installed in any street in the City, except where extraordinary circumstances exist making it necessary or to the best interest of the City and its inhabitants, to lay, construct, erect or install more than one main pipe line in any street. The Engineer shall determine whether any such extraordinary circumstances exist.

SECTION 14. Upon abandonment of any of the facilities or equipment of the Grantee located above or below the surface of the street, the Grantee shall notify the Engineer in writing of such abandonment within not less than sixty (60) days thereafter; and if, in the opinion of the Engineer, said facilities or equipment so abandoned should be removed at any time during the term of this franchise, within sixty (60) days after receipt of notice to that effect from the Engineer, the Grantee shall commence the removal of the same at the Grantee's own cost and expense, or if, in the opinion of the Engineer, any work should be done in the streets for the purpose of insuring the restoration of said streets to a useful, safe, durable or good condition as the result of such abandonment, upon thirty (30) days' written notice to that effect from the Engineer, the Grantee shall commence such work as directed at the Grantee's own cost and expense.

SECTION 15. (a) In the event that during the term of this franchise the City shall change the grade, width or location of any street, or improve any street in any manner, including laying of any sewer, storm drain, conduit, water or other pipe, or construct any pedestrian tunnel or other improvement, and, in the opinion of the Engineer such work shall render necessary any change in the position or location of any facilities or equipment of the Grantee in the street including the support thereof

while such work is being done or performed, the Grantee, at its own cost and expense, within sixty (60) days after written notice from the Engineer and request so to do, shall begin the work of doing any and all things to effect such change in position or location in conformity with such written instructions; provided, however, that Grantee shall not be required to bear the expense of such work done at the request of the City if and to the extent that such request is on behalf, or for the benefit, of any private developer or other non-governmental entity so long as no expense, direct or indirect, results to the City. Nothing herein, however, is intended to modify or limit the provisions of Public Utilities Code §6297 (and as amended) or the judicial appellate decisions of the State of California interpreting Public Utilities Code §6297 (and as amended).

(b) The City reserves the right for itself to lay, construct, erect, install, use, operate or maintain below surface or above surface improvements of any type or description in, upon, along, across, under or over the streets of the City. If the necessary location for such improvements conflicts with any facilities or equipment of the Grantee laid, constructed, erected, used, installed, operated or maintained pursuant to the provisions of this franchise, whether previously laid, constructed, erected, used, installed, operated or maintained or not, the Grantee, at its own cost and expense, within sixty (60) days after written notice from the City Manager and request so to do, shall begin the work of changing the location of all facilities or equipment so conflicting with such improvements to a location in, upon, along, across, under or over the street, to be approved by the Engineer.

SECTION 16. [Intentionally omitted.]

SECTION 17. In the event the Grantee shall fail to commence work in compliance with the written instructions of the Engineer or City Manager, provided for in this franchise, within sixty (60) days after service of the same upon the Grantee, or its local agent or manager (unless unable to comply with such instructions by reason of strikes, riots, acts of God or acts of public enemies) the City may, in addition to any other remedies available to it under this franchise or in law or equity, be entitled to draw from the performance bond established as set forth below, a penal sum in the amount of One Thousand Dollars (\$1,000) for each day that Grantee fails to commence work as required under this Section. Grantee shall establish a performance bond, which shall be issued in a form approved by the City and issued by a corporate surety authorized to do business in the State of California, as approved by the City. The principal amount of the performance bond shall be One Hundred Thousand Dollars (\$100,000).

SECTION 18. (a) In granting this franchise the City hereby expressly reserves:

(1) The right to grade, widen, relocate, pave, lay conduits, water, gas, sewer, or other pipe, install manholes, poles or other structures therein, or to alter, repair or otherwise provide for the making of local improvements in the streets of the City;

(2) Except as expressly provided herein to the contrary, the right to make and enforce in the exercise of its police power all such local police, sanitary or other regulations by ordinance;

(3) The right to make and provide for the making of local improvements by special assessment.

The enumeration herein of specific rights reserved shall not be taken as exclusive, or as limiting the general reservations herein made.

(b) Except as expressly provided herein to the contrary, nothing in this franchise contained shall ever be construed or taken to exempt, or as a contract right exempting the Grantee from complying with any ordinances now in force, or which may hereafter be adopted.

SECTION 19. By the acceptance of this franchise, the Grantee agrees that in advance of any improvement of any character of any street, on reasonable notice thereof, it will immediately lay, construct, erect, and install, at its own cost and expense, all facilities or equipment reasonably necessary for its use for the five (5) years next succeeding the making of said improvements, in serving the City and its inhabitants with gas in the area affected, so as to prevent, so far as possible, the disturbance by the Grantee of any surface improvement after such improvement has been completed.

