ANALYSIS

This ordinance amends the electrical transmission and distribution franchise granted to Southern California Edison Company, a California corporation ("Franchisee"), by Ordinance No. 7062, as amended, to extend the term of the franchise through June 30, 2011, and to update the requirements for the payment of an annual franchise fee and municipal public lands use surcharge to the County. Additionally, the County and Franchisee will be entering into a supplemental agreement to implement a coordinated program for graffiti prevention and the removal of graffiti from Franchisee's above-ground facilities located in County rights-of-way.

ROBERT E. KALUNIAN
Acting County Counsel

By
GRACE V. CHANG
Senior Deputy County Counsel
Contracts Division

GVC/

[Requested: 11/12//09]
[Revised: 11/19/09]

ORDINANCE NO. _____

An ordinance amending Ordinance No. 7062, as amended, relating to the electrical transmission and distribution franchise granted to Southern California Edison Company, a California corporation.

The Board of Supervisors of the County of Los Angeles ordains as follows:

WHEREAS, Southern California Edison Company, a California corporation (the "Franchisee"), installs, maintains, upgrades and operates electric facilities for the transmission, distribution, and sale of electricity in locations throughout the State of California, including within the public right-of-way in the unincorporated territory of the County of Los Angeles (the "County") pursuant to franchise Ordinance No. 7062, as amended (the "Franchise"), which became effective on December 28, 1956, and will expire December 31, 2009; and

WHEREAS, County is finalizing an audit of the annual franchise fees and municipal public lands use surcharges paid to County by Franchisee for the calendar year 2001 through the calendar year 2005, inclusive (the "Audit"), and nothing contained herein shall impact or affect County's right to complete the Audit and collect any monies that may be payable to County pursuant to the Audit; and

WHEREAS, County is in the process of amending relevant provisions of its County Code respecting the granting of franchises; and

WHEREAS, through December 31, 2009, Franchisee continues to pay annually to County, as set forth in Section 23 of the Franchise, a franchise fee of two percent

(2%) of the gross annual receipts arising from Franchisee's use, operation or possession of the Franchise, pursuant to Division 3, Chapter 1, of the California Public Utilities Code, also known as the "Broughton Act," and

WHEREAS, County and Franchisee recognize that a new grant of an electric franchise between them will be governed by Division 3, Chapter 2, of the California Public Utilities Code, also known as the "The Franchise Act of 1937," which obligates Franchisee to pay an annual franchise fee which is the greater of the Broughton Act amount or one percent (1%) of the gross annual receipts derived from the sale of electricity services to end use customers within the unincorporated County, and agree that such statutory amount should apply to this extension of the existing franchise agreement between the County and Franchisee; and

WHEREAS, in addition to the annual franchise fee payment, County and Franchisee have agreed that Franchisee shall also pay to County a "municipal public lands use surcharge" set forth in Division 3, Chapter 2.5, of the California Public Utilities Code; and

WHEREAS, for purposes of transmitting, distributing and selling electricity, Franchisee installs, maintains and operates numerous facilities within, under and along the streets, ways, alleys and highways dedicated to the public use in the unincorporated territories of the County; and

WHEREAS, the existence and recurrence of graffiti are social ills of serious concern to the County for which the County incurs a significant amount of time and expense on an annual basis in the abatement thereof County-wide, particularly in Zero

Tolerance Zones designated by the County from time to time; and

WHEREAS, because said issues impact Franchisee's facilities located in County rights-of-way, Franchisee and County have agreed to the implementation of a coordinated program for proactive patrolling, prevention, and abatement of graffiti from Franchisee's above-ground facilities, pursuant to the terms and conditions contained in a supplemental "Graffiti Abatement and Coordination Agreement".

NOW, THEREFORE, in consideration of the foregoing, the Board of Supervisors does hereby amend the Franchise as follows:

SECTION 1 For the calendar year 2010 and after, Section 1 of Ordinance No. 7062, as amended, is hereby amended to read as follows:

Section 1. Franchise Term, Grant.

The right, privilege, and franchise is hereby granted to the Southern California Edison Company, a corporation organized and existing under and by virtue of the laws of the State of California (the "Grantee" and/or "Franchisee"), its successors and assigns, through June 30~~December 31~~, 20~~09~~11, to erect, construct, operate, alter, maintain, and use an electric distribution and transmission system consisting of poles, towers, crossarms, conduits, manholes, vaults, cables, wires, transformers, switches, and other equipment, appliances and appurtenances, including communication circuits, for the purpose of conducting, transmitting, and distributing electricity and electrical energy for light, heat and power purposes, and for any and all other purposes for which electricity can be used, on, along, upon, over, in, under, and across the public streets, ways, alleys, places, and highways within the County of Los Angeles, State of California

(County), together with the right to erect, construct, operate, alter, maintain, and use a private communication system, consisting of poles, towers, conductors, crossarms, conduits, cables, wires and other equipment, appliances, and appurtenances, including communication circuits; said private communication system to be used solely in connection with the operation and maintenance of ~~g~~Grantee's electric system. The privileges granted by this franchise apply only to territory within the County which, upon the effective date of this ordinance, is unincorporated.

