

ORDINANCE NUMBER O- 21676 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 18 2023

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO GRANTING TO ENERGY CENTER SAN DIEGO LLC A NON-EXCLUSIVE FRANCHISE FOR A PERIOD OF TWENTY 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 defined in this section are used, they shall have the respective meanings assigned to them in the following definitions:

- (a) The word "Grantee" shall mean ENERGY CENTER SAN DIEGO LLC, a limited liability company and wholly owned subsidiary of CORDIA LLC organized and existing under and by virtue of the State of Delaware; 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 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 non-exclusive 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 ENERGY CENTER SAN DIEGO LLC, its successors and assigns.

Section 3. TERM

- (a) The right, privilege, and Franchise, subject to each and all of the terms and conditions contained in this Ordinance, is hereby granted to ENERGY CENTER SAN DIEGO LLC, for the primary term of (10) years from and after the Commencement of Operations Date.
- (b) Subject to the provisions set forth in Section 11, the primary term provided in Section 3(a) shall automatically be extended for a secondary term of ten (10) years. Grantee and the City understand and agree that, unless one or more of the provisions set forth in Section 11(b) or (c) apply or are exercised, the Franchise shall automatically be extended without additional action of any kind by the City or Grantee.
- (c) All associated agreements, rights, and obligations under the Franchise shall also expire at the expiration or earlier termination of the Franchise, except for the provisions set forth in Section 15.

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 amount of 3% (three percent) of Grantee's gross receipts as set forth in the below in the manner and on the conditions as set forth in Section 5 hereof.

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 2024, 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 herein-above provided, Grantee shall pay as additional consideration both of the following amounts:
- (1) A sum equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and 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. Without limitation such responsibility includes compliance with the City's Living Wage Ordinance requirements, its non-discrimination requirements, and its Drug Free Workplace requirements. This also includes, but is not limited to, state and City ordinances, rules and regulations relating to decarbonization of building or industrial energy systems.

Section 7. ADMINISTRATIVE PRACTICES

- (a) Grantee's exercise of rights to install, maintain, and operate its facilities in the streets of the City shall at all times be subject to obtaining and maintaining in force an Administrative Practices Memorandum of Understanding (Administrative MOU). The Administrative MOU shall define Grantee's administrative practices throughout the streets while exercising the Franchise rights; however, the Administrative MOU shall not be in lieu of or relieve Grantee from complying with the Franchise terms or obtaining more particular permits required for Grantee's specific projects or activities. The Administrative MOU shall be granted by the City Manager subject to the terms and procedures of the Franchise and on such other reasonable terms as may be established by the City Manager following consultation with Grantee and other utilities using the streets. Grantee shall apply for an Administrative MOU within thirty (60) calendar days after the Effective Date, and the initial Administrative MOU shall be reviewed and updated on the second anniversary after the Effective Date. Each successive Administrative MOU shall be reviewed every two (2) years. Grantee shall not be charged a fee to obtain the Administrative MOU. The Administrative MOU shall be consistent with all terms in the Franchise and City policies as applicable. If there is any conflict between the provisions of the Franchise and the provisions of the Administrative MOU, the provisions of the Franchise shall control, and the conflicting provisions of the Administrative MOU shall be void.

- (b) Subject to Applicable Laws and the requirements of the Franchise, the City Manager may take due consideration of Grantee's requests regarding provisions of each biennial Administrative MOU, provided the requests are consistent with and do not conflict with the terms of the Franchise. The City Manager shall determine if the conditions of the Franchise are fulfilled upon any application for an Administrative MOU and if Grantee's application is complete. The City Manager shall grant an Administrative MOU within thirty (30) calendar days after Grantee's complete application. The application shall contain sufficient information for the City Manager to assure compliance with all the requirements in the Franchise. Grantee shall apply for each successive Administrative MOU not less than one hundred eighty (180) calendar days prior to expiration of the prior Administrative MOU. Any Administrative MOU granted by the City Manager shall be subject to the following conditions:
- (1) Upon written request by the City Engineer or designee, Grantee shall provide to the City within ten (10) calendar days, and immediately in the case of a City Manager-declared emergency, GIS coordinate data, or other locational records as the City in its sole discretion may deem appropriate for the City's requirements. The records provided in response to the City's request shall describe Grantee's facilities in geographical areas of any size that the City determines necessary to coordinate with the City's uses or any other lawful uses of the streets throughout the City.

