

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE GRANTING LS POWER GRID CALIFORNIA, LLC, A FRANCHISE TO CONSTRUCT, INSTALL, LAY, USE, MAINTAIN, OPERATE, REPAIR, IMPROVE, RENEW, RELOCATE AND REMOVE TRANSMISSION LINES AND APPURTENANCES FOR THE PURPOSE OF TRANSMITTING ELECTRICITY IN, ALONG, ACROSS, UPON, AND UNDER CERTAIN PUBLIC STREETS AND RIGHTS-OF-WAY WITHIN THE CITY OF SAN JOSE

WHEREAS, the City Council may grant a franchise pursuant to a procedure prescribed by ordinance or by State law (including Section 26001 of the Government Code and Division 3 (commencing at Section 6201) of the Public Utilities Code (each as amended)); and

WHEREAS, Chapter 15.32 of the San José Municipal Code sets forth the procedures applicable to City of San José (“City”) for the granting of gas and electric franchises by the City, including the procedure by which the City may grant a franchise to construct or use, poles, wires, conduits, and appurtenances for transmitting and distributing electricity for any purpose; and

WHEREAS, on December 12, 2025, LS Power Grid California, LLC, a Delaware limited liability company (“Franchisee”), submitted an application to the City pursuant to Section 15.32.030 of the San José Municipal Code requesting that it be granted an electric franchise; and

WHEREAS, Franchisee has agreed to provide certain public benefits to the City (as provided in **Section 3** below), pay statutorily required annual compensation to the City (as provided in **Section 32** below), and reimburse the City for the reasonable costs incurred by the City in relation to the preparation of this Ordinance and the review and inspection of the electric transmission facilities; and

WHEREAS, pursuant to Resolution No. [XXXXX], the City declared its intention to grant the franchise pursuant to this Ordinance and notice thereof was published as required by Chapter 15.32.040 of the San José Municipal Code; and

WHEREAS, pursuant to this Ordinance, Franchisee may construct and operate its electric transmission facilities and related appurtenances within the City; and

WHEREAS, this Ordinance provides the terms and conditions under which Franchisee may construct and operate its electric transmission facilities and related appurtenances; and

WHEREAS, the California Public Utilities Commission (“CPUC”) is the lead agency under the California Environmental Quality Act of 1970 (“CEQA”) and the City Council is the decision-making body for this Ordinance; and

WHEREAS, the City Council adopted a resolution (1) adopting the Power Santa Clara Valley Project Environmental Impact Report prepared by the CPUC (A.24-04-017; SCH No. 2024090200), (2) adopting the Power the South Bay Project Environmental Impact Report prepared by the CPUC (A.24-05-014; SCH NO. 2024071095), (3) making certain findings as the Responsible Agency for purposes of and pursuant to the provisions of CEQA, and (4) adopting a related Mitigation Monitoring and Reporting Program and Construction Impact Mitigation Plan, in connection with the approval of discretionary actions by the City necessary for the construction and operation of the Power Santa Clara Valley Project and the Power the South Bay Project;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Definitions

The definitions set forth in this Ordinance shall govern the application and interpretation of this Ordinance.

- A. “Actual Costs” means the direct costs associated with purchasing materials and services and paying personnel.
- B. “Administrative Costs” means the City's expenses for staff, equipment, supplies, and overhead associated with the administration, implementation, and enforcement of this Ordinance.
- C. “Applicable Law” means all present or future federal, state, municipal, or local laws, rules, regulations, ordinances, codes, orders, permit requirements, judgments, injunctions, or decrees or any judgment or order or decree by a court applicable to the Franchisee or any of its Facilities or activities.
- D. “City” means the City of San José, California.
- E. “City Clerk” means the City Clerk of the City.
- F. “City Council” means the City Council of the City of San José.
- G. “City Engineer” means the Director of Public Works of the City.
- H. “City Manager” means the City Manager of the City.

- I. "City Property" means the property or facilities owned by the City.
- J. "Claims" means all claims, losses, liabilities, causes of action, demands, damages, suits, judgments, debts, costs, expenses (including, but not limited to, attorney's fees and costs), fines, penalties, judgments, orders, injunctions, and liens of every kind and nature, including, but not limited to, claims relating to any Environmental Condition or any Release of any Contaminant, claims for inverse condemnation, claims for personal or bodily injury, wrongful death, injury to real or personal property, natural resources damages, and including claims based on active or passive negligence, gross negligence, contractual, statutory, or strict liability, or otherwise, and any claims seeking judicial or administrative relief, or relating to any administrative proceedings by any governmental agency, whether or not any such claim is ultimately defeated.
- K. "Code" means the San José Municipal Code.
- L. "Contaminant" means any material, substance, or constituent originating from the Facilities or from Franchisee's activities, whether solid, liquid, semi-solid, or gaseous in nature, including any hazardous substance or waste, hazardous material, chemical compound, petroleum (or fraction thereof), or any hydrocarbon substance, pollutant, or contaminant, as those terms are defined by any federal, state, or local law, rule, regulation, or order.
- M. "Day" means calendar day unless otherwise provided.
- N. "Department" means the Department of Public Works of the City.
- O. "Encroachment Ordinance" means Chapter 15.50 of Title 15 of the Code, or any successor ordinance or Code sections adopted by the City.
- P. "Environmental Condition" means the presence or evidence of the likely presence of any Contaminant in violation of Applicable Law and originating from the Facility or from Franchisee's activities, in surface water, groundwater, drinking water supply, soil, land surface, subsurface strata, or the air.
- Q. "Facility" or "Facilities" means all property owned, controlled, or used by the Franchisee that are located in or on the Street pursuant to the Franchise, including, but not limited to, electric transmission lines and grounding cables to collect and transmit electrical energy and such additional communications or other utility lines, cables, conduits, duct bank, wires, meters, monitoring equipment, boxes, or vaults, and other necessary and convenient equipment and appurtenances common in the transmission of electricity, whether installed by the Franchisee or not, erected, constructed, laid, operated, or maintained in, upon, over, under, along, or across any Street pursuant to any right or privilege granted by the Franchise.
- R. "Fire Chief" means the Fire Chief of the City.

S. “Franchise” means the rights granted to Franchisee as described in **Section 2** of this Ordinance.

T. “Franchisee” means LS Power Grid California, LLC, a Delaware limited liability company, or any Person to whom the Franchise is lawfully assigned, and any Person acting on behalf of the Franchisee, including its officers, employees, agents, consultants, and contractors.

