

June 12, 2018

HONORABLE MAYOR AND CITY COUNCIL
City of Long Beach
California

RECOMMENDATION:

Receive supporting documentation into the record, and conclude the public hearing regarding the Natural Gas Franchise with Southern California Gas Company (SoCalGas); declare an Ordinance granting a limited Natural Gas Franchise to SoCalGas to transmit and distribute natural gas within the City of Long Beach, read the first time and laid over to the next regular meeting of the City Council for final reading; and, authorize the City Manager, or designee, to execute any and all documents in connection therewith. (Citywide)

DISCUSSION

On May 15, 2018, the City Council adopted a Resolution of Intention declaring its intent to grant a limited Natural Gas Franchise with the Southern California Gas Company (SoCalGas) for the purpose of transmitting and distributing natural gas within the City of Long Beach (City) and set the public hearing for June 12, 2018.

California Code, Public Utilities Code – PUC § 6233 requires a public hearing to be held before the City Council and a publication of hearing in a newspaper of general circulation within the municipality before granting of a gas franchise. A public hearing notice was published in the Long Beach Press-Telegram on May 16, 2018, and no responses were received as of the date of preparation of this report. Any responses and comments received will be conveyed to the City Council prior to the public hearing.

The attached Ordinance (Franchise Ordinance) grants SoCalGas a limited right to lay, construct, operate, maintain, repair and replace, or remove pipelines and other facilities for transmitting, conducting, and distributing natural gas within the City for a 50-year term and replaces Ordinance C-7106, which expired on June 7, 2018. Under the new Franchise Ordinance, the annual permit fee paid to the City by SoCalGas will be eliminated. The franchise fee component will remain unchanged and continue at 2 percent of the gross annual receipts arising from the use, operation, or possession of said franchise, plus an “in-lieu” fee, which is that certain fee described in the “Municipal Lands Use Surcharge Act,” Chapter 2.5 of Division 3 of the California Public Utilities Commission (CPUC) Code, plus an additional 1 percent surcharge of the “imputed value” of transport gas volumes delivered to its utility electric generation (UEG) customers.

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The franchise agreement was negotiated exclusively with SoCalGas without going to bid as SoCalGas is the sole owner and operator of the gas service utility adjacent to, and surrounding the City, and is the only corporation, firm, or individual that could or would bid for the furnishing of this franchise.

The Energy Resources Department requests the City Council adopt the Franchise Ordinance granting franchise rights to SoCalGas after the final reading.

This matter was reviewed by Deputy City Attorney Richard F. Anthony on May 30, 2018 and by Revenue Management Officer Geraldine Alejo on May 30, 2018.

TIMING CONSIDERATIONS

City Council action is requested on June 12, 2018, to ensure the Franchise Ordinance is in place expeditiously.

FISCAL IMPACT

Franchise fee revenue from SoCalGas is approximately \$2,600,000 per year and accrues in the General Fund (GF) in the Citywide Activities Department (XC). Under the proposed agreement, the franchise fee paid to the City will remain unchanged and continue at 2 percent of the gross annual receipts of gas delivered by SoCalGas, plus the CPUC-approved Municipal Public Lands Use Surcharge, plus a 1 percent surcharge of the imputed value of SoCalGas transport gas volumes to its UEG customers. Under the new agreement, the annual permit fee paid to the City will be eliminated; however, the addition of the CPUC-approved 1 percent surcharge on the imputed value of transport gas volumes to its UEG customers is anticipated to offset the annual permit fee loss of \$440,000 in the General Fund (GF) in the Citywide Activities Department (XC). There is no local job impact associated with this recommendation.

SUGGESTED ACTION:

Approve recommendation.

