

RESOLUTION NO. 200375 JUL 23 1970

NOTICE AND RESOLUTION OF INTENTION OF THE COUNCIL OF THE CITY OF SAN DIEGO TO SELL TO THE HIGHEST RESPONSIBLE CASH BIDDER A FRANCHISE TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES FOR TRANSMITTING AND DISTRIBUTING GAS IN THE STREETS OF THE CITY OF SAN DIEGO.

WHEREAS, the Council of The City of San Diego, upon due consideration, after public hearings, and upon the recommendation of the City Manager, has determined this 23rd day of July, 1970 to advertise the fact that it is in the best interests of the City of San Diego and its inhabitants to grant a franchise for a period of thirty (30) years to construct, maintain and use pipes and appurtenances for transmitting and distributing gas in the streets of the City of San Diego; and that bids should be received for such franchise, and that it should be awarded to the highest responsible bidder; and

WHEREAS, the City Attorney has prepared forms of ordinances based upon the recommendations of the City Manager as aforesaid and the determinations of the Council which, if adopted by the Council, would grant such franchise; and

WHEREAS, the forms of ordinances heretofore mentioned are attached to this resolution as Exhibits "A" and "B" and incorporated by reference hereto; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

1. That the City Clerk be and he is hereby authorized and directed to advertise for sealed bids in writing for the award of a franchise in the forms set forth in Exhibits "A" and "B."

2. Said advertisement shall be in the form and manner as set forth in a Notice Inviting Bids attached hereto as Exhibit "C."

3. Sealed bids in writing will be received for such franchise up to the hour of 9:00 a.m. of Thursday, the 6th day of August, 1970, when the Council will, in open session, open and publicly declare all bids; and that the franchise as above described will be struck off, sold and awarded to the person, firm or corporation who shall make the highest cash bid therefor, but not less than Fifty Thousand Dollars (\$50,000.00); provided only, that at the time of opening said bids any responsible person, firm or corporation present or represented may bid for said franchise a sum not less than 10% above the highest sealed bid therefor, and said bid so made may be raised not less than 10% by any other responsible bidder, and said bidding may so continue until finally said franchise shall be struck off, sold and awarded by said Council to the highest bidder therefor, in lawful money of the United States.

A responsible person, firm or corporation, within the meaning of this notice and resolution shall be a person, firm or corporation responsible financially, capable and able to construct, maintain and use pipes and appurtenances for transmitting and distributing gas in the streets of the City of San Diego, and one who is able to commence the operation of such system on the effective date of the ordinance granting such franchise.

Each sealed bid shall be accompanied with cash or a certified check payable to the Treasurer of The City of San Diego for the full amount of said bid, and no sealed

bid shall be considered unless said cash or check is enclosed therewith.

The successful bidder shall file a surety bond running to the City, to be approved by the Council, in the sum of Five Hundred Thousand Dollars (\$500,000.00), conditioned that such bidder shall well and truly observe, fulfill and perform each and every term and condition of such franchise, and that in case of any breach of any condition of the franchise the whole amount of the penal sum named in the bond shall be taken and deemed to be liquidated damages, and shall be recoverable from the principal and sureties upon said bond. The bond shall be filed with the Council within five (5) days after such franchise is awarded, and upon the filing and approval of such bond the franchise shall by said Council be granted by ordinance to the person, firm or corporation to whom it has been struck off, sold and awarded, and in case that such bond shall not be so filed the award of such franchise shall be set aside, and any money paid therefor shall be forfeited, and said franchise shall, in the discretion of said Council, be readvertised and again offered for sale in the same manner and under the same restrictions as hereinbefore provided.

BE IT FURTHER RESOLVED, that the proposed ordinance granting such proposed franchise, with the exception of the dates that are left blank and the name of the successful bidder and grantee, is in words and figures, as follows.

Exhibit "A" assumes that the bidder holds a so-called constitutional franchise as that term is described in Section 1(g) of Exhibit "A," and bids on the terms of Exhibit "A" will be received only from those persons, firms or corporations who hold such franchise.

However, any bidder who meets the other qualifications  
as set forth herein may bid on Exhibit "B."