U. “Franchise Fee” means the fee described in **Section 32** of this Ordinance.

V. “Ordinance” means this Ordinance granting the Franchise to Franchisee, unless some other ordinance is mentioned.

W. “Person” means any individual, person, firm, partnership, or corporation.

X. “Public Entity” means a county, city, district, local public body, state board, state commission, federal agency, or joint powers authority. Public Entity does not include any investor or other privately owned public utility.

Y. “Release” means any “release” (as that term is defined in 42 U.S.C. § 9601(22)), or “disposal” (as that term is defined in 42 U.S.C. § 6903(3)), or any discharge, active or passive migration, deposit, storage, burial, emplacement, seepage, filtration, or disposal of a Contaminant into the environment originating from any Facility or from Franchisee's activities.

Z. “Remedial Work” means all “Remedial Action” (as that term is defined in 42 U.S.C. § 9601(24)), and all other actions as are necessary or required to remediate a Release of any Contaminant or an Environmental Condition to a condition which would allow unimpaired and unrestricted use and development and would comply with Applicable Law, and including, but not limited to, all actions necessary to “Remove,” “Remedy,” or “Respond” (as those terms are defined in 42 U.S.C. § 9601(23), (24), and (25), respectively), a Release of a Contaminant or Environmental Condition.

AA. “Remediation Costs” means all Actual Costs and Administrative Costs incurred by the City, whether in house or by contract, in performing and monitoring any Remedial Work.

BB. “Shall” is mandatory; “may” is permissive.

CC. “Street” means any public street, road, highway, alley, lane, court, right-of-way, property, place, or other public easement, which now exists or may hereafter exist in the City and over which the City has the authority to grant a Franchise.

SECTION 2. Scope of Franchise

A. The City Council hereby grants this Franchise to Franchisee, to, in accordance with the terms hereof, construct, install, lay, use, maintain, operate, repair, improve, renew, relocate, and remove the Facilities in connection with the transmission of electricity necessary or convenient for the exercise of the Franchise in, along, across, upon, and under the Streets within the City.

B. Franchisee shall have no recourse whatsoever against the City or any official, officer, employee, or agent thereof for any loss, cost, expense, or damage arising out of any provision or requirement of this Franchise or the enforcement thereof. No privilege or exemption is granted or conferred by this Franchise except those specifically prescribed herein.

C. The following rules shall apply to the construction of this Ordinance unless the context requires otherwise: (i) the singular includes the plural, and the plural includes the singular; (ii) words imparting any gender include the other gender; (iii) references to statutes are to be construed as including all statutory provisions consolidating and amending, and all regulations promulgated pursuant to, such statutes; (iv) references to "writing" include printing, photocopy, typing, lithography, and other means of reproducing words in a tangible visible form; (v) the words "including," "includes," and "include" shall be deemed to be followed by the words "without limitation"; (vi) references to the introductory paragraph, recitals, articles, sections (clauses or subdivisions of sections), exhibits, appendices, annexes, or schedules are to those of this Ordinance unless otherwise indicated; (vii) references to agreements and other contractual modifications shall be deemed to include all subsequent amendments or other modifications to said instruments, but only to the extent such amendments or other modifications are permitted or not prohibited by the terms of this Ordinance; (viii) section headings in this Ordinance are included herein for convenience of reference only and shall not constitute a part of this Ordinance for any other purpose; (ix) references to Persons include their respective permitted successors and assigns and, in the case of governmental Persons, Persons succeeding to their respective functions and capacities; and (x) in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including," and the words "to" and "until" each means "to but excluding."

SECTION 3. Public Benefits.

As a condition of this grant of Franchise to make efficient use of the Streets and maximize the public benefits for residents and businesses in San José, Franchisee shall install with the Facilities one 2-inch nominal diameter conduit along certain segments of the Facilities and in-ground communications boxes in the vicinity of certain intersections, all as described in **Exhibit A** attached hereto ("Public Benefit Fiber Optic Communication Infrastructure Improvements"), which is attached hereto and incorporated by this reference, for the exclusive use of the City or the City's designated agent(s) for non-metallic fiber optic communications lines. Franchisee shall have the right to disallow any

other use that it believes may interfere or otherwise be incompatible with its use of the Facilities for electric transmission purposes. This requirement does not include any obligation for Franchisee to supply, install, splice, or provide communication utility lines or service or maintain such conduit or communications boxes, and the City acknowledges this requirement is not intended to compel Franchisee to undertake any activities that trigger incremental maintenance or utility regulatory requirements to which it would not otherwise be subject.

SECTION 4. Location of Facilities

Upon the completion of the construction of the Facilities, Franchisee shall provide the City Engineer with the “as-built” plans and specifications as required by **Section 16.B** of this Ordinance identifying the actual location of the Facilities. Franchisee shall simultaneously provide the City Engineer with a map depicting the actual location of the Facilities for the City Engineer's review.

SECTION 5. Above Ground Facilities

Nothing in this Ordinance shall be construed to permit the Franchisee to construct poles or other Facilities above ground, unless approval is obtained pursuant to Applicable Law.¹

SECTION 6. Nonexclusive Franchise

The granting of this Franchise shall not prevent the City from granting any similar franchise to any Person other than the Franchisee.

SECTION 7. Acceptance of Franchise

The Franchisee shall, within ninety (90) days after the adoption of this Ordinance, file with the City Clerk a written acceptance of the terms and conditions of said Ordinance. The Franchise shall be null and void if the written acceptance is not filed within the prescribed time.

SECTION 8. Term

A. The initial term of the Franchise shall be ten (10) years from the effective date of this Ordinance. The effective date of this Ordinance shall be at such time as described in **Section 33** of this Ordinance.

B. At the expiration of the initial term, the Franchise shall automatically renew for successive ten (10) year terms as long as the Facilities continue to be in use providing utility service. No less than one hundred eighty (180) days prior to the expiration of a term, the parties hereto shall commence review of the compensation hereunder and amend

¹ Note – Subject to confirmation (whether any Facilities are above ground).

Section 32 as appropriate to reflect the then prevailing valuation of the Franchise. If the parties are unable to agree upon such amendment prior to the expiration of the term, the Franchise shall automatically renew and Franchisee shall continue to pay the Franchise Fee at the rate applicable during the immediately preceding term until such time as the parties reach agreement on the updated compensation structure for the new term and an amendment is executed in respect of the same. Upon reaching agreement on the updated compensation structure and executing such amendment:

- (i) if the updated compensation structure results in higher Franchise Fees than were paid by Franchisee during the period between commencement of the new term and the date of the executed amendment, Franchisee shall pay to the City the difference between (a) the amounts actually paid and (b) the amounts that would have been due under the updated compensation structure, within sixty (60) days after the amendment becomes effective; or
- (ii) if the updated compensation structure results in lower Franchise Fees than were paid by Franchisee during the period between the commencement of the new term and the date the amendment becomes effective, the City shall credit the difference between (a) the amounts actually paid and (b) the amounts that would have been due under the updated compensation structure, against Franchisee's Franchise Fee obligations in subsequent payment periods until such overpayment amount has been fully applied.