- (A) Grantee's contention that information is confidential shall not relieve Grantee from the duty to produce the information to City. Grantee acknowledges that any information required to be submitted or provided in fulfillment of the obligations of the Franchise is a public record subject to disclosure in response to a California Public Records Act (California Government Code sections 6250 – 6276.48) (CPRA) request, unless the City or a court of competent jurisdiction determines that a specific exemption to the CPRA applies. If Grantee submits information clearly marked confidential or proprietary, the City shall protect such information and treat it with confidentiality to the extent permitted or required by law; provided however, that the City shall assume no liability for having access to Grantee's records for official City purposes except by a judgment in a court of competent jurisdiction upon a claim arising from the established sole negligence or willful misconduct of the City, its officers, agents, or employees. It shall be Grantee's responsibility to provide to the City the specific legal grounds on which the City can rely in withholding information from public disclosure should Grantee request that the City withhold such information. General references to sections of the law

will not suffice. Rather, Grantee shall provide in writing a specific legal basis, including applicable case law or other law, that reasonably establishes the requested information is exempt from disclosure. Grantee agrees to defend and indemnify City if City is sued for withholding from disclosure information deemed confidential by Grantee. If, at the time the documents are provided to the City, Grantee does not provide in writing a specific legal basis for requesting the City to treat the information as confidential, to protect it from release, and to withhold alleged confidential or proprietary information from CPRA requests, the City is not required to treat the information as being confidential and may release the information as required by the CPRA. When reviewing any request by Grantee for confidentiality, the City will consider California Government Code section 6254(e), which provides a CPRA exemption for records concerning geological and geophysical data relating to utility systems development that are obtained in confidence from any person.

- (B) The City shall not be required to execute any non-disclosure agreement with Grantee to obtain prompt confidential access to Grantee's records for its facilities in

City streets except by order of a state or federal governmental agency or court having jurisdiction to impose such requirement. Absent such order, the City may, but shall not be required, to execute non-disclosure agreements with Grantee respecting the locations of Grantee's facilities.

- (2) Grantee's rights to uses in the streets exist subject to City uses of the streets unless Grantee's rights are in easement or fee, in which case the Franchise does not control. At all times the City's superior reserved rights to uses of the streets shall be preserved under Section 8. No provision of an Administrative MOU may be written or construed to modify that explicit reservation which shall be controlling at all times.
- (3) With respect to any and all City work in the streets, the costs of protecting Grantee's facilities shall be at Grantee's sole expense. The City and its contractors shall not be required to pay any amount for the services of any personnel for the protection of Grantee's facilities which may be necessary for any City-controlled excavation or other work. Upon written request from the City or an authorized agent, Grantee shall within five (5) calendar days, or as soon as practicable in the case of emergency, arrange the on-site presence of any standby safety engineer that Grantee or City deem necessary for the protection of Grantee's

facilities, and Grantee shall be solely responsible for all related costs.

- (4) Grantee shall fully cooperate with the City's uses of the streets, including for the City's construction, maintenance, and repair of City utilities. The City will establish or continue to operate a Joint Utilities Coordinating Committee (Coordinating Committee) or similar body in which Grantee shall be a member and active participant. The purpose of the Coordinating Committee shall be to review and make recommendations to all utilities and the City on matters regarding utility installations and operations within the public rights-of-way. The Coordinating Committee shall be chaired by the City Engineer or designee. The Coordinating Committee shall meet a minimum of four times each fiscal year. The Coordinating Committee may, by agreement of the City and Grantee, establish standing subcommittees and may assign tasks to, and receive recommendations from, such subcommittees as it may deem necessary.