APPROVED: JOHN W. WITT, City Attorney

By *Robert S. Teaze*  
Robert S. Teaze, Asst. City Attorney

RST:vl  
7-22-70

200375

ORDINANCE NO. \_\_\_\_\_

(New Series)

ORDINANCE GRANTING TO ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE (1) TO USE FOR TRANSMITTING AND DISTRIBUTING GAS SUITED FOR LIGHTING BUT THE USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES OTHER THAN LIGHTING, ALL PIPES AND APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE LAWFULLY PLACED AND MAINTAINED IN THE STREETS WITHIN THE CITY OF SAN DIEGO UNDER THAT CERTAIN FRANCHISE OF GRANTEE ACQUIRED PURSUANT TO SECTION 19 OF ARTICLE XI OF THE CONSTITUTION OF THE STATE OF CALIFORNIA, AS SAID SECTION EXISTED PRIOR TO ITS AMENDMENT ON OCTOBER 10, 1911, (2) TO CONSTRUCT, MAINTAIN AND USE IN SAID STREETS ALL PIPES AND APPURTENANCES WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE IS NOT NOW NOR SHALL HEREAFTER BE AVAILABLE THEREFOR, NECESSARY TO TRANSMIT AND DISTRIBUTE GAS SUITED FOR, AND FOR USE BY CONSUMERS FOR, ANY AND ALL LAWFUL PURPOSES, AND (3) TO UTILIZE SAID PIPES AND APPURTENANCES IN SAID STREETS FOR TRANSMITTING GAS FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR ANY AND ALL LAWFUL PURPOSES, AND PROVIDING THE TERMS AND CONDITIONS OF THE FRANCHISE SO GRANTED.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. DEFINITIONS

Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions:

(a) The word "Grantee" shall mean \_\_\_\_\_, its lawful successors and assigns;

(b) The word "City" shall mean The City of San Diego, 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 freeways, highways, streets, ways, alleys and places as the same now or may hereafter exist within the City;

(d) The word "gas" shall mean natural or artificial gas, or a mixture of natural and artificial gas;

(e) The phrase "pipes and appurtenances" shall mean pipes, pipelines, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances and, without limitation to the foregoing, any other property located in, upon, along, across, under or over the streets of the City and used or useful in transmitting and or distributing gas;

(f) The phrase "construct, maintain and use" shall mean to construct, erect, install, operate, maintain, use, repair, relocate or replace and appurtenances thereto in, upon, along, across, under or over the streets of the City;

(g) The phrase "constitutional franchise" shall mean the right acquired through acceptance by Grantee or its predecessor in estate of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as said Section existed prior to its amendment on October 10, 1911;

(h) The phrase "gross revenues" shall mean and include all gross operating revenues without deductions or exemptions of any kind whatsoever received or accrued by Grantee in the operation of its business of transmitting and distributing electrical energy to the City and its inhabitants within the City, including sales to the United States Military reservations which the official City maps show to be located wholly or partially within the City limits. Said total gross operating revenues shall be those credited, or entitled to be credited, to the following accounts of Grantee, being

the accounts among others required by the Uniform System of Accounts prescribed by the Public Utilities Commission of the State of California now in effect or as hereafter modified or amended, and any other account (accounts) that may be later established to reflect total sales of electricity, which, without deductions of any kind whatsoever, shall be the ultimate measure of the franchise tax:

<u>Account No.</u>	<u>Title of Account</u>
480	Residential Sales
481	Commercial and Industrial Sales
482	Other Sales to Public Authorities

Section 2. PURPOSE

The franchise (1) to use for transmitting and distributing gas suited for lighting but for use by consumers for any and all lawful purposes other than lighting, all pipes and appurtenances which are now or may hereafter be lawfully placed and maintained in the streets within the City of San Diego under that certain franchise of Grantee acquired pursuant to Section 19 of Article XI of the Constitution of the State of California, as said Section existed prior to its amendment on October 10, 1911, (2) to construct, maintain and use in said streets all pipes and appurtenances whenever and wherever said constitutional franchise is not now nor shall hereafter be available therefor, necessary to transmit and distribute gas suited for, and for use by consumers for, any and all lawful purposes, and (3) to utilize said pipes and appurtenances in said streets for transmitting gas and for use outside the boundaries of the City for any and all lawful purposes is hereby granted to \_\_\_\_\_, its successors and assigns.