Respectfully submitted,



ROBERT M. DOWELL
DIRECTOR OF ENERGY RESOURCES

RD:LAF:rmw

Attachment

APPROVED:


PATRICK H. WEST
CITY MANAGER

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
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Long Beach, CA 90802-4664

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ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LONG BEACH GRANTING TO SOUTHERN CALIFORNIA GAS COMPANY, A CORPORATION, THE RIGHT, PRIVILEGE AND FRANCHISE UPON TERMS AND CONDITIONS HEREIN SET FORTH TO LAY AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS FOR THE PURPOSES AS SPECIFIED HEREINAFTER UNDER, ALONG, ACROSS OR UPON CERTAIN PUBLIC STREETS, WAYS, ALLEYS AND PLACES, AS THE SAME NOW OR MAY HEREAFTER EXIST, WITHIN THE CITY OF LONG BEACH

WHEREAS, the City granted to Southern California Gas Company the right, privilege and franchise to lay, construct, operate, maintain, repair and replace or remove pipelines and other facilities for transmitting, conducting and distributing natural gas within the City by Ordinance No. C-3582, adopted August 20, 1956, Ordinance No. C-3701, adopted January 29, 1957, and Ordinance No. C-3710, adopted March 12, 1957; and

WHEREAS, the three ordinances mentioned above were amended and extended by the City Council to ultimately expire on June 15, 1993, by Ordinance No. C-6936, adopted October 8, 1991, Ordinance No. 6976, adopted February 25, 1992, Ordinance No. C-7059, adopted November 24, 1992, and Ordinance No. C-7087, adopted February 23, 1993; and

WHEREAS, the four ordinances mentioned immediately above were amended and extended by the City Council to ultimately expire on June 7, 2018, by Ordinance No. C-7106, adopted May 4, 1993

WHEREAS, Southern California Gas Company has provided, and continues

1 to provide, all but a small portion of the gas service for utility electric generation to Southern
2 California Edison Company ("Edison") and Los Angeles Department of Water and Power
3 ("LADWP") within the City; and

4 WHEREAS, significant costs would be incurred in order for the City to convert
5 to an exclusive provider of gas service to Edison and LADWP within the boundaries of the
6 City; and

7 WHEREAS, Southern California Gas Company owns and operates the gas
8 service utility territory adjacent to and surrounding the City and is the sole provider of utility
9 natural gas pipelines adjacent to and surrounding the City; and

10 WHEREAS, Southern California Gas Company desires to extend its natural
11 gas franchise to operate, transmit and distribute natural gas within the City for specified
12 purposes, and to adequately compensate the City for the privilege of such a franchise; and

13 WHEREAS, no useful purpose would be served by advertising for bids for a
14 natural gas franchise within the City since Southern California Gas Company is the sole
15 owner and operator of the gas service utility territory adjacent to and surrounding the City,
16 and is the only corporation, firm or individual that could or would bid for the furnishing of
17 said franchise to the City; and

18 WHEREAS, to advertise for bids for a natural gas franchise would constitute
19 an idle and useless act and an unnecessary expenditure of public funds on the part of the
20 City; and

21 WHEREAS, on May 15, 2018, in accordance with Public Utilities Code
22 Section 6232, the City Council declared its intention to extend the natural gas franchise
23 with the Southern California Gas Company and established a date and time for a public
24 hearing to consider the proposed extension; and

25 WHEREAS, on June 12, 2018, a public hearing was held to consider the
26 granting and extension of a natural gas franchise ordinance to Southern California Gas
27 Company, at which time the City Council gave due consideration to the quality and type of
28 the service proposed, the amount of income to the City, the experience, background, and

1 financial responsibility of Southern California Gas Company and other considerations
2 deemed pertinent by the City Council for safeguarding the interests of the City and the
3 public;

4 WHEREAS, on June 7, 2018, the Franchise Agreement between the
5 Southern California Gas Company and the City will terminate unless a new Franchise
6 Agreement and Ordinance of the City Council of the City of Long Beach is adopted;

7 NOW, THEREFORE, the City Council of the City of Long Beach does hereby
8 ordain as follows:

9 Section 1. Definitions. Whenever in this ordinance the words or phrases
10 hereinafter in this section defined are used, they shall have the respective meanings
11 assigned to them in the following definitions (unless, in the given instance, the context
12 wherein they are used shall clearly import a different meaning):

13 A. The word "Grantee" shall mean Southern California Gas
14 Company, and its lawful successors or assigns;

15 B. The word "City" shall mean the City of Long Beach, a municipal
16 corporation of the State of California, in its present incorporated form and in
17 any later reorganized, consolidated or reincorporated form;

18 C. The word "streets" shall mean those public streets, ways, alleys
19 and places as the same now or may hereafter exist within said City;