SECTION 9. Forfeiture

The Franchise is granted and shall be held and enjoyed upon each and every condition contained in this Ordinance. The Franchise shall grant only those rights that are stated in plain and unambiguous terms. Failure or refusal to comply with any of the conditions of the Franchise, including the failure to comply with all Applicable Law, shall constitute grounds for the suspension or forfeiture of the Franchise subject to the terms and conditions of this Ordinance. The City Council, prior to any suspension or forfeiture of the Franchise, shall give to the Franchisee (in accordance with **Section 18** hereinafter) and any Mortgagee (in accordance with **Section 12** below) not less than ninety (90) days' notice (or such longer period of time as is reasonably necessary to cure the applicable default) in writing of any default thereunder. If the Franchisee does not, within ten (10) business days of receiving the written notice, begin the work of compliance or after such beginning does not prosecute the work with due diligence to completion, the City Council may hold a hearing, at which the Franchisee shall have the right to appear and be heard, and thereupon, but subject to **Section 12** below, the City Council may determine, in its sole discretion, whether such conditions are material and essential to the Franchise and whether the Franchisee is in default with respect thereto and may declare the Franchise suspended or forfeited, or whether the City Council will impose additional conditions on the Franchisee as an alternative to suspension or forfeiture. Notice of said hearing shall be given to the Franchisee and any Mortgagee required under **Section 12** below by certified mail not less than ten (10) business days before said hearing.

SECTION 10. State Highways

If any Street or portion thereof becomes a state highway, except for such rights as by law remain with the City, the State of California shall succeed to all rights reserved to the City by the Franchise. This **Section 10** does not apply to any change of location in a state highway for a temporary purpose.

SECTION 11. Eminent Domain

The Franchise granted hereunder shall not in any way to any extent impair or affect any right of the City to acquire the property of the Franchisee 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 abridge, either for a term or in perpetuity, the City's or the Franchisee's rights of eminent domain before any court or other public authority in any proceeding of any character. Notwithstanding the foregoing or anything contained in the Franchise granted hereunder, all Facilities shall remain the personal property of Franchisee, removable by Franchisee at any time during the term of the Franchise (subject to **Section 20** hereinafter).

SECTION 12. Assignment

A. The Franchisee shall not sell, transfer, assign or lease the Franchise or any part thereof, or allow another Person or entity (except the Franchisee's affiliates and contractors and other California electric utility companies adequately experienced and credentialed to operate the Facilities) to operate the Facilities subject to the Franchise, except with the prior written consent of the City Manager, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Franchisee may hypothecate the Franchise and/or Facilities without such consent and, in the event of foreclosure, a secured party or agent thereof (a "Mortgagee") may be assigned the Franchise and/or Facilities provided that: (a) the Facilities within the Streets are properly maintained; (b) the Mortgagee agrees in writing to be bound by the terms of the Franchise and not to further assign the Franchise without the consent of the City Manager; and (c) the Mortgagee pays to the City the required administrative fee to process the assignment. In no event shall Franchisee have the right to encumber, in any manner whatsoever, City's fee or other underlying ownership interest in the Streets subject to the Franchise.

B. Upon delivery to the City of notice of its name and address, and for as long as the lien of the Mortgagee exists, such Mortgagee shall be entitled to the following protections:

1. The City and Franchisee will not modify or terminate this Franchise without the prior written consent of the Mortgagee which consent will not be unreasonably withheld, conditioned or delayed.

2. Mortgagee shall have the right to do any act or thing required to be performed by Franchisee under this Franchise and any such act or thing shall be as effective to cure any default under this Franchise as if done by Franchisee itself.
3. To the extent Franchisee's failure to perform under this Franchise results in the City being afforded the right to terminate this Franchise pursuant to the terms hereof (each a "Default"), then the City will not terminate this Franchise unless it has first given notice of such uncured Default and its intent to terminate to Mortgagee and has given Mortgagee the same period after receipt of a written notice of Default to cure the Default as is given to Franchisee plus at least thirty (30) additional days to cure the Default to prevent such termination of this Franchise.
4. In the case of any termination of this Franchise, the City shall, upon written request of Mortgagee, made within sixty (60) days after such notice to Mortgagee, enter into a new franchise agreement with Mortgagee, or its designee, within twenty (20) days after receipt of such request. Such new franchise agreement shall be effective as of the date of the termination of this Franchise and shall be on the same terms and conditions of this Franchise.

C. All of the limitations, uses, obligations, covenants, restrictions, permissions, and conditions stated herein shall run with the terms of this Franchise and shall be binding on all parties having or acquiring any right, title, or interest in the Franchise, and shall inure to the benefit of and be binding upon each lawful successor in interest of the owners thereof. Each and all these limitations, uses, obligations, covenants, conditions, permissions, and restrictions shall be deemed to be and shall be construed, as equitable servitudes, enforceable by the City against any other owner, contractor, subcontractor, or supplier of Franchisee and by Franchisee against the City.

SECTION 13. City Officers

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

SECTION 14. City Approval of Location of Facilities

Franchisee may not install or operate any Facilities in any Street within the City without first obtaining the prior written approval of the City Engineer through the issuance of any necessary encroachment permit. Franchisee acknowledges that as of the effective date of this Ordinance, Franchisee is aware of all governmental requirements, site and physical conditions (including sub-surface conditions) to the best of its knowledge through

reasonable efforts, and other matters affecting the use and condition of any Street in which the Facilities are to be located.

SECTION 15. Release of Products or Contaminants

Notwithstanding any other provision herein, in the event of Release of a Contaminant by Franchisee or from any Facility of Franchisee or the discovery of an Environmental Condition caused by Franchisee or any Facility of Franchisee, Franchisee shall immediately conduct such Remedial Work and pay all Remediation Costs, at its sole expense, as is necessary to fully mitigate and remediate the same in accordance with all Applicable Law; provided, however, notwithstanding the foregoing to the contrary, that Franchisee shall have no obligation or liability for (a) any Release preexisting the grant of this Franchise or any Environmental Condition not otherwise caused by Franchisee. In the event that Franchisee fails to perform necessary remediation work in accordance with Applicable Law as required by any final Remedial Action plan approved by the regulatory agency with oversight responsibility, City may commence a nuisance abatement action or take any other legal action the City deems appropriate in the circumstances to cause the conduct of the Remedial Work and, as may be applicable, to recover any and all Remediation Costs.