Section 8. CITY RESERVED RIGHTS

- (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, whether done in a governmental or proprietary capacity, conflicts with any pipes and appurtenances of Grantee constructed, maintained and used pursuant to 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. INDEMNITY, DEFENSE, INSURANCE

- (a) Grantee, to the fullest extent permitted by law, shall defend with legal counsel reasonably acceptable to the City, indemnify, and hold harmless the City and its officers, agents, departments, officials, and employees (Indemnified Parties) from and against all claims, losses, costs, damages, injuries (including death) (including injury to or death of an employee of Grantee, any agent or subcontractor, anyone employed by them, or anyone that they control), expense and liability (collectively "Claims"), including

court costs, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation, that arise out of, in whole or in part, any acts performed, rights exercised, or rights or privileges granted under the Franchise, to or by Grantee, any agent or subcontractor, anyone directly or indirectly employed by them, or anyone that they control. Grantee's duty to defend, indemnify, and hold harmless shall not include any Claims or liabilities arising from the active negligence, sole negligence, or willful misconduct of the Indemnified Parties.

- (b) Concurrent with the acceptance of the Franchise by Grantee, and as a condition precedent to the effectiveness of the Franchise, and in partial performance of the obligations assumed herein, Grantee shall procure and maintain at Grantee's expense for the duration of the Franchise from an insurance company that is admitted to write insurance in California or that has a rating of or equivalent to A:VIII by A.M. Best & Company the following insurance against Claims for injuries to persons or damage to property which may arise from or in connection with the Franchise by Grantee, its agents, representatives, employees or subcontractors:

- (1) Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury, with limits no

less than fifteen million dollars (\$15,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Franchise or the general aggregate limit shall be twice the required occurrence limit.

- (2) Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Grantee has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than five million dollars (\$1,000,000) per accident for bodily injury and property damage.
 - (3) Workers' Compensation: as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits no less than one million dollars (\$1,000,000) per accident for bodily injury or disease.
- (c) Policies must be endorsed according to the following requirements:
- (1) Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Grantee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Grantee's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the

addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

- (2) **Primary Coverage.** For any Claims related to the Franchise, Grantee's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Grantee's insurance and shall not contribute with it.
 - (3) **Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with prior notice to the City.
 - (4) **Waiver of Subrogation.** Grantee hereby grants to City a waiver of any right to subrogation which any insurer of Grantee may acquire against the City by virtue of the payment of any loss under such insurance. Grantee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- (d) **Verification of Coverage.** Grantee shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the

CGL policy listing all policy endorsements to City before the Franchise is awarded. However, failure to obtain the required documents prior to the award of the Franchise shall not waive Grantee's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

- (e) Not more frequently than every five (5) years, if in the opinion of the City Manager or of an insurance broker retained by the City, the amount of the foregoing insurance coverage is not adequate, Grantee shall increase the insurance coverage as required by the City. Grantee shall furnish the City with certificates of insurance and with endorsements provided in Section 13(c) affecting coverage as required above. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. Any modification or waiver of the insurance requirements contained in the Franchise shall only be made with the written approval of the City's Risk Manager in accordance with established City policy.
- (f) Grantee may fulfill the insurance obligations of Sections 13(b) through (d) by self-insurance. Grantee shall provide a certificate to the City evidencing the fulfillment of these requirements.

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, sidewalk 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. REMEDIES, FORFEITURE, VOIDING OF SECONDARY TERM

- (a) Interpretation. 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.
- (b) Breach 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.
- (c) The City's Right to Void the Automatic Renewal for Secondary Term. The Parties agree that the City reserves the right to void the automatic renewal for the secondary term that is described in Section 3(b). Voiding the automatic renewal for the secondary term does not impact the grant of

the Franchise for the first ten (10) year term. The City's right to void the automatic renewal shall be at City's sole discretion and only applies to the secondary ten (10) year term of the Franchise. No later than thirty (30) calendar days prior to the tenth anniversary of the Effective Date, and no earlier than the ninth anniversary of the Effective Date, the City may void the automatic renewal if the City, through action of a two-thirds vote of the members of the City Council, votes to void the automatic renewal.