20 D. The word "Engineer" shall mean the Director of Public Works
21 of the City or such other public official as may hereafter be charged with the
22 performance of duties similar to those now imposed upon the Director of
23 Public Works by the City;

24 E. The word "franchise" shall mean and include any authorization
25 granted hereunder in terms of a franchise, privilege, permit, license or
26 otherwise to lay and use pipes and appurtenances for transmitting, storing,
27 and distributing gas as specified hereinafter, under, along, across or upon
28 the public streets, ways, alleys and places in the City, and shall include and

1 be in lieu of any existing or future City requirement to obtain a license or
2 permit for the privilege of transacting and carrying on a business within the
3 City;

4 F. The word "gas" shall mean natural or manufactured gas or
5 renewable natural gas, or a mixture of natural and manufactured gas and
6 renewable natural gas;

7 G. The phrase "pipes and appurtenances" shall mean pipe,
8 pipeline (including water disposal), cable, main, service, cathodic protection
9 equipment, trap, vent, vault, manhole, meter, gauge, regulator, valve,
10 conduit, communication facilities, appliance, attachment, appurtenance and
11 any other property located or to be located in, upon, along, across, under or
12 over the streets of the City, and used or useful in, or in carrying on the
13 business of, transmitting, storing, and distributing gas;

14 H. The phrase "lay and use" shall mean to lay, construct, erect,
15 install, operate, maintain, use, repair, replace, or remove;

16 I. The phrase "City Manager" shall mean the City Manager of the
17 City of Long Beach, or his successor as the chief executive officer of the City;

18 J. The phrase "City Clerk" shall mean the duly qualified and acting
19 City Clerk of the City of Long Beach, or such person as may hereafter by law
20 be authorized to perform the duties now being performed by that official.

21
22 Section 2. Nature of Franchise Granted.

23 A. That the right, privilege and franchise, subject to each and all
24 of the terms and conditions contained in this ordinance, and Article XVI,
25 Section 1600 through 1604 of the City Charter of the City of Long Beach,
26 shall be, and the same is hereby granted to Grantee, to lay and use pipes
27 and appurtenances for transmitting under, along, across or upon the streets
28 of the City and other places as provided herein, and distributing gas to certain

1 geographical areas as specified hereinafter.

2 B. The Grantee of this franchise shall construct, install and
3 maintain all pipes and appurtenances in accordance with and in conformity
4 with all of the ordinances, rules and regulations heretofore, or hereafter
5 adopted by the legislative body of this City in the exercise of its police powers
6 and not in conflict with the paramount authority of the State of California, and,
7 as to State highways, subject to the provisions of general laws relating to the
8 location and maintenance of such facilities.

9 Section 3. Term. The right, privilege and franchise, subject to each and
10 all of the terms and conditions contained in this ordinance herein is granted to Grantee for
11 the term of fifty (50) years from the effective date of this franchise. Provided however, this
12 franchise may be terminated earlier, with the consent of the Public Utilities Commission of
13 the state of California by being voluntarily surrendered or abandoned by Grantee, if the
14 state of California or some municipal or public corporation thereunto duly authorized by law
15 shall purchase by voluntary agreement or shall condemn and take under the power of
16 eminent domain, all property actually used and useful in the exercise of this franchise, and
17 situated within the territorial limits of the State, municipal, or public corporation purchasing
18 or condemning such property, or until this franchise shall be thereof.

19 Section 4. Consideration. Grantee shall pay to City a Franchise Fee
20 calculated and paid as follows:

21 1. The Grantee shall pay to the City at the times hereinafter
22 specified, in lawful money of the United States, a sum annually which shall
23 be equivalent to two percent (2%) of the gross annual receipts of Grantee
24 arising from the use, operation or possession of said franchise within the City;
25 provided however, that such payment shall in no event be less than two
26 percent (2%) of the gross annual receipts of the Grantee derived from the
27 sale and transportation of gas for Grantee's retail and utility electric
28 generation ("UEG") customers within the limits of the City under this

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franchise, plus the In-Lieu Fee of Section 4.2 below;

2. Grantee shall also pay to City a Municipal Surcharge as described in the "Municipal Lands Use Surcharge Act", Chapter 2.5 of Division 3 of the California Public Utilities Code beginning with Section 6350, as the same is now or as amended from time to time ("In-Lieu Act"), plus an additional one percent (1%). The Municipal Surcharge is calculated with the "imputed value" of "non-proprietary gas" delivered by Grantee to its UEG retail customers, within the City per calendar year during the term of this franchise. By way of example, the Municipal Surcharge payment hereunder as of the effective date of this franchise (using the current Surcharge of 1.4136%) shall be equal to 2.4136% of the "imputed value" of "non-proprietary gas".

