

RESOLUTION NO.

200942

OCT 6 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 6th day of October, 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 fifty (50) 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 Tuesday, the 20th day of October, 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.

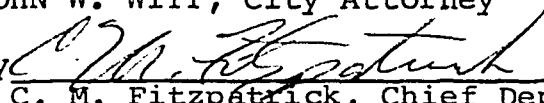
The successful bidder shall file a surety bond running to the City, to be approved by the Council, in the sum of Five Hundred Thousand Dollars (\$500,000.00), guaranteeing that such bidder shall well and truly observe, fulfill and perform each and every term and condition of such franchise, and that in case of any breach of any condition of the franchise the whole amount of the sum named in the bond may 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 
C. M. Fitzpatrick, Chief Deputy

200942

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 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 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 or distributing gas, sometimes otherwise referred to as "facilities";

(f) The phrase "construct, maintain and use" shall mean to construct, erect, install, operate, maintain, use, repair, relocate or replace pipes 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 receipts" shall mean all gross operating revenues received by Grantee from the sale of gas to Grantee's customers with points of service within the corporate limits of the City (including, but not limited to, sales to military reservations with points of service within the City's corporate limits) which are credited in Account Numbers 480, 481 and 482 of the current Uniform System of Accounts of the Federal Power Commission as adopted by the California Public Utilities Commission, or similar superseding accounts, less uncollectible amounts and less any refunds or rebates made by Grantee to such customers pursuant to orders or decisions of the California Public Utilities Commission.

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 fifty (50) years from and after the effective date hereof.

Section 4. CONSIDERATION

(a) 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 receipts during the preceding calendar year, or a fractional year, commencing with the date of adoption of this ordinance by the City Council, for the first thirty (30) years of the term of this franchise by the dates, in the manner, and on the conditions as set forth in Section 5 hereof.

(b) For the last twenty (20) years of the term of this franchise Grantee, as consideration and compensation for the rights and privileges herein granted and 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 an amount to be determined as set forth below of Grantee's gross receipts during the preceding calendar year, or a fractional year, for the remainder of the term of this franchise by the dates, in the manner and on the conditions as set forth in Section 5 hereof.

(c) Determination of the amount to be paid as set forth in Section 4(b) above shall be made by good faith negotiation between City and Grantee commencing not less than six (6) months prior to the expiration of the first thirty (30) year period. In the event that at the conclusion of the first thirty (30) year period said good faith negotiation does not result in a determination of the amount to be paid by Grantee during the

last twenty (20) years (or 19 years, 6 months, as the case may be) of the term of this franchise, then this question (and no other) shall be submitted to binding arbitration as hereinafter set forth; provided however that no later than fifteen (15) days prior to the end of the first thirty (30) year period the parties may mutually agree to extend the time for said good faith negotiation for an additional six (6) months if they so desire, during which time Grantee shall continue to pay a sum equal to three percent (3%) of Grantee's gross receipts as consideration for the rights and privileges herein granted. Unless City and Grantee mutually agree in writing to a modification prior to the conclusion of the first thirty (30) year period (or at the conclusion of the additional six (6) month period as provided for above) then the determination of the number of arbitrators, the time and mode of their selection, and the rules of practice and procedure to be followed shall be as set forth herein.

(d) Within thirty (30) days after the end of the first thirty (30) year period or within thirty (30) days after the six (6) month extension provided for above, as the case may be, Grantee and City shall each appoint a person to serve as an arbitrator and shall give written notice to the other party of such appointment.

(e) The two persons so appointed shall then agree upon and secure a third arbitrator. If the third arbitrator should not be secured within thirty (30) days from the selection of the arbitrators by Grantee and City respectively, then upon application in writing by either City or Grantee to the Chief Justice of the California State Supreme Court, said Chief Justice shall be empowered to appoint a third arbitrator. No person shall be

eligible for appointment by said Chief Justice who is an officer or employee of City or Grantee, or a shareholder of Grantee.

