

Introduce by Director Kathryn Nack

ORDINANCE NO. Ord. 6262

AN ORDINANCE OF THE CITY OF PASADENA GRANTING TO THE  
 SOUTHERN CALIFORNIA GAS COMPANY,  
 A CORPORATION, THE RIGHT, FRANCHISE AND PRIVILEGE  
 TO LAY, CONSTRUCT, OPERATE, MAINTAIN, USE, REPAIR AND  
 REPLACE GAS PIPES, MAINS, CONDUITS AND  
 APPURTENANCES THERETO, ALONG, UPON, OVER, IN, UNDER  
 AND OR ACROSS ALL PUBLIC STREETS, LANES, ALLEYS,  
 COURTS, OR OTHER PUBLIC PLACES IN THE CITY OF PASADENA,  
 FOR THE PURPOSE OF TRANSPORTING AND OR DISTRIBUTING  
 GAS FOR HEAT, LIGHT, POWER, AND ANY AND ALL  
 OTHER PURPOSES

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The People of the City of Pasadena ordain as follows:

SECTION 1. 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 "City" shall mean the City of Pasadena, a municipal corporation of the State of California, 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 and Superintendent of Streets of the City.

(d) The phrase "facilities or equipment" shall mean pipe, pipeline, tube, main, service, trap, vent, vault, manhole, meter, gauge, regulator, valve, conduit, 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 "gas" shall mean natural or artificial gas, or a mixture of natural and artificial gas.

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

(g) 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 thirty (30) years from and after the effective date hereof (August 18, 1987), 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 conducting, conveying, transporting, supplying, distributing and selling gas to the City and its inhabitants for light, heat, and power and any and all other purposes for which gas may be used, and

(2) For the purpose of conducting, conveying and transporting gas through the City for use outside of the boundaries of the City for light, heat and power and any and all other purposes for which gas may be used.

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 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, owned or operated by any person, firm or private or public corporation doing business within the City, provided,

however, that the phrase "all telephone, telegraph and electric poles or wires" hereinabove mentioned shall not be construed to include the erection, maintenance, or use of any pole or poles for street illumination, for traffic control purposes, or for the support of overhead suspension wires, feeder wires, trolley wires or guy wires actually used by any street railway or buses lawfully operating under a valid franchise, or to include the erection, maintenance or use of any suspension wires, feeder wires, trolley wires, or guy wires actually used by such street railway or buses or any pedestal for the official use of the fire and police departments of the City for their traffic, alarm or communication systems.

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, by the orders of the Commission, and by any other body or governmental authority having jurisdiction in the premises.

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 having jurisdiction in the premises.

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 of the City as the legislative body of 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, or before disturbing the earth beneath the surface of 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) If 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, does not unreasonably

interfere: (1) with the use of the streets for the purpose of travel; (2) with any proposed or contemplated use of the streets by the City or any of its departments, either above or below the surface of the street, for which plans have been prepared, or for which plans are in the course of preparation, which said plans have been authorized by the City Manager, or the legislative body of the City; or, (3) with personal property lawfully in, upon, along, across, under or over the streets, and otherwise complies with this franchise, and any ordinance, rule or regulation of the City in force and effect at the time of such application; then, the Engineer shall approve said application and 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 as promptly as practicable 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 reasonable satisfaction.

SECTION 11. In the event during the term of this franchise the City shall provide by ordinance that all work of restoring the portion of any street affected or damaged by any opening or excavation made, or work done by the Grantee in, upon, along, across, under or over said street shall be done and performed by the City and the City shall have done and performed said work pursuant to the provisions of said ordinance, the Grantee, by the acceptance of this franchise, agrees to pay the City the reasonable charges for said restoration work prescribed in said ordinance applicable alike to all non-governmental entities opening, excavating or working in, upon, along, across, under or over the streets of the City. Said charges shall be paid by the Grantee to the City at the time and in the manner provided in said ordinance.

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, tube, 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 (30) 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 impracticable due to extraordinary circumstances, 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, catch basins 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 prescribed or 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.