As used herein, "non-proprietary gas" means gas that is conducted, conveyed, transported, supplied and distributed, but not sold, to Grantee's retail customers within the City by Grantee and excluding gas delivered to City's municipal gas utility for resale or redelivery;

"Imputed value" means the value of the actual quantities of such non-proprietary gas delivered within the City by Grantee during the period of calculation. For purposes of this franchise agreement, City and Grantee intend that the imputed value accurately reflect the value of such gas delivered as if it were sold on a proprietary basis by Grantee, rather than transported on behalf of third parties. City and Grantee agree that the "imputed value" will be calculated in a manner consistent with Section 6353(b) of the California Public Utilities Code as it is implemented and authorized by the California Public Utilities Commission. Currently this is Grantee's adjusted core procurement rate of "GCPA". Thus, the imputed value shall be determined by multiplying the actual quantities of such non-proprietary gas times the GCPA. In the event that either City or Grantee

1 believes that a change in circumstances results in the GCPA no longer
2 representing the intent of the parties, or GCPA information is no longer
3 available, such party shall notify the other of its concerns and the parties
4 agree to negotiate in good faith to adopt an alternate measure of imputed
5 value that is consistent with the original intent of both parties. Should the
6 parties fail to agree as to an alternate standard for imputed value, the matter
7 shall be submitted for binding arbitration.

8 3. The Franchisee of this franchise shall file with the Clerk
9 of the City within three (3) months after the expiration of the calendar year,
10 or fractional calendar year, following the date of the grant of this franchise,
11 and within three (3) months after the expiration of each and every calendar
12 year thereafter, a duly verified statement showing in detail the gross annual
13 receipts of the Franchisee, its successors or assigns, during the preceding
14 calendar year, or such fractional calendar year, from the sale of the utility
15 service within the City for which this franchise is granted. It shall be the duty
16 of the Franchisee to pay the City within fifteen (15) days after the time for
17 filing such statement in lawful money of the United States, the specified
18 percentage of its gross receipts for the calendar year, or such fractional
19 calendar year, covered by such statement. Any neglect, omission or refusal
20 by said Franchisee to file such verified statement, or to pay said percentage,
21 at the times or in the manner hereinbefore provided, shall be grounds for the
22 declaration of forfeiture of this franchise and of all rights hereunder.

23 Section 5. Data, Reports and Audits.

24 A. On or before the fifteenth (15th) day of March of each calendar
25 year during the term of this franchise and forty-five (45) days after the
26 expiration of the term of this franchise, the Grantee shall file with the City
27 Clerk of the City, the original, and with one copy each to the City Manager,
28 the Director of the Gas Department and the Director of Finance of the City, a

1 statement showing the following:

2 1. The total gross revenue under Section 4 received by the
3 Grantee from the operation of its business in the City during the preceding
4 year, or fractional calendar year.

5 2. The method (and supporting calculations) used to
6 calculate the franchise fees which are payable to the City in accordance with
7 this franchise (i.e., Franchise fee, In-Lieu Fee, or fees of Section 4.B).

8 3. The total amount of all annual payments made by
9 Grantee attributable to the preceding calendar year or fractional calendar
10 year.

11 4. Such other data or information as City may reasonably
12 need to calculate or determine the amounts which Grantee is obligated to
13 pay City pursuant to Section 4, provided that the City shall request such data
14 and information from Grantee in writing and shall deliver said request no less
15 than sixty (60) days prior to the due date of the above-described statement
16 and which shall solely be used by City for the limited purposes described
17 herein.

18 B. Said statement shall be verified by the Manager of Taxes or
19 other authorized officer of the Grantee, and shall be in such form and detail
20 as from time to time shall be reasonably prescribed by the Director of
21 Finance.