SECTION 16. General Requirements

A. Hazardous Substance Testing. Franchisee shall, upon request, provide to the City the results of any hazardous substances testing within the Street conducted during construction of any Facilities.

B. Plans and Specifications. Franchisee shall provide to the City Engineer an electronic copy in PDF and AutoCAD file format of “as-built” plans and specifications for its Facilities within the Street no later than one hundred eighty (180) days after the Facilities have been fully constructed. Franchisee shall maintain for the term of this Ordinance a current and accurate set of maps and plans showing all of the Facilities as installed. Franchisee shall make such maps and plans available to the City at no cost in order to facilitate other projects within the Streets and for public safety purposes; notwithstanding the foregoing, Franchisee shall not be required to make information available to the public which, in its sole discretion, may compromise sensitive details of the electrical grid.

C. Fire Risk Training. Franchisee shall annually meet with fire department staff having fire suppression responsibilities for the Facilities to discuss and review contingency plans for emergencies.

D. Damage to Facilities. Franchisee shall promptly repair any damage to its Facilities. If any private property shall be damaged by damage to the Facilities or by reason of any cause arising from the operation or existence of the Franchise, Franchisee shall, at its own cost and expense, immediately repair and restore such private property to as good

Chesterfield, MO 63017
Attn: Asset Manager

and

LS Power Grid California, LLC
16150 Main Circle Dr., Ste. 310
Chesterfield, MO 63017
Attn: Legal Department

SECTION 19. Access to Records and Property

Upon request, the Franchisee shall permit the City or its duly authorized representative to examine all of its Facilities, together with any appurtenant property of the Franchisee, provided that Franchisee shall be entitled to accompany (through an agent of Franchisee's choosing) City or its duly authorized representative during any such inspection and City or its duly authorized representative shall adhere to all safety and security measures required by Franchisee. At Franchisee's expense, Franchisee's maintenance and repair records concerning its operations under this Franchise shall be provided to the City for examination and copying at City Hall located at 200 East Santa Clara Street in San José, within a reasonable time after City's request, during normal business hours.

SECTION 20. Removal or Abandonment of Facilities

A. Subject to Applicable Law, at the time of the expiration (unless renewed), revocation, or termination of this Franchise, or the permanent discontinuance of the use of its Facilities, or any portion thereof, the Franchisee shall, within thirty (30) days thereafter make written application to the City Engineer for authority to either abandon all or a portion of such Facilities in place or to remove all or a portion of such Facilities. For purposes of this **Section 20**, "permanent discontinuance" shall mean for a continuous period of more than one calendar year after the completion of the initial construction of the Facilities, the Facilities have either: (i) not been in use or (ii) have not been functional. Thereupon the City Engineer shall determine whether any abandonment or removal is deemed necessary at some or all locations and whether any abandonment or removal which is thereby proposed may be affected without detriment to the public interest or under what conditions such proposal of abandonment or removal may be safely affected and shall then notify the Franchisee according to such requirements as shall be specified in the City Engineer's order. Within one hundred eighty (180) days thereafter, or such other time as the City and Franchisee deem reasonable, Franchisee shall, pursuant to such order of the City Engineer, either (i) remove all or a portion of such Facilities; or (ii) abandon in place all or a portion of such Facilities in accordance with all conditions prescribed.

B. The Franchisee shall pay to the City the Actual Costs and Administrative Costs of all reasonable tests required to determine whether the Facilities shall be abandoned or removed.

C. If any Facilities to be abandoned in place, subject to prescribed conditions, are not abandoned in accordance with all of such conditions, then the City Engineer may make additional appropriate orders, including, if deemed appropriate, an order that the Franchisee shall remove all such Facilities. If the Franchisee fails to comply therewith, the City Engineer may cause said Facilities to be removed at the Franchisee's expense, and the Franchisee shall pay to the City the Actual Costs and Administrative Costs of removing the Facilities.

D. If the Franchisee applies for authority to abandon all or a portion of its Facilities in place, and the City Engineer determines that abandonment in place of all or part of such Facilities may be affected without detriment to the public interest, the Franchisee shall pay to the City the Actual Costs and Administrative Costs related to the abandonment.

E. Within one hundred eighty (180) days following the date on which any Facilities have been fully removed or abandoned under the Franchise, the Franchisee shall file a plan with the City Engineer showing the location, depth, and size of the Facilities so removed or abandoned.

SECTION 21. Appeal

Any decision made by the City Engineer pursuant to authority delegated in this Ordinance may be appealed by Franchisee to the City Manager. For purposes of seeking judicial review, the decision of the City Manager shall be final when notice of the decision is given to the Franchisee in accordance with Section 1.04.140 of the Code.

SECTION 22. Maintenance and Replacement

A. Maintenance Requirements. All Facilities shall be maintained in a good workman-like manner and in conformity with Applicable Law.

B. Replacement. Any replacement of Facilities shall be constructed or installed in compliance with Applicable Law. All such reinstallations or replacements shall be reviewed by the City Engineer as to the most desirable location in the Streets of the City and his or her decision shall be final and binding on the Franchisee subject to appeal pursuant to **Section 21**.

C. Permits. Where the provisions of any Applicable Law, which shall be in force at the time, require the issuance of an excavation, encroachment, or other type of permit, the Franchisee shall not commence any excavation or encroachment work under the Franchise until it shall have obtained such permits, except in cases of emergency affecting public health, safety, or welfare or the preservation of life or property, in which

case the Franchisee may immediately address the emergency but shall apply for such permits as soon as practicable thereafter. The Franchisee's application for a permit under Applicable Law shall show the length and proposed location of the Facility intended to be installed, and such other information as the Department may require. The Franchisee shall pay all permit inspection fees established by City Council resolution to the Department.

D. Work on and Restoration of Street. The work of constructing, replacing, maintaining, repairing, relocating, or removing Facilities authorized under the provisions of this Ordinance in, over, under, along, or across any Street shall be conducted to minimize hindrance to the use of the Street for purposes of travel, and as soon as such work is completed, all portions of the Street which have been excavated or otherwise damaged thereby shall promptly and in a workman-like manner be repaired, replaced, or restored and placed in as good condition as the same was before the commencement of such work. All restoration, relocation, repair, or replacement work shall be done to the satisfaction of the City Engineer at the expense of the Franchisee in accordance with all Applicable Law, including, but not limited to, the Encroachment Ordinance. All work within the Street shall be done in accordance with the then current City standard details and specifications.