Section 3. TERM

The right, privilege and franchise, subject to each and all of the terms and conditions contained in this ordinance hereby is granted to \_\_\_\_\_, a corporation organized and existing under and by virtue of the laws of the State of California, for the term of thirty (30) years from and after the effective date hereof.

Section 4. CONSIDERATION

The rights and privileges herein granted are upon the express condition that Grantee, as consideration therefor and as compensation for the use of the streets of the City as herein authorized and permitted, shall pay each year to City in lawful money of the United States, a sum equal to three percent (3%) of Grantee's gross revenues during the preceding calendar year, or fractional year, for the term of this franchise by the dates, in the manner, and on the conditions as set forth in Section 5 hereof.

Section 5. REPORTS, DATES OF PAYMENT TO CITY, AUDITS

(a) On or before the 15th day of February of each calendar year during the term of this franchise and forty-five (45) days after the expiration of the term of this franchise, Grantee shall file with the City Clerk of City, the original, and with the Auditor of City, one copy of a statement showing the gross revenues during the preceding calendar year or fractional calendar year.

(b) Within ten (10) days after the filing of the statement required to be filed on or before the 15th day of February 1971, Grantee shall pay to the City Treasurer the money herein required to be paid by



Grantee to City upon the basis of the data set forth in said statement.

(c) Thereafter, no later than the 25th day of May, the 25th day of August and the 25th day of November of each calendar year during the term of this franchise Grantee shall pay to the said City Treasurer one-fourth (1/4) of the money herein required to be paid by Grantee to City upon the basis of the data set forth in the statement required by Section 5(a) hereof. By this method of payment it is contemplated and understood that Grantee is in effect paying the money herein required to be paid by Grantee to City on an estimated gross revenue basis for the current year and that an adjustment to that estimate shall be made as more fully set forth in Section 5(d) hereof.

(d) Within ten (10) days after the filing of the statement required by Section 5(a) hereof, Grantee shall pay to the said City Treasurer a sum of money equal to the difference between the sum of the payments of money made in accordance with Section 5(c) hereof and the annual payment of money herein required to be paid by Grantee to City upon the basis of the data set forth in said statement.

(e) The City Auditor, or any qualified person designated by the City, at any reasonable time during business hours, may make examination at Grantee's office or offices, of its books and records, germane to and for the purpose of verifying the data set forth in the statement required by Section 5(a) hereof.

(f) All books and records subject to examination by City Auditor, or qualified person designated by City, shall be kept within the County of San Diego, or in

such other place as the reasonable convenience of Grantee may require; and in the event that it becomes necessary for said City Auditor, or any representative designated by the City to make such examination at any place other than within the County, then, in that event, all increased costs and expenses to City necessary or incident to such examination and resulting from such books and records not being available within the County, shall be paid City by Grantee on demand.

(g) Grantee shall file with the City Clerk a duplicate original of all monthly and annual financial and operating reports of Grantee filed with the Public Utilities Commission of the State of California, the Federal Power Commission or their successors in authority, as soon as practicable after the original of such reports have been filed with those Commissions, or their successors in authority.

(h) In the event Grantee fails to pay the consideration for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(1) A sum of money equal to five percent (5%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(2) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

Section 6. COMPLIANCE WITH LAWS

All facilities or equipment of Grantee that Grantee shall construct, maintain and use or remove, pursuant to the provisions of the franchise granted herein shall be accomplished in accordance with the ordinances, rules and regulations of City now or as hereafter adopted or prescribed, and such rules or regulations as are promulgated under State law, or orders of the Public Utilities Commission or other governmental authority having jurisdiction in the premises.

Section 7. ADMINISTRATIVE PRACTICES

Grantee is herewith charged with the responsibility of cooperating with City in preparing a manual of administrative practices which shall govern the installation and removal of Grantee's facilities in the streets of City which shall include, but not be limited to, cathodic protection practices. Once each year, commencing with the first full calendar year of the franchise granted herein, it is to be the joint responsibility of Grantee and City to review and update such administrative practices. Both Grantee and City are charged with the duty to prepare, review and update such administrative practices by a method of mutual cooperation which shall take into consideration the reasonable needs and convenience of each party; provided that said administrative practices and the terms and conditions thereof shall be at all times subject to approval of the City Council as expressed by appropriate legislative action.