22 C. Within ten (10) days after the filing of said statement, the
23 Grantee shall pay to City, at the office of the City Treasure, in lawful money
24 of the United States, the sums of money required to be paid by Grantee to
25 City under Section 4 for the calendar year.

26 D. Any neglect, omission or refusal by Grantee to file the verified
27 statement required under subsection A above, or to pay any required
28 payments under Section 4 at the time and in the manner specified shall be

1 grounds for the declaration of a forfeiture of this franchise and of all rights
2 and privileges of Grantee hereunder, provided that Grantee shall not have
3 cured said neglect, omission, or refusal to file or pay within twenty (20) days
4 following written notice from the City of such failure to file or pay, or, if such
5 neglect, omission or refusal is not reasonably subject to cure such neglect,
6 omission or refusal within such twenty (20) day period and has not continued
7 to prosecute such cure to completion. The prevailing party in any action to
8 collect or enforce Section 4 and/or 5, shall be entitled to reasonable
9 attorney's fees.

10 E. Grantee shall supply free of cost to City copies of such tariffs,
11 financial data or financial reports on Grantee's operations within the city,
12 under this franchise, as the City Manager may, from time to time, reasonably
13 request.

14 Section 6. Prior Franchises. This grant is made in lieu of all other existing
15 franchises owned by the grantee, or by any successor of the grantee to any rights under
16 this franchise, for transmitting and distributing gas within the limits of the City, as said limits
17 now or may hereafter exist, and the acceptance of the franchise hereby granted shall
18 operate as a termination and an abandonment of all such franchises within the limits of the
19 City, including but not limited to Ordinance No. C-7106, as such City limits now or may
20 hereafter exist, in lieu of which this franchise is granted.

21 Section 7. Acquisition and Valuation. The franchise granted hereunder
22 shall not in any way or to any extent impair or affect the right of the City to acquire the
23 property of the Grantee hereof either by voluntary agreement to purchase or through the
24 exercise of the right of eminent domain, and nothing herein contained shall be construed
25 to contract away or to modify or to abridge, either for a term or in perpetuity, the City's right
26 of eminent domain in respect to Grantee; nor shall this franchise ever be given any value
27 before any court or other public authority in any proceeding of any character in excess of
28 the cost to the Grantee of the necessary publication and any other sum paid by it to the

1 City therefor at the time of the acquisition thereof. In the event the City exercises its right
2 of eminent domain, it shall do so in accordance with the procedures provided by the general
3 law of the State of California for the condemnation of public utility property except the City
4 agrees it shall pay Grantee the higher of market value or the cost of replacement of the
5 condemned facilities and property.

6 Further, in the event City exercises such rights, subsequent to such action
7 the City shall not be entitled to any future payments as calculated in and provided for in
8 Section 4 herein, except monies already due for any prior period.

9 Section 8. Grantee's Facilities.

10 A. Grantee, at City's request shall supply to City maps of any of
11 Grantee's pipes and appurtenances presently existing within the City,
12 including the size and diameter of the pipes, and designation of the general
13 location of existing routes. Notwithstanding anything to the contrary
14 contained herein, Grantee shall not be obligated to provide such maps if
15 doing so could cause Grantee to violate or otherwise act in a manner
16 inconsistent with federal or state rules, regulations or other guidance
17 concerning disclosure of critical energy infrastructure information. Further, it
18 is explicitly understood that Grantee does not warrant the precise location
19 accuracy of its pipes and appurtenances on any map information given by
20 Grantee to City.

21 B. The City's Engineer shall have power to give the Grantee such
22 directions for the location of any pipes and appurtenances as may be
23 reasonably necessary to avoid sewers, water pipes, conduits or other
24 structures lawfully in or under the streets (provided such directions are not in
25 conflict with any express provisions of this franchise, regulations of the
26 California Public Utilities Commission or the paramount authority of the
27 State); and before the work of constructing any pipes and appurtenances is
28 commenced, the Grantee shall file with said Engineer plans showing the

1 location thereof, which shall be subject to the approval of the City Engineer
2 (such approval not to be unreasonably withheld); and all such construction
3 shall be subject to the inspection of said Engineer and done to his reasonable
4 satisfaction. All street coverings or openings of traps, vaults, and manholes
5 shall at all times be kept flush with the surface of the streets; provided,
6 however, that vents for underground traps, vaults and manholes may extend
7 above the surface of the streets when said vents are located in parkways,
8 between the curb and the property line.