In the event that the Franchisee shall fail or neglect to commence to make such Street repair, replacement, or restoration work and complete such work within a period of time approved by the City Engineer, then ten (10) business days after notice therefor has been given Franchisee by the City Engineer, the City may repair, replace, or restore said Street at the expense of Franchisee. The Franchisee agrees to pay to the City the Actual Costs and Administrative Costs of performing such work.

E. Failure to Timely Comply. Whenever the Franchisee fails to complete any work required by the terms and conditions of the Franchise, and the permits issued thereunder, within the time limits required thereby and hereby, the City may complete or cause to be completed said work in compliance with Applicable Law at the expense of the Franchisee. The Franchisee agrees to pay to the City the Actual Costs and Administrative Costs of performing such work.

F. Completion Statement. Upon the completion of the construction of any Facilities constructed pursuant to the Franchise after the effective date of this Ordinance, the Franchisee shall submit a statement to the City Engineer, identifying the permit or permits issued by the Department, the total length, material, and diameter of the Facilities (as applicable), the construction of which was authorized under such permit or permits, and such details of the Facility as installed.

G. Facilities. The Franchisee shall have the right to construct, maintain, and repair such Facilities as may be necessary or convenient for the proper maintenance and operation of the Facilities under this Franchise, and said Facilities within the Street shall be kept below or flush with the surface of the Street and so located as to conform to any

ordinance, rule, or regulation of the City, or of any permit issued by the Department in regard thereto and shall not interfere with the use of the Street for travel. The Franchisee shall have the right, subject to Applicable Law, to make all necessary excavations in said Streets for the construction, maintenance, and repair of said Facilities; provided, however, that the Franchisee shall first obtain an encroachment permit in accordance with the Encroachment Ordinance from the Department for doing any such work.

H. Repair. The Franchisee shall obtain an encroachment permit in accordance with the Encroachment Ordinance to perform ordinary repair work and emergency repair work.

I. Traffic Hazards and Nuisances. In order to minimize traffic hazards and public nuisances arising out of Franchisee's installation and operation of the Facilities pursuant to this Franchise within the Street, Franchisee shall ensure that adjacent properties and improved surfaces of surrounding streets stay substantially free and clear of silt, tracked mud, dust, and the like, coming from or any way related to its Facilities. In the event Franchisee fails to comply with this condition, Franchisee grants the City the rights to take or cause to be taken, without prior notice to Franchisee, immediate corrective action, with all Actual Costs incurred by City to be reimbursed by Franchisee upon City's written demand.

J. Facilities Location. Franchisee shall make reasonable efforts to identify the locations of its underground facilities, for example, through the use of detectable underground warning tape.

SECTION 23. Relocation/Repair

A. The City Engineer shall have the right to require relocation and/or repairs of the Facilities for any public project, including, but not limited to, the construction, repair, relocation, or new installation of any aboveground or underground City facility, utility, storm drain, sewer, waterline, or roadway improvement (such as any lawful change of grade, alignment, or width of any Street) provided that nothing in this **Section 23** shall be deemed a waiver by Franchisee of any of its rights related to the foregoing (including, but not limited to, arising due to Franchisee being a public utility). "Public project" means projects initiated by a Public Entity. The Franchisee shall relocate/repair its Facilities, or portion thereof, to the reasonably nearest alternative location or other location in the Street mutually agreeable to the City and the Franchisee, either permanently or temporarily, as is determined by the City Engineer and within the reasonable time required by the City Engineer, it being acknowledged that relocation on an expedited basis may not be practicable. Said relocation/repair shall be accomplished at the Franchisee's sole expense.

B. If the Franchisee fails to relocate its Facilities within the reasonable timeline set forth in the City Engineer's notice of relocation or repair, or to complete construction and/or site restoration, the City may, provided that it complies with Applicable Law, cause

the work to be done, and the Franchisee shall reimburse the City or other Public Entity for such cost within sixty (60) days after presentation to Franchisee of an itemized account of such costs. The Franchisee shall hold harmless the City, its officers, contractors, agents, and employees from any liability which may arise or be claimed to arise from the moving, cutting, or alteration of any of the Facilities, or the turning on or off of utilities, including water, oil, or other liquid, gas, or electricity required to be accomplished by the City as a result of the Franchisee's failure to relocate said Facility by the date established by the City as provided above.

SECTION 24. Emergency Preparedness and Response

A. Emergency Response Plan. Franchisee, at its sole cost and expense, shall provide to the City its Emergency Response Plan (the "Plan") that analyzes the risks associated with Franchisee's Facilities and identifies the monitoring, inspection, and emergency response procedures that Franchisee will maintain to ensure there will be no detrimental impact to City's facilities or the public at least 90 days prior to the initial energization of the Facilities. The Plan shall specifically include procedures which Franchisee has established for informing local fire and other City emergency personnel of steps to take in the event of an emergency. The Plan shall be subject to the annual review and comment by the City Manager or designee, and shall contain all of the following information:

1. A diagram showing the as-built or modified locations of the Facilities, subject to applicable energy infrastructure information confidentiality requirements.
2. A description of the Facilities, including sufficient technical information to identify fire extinguishing procedures.
3. A description of the potential hazards of the Facilities and the mitigation actions to reduce such hazards. Any mitigation action that may affect the surrounding area must be approved by the City Engineer.
4. Other information which may be validly required in conformance with Applicable Law and by the City Council and/or City Manager.

B. Changes to Plan. Franchisee shall promptly notify the City Engineer and Fire Chief of any changes in the procedures previously established in the Plan, if not previously listed and reported by Franchisee to the City Engineer and Fire Chief.

C. Wildfire Mitigation Plan. Franchisee shall provide to the City its Wildfire Mitigation Plan that details risks and wildfire prevention actions associated with the Facilities.

D. Emergency Contact. At all times during the term of this Franchise, Franchisee shall maintain on a twenty-four (24) hour basis personnel available to facilitate the de-energization of the Facilities for the purpose of responding in the event of an emergency resulting from an earthquake, fire, flood, explosion, an act of war or terrorism, civil

disturbance, or other cause. Franchisee shall at all times maintain in the offices of the City Clerk, City Engineer, and the responsible fire department an emergency telephone number whereby and through such number such emergency contact may be reached.