Following the preparation of said manual, and its approval by the City Council, it shall govern the practices of the Grantee in its installation and removal of Grantee's facilities in the streets of City.

Section 8. CITY RESERVED POWERS

(a) City reserves the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade 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. City further reserves the right to relocate, remove, vacate or replace the streets themselves. If the necessary exercise of the aforementioned reserve rights conflicts with any pipes and appurtenances of Grantee constructed, maintained and used pursuant to the provisions of the franchise granted hereby, whether previously constructed, maintained and used or not, Grantee shall, without cost or expense to City within thirty (30) days after written notice from the City Manager, or his designated representative, and request so to do, begin the physical field construction of changing the location of all facilities or equipment so conflicting to a location to be approved by the City Manager, or his designated representative. Grantee shall proceed promptly to complete such required work.

(b) Irrespective of any other provision of this ordinance, Grantee's right to construct, maintain and use, or remove pipes and appurtenances 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.

Section 9. HOLD HARMLESS

Grantee of the franchise granted hereby 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 10. REPAIR COSTS

Grantee shall pay to City on demand the cost of all repairs to City property made necessary by any of the operations of Grantee under the franchise granted hereby.

Section 11. FORFEITURE

This franchise is granted upon each and every condition herein contained, and shall ever be strictly construed against Grantee. 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,

or of any of the terms or conditions of any ordinance now in force or hereafter adopted by City in the exercise of its police power during the term hereof, and if such failure, neglect or refusal shall continue for more than thirty (30) days after written demand by the City Manager, for compliance therewith, then City, by the City Council, in addition to all rights and remedies allowed by law, thereupon may terminate the right, privilege and franchise granted in and by this ordinance, and all the rights, privileges and 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 12. ACQUISITION AND VALUATION

Nothing in this ordinance or in the franchise granted hereby shall be construed as in any way impairing City's rights to acquire property of Grantee through the exercise of City's power of eminent domain or through voluntary agreement between City and Grantee. In the event that City chooses to exercise its power of eminent domain, it shall do so in accordance with the procedures provided by the general law of the State of California for the condemnation of public utility property. The valuation of such property for condemnation purposes shall be made in accordance with such general law.

Section 13. PUBLICATION EXPENSE

Grantee of said franchise shall pay to 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 City shall have furnished Grantee with a written statement of such expenses.

Section 14. STATE HIGHWAY EXCLUSION

The franchise granted hereby shall not be a contract within the meaning of Section 703 of the Streets and Highways Code of the State of California and the cost of any relocation made necessary by the construction or any lawful change of grade, alignment or width of any State highway or freeway constructed by the State of California shall not be governed by the provisions of the franchise granted hereby but shall be governed by the provisions of Chapter 3, Division 1 of said Streets and Highways Code and any other applicable provisions of State law.

Section 15. AUTHORITY FOR GRANT

Notwithstanding any other provisions contained herein, this franchise is granted solely and exclusively under Sections 103, 103.1, 104 and 105 of the Charter of The City of San Diego and under no other authority.

Section 16. NO TRANSFER WITHOUT CONSENT

Grantee shall not sell, transfer or assign this franchise or the rights and privileges granted thereby without the consent of the City Council of The City of San Diego, as set forth in Section 103 of the Charter of The City of San Diego.

Section 17. RIGHT OF CITY'S ELECTORS

This grant of franchise and authority shall be and is subject to the right of the majority of the electors of City voting at any election at any time thereafter to repeal, change or modify the grant, and such right is hereby expressly reserved to said electors; and it is expressly agreed that at any election held in City a majority of the electors of City voting at said election shall have the right to repeal, change or modify the terms of this franchise and the authority granted hereunder.

Section 18. PERFORMANCE BOND

Grantee shall file and maintain a faithful performance bond in favor of the City as beneficiary in the sum of Five Hundred Thousand Dollars (\$500,000) conditioned that Grantee shall well and truly observe, fulfill and perform each and every term and condition of the franchise herein granted, and that in case of any breach of any condition of the franchise, the whole amount of the penal sum made in the bond shall be taken and deemed to be liquidated damages and shall be receivable from the principal and sureties upon said bond, which bond shall be acknowledged by Grantee as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.