9 C. Where it is necessary to lay any underground pipes through,
10 under or across any portion of a paved or macadamized street, the same,
11 where practicable and economically reasonable shall be done by a tunnel or
12 bore, so as not to disturb the foundation of such paved or macadamized
13 street; and in the event that the same cannot be so done, or in the event it is
14 necessary to cut the street in order to access existing pipes and
15 appurtenances, such work shall be done under a permit to be granted by the
16 Engineer within a reasonable period of time after application thereof. The
17 application shall contain such information as the Engineer reasonably
18 requires, and the permit shall contain such conditions as the Engineer
19 reasonably requires, subject to City ordinances, standards and/or regulations
20 not in conflict with any express provisions of the franchise, regulations of the
21 California Public Utilities Commission or the paramount authority of the State.

22 D. If Grantee desires to abandon any of its pipes and
23 appurtenances, or at the time of expiration of this franchise or of the
24 permanent discontinuance of the use of its facilities, or any portion thereof,
25 Grantee shall make application to the City Engineer, pursuant to Section 9.C.
26 for a street cut permit to abandon said pipes and appurtenances. Upon
27 issuance of the permit, Grantee shall abandon in place (subject to any
28 reasonable conditions imposed by the Engineer in said permit), or, if

1 reasonably requested by the Engineer, remove such pipes and
2 appurtenances, in compliance with the terms of the permit, subject, however,
3 to the express provisions of this franchise, applicable regulations and orders
4 of the California Public Utilities Commission and the paramount authority of
5 state law.

6 Section 9. Repair Costs. If any portion of any street shall be damaged by
7 reason of defects in any of the pipes and appurtenances maintained or constructed under
8 this grant, or by reason of any other cause arising from the operation or existence of any
9 pipes and appurtenances constructed or maintained under this grant, said Grantee shall,
10 at its own cost and expense, immediately repair any such damage and restore such portion
11 of street, to as good condition as existed before such defect or other cause of damage
12 occurred, such work to be done under the direction of the Engineer, and to his reasonable
13 satisfaction.

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15 Section 10. City Reserved Powers.

16 A. The Grantee of this franchise shall remove and relocate, at
17 the request of the City and without expense to the City, any facilities installed,
18 used and maintained under this franchise if and when made necessary by
19 any lawful change of grade, alignment or width of any public street, way,
20 alley or place, including the construction of any subway or viaduct by the City;
21 provided, however, that Grantee shall not be required to bear the expense of
22 any removal or relocation made at the request of the City on behalf of or for
23 the benefit of any private developer or other third party, except this shall not
24 include development or relocation by the City's Redevelopment Agency.

25 B. Distribution of gas within the City pursuant to this franchise shall
26 be limited to those geographical areas presently being served by Grantee.
27 Grantee's service of new geographical areas within the geographical
28 boundaries of this franchise shall require City's written approval. The decision

1 whether to allow Grantee to serve additional new geographical areas within
2 the geographical boundaries of this franchise shall be at the sole discretion
3 of the City.

4 C. The City Manager may request Grantee to serve retail
5 customers within the City of Long Beach needing new or additional gas
6 service until such time as the City is economically able to provide this service.
7 Grantee is not required to provide such service unless Grantee and the City
8 mutually agree on the specific terms and conditions of such service.

9 D. Nothing herein contained shall ever be construed or taken to
10 exempt Grantee from compliance with all valid Engineering permits,
11 inspections or construction ordinances of City now in effect or which may be
12 hereafter adopted not in conflict with the paramount authority of the State of
13 California wherein it has jurisdiction and as to State Highways subject to the
14 provisions of the general laws relating to the location and maintenance of
15 such facilities. Enumeration hereof of specific rights reserved shall not be
16 taken as exclusive, or as limiting the general reservation herein made, or as
17 limiting such rights as City may now or hereafter have in law.

