

ORDINANCE NO. _____
(New Series)

10639

JUL 29 1971

ORDINANCE GRANTING TO APPLIED ENERGY,
INCORPORATED A NON-EXCLUSIVE
FRANCHISE FOR A PERIOD OF FIFTY YEARS TO
CONSTRUCT, MAINTAIN AND USE PIPES AND
APPURTENANCES TO CARRY TEMPERATURE-
CONTROLLED WATER FOR HEATING AND COOLING
PURPOSES IN STREETS WITHIN THE CITY OF SAN
DIEGO AND TO UTILIZE SAID PIPES AND APPUR-
TENANCES IN SAID STREETS FOR TRANSMITTING
TEMPERATURE-CONTROLLED WATER FOR USE OUT-
SIDE THE BOUNDARIES OF THE CITY FOR HEATING
AND COOLING 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 "Grantee" shall mean APPLIED ENERGY,
INCORPORATED a corporation organized and existing
under and by virtue of the State of California; 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;

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(d) 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 temperature controlled water, sometimes otherwise referred to as "facilities";

(e) 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;

(f) The phrase "gross receipts" shall mean all gross operating revenues received by Grantee from the sale of the service of providing temperature controlled water to Grantee's customers with points of service within the corporate limits of the City to the extent that said gross operating revenues are derived from service which requires the use by Grantee of the pipes and appurtenances located upon, along, across, under or over the streets of the City under the terms and conditions of the franchise granted herein.

Section 2. PURPOSE

The nonexclusive franchise (1) to construct, maintain

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and use in said streets all pipes and appurtenances whenever and wherever necessary to transmit and distribute temperature-controlled water for, and for use by consumers for, heating and cooling purposes, and (2) to utilize said pipes and appurtenances in said streets for transmitting temperature-controlled water for use outside the boundaries of the City for heating and cooling purposes is hereby granted to APPLIED ENERGY, INCORPORATED, 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 APPLIED ENERGY, INCORPORATED, 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

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 the amounts or percentages of Grantee's gross receipts as set forth in the schedule below in the manner and on the conditions as set forth in Section 5 hereof.

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SCHEDULE

<u>Calendar Year</u>	<u>Amount or Percentage</u>
1972	\$1,000 or 3% of gross receipts whichever is greater
1973	1,000 or 3% of gross receipts whichever is greater
1974	1,000 or 3% of gross receipts whichever is greater
1975	1,000 or 3% of gross receipts whichever is greater
1976	1,000 or 3% of gross receipts whichever is greater
1977 and thereafter to the end of the term of the franchise	3% of gross receipts

Section 5. RECEIPTS, DATES OF PAYMENT TO CITY, AUDITORS

(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 1972, 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

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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 its stockholders as soon as practicable after the original of said report has been filed with the stockholders.

(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

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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 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

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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 of 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

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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.

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

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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 property. The valuation of such property for condemnation purposes shall be made in accordance with such general law.

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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, 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 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 Thousand Dollars (\$5,000) 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 receiveable 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

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

RECEIVED
CITY CLERK'S OFFICE

1971 JUN 28 PM 1:49

SAN DIEGO, CALIF.

Councilmen	Yeas	Nays	Excused	Absent
Helen Cobb	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 checked="" type="checkbox"/>	<input 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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mike Schaefer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input 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.

EDWARD NIELSEN

~~JOHN LOCKWOOD~~

City Clerk of The City of San Diego, California.

(Seal)

By Elfa Z. Hamel, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 15 1971

JUL 29 1971

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

EDWARD NIELSEN

~~JOHN LOCKWOOD~~

City Clerk of The City of San Diego, California.

(Seal)

By Elfa Z. Hamel, Deputy.

Office of the City Clerk, San Diego, California

Ordinance
Number

10639

Adopted

JUL 29 1971

FORM CC-1255-A (1-70)

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me

ATTORNEY (S)

* City of San Diego
202 "C" Street
Community Concourse
San Diego, California 92101

CERTIFICATE OF PUBLICATION

No.

IN THE MATTER OF

NON-EXCLUSIVE FRANCHISE FOR A PERIOD OF
FIFTY YEARS TO CONSTRUCT, MAINTAIN AND USE
PIPES AND APPURTENANCES TO CARRY TEMPERATURE-
CONTROLLED WATER FOR HEATING AND COOLING
PURPOSES

RECEIVED
CITY CLERK'S OFFICE
1971 AUG 12 AM 10:56
SAN DIEGO, CALIF.

