

(R-84-338)

RESOLUTION NUMBER R- 259365

Adopted on OCT 10 1983

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 GAS IN A PORTION OF NORTH TORREY PINES ROAD 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 on this 10th day of October, 1983, 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 gas in a line along North Torrey Pines Road beginning at Del Mar City limits to a junction with Genesee Avenue, a distance of approximately 3.7 miles within 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 will be received for such franchise up to the hour of 1:00 p.m. of Monday, the 24th day of October, 1983, 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 THOUSAND DOLLARS (\$5,000); 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 ten (10) percent above the highest sealed bid therefor, and said bid so made may be raised not less than ten (10) percent by another 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 gas in the above referenced portion of North Torrey Pines Road 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.

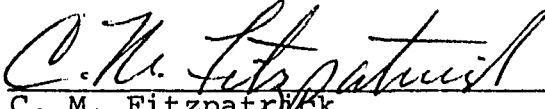
Each sealed bid shall be accompanied with cash or a certified check payable to the Treasurer of The City of San Diego for the full amount of said bid, and no sealed bid shall be considered unless said cash or check is enclosed therewith.

The successful bidder shall file a surety bond running to the City, to be approved by the Council, in the sum of FIVE THOUSAND DOLLARS (\$5,000), conditioned that such bidder shall well and truly observe, fulfill and perform each and every term and condition of such franchise, and that in case of any breach of any condition of the franchise the whole amount of the penal sum named in the bond shall be taken and deemed to be liquidated damages, and shall be recoverable from the principal and sureties upon said bond. The bond shall be filed with the Council within five (5) days after such franchise is awarded, and upon the filing and approval of such bond the franchise shall by said Council be granted by ordinance to the person, firm or corporation to whom it has been struck off, sold and awarded, and in case that such bond shall not be so filed the award of such franchise shall be set aside, and any money paid therefor shall be forfeited, and said franchise shall, in the discretion of said Council, be readvertised and again offered for sale in the same manner and under the same restrictions as hereinbefore provided.

BE IT FURTHER RESOLVED, that the proposed ordinance

granting such proposed franchise, with the exception of the dates that are left blank and the name of the successful bidder and grantee, is as set forth herein on Exhibit "A."

APPROVED: John W. Witt, City Attorney

By   
C. M. Fitzpatrick  
Senior Chief Deputy

CMF:ps:480.4  
8/25/83  
Or.Dept:Prop.  
Job:217067  
Form=r.none

*R* 259365

(O-84-39)

ORDINANCE NUMBER O-\_\_\_\_\_ (New Series)

Adopted on \_\_\_\_\_

AN ORDINANCE GRANTING TO \_\_\_\_\_, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE TO CONSTRUCT, MAINTAIN AND USE A PORTION OF NORTH TORREY PINES ROAD IN THE CITY OF SAN DIEGO, NECESSARY TO TRANSMIT GAS SUITED FOR, AND FOR USE BY ULTIMATE CONSUMERS FOR, ANY AND ALL LAWFUL PURPOSES.

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

Section 1. DEFINITIONS

Wherever 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 any later reorganized, consolidated, enlarged or reincorporated form;

(c) The phrase "a portion of North Torrey Pines Road" shall mean that portion beginning at Del Mar city limits south to intersection with Genesee Avenue, a distance of approximately 3.7 miles;

(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 referenced portion of North Torrey Pines Road in 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 said portion of North Torrey Pines Road in the City;

(g) The phrase "gross receipts" shall mean all gross operating revenues received by Grantee arising from the use, operation and possession of this franchise, prepared under oath and computed in accordance with the decisions of the courts of the State of California, including County of Tulare v. City of Dinuba, 188 C.664 (1922) and County of Los Angeles v. Southern Counties Gas Company, 42 Cal.2d 129 (1954).

## Section 2. PURPOSE

The franchise to construct, maintain and use in said portion of North Torrey Pines Road all pipes and appurtenances wherever necessary to transmit gas suited for, and for use by ultimate consumers 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

The Grantee of said franchise, its successors and assigns, shall file with the Clerk of The City of San Diego during the first fifteen (15) days of May of each year and during the same period of each successive year thereafter for the full term of this franchise, a statement verified by the oath of said Grantee, its successors or assigns, showing the total gross annual receipts arising from its use, operation or possession of said franchise for the preceding calendar year; and said Grantee, or its successors or assigns, shall thereupon pay, as rental for that portion of said North Torrey Pines Road exclusively occupied by the Grantee of this franchise, to the Treasurer of The City of San Diego, for The City of San Diego, the aggregate sum of two percent (2%) of the gross annual receipts, as shown by said statement, on or before the first day of June of each year during the term of this franchise.

Any refusal by said Grantee, its successors or assigns, to file said verified statement, or to pay said percentage of said gross annual receipts as hereinabove provided, within the time above provided, shall constitute ground for forfeiture of said franchise and all rights granted thereby.

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

(a) As required by Section 4, on or before the 15th day of

May 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) On or before the first day of June of each year after the filing of the statement required to be filed on or before the 15th day of May 1984 and each May thereafter, Grantee shall pay to the City Treasurer the money herein required to be paid by Grantee to City upon the basis of the date set forth in said statement.

(c) The City Auditor or any qualified person designated by City may after said statement is made and filed, inspect and examine the books and records of the Grantee of this franchise, or its successors or assigns, at this or their place of business, insofar as said books and records relate to the revenues derived or received from or by virtue of or connected with the exercise of the rights and privileges granted by this franchise, and may cause the same to be examined by an expert accountant and may examine under oath any and all of its officers and agents, for the purpose of ascertaining the gross annual receipts arising from the use, operation or possession of this franchise.

(d) 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.

(e) 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 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 existing 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 agrees to comply with and be bound by the provisions of a manual of administrative practices governing the

installation and removal of Grantee's facilities in the streets of the City, as said manual may be revised from time to time. However, in the event said manual of administrative practices shall conflict with any requirement or provision of California Public Utilities Commission General Order No. 112-D, as said Order may be revised or renumbered from time to time, Grantee shall comply with the provisions of said General Order No. 112-D.

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 reserved 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.

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. PERFORMANCE BOND

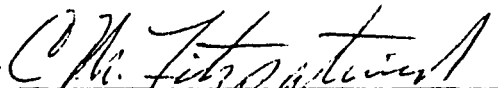
Grantee shall file and maintain a faithful performance bond in favor of the City in the sum of Five Thousand Dollars (\$5,000.00) to guarantee that Grantee shall well and truly

observe, fulfill and perform each and every term and condition of the franchise therein 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 17. EFFECTIVE DATE

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

APPROVED: John W. Witt, City Attorney

By   
C. M. Fitzpatrick  
Senior Chief Deputy

CMF:ps  
8/18/83  
Or.Dept:Prop.  
O-84-39  
Form=o.none

R-259365

Passed and adopted by the Council of The City of San Diego on OCT 10 1983,  
 by the following vote:

Councilmen	Yeas	Nays	Not Present	Ineligible
Bill Mitchell	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bill Cleator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gloria McColl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
William Jones	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ed Struiksma	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Gotch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Dick Murphy	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Uvaldo Martinez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Roger Hedgecock	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

ROGER HEDGECOCK  
 Mayor of The City of San Diego, California.

CHARLES G. ABDELNOUR  
 City Clerk of The City of San Diego, California.

(Seal)

By Ellen Board, Deputy.

Office of the City Clerk, San Diego, California

Resolution Number R-259365 Adopted OCT 10 1983