Voiding the automatic renewal does not require a finding of any breach by Grantee. If the City exercises its sole prerogative to void the secondary ten (10) year term then it shall within 30 days of the end of the primary ten (10) term refund to Grantee the sum of \$250,000 (Two Hundred Fifty Thousand Dollars) to Grantee which represents one half of the Bid Amount. The City shall have no other liability to Grantee if it voids the secondary ten (10) year term.

- (d) 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 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. DISPUTE RESOLUTION

- (a) If any dispute arises under the Franchise, including any alleged breach, the City and Grantee shall use reasonable efforts to resolve the dispute. The City and Grantee shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to the City and Grantee. If the City and Grantee do not agree on such a solution within fifteen (15) calendar days, then, upon written notice by either party to the other, such dispute shall be referred to the City Manager and a member of Grantee's executive staff for further consultation and negotiation.
- (b) If the City Manager and the member of Grantee's executive staff are unable to agree on a solution within fifteen (15) calendar days of such referral, the City and Grantee shall attempt in good faith to settle the dispute by non-binding mediation administered by a mediator acceptable to both parties. The City and Grantee will cooperate in selecting a mediator. The City and Grantee will share equally in the mediation costs and each party will bear its own attorneys' fees and related costs, including any expert witness fees. The parties will use their best efforts to

conclude the non-binding mediation within forty-five (45) calendar days after the City Manager and member of Grantee's executive team conclude their discussions. The parties may extend the dates in Section 13 by mutual agreement.

- (c) If the City and Grantee do not agree on a solution through non-binding mediation, then either party may pursue litigation in any court with jurisdiction. Notwithstanding any other provision of Section 13, the City or Grantee may proceed directly to litigation if there is an urgency that renders the preceding dispute resolution process impracticable.

Section 14. 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 15. SURVIVABILITY

If the Franchise is terminated for any reason, then the following Section of the Franchise shall survive that termination: Section 1, Section 4, Section 11, and Sections 17 to 21. In addition, the insurance required of Grantee in Section 9 shall be maintained until any remaining Grantee obligations to the City are fulfilled.

Section 16. 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 17. 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 18. 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 19. PERFORMANCE BOND

Grantee shall file and maintain a faithful performance bond in favor of the City in the sum of Five Hundred Thousand Dollars (\$500,000) 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 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 20. BANKRUPTCY


Grantee and the City acknowledge that if Grantee becomes a debtor in bankruptcy under the bankruptcy laws of the United States (Bankruptcy Code), the Franchise shall be treated as an

executory contract pursuant to Bankruptcy Code section 365(c). Grantee and the City further acknowledge that, as a non-assignable contract pursuant to applicable law, including San Diego Charter section 103 and California Public Utilities Code section 6203, the Franchise may not be assumed or assigned by the trustee or the debtor-in-possession without the consent of the City. In the event that the debtor-in-possession assumes the Franchise and the Franchise is sold pursuant to the Bankruptcy Code, it is the intent of the parties that the City shall have the right of first refusal to match the price of any buyer for the purchase of Grantee's facilities and assets and may acquire Grantee's facilities by matching any bona fide offer of purchase made in bankruptcy. Grantee and City acknowledge that if the City files any petition for bankruptcy pursuant to Chapter 9 of the Bankruptcy Code, Grantee's claims shall be treated consistently with the applicable provisions of that Chapter.

Section 21. EFFECTIVE DATE

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

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Frederick M. Ortlieb
Senior Deputy City Attorney

FMO:cw
June 5, 2023
Or.Dept: Sustainability
CC No.: N/A
Doc. No.: 3200590

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 11 2023.

DIANA J.S. FUENTES
City Clerk

By Kristell Medina
Deputy City Clerk

Approved: 7/18/23
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JUL 11 2023, 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"/>
Kent Lee	<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 JUL 18 2023.

AUTHENTICATED BY:

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

(Seal)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By *Kristell Medina*, 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

JUN 20 2023

JUL 18 2023

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)

DIANA J.S. FUENTES
City Clerk of The City of San Diego, California.

By *Kristell Medina*, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21676