Section 19. EFFECTIVE DATE

This ordinance shall take effect and be in force at 12:01:01 a.m. on the 28th day of September 1970.

APPROVED: JOHN W. WITT, City Attorney

By Robert S. Teaze, Assistant City Attorney



ORDINANCE NO. \_\_\_\_\_  
(New Series)

ORDINANCE GRANTING TO \_\_\_\_\_,  
ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE (1) TO  
USE FOR TRANSMITTING AND DISTRIBUTING GAS SUITED  
FOR ANY AND ALL LAWFUL PURPOSES, ALL PIPES AND  
APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE  
LAWFULLY PLACED AND MAINTAINED IN THE STREETS WITHIN  
THE CITY OF SAN DIEGO, (2) TO CONSTRUCT, MAINTAIN  
AND USE IN SAID STREETS ALL PIPES AND APPURTENANCES  
NECESSARY TO TRANSMIT AND DISTRIBUTE GAS SUITED FOR  
AND FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL  
PURPOSES, AND (3) TO UTILIZE SAID PIPES AND APPUR-  
TENANCES IN SAID STREETS FOR TRANSMITTING GAS FOR  
USE OUTSIDE THE BOUNDARIES OF THE CITY OF SAN DIEGO  
FOR ANY AND ALL LAWFUL PURPOSES, AND PROVIDING THE  
TERMS AND CONDITIONS OF THE FRANCHISE SO GRANTED.

BE IT ORDAINED, by the Council of The City of San Diego,  
as follows:

Section 1. DEFINITIONS

Whenever in this ordinance the words or phrases  
hereinafter in this section defined are used, they shall have  
the respective meanings assigned to them in the following  
definitions:

(a) The word "Grantee" shall mean \_\_\_\_\_  
\_\_\_\_\_, its lawful successors and assigns;

(b) The word "City" shall mean The City of San  
Diego, 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  
freeways, highways, streets, ways, alleys and places  
as the same now or may hereafter exist within the City;

(d) The word "gas" shall mean natural or artificial  
gas, or a mixture of natural and artificial gas;

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EXHIBIT B

(e) The phrase "pipes and appurtenances" shall mean pipes, pipelines, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances and, without limitation to the foregoing, any other property located in, upon, along, across, under or over the streets of the City and used or useful in transmitting and or distributing gas;

(f) The phrase "construct, maintain and use" shall mean to construct, erect, install, operate, maintain, use, repair, relocate or replace and appurtenances thereto in, upon, along, across, under or over the streets of the City;

(g) The phrase "gross revenues" shall mean and include all gross operating revenues without deductions or exemptions of any kind whatsoever received or accrued by Grantee in the operation of its business of transmitting and distributing electrical energy to the City and its inhabitants within the City, including sales to the United States Military reservations which the official City maps show to be located wholly or partially within the City limits. Said total gross operating revenues shall be those credited, or entitled to be credited, to the following accounts of Grantee, being the accounts among others required by the Uniform System of Accounts prescribed by the Public Utilities Commission of the State of California now in effect or as hereafter modified or amended, and any other account (accounts) that may be later established to

reflect total sales of electricity, which, without deductions of any kind whatsoever, shall be the ultimate measure of the franchise tax:

<u>Account No.</u>	<u>Title of Account</u>
480	Residential Sales
481	Commercial and Industrial Sales
482	Other Sales to Public Authorities

Section 2. PURPOSE

The franchise (1) to use for transmitting and distributing gas suited for any and all lawful purposes, all pipes and appurtenances which are now or may hereafter be lawfully placed and maintained in the streets within the City of San Diego, (2) to construct, maintain and use in said streets all pipes and appurtenances necessary to transmit and distribute gas suited for and for use by consumers for any and all lawful purposes, and (3) to utilize said pipes and appurtenances in said streets for transmitting gas for use outside the boundaries of the City of San Diego for any and all lawful purposes is hereby granted to \_\_\_\_\_, its successors and assigns.