(f) None of the requirements of this SECTION 13 are intended to replace, modify or limit any order or regulation imposed by the Commission or by federal or state law or regulation that is more restrictive than any of the requirements of this SECTION 13.

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 ninety (90) 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 ninety (90) 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 sixty (60) 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 ninety (90) 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 ninety (90) 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. If the Grantee is dissatisfied with any

determination of the Engineer or City Manager permitted by SECTIONS 13, 14, or 15 hereof, it may petition the legislative body of the City to review the same within ten (10) days after such determination. The decision of the legislative body thereon, after duly hearing and considering the appeal, shall be final.

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 ninety (90) 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 Engineer will cause the work required in said notice to be done and performed and by the acceptance of this franchise the Grantee agrees to pay the City the costs thereof within thirty (30) days after the delivery to it, or its local agent or manager, of an itemized bill therefor. It is understood and agreed that the cost of doing said work, whether by the City or a private contractor, shall be considered the actual cost (i.e., the awarded contract in the case of private contractor) plus ten percent (10%) thereof for overhead.

SECTION 18. (a) In granting this franchise (without admitting or recognizing in any way that it is not already vested with the powers hereinafter reserved) the

City hereby expressly reserves:

(1) The right to grade, widen, relocate, sewer, pave, macadamize, lay conduits, water, gas 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 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 ("Basic Fee") 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 ("Basic Formula"); 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 ("Broughton Act Formula").

Said total gross revenue under the Basic Formula 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,



credited or entitled to be credited to the following accounts of the Grantee, being the accounts among others required by the Uniform System of Accounts for Gas Corporations prescribed by the Commission, or as thereafter modified or amended:

Account Number:	Title of Account
480	Residential Sales
481	Commercial and Industrial Sales
482	Other Gas Sales
483	Sales for Resale
488	Miscellaneous Revenues
489	Revenue from Gas Transportation
495	Other Gas Revenues
232.12	State Regulatory Surcharge

Said total gross revenue under the Basic Formula shall be reduced by any rate refunds authorized by the Commission and any deduction for uncollectible gross operating revenue (i.e., Account No. 144, entitled "Uncollectible Gas Accounts").

Said total gross revenue under the Basic Formula shall also include any and all gross operating revenue attributable to the area within the City, hereafter included in any subdivision of or addition to the above accounts, or included in accounts covering gross operating revenues as established from time to time in lieu of or in addition to said accounts by the Commission or other regulatory bodies vested with authority with respect to accounts of gas corporations.

The Basic Fee shall be paid in four installments,

each installment being equal to two percent (2%) of the total gross revenues under the Basic Formula of the preceding calendar quarter, and calculated in the manner specified in this SECTION 20 (a)(1). 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.

Upon notice by City that payments shall be made in accordance with the Alternate Formula pursuant to subdivision (b)(1) of SECTION 20, Grantee shall pay the then franchise fee in installments as provided in the preceding sentence, provided that the amount of each of the first three installments shall be one-fourth of the amount of the total annual fee due for the year under the Alternate Formula as estimated in good faith by Grantee, and the final yearly payment shall be the actual balance due as provided by SECTION 20.5(c). 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.

(2) An additional sum ("In Lieu Fee") equal to two

percent (2%) of the "imputed value" of "non-proprietary gas" conducted, conveyed, transported, supplied and distributed to the City and its inhabitants within the City per calendar year, or fractional calendar year, during the term of this franchise.

As used herein,

"non-proprietary gas" means gas which is conducted, conveyed, transported, supplied and distributed, but not sold, to the City and its inhabitants within the City by Grantee;

"imputed value" means the product of the actual volumes of such non-proprietary gas conducted, conveyed, transported, supplied and distributed, but not sold, to the City and its inhabitants within the City by Grantee during the period of calculation times the average weighted cost of "non-core gas" for such period; and

"non-core gas" means that gas which, in accordance with rules and directives adopted from time to time by the Commission, is purchased by the Grantee to serve its non-core classified commercial, industrial, utility electrical generating and wholesale customers (including, but not limited to, the category of customers for which it also transports and delivers non-proprietary gas within the City), and currently includes short-term discretionary gas purchased by Grantee for such customers.

