

RESOLUTION NO. 210011

FEB 28 1974

NOTICE AND RESOLUTION OF THE INTENTION OF THE COUNCIL OF THE CITY OF SAN DIEGO TO SELL TO THE HIGHEST, RESPONSIBLE CASH BIDDER A STEAM FRANCHISE FOR A PERIOD OF FORTY YEARS TO INSTALL, CONSTRUCT, MAINTAIN AND OPERATE STEAM PIPE CONDUITS IN ORDER TO CARRY STEAM AND/OR STEAM CONDENSATE FOR HEATING AND ALL OTHER PURPOSES IN CERTAIN STREETS WITHIN THE CITY OF SAN DIEGO.

WHEREAS, the Council of The City of San Diego, upon due consideration, after public hearing, and upon the recommendation of the City Manager, has determined this 28th day of February, 1974, to advertise the fact that it is in the best interests of The City of San Diego and its inhabitants to grant a steam franchise for a period of approximately forty (40) years expiring on February 17, 2013 to install, construct, maintain and operate steam pipe conduits in order to carry steam and/or steam condensate for heating and all other purposes in certain streets within the City of San Diego; and that bids should be received for such franchise, and that it should be awarded to the highest bidder; NOW, THEREFORE,

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

That sealed bids in writing will be received for such steam franchise up to the hour of 10:00 a.m. of Thursday, the 9th day of May, 1974, 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 five hundred and no/100 dollars (\$500.00); 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 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 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.

The 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 install, construct, maintain and operate steam pipe conduits for heating and all other purposes in certain streets within 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 steam 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 two thousand and no/100 dollars (\$2,000.00), conditioned that such bidder shall well and truly observe, fulfill and perform each and every term and condition of such franchise, and that in case of any breach of any condition of the franchise the whole amount of the penal sum named in the bond shall be taken and deemed to be liquidated damages, and shall be recoverable from the principal and sureties upon said bond. The bond shall be filed with the Council within five (5) days after such franchise is awarded, and upon the filing and approval of such

bond the franchise shall by said Council be granted by ordinance to the person, firm or corporation to whom it has been struck off, sold or 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 restriction as hereinabove provided.

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

ORDINANCE NO. _____
(New Series)

AN ORDINANCE OF THE CITY OF SAN DIEGO GRANTING TO
A STEAM FRANCHISE FOR A PERIOD OF APPROXIMATELY FORTY YEARS TO INSTALL, CONSTRUCT, MAINTAIN AND OPERATE STEAM PIPE CONDUITS IN ORDER TO CARRY STEAM AND/OR STEAM CONDENSATE FOR HEATING AND ALL OTHER PURPOSES IN CERTAIN STREETS WITHIN THE CITY OF SAN DIEGO.

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

Section 1. The Council of The City of San Diego does hereby determine and declare that after favorable recommendations thereon have been made and filed by the City Manager with the City Clerk of said City, and after public hearings have been held pursuant to published notice, and after free and open competition has been conducted after publication of notice, that the public interest, convenience and necessity of said City and its inhabitants require

that said City Council shall grant to Grantee the franchise to install, construct, maintain and operate underground steam pipe conduits in order to carry steam and/or steam condensate for heating and all other purposes in certain streets within the City of San Diego, for a period of approximately forty (40) years expiring on February 17, 2013, upon the terms and subject to the conditions and restrictions in this ordinance as hereinafter stated.

Section 2. That said Council does further determine and declare that pursuant to its Resolution No. 210011, adopted February 28, 1974, publication, notice and advertisement of intention to grant such franchise and inviting sealed bids thereon as provided for in said resolution was duly and regularly made and published for the time and in the manner as in said resolution and under the terms of the Charter of said City as provided.

Section 3. That said Council further determines and declares that after said advertisement duly and regularly published as required by law, said Council, in open, regular session received, opened and considered bids for said franchise; extended opportunity to responsible persons, firms and corporations to bid for such franchise, as provided by law, and said notice inviting sealed bids, and full opportunity having been given to increase the amount of sealed bids received, and it appearing that the highest bid received was in the sum of _____ dollars (\$ _____), said franchise was thereupon by said Council awarded, sold and granted to said Grantee; that Grantee has deposited with said City, within the time required by law, the total sum aforesaid in lawful money of the United States; that said Grantee has filed with the said Council a bond in the sum of two thousand and no/100

dollars (\$2,000.00), with good and sufficient sureties satisfactory to said Council, running to said City, conditioned that the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages and shall be recoverable from the principal and sureties upon said bond; that said bond is in the form and contains the terms required by law and the order of the Council, and said bond has been regularly approved by said Council.

Section 4. 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 (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

A. The word "Grantee" shall mean _____
_____ and its lawful successors or 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 "street" shall mean any public street or highway under the jurisdiction of The City of San Diego now or hereafter dedicated within the City of San Diego;

D. The phrase "steam pipe conduits" shall mean pipes, pipelines, mains, services, traps, meters, gauges, regulators, valves, conduits, vaults, manholes, appurtenances, attachments, appurtenances and, without limitation of the foregoing, any other property located or to be located in or below the streets of the City, and used or useful in transmitting and carrying steam and/or steam condensate;

E. The phrase "install, construct, maintain and operate" shall mean to construct, erect, install, lay, operate, maintain, use, repair or replace.

Section 5. There is hereby granted to Grantee, and to its successors or assigns, the franchise to install, construct, maintain and operate steam pipe conduits for heating and all other purposes in certain streets within the City of San Diego as hereinafter described:

Beginning at the intersection of the Easterly line of India Street with a line that is parallel with and 50.00 feet Northerly of the Northerly line of Grape Street, said point herein designated Point "A"; thence Westerly along said parallel line and its Westerly prolongation to the Westerly line of Harbor Drive, said point herein designated Point "B"; thence Southerly and Southeasterly along the Westerly and Southwesterly line of Harbor Drive to the intersection with the Southerly prolongation of a line that is parallel with and 50.00 feet Easterly of the Easterly line of Eighth Avenue; thence Northerly along said parallel line to a line that is parallel with and 50.00 feet Southerly of the Southerly line of Commercial Avenue; thence Easterly along said parallel line and its Easterly prolongation to the center of Interstate 5; thence Northerly, Northwesterly and Westerly along the center of Interstate 5 to the intersection with the Easterly prolongation of Course ("A"- "B") described above, said Course being parallel with and 50.00 feet Northerly of the Northerly line of Grape Street; thence Westerly along said prolongation to the POINT OF BEGINNING; but excluding all that area included within that franchise granted to San Diego Gas & Electric Company on January 17, 1963, a copy of which is on file in the office of the City Clerk of City as Document No. 650514.

Section 6. The term of this franchise shall be approximately forty (40) years, expiring on February 17, 2013, provided that upon written notice given by the City or Grantee to the other not less than one (1) year prior to February 17, 1988, the terms and

conditions of this franchise may be subject to renegotiation for an additional fifteen-year term. If this first renegotiation is successful, then upon written notice given by the City or Grantee to the other not less than one (1) year prior to February 17, 2003, the terms and conditions of this franchise may be subject to further renegotiation for the remainder of the franchise term.

Renegotiations shall be directed toward effecting alterations in the terms and conditions of the franchise in order to reflect those technical and economic changes which have occurred during the interim period. If renegotiation at any time prior to the end of the term of the franchise does not result in agreement between City and Grantee for continuance of the franchise for a succeeding term as specified above, the franchise shall terminate without further action by City on February 17, 1988 or, if the first renegotiation is successful, on February 17, 2003. At no time shall any renegotiation of this franchise lower the consideration charged by the City for this franchise below three percent (3%) of the gross annual receipts of the Grantee arising from the use, operation, or possession of the franchise.

Section 7. This franchise is granted upon the following terms and subject to the following conditions:

A. The franchise herein granted is upon the express condition that the Grantee, as consideration therefor and as compensation for the use of the City streets, shall pay annually to the City during the term of the franchise a sum equal to three percent (3%) of the gross annual receipts of the Grantee arising from the use, operation, or possession of the franchise, such percentage to

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commence to accrue on the date the ordinance granting the franchise becomes effective.

B. The Grantee shall file with the Clerk of the City within three (3) months of the expiration of each calendar year, following the date of granting hereof and during the life of said franchise, a duly verified statement showing in detail the gross receipts of Grantee during the preceding calendar year, arising from the use, operation or possession of the franchise. Grantee shall pay the City within three (3) months and fifteen (15) days after the expiration of the calendar year, in lawful money of the United States of America, the aforesaid percentage of its gross receipts for such calendar year, covered by the above mentioned statement. Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and of all rights of Grantee hereunder.

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

D. Before Grantee commences any work, the location of any steam main installation shall be approved by the City Engineer.

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E. This franchise does not relieve the Grantee of any requirement, ordinance, rule or regulation of the City relating to street work, or the use, removal, or relocation of property in streets.

F. The right to grade, sewer, pave, macadamize, or otherwise improve or alter or repair City streets, or to change the grade thereof, shall be reserved to the City. Such work shall be done so as to interfere as little as possible with the rights and privileges enjoyed by the Grantee of this franchise, under the terms and provisions thereof. The Grantee, at its own expense, shall change the location of steam pipe conduits placed in the City streets so as to comply with any change of grade of said streets ordered by the City Council.

G. Whenever a street or portion thereof is closed, the Grantee shall be granted by the City a permanent easement covering the location of steam pipe conduits then existing in said closed street or portion thereof, with access for maintenance, repair and operation; provided, however, that (1) when the construction of a structure or structures for municipal purposes shall require the removal or relocation of a portion or portions of said steam pipe conduits, said easement shall be revoked with respect to such portions of said steam pipe conduits and the Grantee shall remove and relocate such portions at its own expense, and (2) in all other cases said easement may be revoked only upon condition that the Grantee is reimbursed for any and all costs incurred by it occasioned

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by such revocation and for the cost of relocation or removal of existing steam pipe conduits and the construction of alternative steam pipe conduits to supply steam service to its customers. The Grantee shall not install any new extension of its steam pipe conduits or any new steam service in any streets regarding which Grantee has received written notice that the same shall be closed within a period of five (5) years from date of notice.

H. Within ten (10) days after the passage and taking effect of this ordinance, the Grantee shall file with the City Clerk of said City a written acceptance of the franchise hereby granted and an agreement to comply with the terms thereof.

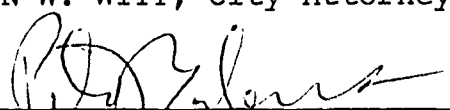
I. This franchise shall not be transferred except with the approval of the Council expressed by ordinance.

J. This franchise may be amended by agreement of the City and Grantee, but such amendment must be authorized by ordinance.

Section 8. 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 9. 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 
Peter D. Bufens, Deputy

PDB:lc
Pages 7
through 10
Revised. 3/5/74

Passed and adopted by the Council of The City of San Diego on **FEB 28 1974**,
 by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Gil Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen F. O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lee Hubbard	<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"/>
Jim Ellis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Bates	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

(Seal)

EDWARD NIELSEN

City Clerk of The City of San Diego, California.

By *Laverne E. Miller*, Deputy.

RECORDED
 1974 FEB 28 PM 12:30
 SAN DIEGO, CALIF.
 CC-1278 (REV. 11-73)

Office of the City Clerk, San Diego, California	
Resolution Number 210011	Adopted FEB 28 1974
<i>jm</i>	