SECTION 2. Effective as of January 1, 2010, Section 23 of Ordinance No. 7062, as currently written, is hereby effective only for the term through December 31, 2009:

SECTION 3. Effective as of January 1, 2010 and thereafter, Section 23 of Ordinance No. 7062, as amended, is hereby added to read as follows:

Section 23. Consideration; Payment of Fees.

A. As consideration for the extension of the franchise granted, Franchisee shall pay a one time granting fee of five thousand dollars ($5,000), on or before the date this ordinance is introduced to the Board of Supervisors for adoption.

B. As additional consideration for the franchise granted, the Franchisee shall pay annually in arrears to County, on or before the fee payment date set forth in the Franchise, for each year commencing with the 2010 calendar year, in lawful money of the United States, a franchise fee computed annually ("annual franchise fee") as provided herein as follows:

Two percent (2%) of the gross annual receipts of the Franchisee arising from the use, operation, or possession of the franchise; provided, however, that such payment

shall in no event be less than one percent (1%) of the gross annual receipts of the Franchisee derived from the sale within the subject franchise area of the commodity or service for which the franchise is awarded. Such percentage shall be paid annually during the extended life of the franchise (commencing on January 1, 2010), including the year 2010 (which would become payable in 2011). In the event this amount is increased by federal or state law or County is empowered to increase the rate, County reserves the right to increase the rate to the maximum amount permitted by federal, state, or local law.

C. As additional consideration for the franchise granted, Franchisee shall pay annually in arrears to County, on or before the fee payment date required in the Franchise, for each year commencing with the 2010 calendar year, in lawful money of the United States, a municipal public lands use surcharge, as set forth in Division 3, Chapter 2.5, of the California Public Utilities Code, or in accordance with any subsequent orders or decisions approved in the most recent proceeding by the Public Utilities Commission of the State of California applicable to County.

D. The Franchisee shall also pay any application, administrative, and processing fees required in connection with this franchise provided such fees and their underlying requirements do not conflict with existing provisions of the California Government Code and the California Public Utilities Code. These fees shall be charged at the then-current applicable rates.

SECTION 4. Effective as of January 1, 2010, Section 24 of Ordinance No. 7062, as currently written, is hereby effective only for the term through December 31, 2009.

SECTION 5. Effective as of January 1, 2010 and thereafter, Section 24 of Ordinance No. 7062, as amended, is hereby added to read as follows:

Section 24. Definition of Gross Annual Receipts.

Effective on and after January 1, 2010, as used above the phrase "two percent (2%) of the gross annual receipts of the Franchisee arising from the use, operation, or possession of the franchise," and the phrase "one percent (1%) of the gross annual receipts of the Franchisee derived from the sale within the subject franchise area of the commodity or service for which the franchise is awarded," shall both be construed as having the same meaning as those similar phrases found in Section 6231(c), in Division 3, Chapter 2, of the California Public Utilities Code, also known as the "Franchise Act of 1937."

[ELECFRNSOCALRENEWALGCCC]

GRAFFITI ABATEMENT AND COORDINATION AGREEMENT

This Graffiti Abatement and Coordination Agreement ("Agreement") is made and entered into by and between Southern California Edison Company, a California Corporation ("SCE"), and the County of Los Angeles ("County").

RECITALS

WHEREAS, the County is a duly organized subdivision of the State of California;

WHEREAS, the County in pertinent part provides law enforcement services to the unincorporated portions of the County of Los Angeles;

WHEREAS, SCE is a regulated public utility operating under the laws of the State of California;

WHEREAS, over the course of time, the County has attempted to control and remediate the problems associated with graffiti in the public rights-of-way and elsewhere;

WHEREAS, the County has entered into several contracts with other vendors to provide graffiti abatement services;

WHEREAS, due to safety and identification concerns, SCE does not consent to abatement by the County except as provided herein;

WHEREAS, SCE's electric facilities installed in the public right-of-way are particularly vulnerable to graffiti;

WHEREAS, SCE has entered into a contract with a vendor ("Graffiti Abatement Vendor" or "Vendor") to provide graffiti-abatement services on SCE's Facilities across SCE's 50,000-square-mile service territory, including the unincorporated areas of the

County, the term of which runs through June 30, 2011, which contract requires graffiti abatement within 48 hours of notice, on a Monday-Friday (holidays excepted) basis;

WHEREAS, SCE's Vendor responds to notice of graffiti on SCE facilities regardless of the source of that notice, and SCE has provided County with the toll-free number and the email address of the Vendor's dispatch center;

WHEREAS, due to the unique nature of SCE's Facilities, SCE and the County recognize that SCE and its contractors are best positioned to safely abate graffiti from SCE's Facilities, except as otherwise provided herein;

WHEREAS, SCE and the County believe that a period of proactive patrolling and abatement in areas deemed particularly subject to graffiti may in fact reduce both parties' costs of graffiti abatement;

WHEREAS, SCE and the County wish to memorialize an agreement which recognizes SCE's graffiti abatement program and establishes protocols by which SCE and the County can ensure that graffiti is abated expeditiously on a consistent basis.