The In Lieu Fee for each calendar year or fractional

calendar year, during the term of this franchise, shall be paid to the City on the twenty-fifth day of March of the following calendar year in accordance with SECTION 20.5(c).

(b) Notwithstanding the provisions of this subsections (a)(1) and (2) of this SECTION 20, 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, as they existed as of January 1, 1988, should at any time ever be amended or changed to permit general law 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 (hereinafter referred to as "Alternate 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) (1) and (2) of this SECTION 20, then in such event 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 "Alternate

Formula", and the Alternate 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 with the City Controller of the City, one copy of a statement showing the following:

(1) The total gross revenue under the Basic Formula 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 (i.e., Basic Formula, Broughton Act Formula or Alternate Formula).

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

(4) Unless the Alternate Fee is used, the amount of the In Lieu Fee and all information and data necessary to calculate the In Lieu Fee of SECTION 20(a)(2).

(5) 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 said City Controller.

(c) Within ten (10) days after the filing of said statement, the Grantee shall pay to 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(a)(1) and (2) or 20(b)(1) 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 legislative body 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 lawful 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 them 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 Controller, or any certified public accountant, or qualified person designated by the City, at any reasonable time during business hours, may 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.

(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, or any representative designated by it, or any officer thereof, 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 said City of Los Angeles, shall be paid 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. (a) 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(g) hereinabove) for conducting, conveying, transporting, supplying, distributing and selling gas within the limits of the City, as such limits now or may hereafter exist, except for supplying light under SECTION 19, Article XI of the Constitution of the State of California, as such SECTION existed prior to the amendment thereof adopted October 10, 1911, and particularly in lieu of any and all claims by the Grantee of any right under said Constitutional provision for supplying gas for heat or power, or for any purposes other than light.

(b) By the acceptance of this franchise, and as a condition precedent to the enjoyment of any rights or privileges hereunder, ipso facto the Grantee surrenders to the City all franchises, rights and privileges in lieu of which this franchise is granted as hereinabove in this SECTION provided, and particularly the rights, privileges and franchises granted by Ordinance No. 6765 of the County of Los Angeles, State of California, in so far as said

ordinance now or hereafter shall be applicable to any territory within the corporate limits of the City.

(c) Any and all persons, firms or corporations who may claim or assert any right, by, through or under this franchise, or the aforementioned acceptance thereof, shall by such claim or assertion, and as a condition precedent to the enjoyment of any right, privilege or franchise hereunder, ipso facto likewise surrender all interests owned or claimed by them in the aforementioned franchises, rights and privileges in lieu of which this franchise is granted.

(d) The granting of this franchise shall not affect, nor shall the Grantee be required to surrender, any right of the Grantee to supply gas to the City or the inhabitants thereof, for light under said Constitutional provision.

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, except the right of the Grantee to

supply gas therein for light under said Constitutional provision.

SECTION 25. (a) The City shall have the right, which right is hereby expressly reserved to said City, to purchase and take over at any time during the term of this franchise, the works, plant and property of the Grantee constructed under this grant in the City of Pasadena at their fair market value (as defined by State law) and without compensation for this franchise or good will. Said property may be acquired by the City either upon the payment to Grantee of such sum as may be fixed by the Commission for the fair market value without compensation for this franchise or good will or upon payment to Grantee of such sum as may be fixed by a court of competent jurisdiction under eminent domain proceedings for the fair market value without compensation for this franchise or good will. Except for the provisions of SECTION 25(b) below, nothing in this Franchise shall in any way impair, contract away, modify, abridge or affect the City's right of eminent domain in acquiring property of Grantee.