E. City Mitigation of Emergencies. In the event of an emergency, or where Facilities create or are contributing to an imminent danger to health, safety, or property (“Emergency”), City shall first use all reasonable efforts under the circumstances to contact Franchisee using the contact information provided by Franchisee to City (as the same may change from time to time) for Franchisee to take emergency action. In the event that City is unable to contact Franchisee using such contact information, then City shall have the right to take appropriate action(s) to mitigate such Emergency. Any mitigation actions taken by the City in such circumstance are at Franchisee's expense, provided that Franchisee's acts or omissions or any disaster (such as an earthquake, fire, flood, explosion, an act of war or terrorism, civil disturbance, or other cause) directly or indirectly caused the Emergency. Such expenses shall consist of the Actual Costs and Administrative Costs of such mitigation undertaken by City.

SECTION 25. Reservation of City Rights

A. There is hereby reserved to the City every right and power which is required or permitted to be herein reserved or provided by any provision in federal or state law or City ordinance, resolution, or regulation, and Franchisee by its acceptance of this Franchise agrees to be bound thereby and to comply with any action or requirement of the City in its exercise of any such power. Neither the granting of this Franchise nor any provision hereof shall constitute a waiver or bar to the exercise of any governmental right or power of the City.

B. The Franchise herein granted to Franchisee, and all rights and privileges granted thereunder, are and shall be subordinate to the right of the City, and of the general public, to use and occupy, and to any occupancy by them, of any public right-of-way for any private or public uses or purposes; provided, that any such uses, other than uses consistent with those as of the effective date of this Franchise, could not materially interfere with the Facilities or Franchisee's exercise of its rights under this Franchise.

SECTION 26. Indemnification

A. The Franchisee shall indemnify to the fullest extent permitted by law, and defend and hold the City, and its elected officials, officers, employees, and agents (hereinafter “Indemnified Parties”) free and harmless from and against all Claims (if customarily insurable on commercially reasonable terms) arising from or in any way related to the Franchise or activities conducted by or on behalf of Franchisee under the Franchise (“Events”).

B. The Indemnified Parties shall have the right to approve the attorneys selected by Franchisee to represent them, such approval not to be unreasonably withheld or

conditioned. In the event Franchisee does not provide attorneys acceptable to the Indemnified Parties, the Indemnified Parties may select attorneys of their choice, so long as the attorney's rates are reasonable for services provided in the San Francisco Bay Area.

C. The aforesaid hold harmless and indemnification obligation shall apply to all Claims of every kind, suffered, or alleged to have been suffered, by reason of any of the aforesaid Events, regardless of whether or not Indemnified Parties have prepared, supplied, or approved of plans submitted in connection with work to be performed in the Street and irrespective of the grant of permission contained herein and irrespective of Indemnified Parties' inspection of the works performed or the improvements constructed within the Street. Said indemnification and hold harmless obligation shall not include damages, liabilities, and/or Claims to the extent arising out of or caused by any of the Indemnified Parties' negligence, willful misconduct, or violation of law.

SECTION 27. Insurance

A. Franchisee, at its sole expense, throughout the duration of this Franchise (or for such longer periods as are specified in this **Section 27**), shall maintain or cause to be maintained insurance to cover Claims arising out of or in connection with any work or other operations under this Franchise. This **Section 27** identifies the insurance requirements with which Franchisee shall comply; however, the insurance requirements shall not relieve Franchisee of any other performance responsibilities under this Franchise (including the indemnity requirements), and Franchisee may carry, at its own expense, any additional insurance it deems necessary or prudent. Prior to the commencement of any work or other operations under the Franchise, the Franchisee shall furnish certificates of insurance affecting required coverage to the City. Thereafter, Franchisee shall provide substitute certificates and endorsements no later than thirty (30) days after the expiration date of any insurance policy required by this Franchise.

B. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001, including products and completed operations and explosion, collapse and underground coverages, and coverage for economic loss; and

2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned, and hired automobiles; and

3. Contractor's Pollution Liability with respect to initial construction of Facilities and, thereafter, site-specific Pollution Legal Liability, insurance applying to both sudden conditions for all operations, completed operations, and professional services, and including coverage for on-site and off-site bodily injury, property damage and, clean up

and defense costs and economic loss, such coverage may be satisfied by contractor performing the work; and

4. Workers' Compensation insurance if and as required by the California Labor Code and Employer's Liability insurance; and

5. ~~Builder's Risk insurance during construction/replacement of Facilities, and, with respect to completed Facilities, property, insurance covering the Facilities after completion, in each case, providing on an "all risk" coverage for the Facilities basis including flood coverage and excluding earthquake coverage.~~

6. There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

C. Minimum Limits of Insurance. ~~Franchisee shall maintain limits no less than: Limits may be satisfied through an excess liability (umbrella) policy, and shall be no less than:~~

1. Commercial General Liability: ~~\$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit \$1,000,000 per occurrence and \$2,000,000 in the aggregate annually.~~

2. Automobile Liability: ~~\$5,000,000 \$1,000,000~~ per accident for bodily injury and property damage.

3. Pollution Liability: ~~\$1,000,000 per contamination incident \$5,000,000 per occurrence and \$5,000,000 in the aggregate annually.~~

4. Workers' Compensation: coverage as required by the State of California, and Employer's Liability \$1,000,000 per accident.

5. Builder's Risk and Property: ~~one hundred percent (100%) of the full replacement value of the Facilities, with the exception of flood coverage which shall not be less than \$5,000,000 full replacement value, or an acceptable loss limit consistent with good utility practice.~~

6. ~~Property insurance after completion of Facilities: \$5,000,000. An excess liability (umbrella) policy in an amount equal to, and not less than, \$20,000,000 per occurrence and in the aggregate.~~

~~Any limits requirements may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.~~

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager, such approval may not be unreasonably withheld. The City's Risk Manager may from time to time request that Franchisee's insurer reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and agents. Upon receipt of such a request of the City's Risk Manager, Franchisee shall undertake commercially reasonable efforts to cause its insurers to institute such changes. If Franchisee is unable to cause its insurers to institute such changes, the City's Risk Manager may require that the Franchisee provide a cash deposit or procure a bond or other form of acceptable security guaranteeing payment of losses and related investigations, claim administration, and defense expenses in an amount reasonably specified by the City's Risk Manager.