(f) The arbitrators so appointed shall hear evidence submitted by both City and Grantee and may call for additional information, which additional information City or Grantee shall furnish to the extent feasible. An award, decision or determination in writing and signed by a majority of the arbitrators shall be made within sixty (60) days after the selection of the third arbitrator and shall be conclusive with respect to the issue submitted and shall be binding upon both City and Grantee.

(g) Except as otherwise provided in this section, the arbitration shall be governed by the rules of practice and procedure of the American Arbitration Association from time to time in force, except that, if such rules and practice as herein modified shall conflict with the California Code of Civil Procedure or any other provision of California law then in force, such California rules and provisions shall govern. This submission and agreement to arbitrate shall be specifically enforceable. The award of the arbitrators or a majority of them upon the question submitted to them hereunder shall be final and binding upon the parties to the extent and in the manner provided by the California Code of Civil Procedure.

(h) Each party shall bear the fee and personal expenses of the arbitrator appointed by it together with the fees and expenses of its own counsel and of its own witnesses. All other costs and expenses of the arbitration, including the cost and expense incurred by reason of selection of the third arbitrator as hereinabove provided, shall be borne equally by City and Grantee.

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 receipts 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 under this subsection on the basis of gross receipts for the preceding calendar year and that an adjustment 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, or receive as a refund from the City, as the case may be, 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 Manager a copy of its annual report to the California Public Utilities Commission, or its successor in authority, as soon as practicable after the original of said report has been filed with said Commission, or its successor in authority.

(h) In the event Grantee fails to make the payments 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 two percent (2%) 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 ninety (90) 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. 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.

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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, provided however that Grantee may make repairs to streets, sidewalks, curbs and gutters itself at its own cost in accordance with City specifications if the same can be done without undue inconvenience to the public use of the streets.

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, 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.

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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.

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Section 14. 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.

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Section 15. 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 16. 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.

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Section 17. PERFORMANCE BOND

Grantee shall file and maintain a faithful performance bond in favor of the City in the sum of Five Hundred Thousand Dollars (\$500,000) to guarantee that Grantee shall well and truly observe, fulfill and perform each and every term and condition of the franchise herein granted. In case of any breach of any condition of the franchise, any amount of the sum made in the bond up to the whole thereof, may be receivable from the principal and sureties upon said bond to compensate City for any damages it may suffer by reason of such breach. Said 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 18. EFFECTIVE DATE

This ordinance shall take effect and be in force on the thirty-first day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By _____
C. M. Fitzpatrick, Chief Deputy

CMF:vl
10-1-70

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 herein-
after in this section defined are used, they shall have the
respective meanings assigned to them in the following
definitions:

(a) The word "Grantec" 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 free-
ways, 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 or distributing gas, sometimes otherwise referred to as "facilities";

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

(h) The phrase "gross receipts" shall mean all gross operating revenues received by Grantee from the sale of gas to Grantee's customers with points of service within the corporate limits of the City (including, but not limited to, sales to military reservations with points of service within the City's corporate limits) which are credited in Account Numbers 480, 481 and 482 of the current Uniform System of Accounts of the Federal Power Commission as adopted by the California Public Utilities Commission, or similar superseding accounts, less uncollectible amounts and less any refunds or rebates made by Grantee to such customers pursuant to orders or decisions of the California Public Utilities Commission.

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.

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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 fifty (50) years from and after the effective date hereof.

Section 4. CONSIDERATION

(a) 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 receipts during the preceding calendar year, or a fractional year, commencing with the date of adoption of this ordinance by the City Council, for the first thirty (30) years of the term of this franchise by the dates, in the manner, and on the conditions as set forth in Section 5 hereof.

(b) For the last twenty (20) years of the term of this franchise Grantee, as consideration and compensation for the rights and privileges herein granted and 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 an amount to be determined as set forth below of Grantee's gross receipts during the preceding calendar year, or a fractional year, for the remainder of the term of this franchise by the dates, in the manner and on the conditions as set forth in Section 5 hereof.

