

ORDINANCE NO. 3880

AN ORDINANCE GRANTING TO SOUTHERN CALIFORNIA GAS COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS FOR ANY AND ALL PURPOSES IN, ALONG, ACROSS, UPON, AND UNDER THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF HUNTINGTON BEACH.

The City Council of the City of Huntington Beach does hereby ordain as follows:

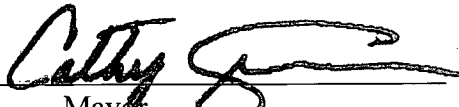
SECTION 1. The City of Huntington Beach hereby grants a gas pipeline franchise to Southern California Gas Company.

SECTION 2. The franchise is granted in accordance with the terms and conditions set forth in the attached Pipeline Agreement between the City of Huntington Beach and Southern California Gas Company to construct, maintain and use pipes and appurtenances for transmitting and distributing gas for any and all purposes in, along, across, upon, and under the public streets and places within the City of Huntington Beach which agreement is incorporated herein by this reference.


SECTION 3. Charter Sections 550(a) and 615 requires that a franchise shall be granted by ordinance.

SECTION 4. This ordinance shall become effective 30 days after this adoption.


PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 17th day of May, 2010.


Mayor


ATTEST:


City Clerk

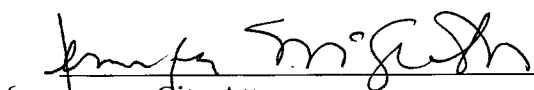
INITIATED AND APPROVED:


Director of Public Works

REVIEWED AND APPROVED:


City Administrator

APPROVED AS TO FORM:


City Attorney 4.22.10

AN AGREEMENT GRANTING TO SOUTHERN CALIFORNIA GAS COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS FOR ANY AND ALL PURPOSES IN, ALONG, ACROSS, UPON, AND UNDER THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF HUNTINGTON BEACH

This Franchise Agreement (Agreement) adopted by ordinance of the City of Huntington Beach is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California hereinafter referred to as 'City' and Southern California Gas Company, a _____, hereinafter "Grantee"

SECTION 1 DEFINITIONS

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

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

(b) The word "City" shall mean the City of Huntington Beach, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form,

(c) The word "streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within the City, including state highways, now or hereafter established within the City, and freeways hereafter established within the City,

(d) 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 pipes and appurtenances for the business of 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. Any proposed telecommunication facilities not related with gas utility services or other non-gas system uses must be approved by the City under a separate franchise or other applicable permit.

(e) The phrase "pipes and appurtenances" shall mean pipes, pipelines, mains, services, traps, vents, cables, conduits, vaults, manholes, meters, appliances, associated communications infrastructure, attachments, appurtenances, and any other property located or to be located in, upon, along, across, or under the streets of the City, and used or useful in the transmitting and/or distributing of gas,

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

(g) The phrase "construct, maintain, and use" shall mean to construct, erect,

install lay, operate, maintain, use, repair, or replace and

(h) The phrase "gross annual receipts" shall mean gross operating receipts received by Grantee from the sale of gas to Grantee's customers less uncollectible amounts and less any refunds or rebates made by Grantee to such customers pursuant to California Public Utilities Commission ("CPUC") orders or decisions

SECTION 2 PURPOSE AND TERM

(a) That the right, privilege and franchise, subject to each and all of the terms and conditions contained in this Agreement, and pursuant to the provisions of Division 3, Chapter 2 of the Public Utilities Code of the State of California, known as the Franchise Act of 1937, be and the same is hereby granted to Grantee to construct, maintain and use pipes and appurtenances for transmitting and distributing gas for any and all purposes, under, along, across or upon the streets of the City for a twenty-five (25) year term from and after the effective date hereof (January 1, 2010)

(b) Early Termination In the event the CPUC has not approved Grantee's application for imposition of a surcharge for payment of the franchise fee in the manner provided for in Section 3(a)(2) within eighteen (18) months of the effective date of this Agreement, or if the CPUC has denied Grantee's application as filed, then at the request of either party, the parties shall meet and confer to determine the proper compensation for the remaining term of this franchise. If no agreement on compensation is reached by the parties prior to a date that is twenty-one (21) months after the effective date of this franchise Agreement, then this Agreement and the franchise granted herein shall terminate and be of no further force and effect

(c) City shall have the right to terminate this franchise by ordinance, at any time should any of the following events occur (i) the Grantee fails to comply with any material provision hereof or (ii) the City purchases (through its power of eminent domain or otherwise) all of the franchise property of Grantee. The Grantee shall be given ninety (90) days written notice prior to the beginning of any termination proceeding

SECTION 3 CONSIDERATION

(a) The Grantee shall pay to the City at the times hereinafter specified in lawful money of the United States, a total annual franchise fee commencing as of January 1, 2010, that is equal to the sum of three (3) plus either one (1) or two (2) below (whichever is then in effect) as follows