Section 3. TERM

The right, privilege and franchise, subject to each and all of the terms and conditions contained in this ordinance hereby is granted to \_\_\_\_\_, a corporation organized and existing under and by virtue of the laws of the State of California, for the term of thirty (30) years from and after the effective date hereof.

**Section 4. CONSIDERATION**

The rights and privileges herein granted are upon the express condition that Grantee, as consideration therefor and as compensation for the use of the streets of the City as herein authorized and permitted, shall pay each year to City in lawful money of the United States, a sum equal to four percent (4%) of Grantee's gross revenues during the preceding calendar year, or fractional year, for the term of this franchise by the dates, in the manner and on the conditions as set forth in Section 5 hereof.

**Section 5. REPORTS, DATES OF PAYMENT TO CITY,  
AUDITS**

(a) On or before the 15th day of February of each calendar year during the term of this franchise and forty-five (45) days after the expiration of the term of this franchise, Grantee shall file with the City Clerk of City, the original, and with the Auditor of City, one copy of a statement showing the gross revenues during the preceding calendar year or fractional calendar year.

(b) Within ten (10) days after the filing of the statement required to be filed on or before the 15th day of February 1971, Grantee shall pay to the City Treasurer the money herein required to be paid by

Grantee to City upon the basis of the data set forth in said statement.

(c) Thereafter, no later than the 25th day of May, the 25th day of August and the 25th day of November of each calendar year during the term of this franchise Grantee shall pay to the said City Treasurer one-fourth (1/4) of the money herein required to be paid by Grantee to City upon the basis of the data set forth in the statement required by Section 5(a) hereof. By this method of payment it is contemplated and understood that Grantee is in effect paying the money herein required to be paid by Grantee to City on an estimated gross revenue basis for the current year and that an adjustment to that estimate shall be made as more fully set forth in Section 5(d) hereof.

(d) Within ten (10) days after the filing of the statement required by Section 5(a) hereof, Grantee shall pay to the said City Treasurer a sum of money equal to the difference between the sum of the payments of money made in accordance with Section 5(c) hereof and the annual payment of money herein required to be paid by Grantee to City upon the basis of the data set forth in said statement.

(e) The City Auditor, or any qualified person designated by the City, at any reasonable time during business hours, may make examination at Grantee's office or offices, of its books and records, germane to and for the purpose of verifying the data set forth in the statement required by Section 5(a) hereof.

(f) All books and records subject to examination by City Auditor, or qualified person designated by City, shall be kept within the County of San Diego, or in

such other place as the reasonable convenience of Grantee may require; and in the event that it becomes necessary for said City Auditor, or any representative designated by the City to make such examination at any place other than within the County, then, in that event, all increased costs and expenses to City necessary or incident to such examination and resulting from such books and records not being available within the County, shall be paid City by Grantee on demand.

(g) Grantee shall file with the City Clerk a duplicate original of all monthly and annual financial and operating reports of Grantee filed with the Public Utilities Commission of the State of California, the Federal Power Commission or their successors in authority, as soon as practicable after the original of such reports have been filed with those Commissions, or their successors in authority.

(h) In the event Grantee fails to pay the consideration for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(1) A sum of money equal to five percent (5%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

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(2) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

#### Section 6. COMPLIANCE WITH LAWS

All facilities or equipment of Grantee that Grantee shall construct, maintain and use or remove, pursuant to the provisions of the franchise granted herein shall be accomplished in accordance with the ordinances, rules and regulations of City now or as hereafter adopted or prescribed, and such rules or regulations as are promulgated under State law, or orders of the Public Utilities Commission or other governmental authority having jurisdiction in the premises.

#### Section 7. ADMINISTRATIVE PRACTICES

Grantee is herewith charged with the responsibility of cooperating with City in preparing a manual of administrative practices which shall govern the installation and removal of Grantee's facilities in the streets of City which shall include, but not be limited to, cathodic protection practices. Once each year, commencing with the first full calendar year of the franchise granted herein, it is to be the joint responsibility of Grantee and City to review and update such administrative practices. Both Grantee and City are charged with the duty to prepare, review and update such administrative practices by a method of mutual cooperation which shall take into consideration the reasonable needs and convenience of each party; provided that said administrative practices and the terms and conditions thereof shall be at all times subject to approval of the City Council as expressed by appropriate legislative action.

