

3/11/2022 #55

(O-2022-85)
COR. COPY

ORDINANCE NUMBER O- 21440 (NEW SERIES)

DATE OF FINAL PASSAGE MAR 09 2022

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO TO AUTHORIZE THE EXECUTION OF A
MEMORANDUM OF UNDERSTANDING WITH SAN DIEGO
GAS & ELECTRIC FOR THE OPERATION OF THE
MUNICIPAL SURCHARGE UNDERGROUNDING PROGRAM
AND RELATED ACTIONS.

WHEREAS, the City Council (Council) of San Diego awarded a Franchise for
Transmitting and Distributing Electricity and other purposes (Franchise) to San Diego Gas &
Electric (SDG&E) by Ordinance No. 0-21328, which became effective on July 11, 2021; and

WHEREAS, the City and SDG&E have had a contractual relationship for the provision
of gas and electric services since 1920, and during the prior franchise effective between 1971 and
2021 (Prior Franchise) entered into a Memorandum of Understanding Regarding Implementation
of Franchise Undergrounding Obligations ("2001 Undergrounding MOU") approved by
San Diego City Council Resolution No. R-295892 on December 11, 2001, which dictated the
processes and procedures for undergrounding; and

WHEREAS, in 2002 under the Prior Franchise, SDG&E increased the amounts of money
budgeted for undergrounding by applying to the California Public Utilities Commission (CPUC)
for a Municipal Undergrounding Surcharge (Surcharge); and

WHEREAS, the CPUC approved SDG&E's proposed Surcharge to fund a Municipal
Undergrounding Surcharge Program (Undergrounding Program) by issuing CPUC Resolution
E-3788; and

WHEREAS, in its approval of Resolution E-3788, the CPUC retained jurisdiction over
the construction of the underground conversion of SDG&E facilities, and advised that all such
work must be performed in compliance with applicable CPUC regulations; and

WHEREAS, section 10(g) of the current Franchise requires the City and SDG&E to negotiate a new or amended Undergrounding Memorandum of Understanding to continue the undergrounding conversion of SDG&E's aboveground electric facilities; and

WHEREAS, City staff from the Transportation and Sustainability and Mobility Departments have concluded negotiations with SDG&E and presents to Council for adoption a proposed new Undergrounding MOU (MOU); and

WHEREAS, City staff have elected to draft a new MOU rather than amending the previous MOU, to address outdated terms and insert accountability measures; and

WHEREAS, the newly proposed MOU has substantially more detail and addresses issues identified by both parties in the 2001 Undergrounding MOU; and

WHEREAS, the parties included provisions intended to maximize value and efficiency, to reduce disputes, to ensure accountability, and to respect CPUC's jurisdiction over the construction and conversion of SDG&E's facilities; and

WHEREAS, under the new MOU, the City will have the sole authority to decide which and how many projects it will design and construct; and

WHEREAS, for a joint project, the City will be responsible for electrical and civil design, the civil construction, the conversion of electrical service equipment, and design and construction of all City infrastructure such as ADA-compliant pedestrian ramps and streetlights, and SDG&E will perform the electrical work including feeding cable through the conduits, making the electrical connections, and removing the overhead lines and poles; and

WHEREAS, this distribution of responsibilities gives the City direct control over the costliest scope of construction, which is also the work that frequently requires coordination with other City projects, while giving SDG&E control over the part of the work that is most critical for ensuring the safety and reliability of their electrical infrastructure; and

WHEREAS, the City has agreed to adopt SDG&E's Qualified Designer List requirements for any consultant contracts awarded in support of the Undergrounding Program, to ensure that such work meets SDG&E safety and design standards; and

WHEREAS, the new MOU incorporates specific timelines for SDG&E services on joint projects such as design review and performance benchmarks throughout the project life cycle to ensure SDG&E acceptance at completion; and

WHEREAS, for projects to be delivered by solely SDG&E, the new MOU provides clear and comprehensive terms geared toward increased accountability; and

WHEREAS, SDG&E must comply with CPUC rules and regulations and State law when using Surcharge funds; and