E. Endorsements. The insurance policies shall be endorsed (or shall contain provisions) as follows:

1. Commercial General Liability, Automobile Liability, and Pollution Liability.

a. The City, its officers, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Franchisee; products and completed operations of Franchisee; premises owned, leased, or used by Franchisee; and automobiles owned, leased, hired, or borrowed by Franchisee. The scope of protection afforded to City, its officers, employees, and agents shall extend to cover their concurrent negligence.

b. Franchisee's insurance coverage shall be primary insurance as respects City, its officers, employees, and agents. Any insurance or self-insurance maintained by City, its officers, employees, or agents shall be excess of Franchisee's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies by Franchisee shall not affect coverage provided City, its officers, employees, or agents.

d. Coverage shall state that Franchisee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

e. Coverage shall contain waiver of subrogation in favor of the City, its officers, employees, and agents.

2. Workers' Compensation and Employers' Liability; Builder's Risk and Property. Coverage shall contain waiver of subrogation in favor of the City, its officers, employees, and agents.

3. Claims Made Coverages. If coverage is obtained on a “claims made” policy form, the retroactive date shall precede the date services were initiated with the City and the coverage shall be maintained for a period of three (3) years after termination of services under this Agreement.

43. All Coverages. Each insurance policy required by this Franchise shall, to the extent reasonably available in the commercial insurance market, state that coverage shall not be suspended, voided, canceled, or reduced in limits or coverage except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium and no notice shall be required for coverage expiration in accordance with its terms.

F. Duration.

1. Commercial General Liability (or the completed operations component thereof) and Pollution Liability coverages shall be maintained continuously for a minimum of three (3) years after the later to occur of expiration of this Franchise or completion of work or other operations under this Franchise.

2. If any of such coverages, which are permitted to be written on a claims-made basis, are written on a claims-made basis, the following requirements apply:

a. The policy retroactive date must precede the effective date of this Franchise.

b. If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, Franchisee must purchase an extended reporting period equal to or greater than three (3) years after completion of work under this Franchise.

G. Acceptability of Insurers. All insurance companies providing coverage to Franchisee shall have an A.M. Best's rating of not less than “A:VII”.

H. Verification of Coverage. Franchisee shall furnish City with certificates of insurance and with endorsements affecting coverage required by this Franchise. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in PDF format to: Riskmgmt@sanjoseca.gov, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San José - Finance Department
Risk Management
200 East Santa Clara Street, 14th Floor

San José, CA 95113-1905]

City reserves the right to require complete copies of all required insurance policies at any time; provided, Franchisee may redact sensitive information not required to demonstrate compliance with this **Section 27**.

All policies, endorsements (including, without limitation, all endorsements required above, and any endorsement reducing the scope of coverage provided by any insurance policy), and certificates (including, without limitation, those evidencing coverage for third parties as are specified in **Paragraph I**, below), shall be subject to review and reasonable approval by the City's Risk Manager as to form and content; however, the failure to do so shall not operate as a waiver of these insurance requirements.

These insurance requirements are subject to amendment or waiver if so approved in writing by the City's Risk Manager.

City reserves the right to review these insurance requirements from time to time and at any time during the term of this Franchise and to make reasonable adjustments thereto when deemed necessary and prudent by the City's Risk Manager based upon (by way of example only) changes in law, principles of sound risk management practice, or inflation. Should the City's Risk Manager request adjustments in writing to Franchisee, Franchisee shall use commercially reasonable efforts to cause its insurers to implement such adjustments.

I. Coverage for Third Parties. Franchisee shall include all contractors and other parties with whom it is contracting (whether directly or indirectly) in connection with work or other operations under this Franchise ("Third Parties") as insured under its policies or shall obtain separate certificates and endorsements for each such Third Party evidencing their compliance with these insurance requirements, including, without limitation, additional insured's coverage and waivers of subrogation. Notwithstanding the generality of the foregoing, the City's Risk Manager may from time to time approve amendments of these requirements as they apply to Third Parties (such as, by way of example only, reduction of limits), provided the Franchisee has requested such amendment in writing and the City's Risk Manager has determined in its sole but reasonable discretion that such amendment is acceptable based upon principles of sound risk management practice.

J. Self-Insurance. Notwithstanding anything to the contrary herein, to the extent (i) Franchisee is a public utility regulated by the California Public Utilities Commission ("CPUC"), and (ii) Franchisee maintains a reasonable and prudent self-insurance program that is subject to CPUC oversight, the requirements set forth in this **Section 27** shall not be applicable; provided, that if Franchisee intends to rely upon a self-insurance program in lieu of the insurance otherwise required by this **Section 27**, then upon request by the City, Franchisee shall certify that the conditions set forth in the foregoing clauses

(i) and (ii) are satisfied and Franchisee shall provide reasonable supporting documentation, including a detailed description of the applicable self-insurance program.

SECTION 28. Faithful Performance Security

On or before the effective date of this Ordinance, Franchisee shall file and thereafter at all times during the life of the Franchise keep on file with the City Clerk either (i) a corporate surety bond in a form approved by the City Attorney running to the City in the penal sum of five hundred thousand dollars (\$500,000), with a surety licensed to do business in California, (ii) an irrevocable letter of credit in the amount of five hundred thousand dollars (\$500,000) in a form approved by the City Attorney with the City as beneficiary, or (iii) a cash deposit in the amount of five hundred thousand dollars (\$500,000) (the option selected by Franchisee hereinafter being referred to as the "Security"). The Security shall be drawable by the City if the Franchisee defaults in the performance of any material obligation hereunder and fails to cure such default within the applicable cure period, as reasonably determined to be necessary by the City to cure such default. If said Security is not filed prior to the effective date of this Ordinance, the award of the Franchise may be set aside, and this Ordinance may be repealed at any time prior to the filing of said Security and any money paid in consideration for the award of the Franchise shall be deemed forfeited. In the event that said Security, after it has been so filed, shall at any time during the life of the Franchise become insufficient, in the reasonable opinion of the City Engineer, the Franchisee agrees to renew said Security within thirty (30) days after written notice to do so from the City Engineer.

SECTION 29. Liability

The Franchisee shall be liable to the City for damage to City Property, including, but not limited to, any Street, or any other cost incurred by the City caused by Franchisee, any of the Facilities, or by any Person acting on Franchisee's behalf. Except as expressly provided herein, the Franchisee shall be held to a standard of strict liability to City for any activity conducted pursuant to or in connection with the Franchise. The Franchisee's strict liability shall extend to any costs, including Remediation Costs, incurred by the City for control or abatement of any Environmental Condition, Release of Contaminants, Remedial Work, or resulting from any activity conducted by or on behalf of Franchisee pursuant to the Franchise, and in each case for which Franchisee is responsible pursuant to the provisions of this Ordinance.