Following the preparation of said manual, and its approval by the City Council, it shall govern the practices of the Grantee in its installation and removal of Grantee's facilities in the streets of City.

Section 8. CITY RESERVED POWERS

(a) City reserves the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade 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. City further reserves the right to relocate, remove, vacate or replace the streets themselves. If the necessary exercise of the aforementioned reserve rights conflicts with any pipes and appurtenances of Grantee constructed, maintained and used pursuant to the provisions of the franchise granted hereby, whether previously constructed, maintained and used or not, Grantee shall, without cost or expense to City within thirty (30) days after written notice from the City Manager, or his designated representative, and request so to do, begin the physical field construction of changing the location of all facilities or equipment so conflicting to a location to be approved by the City Manager, or his designated representative. Grantee shall proceed promptly to complete such required work.

(b) Irrespective of any other provision of this ordinance, Grantee's right to construct, maintain and use, or remove pipes and appurtenances 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.

7-23-1970  
200375



Section 9. HOLD HARMLESS

Grantee of the franchise granted hereby 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 10. REPAIR COSTS

Grantee shall pay to City on demand the cost of all repairs to City property made necessary by any of the operations of Grantee under the franchise granted hereby.

Section 11. FORFEITURE

This franchise is granted upon each and every condition herein contained, and shall ever be strictly construed against Grantee. 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,

or of any of the terms or conditions of any ordinance now in force or hereafter adopted by City in the exercise of its police power during the term hereof, and if such failure, neglect or refusal shall continue for more than thirty (30) days after written demand by the City Manager, for compliance therewith, then City, by the City Council, in addition to all rights and remedies allowed by law, thereupon may terminate the right, privilege and franchise granted in and by this ordinance, and all the rights, privileges and 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 12. ACQUISITION AND VALUATION

Nothing in this ordinance or in the franchise granted hereby shall be construed as in any way impairing City's rights to acquire property of Grantee through the exercise of City's power of eminent domain or through voluntary agreement between City and Grantee. In the event that City chooses to exercise its power of eminent domain, it shall do so in accordance with the procedures provided by the general law of the State of California for the condemnation of public utility property. The valuation of such property for condemnation purposes shall be made in accordance with such general law.

**Section 13. PUBLICATION EXPENSE**

Grantee of said franchise shall pay to 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 City shall have furnished Grantee with a written statement of such expenses.

**Section 14. STATE HIGHWAY EXCLUSION**

The franchise granted hereby shall not be a contract within the meaning of Section 703 of the Streets and Highways Code of the State of California and the cost of any relocation made necessary by the construction or any lawful change of grade, alignment or width of any State highway or freeway constructed by the State of California shall not be governed by the provisions of the franchise granted hereby but shall be governed by the provisions of Chapter 3, Division 1 of said Streets and Highways Code and any other applicable provisions of State law.

**Section 15. AUTHORITY FOR GRANT**

Notwithstanding any other provisions contained herein, this franchise is granted solely and exclusively under Sections 103, 103.1, 104 and 105 of the Charter of The City of San Diego and under no other authority.

**Section 16. NO TRANSFER WITHOUT CONSENT**

Grantee shall not sell, transfer or assign this franchise or the rights and privileges granted thereby without the consent of the City Council of The City of San Diego, as set forth in Section 103 of the Charter of The City of San Diego.

Section 17. RIGHT OF CITY'S ELECTORS

This grant of franchise and authority shall be and is subject to the right of the majority of the electors of City voting at any election at any time thereafter to repeal, change or modify the grant, and such right is hereby expressly reserved to said electors; and it is expressly agreed that at any election held in City a majority of the electors of City voting at said election shall have the right to repeal, change or modify the terms of this franchise and the authority granted hereunder.

Section 18. PERFORMANCE BOND

Grantee shall file and maintain a faithful performance bond in favor of the City as beneficiary in the sum of Five Hundred Thousand Dollars (\$500,000) conditioned that Grantee shall well and truly observe, fulfill and perform each and every term and condition of the franchise herein granted, and that in case of any breach of any condition of the franchise, the whole amount of the penal sum made in the bond shall be taken and deemed to be liquidated damages and shall be receivable from the principal and sureties upon said bond, which bond shall be acknowledged by Grantee as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.