I, Patricia M. Applestill hereby certify
that The Daily Transcript is a daily newspaper of general
circulation within the provisions of the Government Code of
the State of California, printed and published in the City of
San Diego, County of San Diego, State of California; that
I am the principal clerk of said newspaper; that the

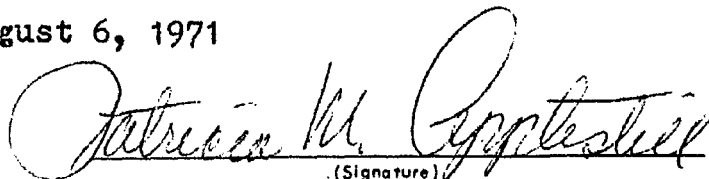
ORDINANCE NO. 10639 (NEW SERIES)

to a true and correct copy of which this certificate is annexed
was published in said newspaper on

August 6, 1971

I certify under penalty of perjury that the foregoing is
true and correct, at San Diego, California, on

August 6, 1971


(Signature)

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53 1/4"

RR3.65

ORDINANCE NO. 10639
(NEW SERIES)

ORDINANCE GRANTING TO APPLIED ENERGY, INCORPORATED, A NON-EXCLUSIVE FRANCHISE FOR A PERIOD OF FIFTY YEARS TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES TO CARRY TEMPERATURE-CONTROLLED WATER FOR HEATING AND COOLING PURPOSES IN STREETS WITHIN THE CITY OF SAN DIEGO AND TO UTILIZE SAID PIPES AND APPURTENANCES IN SAID STREETS FOR TRANSMITTING TEMPERATURE-CONTROLLED WATER FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR HEATING AND COOLING 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 APPLIED ENERGY, INCORPORATED, a corporation organized and existing under and by virtue of the State of California; 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 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 temperature controlled water, sometimes otherwise referred to as "facilities";

(e) 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;

(f) The phrase "gross receipts" shall mean all gross operating revenues received by Grantee from the sale of the service of providing temperature controlled water to Grantee's customers with points of service within the corporate limits of the City to the extent that said gross operating revenues are derived from service which requires the use by Grantee of the pipes and appurtenances located upon, along, across, under or over the streets of the City under the terms and conditions of the franchise granted herein.

Section 2. PURPOSE

The nonexclusive franchise (1) to construct, maintain and use in said streets all pipes and appurtenances whenever and wherever necessary to transmit and distribute temperature-controlled water for, and for use by consumers for, heating and cooling purposes, and (2) to utilize said pipes and appurtenances in said streets for transmitting temperature-controlled water for use outside the boundaries of the City for heating and cooling purposes is hereby granted to APPLIED ENERGY, INCORPORATED, 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 APPLIED ENERGY, INCORPORATED, 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

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 the amounts or percentages of Grantee's gross receipts as set forth in the schedule below in the manner and on the conditions as set forth in Section 5 hereof.

SCHEDULE

Calendar Year	Amount or Percentage
1972	\$1,000 or 3% of gross receipts whichever is greater
1973	1,000 or 3% of gross receipts whichever is greater
1974	1,000 or 3% of gross receipts whichever is greater
1975	1,000 or 3% of gross receipts whichever is greater
1976	1,000 or 3% of gross receipts whichever is greater
1977	1,000 or 3% of gross receipts whichever is greater

1977 and thereafter to the end of the term of the franchise 3% of gross receipts

Section 5. RECEIPTS, DATES OF PAYMENT TO CITY, AUDITORS

(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, 1972, 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 of Grantee's office or offices, of its books and records,

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permane 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 its stockholders as soon as practicable after the original of said report has been filed with the stockholders.

(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 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

Following the preparation of said manual, and its approval by the 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 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.

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 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, 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 the right is hereby expressly agreed that at any election held in City the 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 17. PERFORMANCE BOND

Grantee shall file and maintain a faithful performance bond in favor of the City in the sum of Five Thousand Dollars (\$5,000) 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 bond 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 attested by Grantee as principal and by a corporation licensed by 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 (30) day from and after its passage.

Passed and adopted by the Council of The City of San Diego on July 29, 1971, by the following vote:

YEAS: Loftin, Landt, Williams, Morrow, Martinet, Schaefer.

NAYS: None.

ABSENT: Cobb, Hitch, Curran.

AUTHENTICATED BY:

FRANK CURRAN,
Mayor of The City of San Diego, California.
EDWARD NIELSEN,
City Clerk of The City of San Diego, California.
By ELFA F. HAMEL, Deputy.

(SEAL)

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on July 15, 1971, and on July 29, 1971.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

EDWARD NIELSEN,
City Clerk of The City of San Diego, California.
By ELFA F. HAMEL, Deputy.

(SEAL)

Published August 6, 1971

J-546