1 The higher of

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

(ii) One percent (1%) of the gross annual receipts of the Grantee derived from the sale, transmission or distribution of gas, within the limits of the City under this franchise

2 Grantee shall apply to the CPUC with the City's concurrence for authority to implement a franchise fee surcharge to be charged solely on the City's ratepayers to recover an additional one percent (1%) of gross annual receipts for a total payment to the City based on two percent (2%) of gross annual receipts from the sale, transmission, or distribution of gas

within the limits of the City as described in Section 1(ii) above. After receipt of CPUC approval acceptable to Grantee, Grantee shall calculate and pay the City as of the first day of the quarter immediately following receipt of such approval, the higher of the following two formulas instead of the payment pursuant to Section 1 above:

(i) Two percent (2%) of the gross annual receipts of the Grantee derived from the use, operation or possession of its franchise, or

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

3 In addition to either Section 1 or Section 2 above (whichever is then in effect), Grantee shall also pay Grantor an In Lieu Fee which is that certain fee described in the "Municipal Lands Use Surcharge Act," Chapter 25 of Division 3 of the California Public Utilities Code.

(b) The franchise fee shall be paid in four installments. The first three installments shall be based on the total gross receipts of the preceding calendar quarter employing the formula of subsection a 1 (ii) or a 2 (ii) above (whichever is then in effect), plus the amount of the In-Lieu Fee of Section a 3 for the preceding calendar quarter. The final installment shall be a true up installment using the applicable formula from either subsection a 1 or a 2 above (whichever is then in effect) plus the In-Lieu Fee under Section a 3 above plus any adjustment, if applicable, as provided in Section (c) for the total franchise fee. Each installment shall be paid to the City on or prior to the twenty-fifth (25th) day of the second month following the respective quarter for which payment is made, except for the final quarterly true up payment for the year, which shall be paid on or prior to March 31st. For example, the installment for the first quarter of the year (January through March) shall be paid to the City no later than May 25th.

(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 submission of a written claim, under penalty of perjury, to the City Clerk within two years of the overpayment. Such claim must clearly establish claimant's right to the refund by written records showing entitlement thereto.

(d) The Grantee shall file with the City Clerk within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the granting hereof, and within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross annual receipts and Surcharge Payment of such Grantee during the preceding calendar year or such fractional calendar year, from the sale of gas within the City.

(e) In the event the legislature amends Division 3, Chapter 2, of the Public Utilities Code during the term of this Franchise whereby the City is allowed by change in the Act to increase the amount that may be charged to the Grantee, then the City may implement the allowed increased payment together with all other associated changes to the Act by amending this Agreement by ordinance and consistent with the City's Charter. The changes, including the payment of the increased fee amount, shall be applicable as of the first day of the month following the effective date of such amendment.

SECTION 4 OTHER FRANCHISES

This grant is made in lieu of all other gas utility franchises owned by the Grantee, or by any successor of the Grantee to any rights under this franchise, for transmitting and distributing gas within the limits of the City, as said limits now or may hereafter exist, and the acceptance of the franchise hereby granted shall operate as an abandonment of all such gas utility franchises within the limits of this City, as such limits now or may hereafter exist, in lieu of which this franchise is granted. This Grant after its effective date also supersedes the Revocable License executed by the parties in December 2009.

SECTION 5 OBLIGATIONS OF GRANTEE

(a) All facilities or equipment of Grantee shall be constructed, installed and maintained in accordance with and in conformity with all of the ordinances, rules and regulations heretofore, or hereafter adopted by the legislative body of this City in the exercise of its police powers and not in conflict with the paramount authority of the State of California, and as to state highways, subject to the provisions of the general laws relating to the location and maintenance of such facilities.

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

(c) The Grantee shall pay to the City, on demand, the cost of all repairs to public property made necessary by any operations of the Grantee under this franchise.

(d) Except for such losses or damages caused by the sole negligence or willful misconduct of City and any officers and employees, grantee shall indemnify, save, and hold harmless, City and any officers and employees thereof against and from all damages, judgments, decrees, costs and expenditures which City, or such officer or employee may suffer, or which may be recovered from or obtainable against City or such officer or employee, for or by reason of, or growing out of or resulting from the exercising by Grantee of any or all of the rights or privileges granted hereby, or by reason of any act or acts of Grantee or its servants or agents in exercising the franchise granted hereby, and Grantee shall defend any suit that may be instituted against City, or any officer or employee thereof, by reason of or growing out of or resulting from the exercise by Grantee of any or all of the rights or privileges granted hereby, or by reason of any act or acts of Grantee, or its servants or agents, in exercising the franchise granted hereby.

SECTION 6 REMOVE OR RELOCATE FACILITIES

(a) City shall have the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate 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.