SECTION 20. (a) The rights and privileges herein granted are upon the express condition that the Grantee, as consideration therefor and as compensation for the use of the streets of the City as herein authorized and permitted, shall pay to the City in lawful money of the United States, the following:

(1) A sum equal to two per cent (2%) of the total gross revenues received by the Grantee in the operation of its business of conducting, conveying, transporting, supplying, distributing and selling gas to the City and its inhabitants within the City per calendar year, or fractional year, during the term

of this franchise; provided, however, that such payment shall in no event be less than two percent (2%) of the gross annual receipts of the Grantee derived from the use, operation or possession of this franchise. Said total gross revenue shall include all gross sales of gas and operating revenue received by the Grantee each calendar year or fractional calendar year, attributable to the area within the City.

Said fee shall be paid in four installments, each installment being equal to two percent (2%) of the total gross revenues of the preceding calendar quarter, and calculated in the manner specified in this SECTION 20 (a). 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 25; for example, the installment for the first quarter of the year (January through March) shall be paid to the City on May 25th.

(b) The amount of the above described annual compensation, and/or the formula or measure or manner in which the amount shall be determined, may be changed or amended as hereinafter provided:

(1) In the event that the laws of the State of California should at any time ever be amended or changed to permit general law or charter cities, in granting a franchise of the kind herein being granted to Grantee, to require the Grantee of any such franchise to pay or give any consideration or compensation in accordance with a formula which, if applied to the City of Pasadena and the Grantee herein, would provide payments to the City greater than provided for by

the use of the formula hereinabove specified in subdivision (a) of this SECTION 20, then in such event the City shall have the right, at any time thereafter, by giving thirty (30) days written notice to Grantee, to require Grantee to make payments in accordance with such changed or revised formula and the changed or revised formula shall be deemed to commence as of the next succeeding quarterly installment period following the thirty (30) day written notice.

SECTION 20.5. (a) On or before the fifteenth day of March of each calendar year during the term of this franchise and forty-five (45) days after the expiration of the term of this franchise, the Grantee shall file with the City Clerk of the City, the original and one copy of a statement showing the following:

(1) The total gross revenue as herein defined received by the Grantee from the operation of its said business in the City during the preceding calendar year, or fractional calendar year.

(2) The method (and supporting calculations) used to calculate the franchise fees which are payable to the City in accordance with this franchise.

(3) The total amount of all quarterly installments made by Grantee during the preceding calendar year or fractional calendar year.

(4) Such other data or information as City may reasonably need to calculate or determine the amounts which Grantee is obligated to pay City pursuant to SECTIONS 20 and 20.5, provided that the City shall request such data and information from Grantee in writing and shall deliver said request no less than 60 days prior to the due date of the above described statement.

(b) Said statement shall be verified by the oath of the General Manager or authorized officer of the Grantee, and shall be in such form and detail as from time to time shall be reasonably prescribed by the City.

(c) Within ten (10) days after the filing of said statement, the Grantee shall pay the City, at the office of City's Director of Finance, in lawful money of the United States, the sums of money required to be paid by Grantee to City under SECTIONS 20 and 20.5 for the calendar year, or fractional calendar year, covered by the statement, minus the sum of the quarterly installment amounts paid for such calendar or fractional calendar year.

(d) In the event Grantee fails to make the payments for this franchise on or before fifteen calendar days after 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 due. This amount is required in order to defray those additional expenses and costs incurred by 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 City of postponing services and projects necessitated by the delay in receiving revenue.

(ii) Interest, on any outstanding money due commencing from the due date at the Consolidated Adjustment Mechanism ("CAM") interest rate established by the Commission for Grantee during the period of default, and as periodically adjusted by the Commission during the period of default.

(e) If, following an audit or other investigation, in the judgment of the City, the amount paid by the Grantee to the City is incorrect, it may order the payment of such additional sums as it may find due hereunder. Such additional sums shall be paid by Grantee within ten (10) days of receipt of said order. If Grantee wishes to litigate or arbitrate (if the parties so agree to arbitration) the correctness of such additional sums, Grantee shall so inform the City in writing within ten (10) days of receipt of said order provided that any final determination or judgment confirming or disallowing the payment of additional sums shall accrue interest payable by Grantee or by City, as the case may be, at the highest rate, commencing from the due date (i.e., 10 days following Grantee's receipt of the order by the City legislative body, or from the date of any overpayment by Grantee to City).