SECTION 30. City Costs

A. Franchisee shall reimburse the City for all Actual Costs and Administrative Costs incurred by the City related to the development and approval of this Ordinance and the granting of the Franchise, which includes, but is not limited to, drafting and negotiating the Ordinance, preparing reports, statements, and studies pursuant to CEQA and any similar federal statute, or any successor statute, and for all advertising and publishing costs.

B. Franchisee shall reimburse the City for all Actual Costs and Administrative Costs incurred by the City, in connection with the administration, implementation, and enforcement of this Franchise no later than thirty (30) days after the date of City's invoices.

C. The grant of this Franchise and its continued effectiveness shall be conditioned upon Franchisee's full payment of the City's Actual Costs and Administrative Costs relating therefor. Payment of the City's Actual Costs and Administrative Costs incurred by the City in relation to the Franchise is not and will not be considered in any manner as compensation to the City for occupation of the Streets.

SECTION 31. Damage to City Property

Any damage done to City Property by Franchisee in exercising any right, power, or privilege under this Franchise, or in performing any duty under or pursuant to the provisions of this Ordinance, shall be promptly repaired by Franchisee at its sole cost and expense as it reasonably was before such damage was incurred, to the satisfaction of the City Engineer. If the Franchisee, within ten (10) business days after receipt of written notice from the City instructing it to repair such damage, shall fail to commence to comply with such instructions, or, thereafter, shall fail to diligently prosecute such work to completion, then the City immediately may do work necessary to carry out said instructions at the cost and expense of the Franchisee, which cost and expense, by the acceptance of the Franchise, the Franchisee agrees to pay upon demand and receipt of reasonably acceptable supporting documentation. If such damage constitutes an immediate danger to the public health or safety requiring the immediate repair thereof, the City without notice may repair such damage, and the Franchisee agrees to pay all Actual Costs and Administrative Costs incurred.

SECTION 32. Compensation

A. Franchise Fee Amount. As consideration for the Franchise granted, the Franchisee shall pay to the City in lawful money of the United States a franchise fee (the "Franchise Fee") for each year of the term of the Franchise, to be calculated as follows:

Franchise Fee = 2.3% × Gross Annual Receipts Arising from Franchise

where:

"Gross Annual Receipts Arising from Franchise" = R × (GPf / GPt)

- **"R"** = Franchisee's total gross annual revenue requirement pursuant to its formula rates regulated by the Federal Energy Regulatory Commission or its successor

- **"GPF"** = Franchisee's electric transmission gross plant in service located within City public rights-of-way pursuant to this Franchise
- **"GPT"** = Franchisee's total electric transmission gross plant in service

B. Franchise Fee Payment. Within three (3) months after the expiration of each calendar year, or fractional calendar year, during which Franchisee has received revenues for Facilities arising from this Franchise (i.e., located within City public rights-of-way), Franchisee shall submit to the City Engineer a statement containing each of the values described in **Section 32.A** in a form mutually agreeable to the Parties and calculating the Franchise Fee for the preceding calendar year (the "Franchise Fee Statement"). The Franchise Fee is due on the date which is fifteen (15) days after the date of Franchisee's submission of the Franchise Fee Statement.

C. Penalty/Late Charge. If Franchisee remits the Franchise Fee more than thirty (30) days after the date on which it is due, then there shall be immediately due as an additional payment a sum equal to 3% of the delinquent amount, and the delinquent amount shall accrue interest at 10% per annum until paid in full.

D. Publication Costs. Franchisee shall pay to the City within thirty (30) days after receiving a statement therefor, the advertising and publishing costs stated therein, including the cost of publishing this Ordinance, if necessary, incurred in connection with the granting of this Franchise.

E. No Waiver of Franchisee's Liability or Obligations. Franchisee's payment of the Franchise Fee shall not constitute a waiver or release, nor relieve the Franchisee, in whole or in part, of any of its liability under the terms of this Franchise and/or Applicable Law. Nothing contained in this **Section 32** shall constitute a waiver or relinquishment by Franchisee of any of its rights or defenses under this Franchise and/or Applicable Law.

F. Records. Franchisee shall keep and preserve for a period of five (5) years subsequent to the date of the most recent Franchise Fee Statement all the records necessary to determine the amount of such Franchise Fee.

SECTION 33. Effective Date

This Ordinance shall take effect when the Ordinance has been adopted by the City Council and acceptance pursuant **Section 7** of this Ordinance has been filed by Franchisee.

SECTION 34. Time

Time is of the essence. Franchisee shall not be relieved of its obligation to promptly comply with any provision hereof by any failure of the City to enforce prompt compliance with the same or any other provision.

SECTION 35. Cumulative Remedies

No provision herein made for the purpose of securing the performance 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 procedures herein provided, in addition to those provided by Applicable Law, shall be deemed to be cumulative.

SECTION 36. Amendments

To the extent not contrary to Applicable Law and not resulting in a material deprivation of Franchisee's rights or modification of Franchisee's obligations under this Ordinance, the City Council may amend this Ordinance from time to time if required by any amendments to its Municipal Code of general application to electric utility franchises in the City, provided said amendment does not result in a forfeiture of the Ordinance without following the procedures set forth in **Section 9**.

SECTION 37. Severability

If any part of this Ordinance or the application thereof to any Person or circumstances is for any reason held invalid by a court of competent jurisdiction, the validity of the remainder of the Ordinance or the application of such provision to other Persons or circumstances shall not be affected.

SECTION 38. Survival

Franchisee's obligations contained herein that by their nature would continue beyond the termination or expiration of this Ordinance, including, without limitation, the obligations set forth in **Sections 15** (Release of Products or Contaminants), **20** (Removal or Abandonment of Facilities), **23** (Relocation/Repair), **and 26** (Indemnification), shall survive termination or expiration.

SECTION 39. Governing Law

California law governs the construction and enforcement of this Ordinance.

SECTION 40. Disputes

Any litigation resulting from this Ordinance will be filed in and resolved by a federal or state court in California.

SECTION 41. Recordation

SAW:AFS:AHT
3/13/2026

Franchisee and its successors and/or assigns shall have the right to record this Ordinance, the granting Franchise or a Memorandum in the official records of the County of Santa Clara. Upon expiration or termination of the Franchise, Franchisee shall execute, acknowledge and record a quitclaim of its rights under the Franchise.

PASSED FOR PUBLICATION of title this _____ day of _____, 2026, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk