

RESOLUTION NO. 202981 JUN 22 1971

NOTICE AND RESOLUTION OF INTENTION OF THE COUNCIL OF THE CITY OF SAN DIEGO TO SELL TO THE HIGHEST RESPONSIBLE CASH BIDDER A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES TO CARRY TEMPERATURE-CONTROLLED WATER FOR HEATING AND COOLING PURPOSES 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 22nd day of June, 1971 to advertise the fact that it is in the best interests of the City of San Diego and its inhabitants to grant a non-exclusive franchise for a period of fifty (50) years to construct, maintain and use pipes and appurtenances to carry temperature-controlled water for heating and cooling purposes 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 a form of ordinance 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 form of ordinance heretofore mentioned is attached to this resolution as Exhibit "A" 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 form set forth in Exhibit "A."

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

3. Sealed bids in writing, which shall be in the form set forth as Exhibit "C" attached hereto and no other form, will be received for such franchise up to the hour of 9:30 a.m. the 8th day of July, 1971, when the Council will, in open session, open and publicly declare all bids. Any amendment, deletion, or modification of said bid form, other than the insertion of names and amounts as indicated, shall cause the bid to be declared nonresponsive and invalid.

Thereafter 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 One Thousand Dollars (\$1,000); 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 to carry temperature-controlled water for heating and cooling purposes 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 then immediately file a surety bond running to the City, to be approved by the Council, in the sum of Five Thousand Dollars (\$5,000) 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 immediately 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 the 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 set forth on Exhibit "A."

APPROVED: JOHN W. WITT, City Attorney

By 
C. M. Fitzpatrick, Chief Deputy

CMF:v1
6-3-71

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ORDINANCE NO. _____
(New Series)

ORDINANCE GRANTING TO _____
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 _____

_____ 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;

EXHIBIT A

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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

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

_____, 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

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

<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

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

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 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

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

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 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.

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

NOTICE INVITING BIDS FOR A NON-EXCLUSIVE
FRANCHISE TO CONSTRUCT, MAINTAIN AND USE
PIPES AND APPURTENANCES TO CARRY
TEMPERATURE-CONTROLLED WATER FOR HEATING
AND COOLING PURPOSES 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 NON-EXCLUSIVE
FRANCHISE TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPUR-
TENANCES TO CARRY TEMPERATURE-CONTROLLED WATER FOR HEATING
AND COOLING PURPOSES 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 non-exclusive franchise to construct, main-
tain and use pipes and appurtenances to carry temperature-
controlled water for heating purposes in the streets of the
City of San Diego." Bids in the form set forth in Exhibit "C"
of Resolution No. _____ 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 _____ on _____

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 _____, as practicable.

EXHIBIT B

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The franchise shall be granted by introduction of an ordinance in the form specified as Exhibit "A" 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 One Thousand Dollars (\$1,000); 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 to carry temperature-controlled water for heating and cooling purposes in the streets of the City of San Diego, and one who is able to commence the operation of such system of carrying temperature-controlled water 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: _____

EDWARD NIELSEN, City Clerk
of The City of San Diego,
California.

The Honorable Mayor
and City Council
City of San Diego
San Diego, California

Attention City Clerk

Gentlemen:

Pursuant to the provisions of Resolution No. _____,
the undersigned does hereby bid the sum of \$ _____
(undersigned bidder to insert a sum not less than \$1,000) for
the non-exclusive franchise to construct, maintain and use
pipes and appurtenances to carry temperature-controlled water
for heating and cooling purposes in the streets of the City
of San Diego on the terms and conditions set forth in the
form of franchise attached to said Resolution as Exhibit "A."

A certified check of the undersigned bidder in the
aforementioned amount payable to the Treasurer of The City of
San Diego is enclosed herewith. Said Treasurer is authorized
to deposit, cash or negotiate said check upon the grant of
the franchise mentioned above.

Very truly yours,

Typed name of bidder

By _____
Signature of bidder or authorized
officer or agent

EXHIBIT C

202981

LP

JUN 22 1971

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

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 type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Floyd L. Morrow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Martinet	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 checked="" 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.

EDWARD NIELSEN

JOHN LOCKWOOD

City Clerk of The City of San Diego, California.

(Seal)

By Edna D. Hamel Deputy. *EH*

RECEIVED
CITY CLERK'S OFFICE

1971 JUN -8 AM 8:07

SAN DIEGO, CALIF.

Office of the City Clerk, San Diego, California

Resolution Number 202981

Adopted

JUN 22 1971