Section 19. EFFECTIVE DATE

This ordinance shall take effect and be in force at 12:01:01 a.m. on the 28th day of September 1970.

APPROVED: JOHN W. WITT, City Attorney

By \_\_\_\_\_  
Robert S. Teaze, Assistant City Attorney

NOTICE INVITING BIDS FOR A FRANCHISE TO  
CONSTRUCT, MAINTAIN AND USE PIPES AND  
APPURTENANCES FOR TRANSMITTING AND  
DISTRIBUTING GAS IN THE STREETS OF THE  
CITY OF SAN DIEGO.

NOTICE IS HEREBY GIVEN that pursuant to RESOLUTION  
NO. \_\_\_\_\_ adopted \_\_\_\_\_,  
sealed bids in writing will be received for a FRANCHISE TO  
CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES FOR  
TRANSMITTING AND DISTRIBUTING GAS IN THE STREETS OF THE CITY  
OF SAN DIEGO.

TIME AND PLACE FOR FILING AND OPENING OF BIDS. Each  
bid, together with the bid check, must be in a sealed envelope,  
addressed to the City Clerk, with the envelope and bid clearly  
marked "Bid for a franchise to construct, maintain and use  
pipes and appurtenances for transmitting and distributing gas  
in the streets of the City of San Diego." Bids must be filed  
with the City Clerk of The City of San Diego in his office on  
the 12th Floor, City Administration Building, 202 "C" Street,  
San Diego, California, up to but not later than 9:00 a.m. on  
Thursday, August 6, 1970.

The City Clerk shall provide said bids to the City  
Council in open session. Said City Council will, in said  
open session, open and publicly declare all bids as soon after  
the hour of 9:00 a.m., August 6, 1970, as practicable.

The franchise shall be awarded by introduction of an  
ordinance in the form specified as Exhibit "A" or Exhibit "B"  
and made a part of Resolution No. \_\_\_\_\_, on file  
in the City Clerk's office, naming as Grantee the person who  
shall make the highest cash bid therefor in an amount not less  
than Fifty Thousand Dollars (\$50,000.00); provided that at the  
time of the opening and declaration of said bids any responsible

person, firm or corporation present or represented may bid for said franchise a sum not less than ten percent (10%) above the highest sealed bid therefor, and said bid so made may be raised not less than ten percent (10%) by any other responsible bidder, and said bidding may so continue until the franchise shall be struck off, sold and awarded by the City Council to the highest bidder therefor in lawful money of the United States.

A responsible person, firm or corporation, within the meaning of this notice and resolution shall be a person, firm or corporation responsible financially, capable and able to construct, maintain and use pipes and appurtenances for transmitting and distributing gas in the streets of the City of San Diego, and one who is able to commence the operation of such system of transmission and distribution on the effective date of the ordinance granting such franchise.

Each sealed bid shall be accompanied by cash or a certified check payable to the Treasurer of The City of San Diego in the full amount of said bid, and no sealed bid shall be considered unless the cash or check is enclosed therewith.

Each bidder shall also comply with each and every other requirement as set forth in Resolution No. \_\_\_\_\_ on file in the City Clerk's office.

Dated: \_\_\_\_\_

JOHN LOCKWOOD, City Clerk  
of The City of San Diego,  
California.

JUL 23 1970

Passed and adopted by the Council of The City of San Diego on \_\_\_\_\_  
by the following vote:

RECEIVED  
CITY CLERK'S OFFICE  
1970 JUL 22 PM 4:57  
mc SAN DIEGO, CALIF.

Councilmen	Yeas	Nays	Excused	Absent
Helen Cobb	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sam T. Loftin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Landt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bob Martinet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allen Hitch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Schaefer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mayor Frank Curran	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

AUTHENTICATED BY:

FRANK CURRAN  
Mayor of The City of San Diego, California.

JOHN LOCKWOOD  
City Clerk of The City of San Diego, California.

By Edna J. Hamel, Deputy. *RE*

(Seal)

Office of the City Clerk, San Diego, California

Resolution **200375** JUL 23 1970  
Number \_\_\_\_\_ Adopted \_\_\_\_\_