(c) Determination of the amount to be paid as set forth in Section 4(b) above shall be made by good faith negotiation between City and Grantee commencing not less than six (6) months prior to the expiration of the first thirty (30) year period. In the event that at the conclusion of the first thirty (30) year period said good faith negotiation does not result in a determination of the amount to be paid by Grantee during the

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last twenty (20) years (or 19 years, 6 months, as the case may be) of the term of this franchise, then this question (and no other) shall be submitted to binding arbitration as hereinafter set forth; provided however that no later than fifteen (15) days prior to the end of the first thirty (30) year period the parties may mutually agree to extend the time for said good faith negotiation for an additional six (6) months if they so desire, during which time Grantee shall continue to pay a sum equal to four percent (4%) of Grantee's gross receipts as consideration for the rights and privileges herein granted. Unless City and Grantee mutually agree in writing to a modification prior to the conclusion of the first thirty (30) year period (or at the conclusion of the additional six (6) month period as provided for above) then the determination of the number of arbitrators, the time and mode of their selection, and the rules of practice and procedure to be followed shall be as set forth herein.

(d) Within thirty (30) days after the end of the first thirty (30) year period or within thirty (30) days after the six (6) month extension provided for above, as the case may be, Grantee and City shall each appoint a person to serve as an arbitrator and shall give written notice to the other party of such appointment.

(e) The two persons so appointed shall then agree upon and secure a third arbitrator. If the third arbitrator should not be secured within thirty (30) days from the selection of the arbitrators by Grantee and City respectively, then upon application in writing by either City or Grantee to the Chief Justice of the California State Supreme Court, said Chief Justice shall be empowered to appoint a third arbitrator. No person shall be

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eligible for appointment by said Chief Justice who is an officer or employee of City or Grantee, or a shareholder of Grantee.

(f) The arbitrators so appointed shall hear evidence submitted by both City and Grantee and may call for additional information, which additional information City or Grantee shall furnish to the extent feasible. An award, decision or determination in writing and signed by a majority of the arbitrators shall be made within sixty (60) days after the selection of the third arbitrator and shall be conclusive with respect to the issue submitted and shall be binding upon both City and Grantee.

(g) Except as otherwise provided in this section, the arbitration shall be governed by the rules of practice and procedure of the American Arbitration Association from time to time in force, except that, if such rules and practice as herein modified shall conflict with the California Code of Civil Procedure or any other provision of California law then in force, such California rules and provisions shall govern. This submission and agreement to arbitrate shall be specifically enforceable. The award of the arbitrators or a majority of them upon the question submitted to them hereunder shall be final and binding upon the parties to the extent and in the manner provided by the California Code of Civil Procedure.

(h) Each party shall bear the fee and personal expenses of the arbitrator appointed by it together with the fees and expenses of its own counsel and of its own witnesses. All other costs and expenses of the arbitration, including the cost and expense incurred by reason of selection of the third arbitrator as hereinabove provided, shall be borne equally by City and Grantee.

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 receipts 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 under this subsection on the basis of gross receipts for the preceding calendar year and that an adjustment 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, or receive as a refund from the City, as the case may be, 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 Manager a copy of its annual report to the California Public Utilities Commission, or its successor in authority, as soon as practicable after the original of said report has been filed with said Commission, or its successor in authority.

(h) In the event Grantee fails to make the payments 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 two percent (2%) 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 ninety (90) 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. 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, provided however that Grantee may make repairs to streets, sidewalks, curbs and gutters itself at its own cost in accordance with City specifications if the same can be done without undue inconvenience to the public use of the streets.

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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, 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. 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 15. 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 16. 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.

200942

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
Tuesday, October 20, 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., October 20, 1970, as practicable.

The franchise shall be granted 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.

Passed and adopted by the Council of The City of San Diego on OCT 6 1970,
by the following vote:

RECEIVED
CITY CLERK'S OFFICE

1970 OCT -2 PM 3:25

SAN DIEGO, CALIF. *pr*

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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input 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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Frank Curran	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input 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.

(Seal)

By *Elfa P. Hamel*, Deputy *KE*

Office of the City Clerk, San Diego, California	
Resolution Number <u>200942</u>	Adopted <u>OCT 6 1970</u>