WHEREAS, in some instances, as described more specifically in Section 2 herein, CPUC rules and regulations and State law conflict with City ordinances and policies when dealing with Surcharge funds; and

WHEREAS, instead of waiving City ordinances and policies that conflict with CPUC rules and regulations and State law, which preempt City ordinances and policies, the parties have included in the MOU alternate requirements that are consistent with the City's desired outcomes and goals; and

WHEREAS, the MOU allows some deviations between SDG&E's procurement practices and the City procurement requirements by including the use of Master Services Agreements (MSA) which operate similarly to City's as-needed and job-order contracts, and the use of best value criteria for comparing bids instead of selecting the lowest responsible and reliable bidder; and

WHEREAS, SDG&E will include City staff in creating bid evaluation materials and the review of bid scoring, and will advertise its bid opportunities in support of the Undergrounding Program in a publication selected by the City; and

WHEREAS, SDG&E has agreed to advertise and award new MSAs exclusively for use of the Undergrounding Program which will adhere to these new requirements; and

WHEREAS, although SDG&E operates a diversity program mandated by CPUC regulation that differs substantially from City requirements for Equal Opportunity Contracting and the City's Small and Local Business Program, it has accepted several relevant City requirements that will be imposed on all SDG&E contracts awarded in support of the Undergrounding Program in addition to SDG&E's existing CPUC-mandated diversity program requirements; and

WHEREAS, the MOU includes multiple touchpoints for SDG&E to provide project cost and schedule information, and significant revisions to SDG&E's accounting and internal processes so that the City can confirm invoiced amounts; and

WHEREAS, the MOU provides that the cost pool for SDG&E labor charges related to administration of the projects will not be commingled with accounts that are not using Surcharge funds; and

WHEREAS, the MOU requires SDG&E to participate more closely in the City's process of establishing annual budget by, for instance, explaining changes in budgets or variances between budget and expenditure; and

WHEREAS, the MOU requires SDG&E to coordinate with the City when a project may impact existing street trees or accessibility standards, and to participate in public forums that are designed to adhere to the recommendations from the Utility Undergrounding Advisory Committee; and

WHEREAS, as the MOU imposes obligations that significantly change the relationship between the parties and require modifications to SDG&E's business model and accounting structure, lead time for implementation is necessary; and

WHEREAS, for existing projects that are at a significant stage of completion under the prior Franchise, the City may waive new requirements to reduce delays in project completion; and

WHEREAS, the compliance review processes described under the Franchise will serve as the main mechanism for evaluating SDG&E's compliance with MOU requirements and whether the City is getting a good value; and

WHEREAS, under San Diego City Charter section 99, no contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds majority vote of the Council; and

WHEREAS, the terms of the MOU and the Franchise are consistent, and the MOU may not be amended without an ordinance approved by a two-thirds majority of the Council; and

WHEREAS, the City recognizes that CPUC regulations may preempt City statutes and policies in areas related to SDG&E's operations under the proposed Undergrounding Program, so this Ordinance provides for requirements described in the MOU to replace relevant

requirements in the San Diego Municipal Code that may be preempted, but only as they relate to the use of Municipal Undergrounding Surcharge funds when they are expended on Undergrounding Program projects for contracts awarded by SDG&E to its contractors; NOW, THEREFORE,

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

Section 1. That the Mayor or designee is authorized to enter into a Memorandum of Understanding with SDG&E, for the purposes of performing the underground conversion of existing overhead facilities in support of the Municipal Surcharge Undergrounding Program, under the terms and conditions set forth in the Agreement, on file in the Office of the City Clerk as Document No. OO- 21440.