(f) Any neglect, omission or refusal by Grantee to file the verified statement required under subsection (a) above, or to pay any required payments under SECTIONS 20 and 20.5 at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights and privileges of Grantee hereunder, provided that Grantee shall not have cured said neglect, omission, or refusal to file or pay within twenty (20) days following written notice from the City of such failure to file or pay, or, if such neglect, omission or refusal is not reasonably subject to cure within such twenty (20) day period, Grantee has not commenced to cure such neglect, omission or refusal within such twenty (20) day period and has not continued to prosecute such cure to completion. The prevailing party in any action to collect or enforce SECTIONS 20 or 20.5, shall be entitled to reasonable attorney's fees.

(g) Except as provided in the following sentence, the fees under this franchise shall be in lieu of any and all City imposed taxes, licenses or fees, whether general or specific, upon or for (i) the rights and privileges granted by this franchise, (ii) the right and privilege of transacting and carrying on by Grantee of its business within the City, and (iii) 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 facilities and equipment pursuant to this franchise. Notwithstanding the above, the City expressly reserves: a) the right to impose and collect from Grantee, on a nondiscriminatory basis, processing and inspection fees for 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 do not exceed the actual expense to the City of processing such permits and inspecting the work done thereunder; and (b) the right to impose a business license tax under Pasadena Municipal Code Chapter 5.16.020 and as amended in the future provided that the business license tax calculated under future amendments of Chapter 5.16.020 continues to be based upon a fixed annual business tax and a tax based upon the number of employees, and provided the maximum total tax collected thereunder from Grantee does not exceed \$30,000.00.

SECTION 21. (a) The City, at any reasonable time during business hours, may (excepting Section 21(b) below) at its cost and expense, make examination at the Grantee's office or offices, of its books and records, germane to and for the purpose of verifying the data set forth in the statement required by SECTION 20 or 20.5 hereof and to and for any other purpose relating to the rendition of service of gas by the Grantee

within the City, or the charges to be made therefor. The City may require reports from the Grantee respecting such matters at such times, and in such form as the City by and through its City Manager may reasonably prescribe. Provided, however, if the City undertakes more than one audit in within years, and each audit of records finds an under payment of less than three percent (3%) then, at Grantee's request, City shall reimburse the Grantee for the reasonable time and effort to assist such additional audits.

(b) All books, accounts, maps and other records relating to the rendition of service by the Grantee within the City, showing the affairs, properties, or financial condition of the Grantee shall be kept within the City, or the City of Los Angeles, California, or in such other place as the reasonable convenience of the Grantee may require; and in the event that it becomes necessary for said City to make such examination at any place other than within the City or within the said City of Los Angeles, then, in that event, all increased costs and expenses to the City necessary or incident to such examination and resulting from such books, accounts, maps and records not being available within the City, or within the City of Los Angeles, shall be paid to the City by the Grantee on demand.

SECTION 22. The Grantee shall file with the City Clerk of the City a duplicate original of the annual report of the Grantee filed with the Commission as now required by the Public Utilities Act, or as may be required by any other act of the legislature or of the State of California, as soon as practicable after one duplicate original of said report has been filed with the Commission.

SECTION 23. This franchise is granted in lieu of all other franchises, rights or privileges owned or claimed by the Grantee or licenses otherwise required by the City (except as provided in SECTION 20.5 hereinabove) for distributing and selling gas within the limits of the City, as such limits now or may hereafter exist.

SECTION 24. If, subsequent to the taking effect of this franchise and during the term of this franchise, the City shall acquire additional territory by annexation or consolidation, all rights or privileges of the Grantee hereunder, shall automatically extend to such additional territory, and the Grantee shall forthwith surrender all other franchises, rights or privileges owned or claimed by the Grantee for conducting, conveying, transporting, supplying, distributing and selling gas within said additional territory.

SECTION 25. The Grantee of this franchise shall indemnify, defend (even if the allegations are false, fraudulent, or groundless), and hold harmless, to the maximum extent permitted by law, and covenants not to sue the City, its City Council and each member thereof, its officers, employees, and agents, against and from all damages, claims, judgments, causes of action, decrees, costs and expenditures which the City, its City Council and each member thereof, its officers, employees, and agents, may suffer, or which may be recovered from, or obtainable against the City, its City Council and each member thereof, its officers, employees, and agents, which, in whole or in part, result from, or arise out of, any activity, use, or performance by Grantee, or agents of Grantee, under this franchise as related to Grantee's exercising of any and all rights or privileges granted by this franchise. The above indemnity does not apply to the sole negligence or intentional misconduct of the City, its employees, or agents.