18 Section 11. No Transfer Without Consent.

19 A. This franchise may not be transferred (voluntarily, involuntarily,
20 or by operation of law), leased or assigned by the Grantee except by consent
21 in writing of the City Council, which consent shall not be unreasonably
22 withheld or conditioned, and unless the transferee or assignee thereof shall
23 covenant and agree to perform and be bound by each and all of the terms
24 hereof. The Grantee shall file with the legislative body of the City within ninety
25 (90) days before any sale, transfer, assignment or lease of this franchise, or
26 any part hereof, or of any of the rights or privileges granted hereby, written
27 evidence of the same, certified thereto by the Grantee or its duly authorized
28 officers.

1 B. Any purported or attempted sale, lease, assignment or transfer
2 thereof, without such approval, regardless of whether made voluntarily or
3 otherwise, shall be void and of no effect, and shall transfer none of the rights
4 or privileges hereby granted or facilities installed or maintained pursuant
5 hereto.

6 Section 12. Forfeiture.

7 A. This franchise is granted upon each and every condition herein
8 contained. Nothing shall pass by the franchise granted hereby to Grantee
9 unless it be granted in plain and unambiguous terms. Each of said conditions
10 is a material and essential condition to the granting of the franchise. If the
11 Grantee shall fail, neglect or refuse to comply with any of the provisions or
12 conditions hereof, and shall not, within ninety (90) days after written demand
13 for compliance, begin the work of compliance, or after such beginning shall
14 not prosecute the same with due diligence to completion, then the City, in
15 addition to all rights and remedies allowed by law, thereupon may terminate
16 the right, privilege and franchise granted in and by this ordinance, and all the
17 rights, privileges and the franchise of Grantee granted hereby may be
18 declared forfeited and shall thereupon be at an end when the breach creates
19 a material health and safety risk. Thereupon and immediately, Grantee shall
20 surrender all rights and privileges in and to the franchise granted hereby. No
21 provision herein made for the purpose of securing the enforcement of the
22 terms and conditions of the franchise granted hereby shall be deemed an
23 exclusive remedy or to afford the exclusive procedure for the enforcement of
24 said terms and conditions, but the remedies and procedure outlined herein
25 or provided, including forfeiture, shall be deemed to be cumulative.

26 Section 13. Indemnification by Grantee - Insurance.

27 A. The Grantee of this franchise shall pay to the City, on demand,
28 the cost of all repairs to public property made necessary by any operations

1 of the Grantee under this franchise.

2 B. The Grantee of this franchise shall indemnify and hold
3 harmless the City and its officers, agents and employees from any and all
4 liability for damages proximately resulting from any operations under this
5 franchise, including but not limited to air, ground or water contamination; and
6 be liable to the City for all damages proximately resulting from the failure of
7 said Grantee well and faithfully to observe and perform each and every
8 provision of this franchise and each and every provision of Division 3,
9 Chapter 2 of the Public Utilities Code of the State of California.

10 C. Concurrent with the acceptance of this franchise by Grantee,
11 and as a condition precedent to the effectiveness of this franchise, and in
12 partial performance of the obligations assumed herein, Grantee shall procure
13 and maintain at Grantee's expense for the duration of this franchise from an
14 insurance company that is admitted to write insurance in California or that
15 has a rating of or equivalent to A:VIII by A.M. Best & Company the following
16 insurance against claims for injuries to persons or damage to property which
17 may arise from or in connection with the performance of this franchise by the
18 Grantee, its agents, representatives, employees or subcontractors:

19 1. Comprehensive general liability or self-insurance
20 naming the City, its officials, employees, and agents as additional insured
21 from and against claims, demands, causes of action, expenses, costs, or
22 liability for injury to or death of persons, or damage to or loss of property
23 arising out of or in any manner connected with Grantee's operation or
24 performance under this franchise in an amount not less than Five Million
25 Dollars (\$5,000,000) combined single limit for each occurrence or Five Million
26 Dollars (\$5,000,000) general aggregate.

27 2. Automobile liability in an amount not less than Five
28 Hundred Thousand Dollars (\$500,000) combined single limit per accident for

1 bodily injury and property damage covering owned, non-owned and hired
2 vehicles.

3 3. Workers' Compensation insurance as required by the
4 Labor Code of the State of California.

5 Each insurance policy shall be endorsed to state that coverage shall not be
6 suspended, voided or canceled by either party, reduced in coverage or in limits, except
7 after thirty (30) days prior written notice has been given to the City, and shall be primary
8 and not contributing to any other insurance or self-insurance maintained by the City.

9 Not more frequently than every five (5) years, if in the opinion of City or of an
10 insurance broker retained by City, the amount of the foregoing insurance coverage is not
11 adequate, Grantee shall increase the insurance coverage as required by City.

12 Grantee shall furnish the City with certificates of insurance and with original
13 endorsements affecting coverage as required above. The certificates and endorsements
14 for each insurance policy shall be signed by a person authorized by that insurer to bind
15 coverage on its behalf. Any modification or waiver of the insurance requirements contained
16 in this franchise shall only be made with the written approval of the City's Risk Manager in
17 accordance with established City policy.

18 Grantee may fulfil the obligations of this Section through self-insurance. A
19 certificate of self-insurance program shall be provided to and approved by City.

20 Section 14. Compliance with Laws. Grantee shall be in compliance with all
21 valid applicable local, state and federal laws, orders, directives, rules and regulations of
22 any governmental body, agency, or official having jurisdiction in the premises.

23 Section 15. Nondiscrimination. In the performance of this franchise,
24 Grantee shall not discriminate against any person on the basis of race, religion, national
25 origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or
26 disability.

27 Section 16. Notice. Any notice required to be given under the terms of this
28 franchise shall be in writing and personally delivered or deposited in the U.S. Postal

1 Service, or sent by courier, return receipt requested, to the following addresses:

2 A. Upon the City at 333 West Ocean Boulevard, Long Beach,
3 California 90802, Attention: City Manager with copies to the City Engineer at
4 the same address, and also a copy to the General Manager of the Long
5 Energy Resources Department at 2400 E. Spring Street, Long Beach,
6 California 90806.

7 B. Upon the Grantee at Southern California Gas Company,
8 Franchise and Facilities Manager, Engineering and Operations Support, 555
9 West Fifth Street, Los Angeles, California 90013-1011.

10 Section 17. If any section, subsection, sentence, clause, phrase or portion
11 of this Ordinance is for any reason held to be invalid or unconstitutional by the final decision
12 of any court of competent jurisdiction, such decision shall not affect the validity of the
13 remaining portions of this Ordinance. The City Council declares that it would have adopted
14 this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof,
15 irrespective of the fact that any one or more sections, subsections, phrases, or portions be
16 declared invalid or unconstitutional.

17 Section 18. Acceptance. The franchise granted hereunder shall not
18 become effective until written acceptance thereof shall have been filed by the Grantee
19 thereof with the Clerk of the City no later than ten (10) working days after the adoption of
20 this Ordinance by the city Council. The Grantee shall file with the City Clerk a written
21 acceptance of the franchise hereby granted, and an agreement to comply with the terms
22 and conditions hereof. When so filed, such acceptance shall constitute a continuing
23 agreement of the Grantee that if and when the City shall thereafter annex or consolidate
24 with, additional territory, any and all franchise rights and privileges owned by Grantee
25 therein shall likewise be deemed to be abandoned within the limits of such territory and
26 shall thereafter be governed by the terms of this franchise.

27 Section 19. The procedure of advertising for bids on a new natural gas
28 franchise within the City serves no useful purpose since Grantee is the sole owner and

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CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Lona Beach, CA 90802-4664

1 operator of the gas service utility territory adjacent to and surrounding the City, and is the
2 only corporation, firm or individual that could or would bid for the furnishing of said franchise
3 to the City, and to advertise for bids for a natural gas franchise would constitute an idle and
4 useless act and an unnecessary expenditure of public funds on the part of the City.

5 Section 20. The City Clerk shall certify to the passage of this ordinance by
6 the City Council and cause it to be posted in three (3) conspicuous places in the City of
7 Long Beach, and it shall take effect on the thirty-first (31st) day after it is approved by the
8 Mayor.

9 /
10 /
11 /
12 /
13 /

14 I hereby certify that the foregoing Ordinance was adopted by the City Council
15 of the City of Long Beach at its meeting of _____, 2018, by the
16 following vote:

17
18 Ayes: Councilmembers: _____
19 _____
20 _____

21
22 Noes: Councilmembers: _____
23 _____

24 Absent: Councilmembers: _____
25 _____

26
27
28 _____
City Clerk

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Lana Beach, CA 90802-4664

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Approved: _____
(Date)

Mayor