Section 2. That, to the extent CPUC jurisdiction and regulation prevent SDG&E from compliance with City requirements, the following San Diego Municipal Code (SDMC) provisions as they relate to the expenditure of Surcharge funds on undergrounding projects are to be replaced with the corresponding requirements in the terms of the MOU, as detailed below:

- a. In addition to the requirements of SDMC section 22.3202 for the competitive process for consultant contracts, the City shall use SDG&E's Qualified Designer List only for design services procured by the City for the Undergrounding Program to ensure that all City design work on joint projects meets SDG&E's safety protocols, as required in section 6 of the MOU ("CITY and GRANTEE Cooperation for Design and Project Management of Joint Project").
- b. The City's prequalification process for bidders in SDMC section 22.3004 shall not apply to consultant and construction contracts awarded by SDG&E to its own contractors in support of the Undergrounding Program and funded with Surcharge funds, but shall be replaced by the prequalification processes described in section 9 of

the MOU (“Verifying Competitive Procurement”), which authorizes SDG&E to rely on its own Qualified Designer List and prequalification process to select consultants and contractors with the necessary expertise and experience to work on SDG&E systems.

- c. The requirements of SDMC section 22.3207 shall not apply to consultant contracts for design and engineering awarded by SDG&E to its own consultants in support of the Undergrounding Program and funded with Surcharge funds, but shall be replaced by section 9.1 of the MOU (“Design & Engineering Procurement”), which authorizes SDG&E to issue MSAs for design services for consultants on SDG&E’s Qualified Designer List via a competitive process with input from the City that may exceed the threshold requirements of 22.3207.
- d. The requirements of SDMC section 22.3102 and 22.3107 for the award of major public works contracts, requiring Council approval for major public works contracts and requiring such contracts to be awarded to be to the lowest responsible and reliable bidder, shall not apply to construction contracts awarded by SDG&E to its own contractors in support of the Undergrounding Program and funded with Surcharge funds, but shall be replaced with the provisions of section 9.2 of the MOU (“Construction Procurement”), which authorize SDG&E to award its own undergrounding construction contracts in support of the Undergrounding Program via a competitive process with input from the City to SDG&E’s contractors on a best value basis to ensure the necessary experience and expertise for contractors working on SDG&E electrical systems.

e. The requirements of SDMC sections 22.2701 through 22.2708 (City's Equal Opportunity Outreach Program) and SDMC sections 22.601 through 22.36022 (City's Small and Local Business Program) shall not apply to contracts awarded by SDG&E in support of the Undergrounding Program and funded with Surcharge Funds, but shall be replaced with the requirements of section 9.4 of the MOU ("Diverse Business Enterprises"), which obligates SDG&E to utilize its diverse business outreach program as mandated and tracked by the CPUC in support of the Undergrounding Program. In addition, certain City requirements are imposed in the MOU under section 9.5 ("Minimum Contracting Requirements") on all contracts to be awarded by SD&GE in support of the Undergrounding Program and funded with Surcharge funds, including:

1. Submittal of Work Force Report and/or Equal Employment Opportunity Plan (SDMC 22.2705);
2. Subcontractors must comply with City's equal employment opportunity outreach program (SDMC 22.2704);
3. Mandatory Non-Discrimination Contract Clause requirement (SDMC 22.3512); and
4. Equal Benefits Requirements, as described in SDMC, Article 2, Chapter 2, Division 43.

Section 3. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from
and after its final passage.

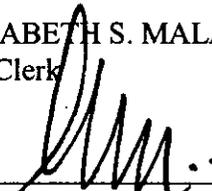
APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Ryan P. Gerrity
Ryan P. Gerrity
Deputy City Attorney

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02/08/22 COR. COPY
01/04/22
Or.Dept: Transportation Department
Doc. No.: 2849997_3

I hereby certify that the foregoing Ordinance was passed by the Council of the City of
San Diego, at this meeting of MAR 01 2022.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 3/9/22
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on MAR 01 2022, by the following vote:

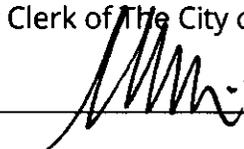
Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAR 09 2022.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

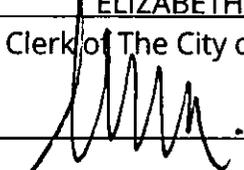
(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By , 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 FEB 15 2022, and on MAR 09 2022.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.
By , Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21440