(b)(1) In the event, that prior to the fifth anniversary of the date of passage of this franchise, eminent domain proceedings involving the acquisition by the City of all or any portion of Grantee' gas distribution system for the purpose of creating a municipal gas system are initiated, it is understood and agreed and Grantee and

the City hereby stipulate that (i) the amount of compensation reflecting fair market value shall not be less than the reproduction cost new, less accrued depreciation of Grantee's property ("RCNLD"), being the valuation method described and followed in City of Riverside v. Southwest Water Company (1972) 74 CPUC 193, affirmed on rehearing, 74 CPUC 563, 565-566 and (ii) except to the extent expressly limited by SECTION 25(a), Grantee shall be entitled to severance damages and other compensation as allowed by law. This stipulation shall not apply, nor shall it be used for any evidentiary purpose whatsoever, in any eminent domain proceedings initiated after such fifth anniversary; nor shall it prejudice the selection by the court or Commission of any lawful and appropriate valuation method, including (but not limited to) RCNLD, in such proceeding.

(b)(2) In the event that, after such fifth anniversary (but during the term thereof), eminent domain proceedings involving the acquisition by the City of all or any portion of Grantee's gas distribution system for the purpose of creating a municipal gas system are initiated, City hereby stipulates that it shall waive, in such proceedings, any right it may possess to have the matter tried within the City of Pasadena and that, to the extent permitted by law and the rules of court, it will agree to trial, at the City's option, before the Commission or a proper court sitting outside the City.

(b)(3) Notwithstanding the immediately preceding provisions of (b)(1) and (b)(2) above, such provisions shall automatically become null and void with respect to eminent domain proceedings initiated after adoption or enactment of a "Special Surcharge" by the Commission or State Legislature and during such period as the Special Surcharge is in effect and has not been stayed or enjoined. As used herein "Special Surcharge" means a special surcharge or special rate tariff imposed on the gas service bills of Grantee payable by the City or its inhabitants, which is intended to or has the effect of recovering directly from the City and/or its inhabitants any portion of the Basic Fee, Alternate Fee or In Lieu Fee exceeding the maximum franchise fee which could be imposed by a general law city under present or future state law (including, but not limited to, the Franchise Act of 1937, California Public Utilities Code Section 6200 et. seq. and the Broughton Act, California Public Utilities Code Section 6001 et. seq.). Recovery of the Basic Fee, Alternate Fee, or In Lieu Fee, or a portion thereof as part of gas transportation tariffs or agreements shall not be a Special Surcharge. Grantee agrees to promptly notify City in writing of any Special Surcharge proposal to the extent that it has actual knowledge of such a proposal; provided that an unintentional failure to notify City shall not be a breach of this franchise. It is further agreed that the

consideration which is contemplated to be paid by the Grantee to the City under this franchise (i.e., the Basic Fee, Alternate Fee, and the In Lieu Fee), without imposition of a Special Surcharge, is a material term and condition of this franchise; provided that adoption or enactment of a Special Surcharge shall not ipso facto result in forfeiture of this franchise.

SECTION 26. The Grantee of this franchise shall indemnify, defend and hold harmless the City, its officers, employees, and agents against and from all damages, claims, judgments, causes of action, decrees, costs and expenditures which the City, its officers, employees, and agents may suffer, or which may be recovered from, or obtainable against the City, its officers, or agents, for, or by reason of, or growing out of or resulting from the exercising 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.

SECTION 27. 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 28. 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 terms. 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 29. (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 30. The use of the singular number herein


shall include the plural, and the use of the plural number shall include the singular.

SECTION 31. 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 32. 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 33. The City Clerk shall certify to the adoption of this ordinance and shall cause the same to be published once in the Star News.

Signed and approved this 13th day of June, 1988.

  
Chairman of the Board of Directors  
of the City of Pasadena

I HEREBY CERTIFY that the foregoing ordinance was adopted by the Board of Directors of the City of Pasadena at its meeting held June 13, 1988, by the following vote:

Ayes: Directors: Cole, Crowley, Hughston, Nack, Paparian, Thomson

Noes: None

Absent: Director Glickman


Date: June 14, 1988

Published: June 23, 1988

Pasadena Star News

  
City Clerk

APPROVED AS TO FORM:

  
Victor J. Kaleta  
City Attorney