NOW THEREFORE, the parties agree as follows:

Section 1.0 Supersedence to Los Angeles County Code Title 13, Division 1, Chapter 13.12. The parties hereto acknowledge and agree that to the extent the terms and conditions contained herein conflict with or exceed the requirements of those contained in Los Angeles County Code, Title 13, Division 1, Chapter 13.12, the terms and conditions contained herein shall govern.

Section 2.0 Efficient Coordination with County Efforts. Within thirty (30) days following execution of this Agreement, SCE, its Vendor, and County staff shall meet and confer for the purpose of developing a notice protocol by and between the County and SCE. The purpose of the notice protocol is to establish that the County will notify SCE of the existence of graffiti on SCE's facilities located in County rights-of-way via the County's Graffiti Abatement Referral System and set forth how SCE will provide notice to the County of the abatement of said graffiti. The protocol will also provide for additional information sharing as may reasonably be required between SCE and County for the purpose of catching and penalizing the culprits through graffiti tracking database systems (e.g., photographing graffiti and adding such graffiti to the County's graffiti database). In addition, SCE agrees to meet with County staff upon request as may be necessary to implement and as may be required to modify the notice protocol set forth in this Section.

Section 3.0 Rapid Response Protocol. SCE's Vendor shall accept reports of graffiti from the County through the County's Graffiti Abatement Referral System, and shall abate such graffiti to County standards on SCE-owned structures and structures jointly owned by SCE and other persons and entities located in the public right-of-way within forty-eight (48) hours (Monday through Friday, holidays excepted) of receiving notice of said graffiti in accordance with the notice protocol to be developed pursuant to Section 2.0 above. To the extent SCE's Vendor cannot abate the subject graffiti within the time allotted herein, SCE may request an extension from the County of not to exceed five (5) days where due to unique or unforeseen circumstances (e.g., inclement

weather), SCE's Vendor cannot complete the abatement in the time allotted. In such case, the County shall approve the extension if, in the County's reasonable opinion, the justification for the extension would prevent the subject abatement within timeframe allotted. If no extension is granted by the County, the County shall proceed to remove the graffiti at SCE's sole expense which shall be the County's actual cost of the subject abatement, including the County's administrative costs for addressing the subject violation. Such action, however, does not and shall not create an employment or contractor relationship as between the County and SCE's Vendor, and shall not constitute the giving of direction by the County to SCE's Vendor. SCE shall have no responsibility to abate graffiti on structures owned by others. However, should the quality of work not meet County standards, SCE shall correct such deficiencies within forty-eight (48) hours' notice by County via electronic mail directly to SCE's Vendor. Should SCE fail to do so, County shall correct such deficiencies at SCE's sole expense which shall be the County's actual cost of the subject abatement, including the County's administrative costs for addressing the subject violation. The precise form of calculation of the County's actual cost shall be negotiated as part of the Notice Protocol set forth above. For the purpose of this Agreement, abating to "County standards" means painting over the subject graffiti with paint that reasonably matches the subject equipment or structure.

Section 4.0 Training and Information Sharing. To avoid the duplication of efforts, SCE will, upon request, provide at SCE's own cost, reasonable training to County supervisory and monitoring personnel and, upon request and as agreed, to

County contractors as well, in the differentiation between SCE-owned facilities and those owned by others. Such training may include, but may not be limited to, developing and delivering to the County for distribution to its own staff and contractors laminated cards with photographs, pictograms or other representations of the types of facilities SCE has installed in the public right-of-way in the County, along with similar renderings or photographs of the tags that identify SCE facilities, and the toll-free telephone number for SCE's graffiti-abatement contractor.

Section 5.0 Coordination With Law Enforcement. Upon request, SCE agrees to provide County staff with a schedule of its Vendor's graffiti abatement in the unincorporated areas of the County, especially those in the areas addressed in Section 6.0 below.