SECTION 26. No transfer, assignment or lease, or attempted transfer, assignment or lease, of this franchise, or of any right, privilege or interest therein, to any person, firm or corporation shall have any force, effect or validity unless and until:

(1) The Grantee shall have duly executed a good and sufficient instrument making such transfer, assignment or lease, and a duplicate original thereof shall have been filed in the office of the City Clerk.

(2) An ordinance of the City consenting to such transfer, assignment or lease shall have been duly adopted and become effective (such consent, however, not to be unreasonably withheld if the transferee, assignee or lessee, shall be a responsible Public Utility Corporation as defined in Section 216 of the Public Utilities Code).

(3) The transferee, assignee, or lessee shall have duly executed a good and sufficient instrument accepting such transfer, assignment or lease, and assuming all the obligations of the Grantee under this franchise, and an original thereof shall have been filed in the office of the City Clerk.

(4) The transferee, assignee, or lessee shall have duly executed a good and sufficient instrument surrendering to the City all franchises, rights and privileges which the transferee, assignee or lessee would have been required to surrender under the provisions hereof, if such transferee, assignee or lessee had been the original Grantee hereof, and the original thereof shall have been filed in the office of the City Clerk of the City. Provided, however, that the terms of the foregoing clauses (1),(2),(3), and (4) of this SECTION shall not apply to any mortgage or deed of trust made by the Grantee (or made by any person, firm or corporation under a transfer, assignment or lease made in full accordance with the provisions of this SECTION) in good faith to secure an issue of

bonds; but the terms of said clauses (1), (3) and (4) shall apply and the terms of said clause (2) shall not apply to any buyer at a sale under any such mortgage or deed of trust, or to the surviving corporation pursuant to a statutory merger.

SECTION 27. This franchise is granted upon each and every condition herein contained, and shall ever be strictly construed against the Grantee. Nothing shall pass by this franchise to the Grantee unless it be granted in plain and unambiguous term. Each of said conditions is a material and essential condition to the granting of this franchise. If the Grantee shall fail, neglect or refuse to comply with any of the conditions of this franchise, or of any of the terms or conditions of any ordinance now in force or hereafter adopted by the City in the exercise of its police power during the term hereof, and if such failure, neglect or refusal shall continue for more than twenty (20) days after written demand by the City or its City Manager, for compliance therewith, or if Grantee has not, within such twenty (20) day period, commenced to cure such failures, neglects or refusals as are not reasonably subject to cure within such twenty (20) day period, or if Grantee ceases to prosecute such cure, once commenced, to completion, then, and in that event, the City, by its legislative body, in addition to all rights and remedies allowed by law, thereupon may terminate the right, privilege and franchise granted in and by this ordinance, and all the rights, privileges and franchises of the Grantee granted hereby shall thereupon be at an end. Thereupon and immediately, the Grantee shall surrender all rights and privileges in and to this franchise. No provision herein made for the purpose of securing the enforcement of the terms and conditions of this franchise shall be deemed an exclusive remedy or to afford the exclusive procedure

for the enforcement of said terms and conditions, but the remedies and procedure outlined herein or provided, including forfeiture, shall be deemed to be cumulative.

SECTION 28. (a) Any written notice herein required to be given by the City, or any of its officers or agents, to the Grantee, shall be deemed to have been duly served if delivered in person to any officer of the Grantee or to its local agent or manager, or if sent by registered mail to the postal address of the Grantee.

(b) Any written notice herein required by the Grantee to be given to the City, or any of its officers or agents, shall be deemed to have been duly served if delivered in person to the individual for whom it is intended, or to the City Manager of the City, or if sent by registered mail to the City Manager of the City.

SECTION 29. The use of the singular number herein shall include the plural, and the use of the plural number shall include the singular.

SECTION 30. Whenever in this franchise any right or power is conferred or duty imposed upon the legislative body of the City or any officer thereof, such right and power shall inure to and be exercised by, and such duty shall be imposed upon such body, board or officer of the City as may by law hereafter succeed to their respective rights, powers and duties. All of the rights and powers conferred or duties imposed upon the City in its present incorporated form shall inure to and be exercised by and be imposed upon said City in any future reorganized, consolidated or reincorporated form.

SECTION 31. Within ten (10) days after thirty (30) days from the passage and 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, and no rights are hereby conferred until the filing of such acceptance and agreement.

SECTION 32. The City Clerk shall certify to the adoption of this ordinance and shall cause the same to be published once.

Signed and approved this _____ day of _____, 2018

Terry Tornek
Mayor of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the City Council of the City of Pasadena at its meeting held _____, 2018, by the following vote:

AYES:

NOES:


ABSENT:

ABSTAIN:

Date Published:

Mark Jomsky
City Clerk

APPROVED AS TO FORM:



Brad L. Fuller
Assistant City Attorney