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

(b) Irrespective of any other provision of this Agreement, Grantee's right to construct, maintain, and use, or remove pipes and appurtenances thereto shall be subject at all times to the right of the City, in the exercise of its police power, to require the removal or relocation of said pipes and appurtenances thereto at the sole cost and expense of Grantee, except (1) as the law may otherwise provide or, (2) except where Grantee's right to possession is pursuant to instruments evidencing right-of-way, easements or other interest in real property, or (3) except where the removal or relocation is made at the request of the City on behalf of or for the benefit of any private developer, CalTrans or other third party.

(c) In the event that the City is made aware of a project developed by a governmental agency, water company, private party or the City that would be located within five hundred feet of a regulator station or other major gas facilities, City shall notify Grantee and initiate discussions among the implicated parties in order to assess potential economic and community impacts and facilitate coordinated and economically reasonable outcomes.

(d) In the event the use of any franchise property is discontinued, Grantee shall promptly notify the Public Works Director of any material discontinuance and remove from the street all such discontinued property, unless the Public Works Director permits such property to be abandoned in place in accordance with the requirements of the Public Works Director (subject to applicable requirements of the CPUC). After abandonment, at the option of City, Grantee shall submit to the Public Works Director, an instrument, reasonably approved by the City and Grantee, transferring to the City the ownership of such franchise property.

SECTION 7 TRANSFER OR SALE OF FRANCHISE

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

Administrator of the City within thirty (30) days after any sale, transfer, assignment, or lease of this franchise, or any part hereof, or any of the rights or privileges granted hereby, written evidence of the same certified thereto by the Grantee or its duly authorized officers

SECTION 8 FORFEITURE

This franchise is granted upon each and every condition herein contained. Nothing shall pass by the franchise granted hereby to Grantee unless it be granted in plain and unambiguous terms. Each of said conditions is a material and essential condition to the granting of the franchise. If Grantee shall fail, neglect or refuse to comply with any of the conditions of the franchise granted hereby, and if such failure, neglect or refusal shall continue for more than thirty (30) days after written demand by the City Administrator for compliance therewith, then City, solely by act of the City Council, in addition to all rights and remedies allowed by law, thereupon may terminate the rights, privilege, and franchise granted in and by this Agreement, and all the rights, privileges and the franchise of Grantee granted hereby shall thereupon be at an end. Thereupon and immediately Grantee shall surrender all rights and privileges in and to the franchise granted hereby. No provision herein made for the purpose of securing the enforcement of the terms and conditions of the franchise granted hereby 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 9 ACQUISITION AND VALUATION

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

SECTION 10 PUBLICATION COSTS

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

SECTION 11 EFFECTIVE DATE

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

SECTION 12 WRITTEN ACCEPTANCE

After the publication of the Ordinance adopting this Agreement the Grantee shall file with the City Clerk a written acceptance of the franchise hereby granted, and agree to comply with the terms and conditions hereof

SECTION 13 PUBLICATION

The City Clerk shall certify to the adoption of this Agreement, and within fifteen (15) days after its adoption, shall cause the same (with a list of the councilmembers voting for and against) to be published in the Huntington Beach Independent, a newspaper of general circulation published and circulated in the City

SECTION 14 AUDIT OF RECORDS

The City Treasurer, or any certified public accountant, or qualified person designated by the City, at any reasonable time during business hours may make an examination at the Grantee's office of its books, accounts and records, germane to and for the purpose of verifying the data set forth in the statement required by Section 3(b)

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by and through their authorized officers on MAY 03 2010

SOUTHERN CALIFORNIA GAS COMPANY

By [Signature]
Michael R. Gault
 print name

ITS (circle one) Chairman/President/Vice President

AND

By [Signature]
CERYL A. STEPHENS
 print name

ITS (circle one) Secretary/Chief Financial Officer (Asst Secretary) Treasurer

CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California

[Signature]
 Mayor

[Signature]
 City Clerk

INITIATED AND APPROVED

[Signature]
 Director of Public Works

REVIEWED AND APPROVED

[Signature]
 City Administrator

APPROVED AS TO FORM

[Signature]
 City Attorney

4/22/2010

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss:
CITY OF HUNTINGTON BEACH)

I, JOAN L. FLYNN, the duly elected, qualified City Clerk of the City of Huntington Beach, and ex-officio Clerk of the City Council of said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing ordinance was read to said City Council at a **regular** meeting thereof held on **May 3, 2010**, and was again read to said City Council at a **regular** meeting thereof held on **May 17, 2010**, and was passed and adopted by the affirmative vote of at least a majority of all the members of said City Council.

AYES: Coerper, Hardy, Green, Bohr

NOES: Carchio, Dwyer, Hansen

ABSENT: None

ABSTAIN: None

I, Joan L. Flynn, CITY CLERK of the City of Huntington Beach and ex-officio Clerk of the City Council, do hereby certify that a synopsis of this ordinance has been published in the Huntington Beach Fountain Valley Independent on May 27, 2010.

In accordance with the City Charter of said City

Joan L. Flynn, City Clerk
Rebecca Los - Senior Deputy City Clerk

Joan L. Flynn
City Clerk and ex-officio Clerk
of the City Council of the City
of Huntington Beach, California