Section 6.0 Proactive Patrolling and Abatement of Zero Tolerance Zones. County staff shall designate throughout the term of this Agreement certain high-priority Zero Tolerance Zones ("ZTZ") in which SCE shall establish and/or increase its routine maintenance to include periodic proactive actions directed to SCE-owned structures in the public right-of-way in such areas. SCE agrees to cause its Vendor to assign one (1) graffiti abatement crew ("Proactive Crew") for the purpose of increasing SCE's proactive patrolling and abatement. SCE shall cause its Vendor to cause the Proactive Crew to negotiate a reasonable coordination schedule with the County. Such schedule may include the Vendor's calling of the County's designee at the beginning of the Vendor's work day or work week for the purpose of assigning an initial ZTZ or ZTZs for patrol by the Proactive Crew for that day or week. To the extent that the Proactive Crew

completes its patrol and abatement before the end of its regular day, or week (as may be applicable), the Proactive Crew shall contact the County's designee who may assign another ZTZ for patrol, provided that such alternative ZTZ is within a reasonable distance of the initial ZTZ given that day or week. This process shall be repeated throughout the day or week as the Proactive Patrol may complete its work in each ZTZ. To the extent the Proactive Patrol is unable to complete its patrol and abatement within a ZTZ during the scheduled time period (e.g., day or week), it shall report same to the County's designee at the end of the subject day or week, whereby the Proactive Patrol will provide the County's designee with a timetable in which it reasonably believes it could complete its work in that ZTZ. Alternatively, upon agreement of the parties, the County and SCE may agree to adjust the coordination schedule (e.g., daily, weekly, or monthly reporting in) depending on the success of the program. This Section shall not be construed as reducing the amount of time allotted to SCE to abate graffiti as set forth in Section 3.0 above. In addition, this Section shall not prohibit the Proactive Patrol from addressing notices of graffiti abatement set forth in Section 3.0 within the assigned ZTZ patrolled for that day or week or within a reasonable radius of the subject ZTZ. For the purpose of this Agreement, a "reasonable radius" shall be negotiated as part of the Notice Protocol discussions set forth in Section 3.0.

Section 7.0 Work-Safety. Neither SCE nor its contractor shall have any obligation to abate graffiti in the event of actual threats to the safety of such personnel. In the event of any such threats, SCE shall promptly notify the County of same. Following notification, the County and SCE shall meet and confer either telephonically,

electronically (email) or in person immediately to discuss a safe manner in which the graffiti could be removed within an appropriate extension period to be approved by the County, as described hereinabove. In the event that a reasonably safe manner for removal cannot be identified at such meeting, then SCE shall allow County access to abate the graffiti at SCE's sole expense which shall be the actual cost of the County to abate the subject graffiti, including the County's administrative costs for addressing the subject violation. SCE and the County shall also confer promptly to establish additional procedures and measures, including coordination with law enforcement, to make possible the safe resumption of graffiti abatement in such areas in the future.

Section 8.0 CEQA Compliance. This Agreement does not establish or create a "project" within the meaning of the California Environmental Quality Act (CEQA) and is therefore exempt from CEQA.

MISCELLANEOUS

Section 9.0 Entire Agreement. This Agreement expresses the entire agreement of the parties on the subject hereof. This Agreement may only be modified by a writing executed by both parties.

Section 10.0 No Third Party Beneficiaries. The County is not and shall not by virtue of this agreement become a third-party beneficiary of SCE's contract with its own Graffiti Abatement Vendor.

Section 11.0 Substitution of Vendor. In the event SCE selects a different vendor to provide graffiti abatement services, it shall notify the County of such change within 48 hours of the effective date of that change.

Section 12.0 Term of Agreement. This Agreement shall remain in effect through June 30, 2011, or until earlier terminated by the mutual written consent of SCE and the County.

Section 13.0 Governing Law/Venue. This Agreement shall be interpreted under the laws of California. Venue shall be appropriate in Los Angeles County.

Section 14.0 County's Remedies. Should SCE fail to fully perform any of its obligations hereunder, the County may, but shall not be obligated to, perform any or all of said unfulfilled obligations as set forth in Section 3.0 above. Further, SCE shall defend, hold harmless, and indemnify County for any and all personal injury, wrongful death, property damage, and other damages arising therefrom unless such cause of action is due to the sole negligence or willful misconduct of the County, its employees, or contractors.

Section 15.0 Counterparts. This Agreement may be executed in counterparts.

[END OF TERMS]

The foregoing Agreement was on the ___ day of _____, 20___, adopted by the Board of Supervisors of the County of Los Angeles and ex-officio the governing body of all other special assessment and taxing districts, agencies, and authorities for which said Board so acts.

COUNTY OF LOS ANGELES

By _____
Gloria Molina, Chair

ATTEST:

SACHI A. HAMAI
Executive Officer-Clerk
Of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM:

ROBERT E. KALUNIAN
Acting County Counsel

By: _____
Grace V. Chang
Senior Deputy County Counsel

IN WITNESS WHEREOF, Southern California Edison Company has caused this Agreement to be executed on its behalf, effective on the day, month and year first written above.

SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation

By: _____

_____
Print Name

_____
Title