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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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Exempt from fees per Gov't Code § 6103
To the benefit of the City of San Diego

7 Attorneys for Plaintiff
8 CITY OF SAN DIEGO

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

10 CITY OF SAN DIEGO, a Municipal
11 corporation,

12 Plaintiff,

13 v.

14 SAN DIEGO GAS & ELECTRIC COMPANY,
a California corporation and DOES 1 through
15 20, inclusive,

16 Defendants.

) Case No. 37-2020-00002219-CU-BC-CTL

) CITY OF SAN DIEGO'S COMPLAINT
) FOR DECLARATORY RELIEF AND
) REIMBURSEMENT

) IMAGED FILE

) I/C Judge:

) Dept.:

) Complaint filed:

) Trial:

17
18 Comes now Plaintiff City of San Diego ("City") and alleges as follows against the above-
19 named Defendants:

20 GENERAL ALLEGATIONS

21 1. City asserts that jurisdiction and venue are proper before this Court as the events
22 which underlie this lawsuit occurred within the City of San Diego and County of San Diego.

23 2. City is, and at all times herein mentioned was, a California Charter City, duly
24 organized and existing by virtue of the laws of the State of California.

25 3. City is informed and believes, and thereon alleges, that Defendant San Diego Gas
26 & Electric Company ("SDG&E") is a corporation organized and existing under the laws of the
27 State of California with its principal place of business located in San Diego County, California.

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1 4. The true names and capacities of Defendants named herein as DOES 1 through
2 20, inclusive, whether individual, corporate or otherwise, are unknown to City, which is
3 informed and believes, and therefore alleges, that each of said fictitiously named Defendants is
4 liable to City on the causes of action herein alleged, and, therefore, City sues such Defendants by
5 said fictitious names. City will move to amend this complaint when the true names and capacities
6 of said fictitiously named Defendants have been ascertained.

7 5. City is informed and believes, and thereon alleges, that at all times herein
8 mentioned each of the Defendants was the agent and/or employee of each of their Co-
9 Defendants, and in doing the things herein mentioned, was acting within the scope and course of
10 the authority of such agency and/or employment, and with the express or implied permission and
11 consent of their Co-Defendants.

12 6. On April 26, 2014 the City Council adopted Resolution Number R-308906
13 enacting and undertaking the Pure Water Program. The City Council deemed the Pure Water
14 Program necessary to increase diversion of sewage flow away from the Point Loma Wastewater
15 Treatment Plant (PLWTP) and the Pacific Ocean to the North City Water Reclamation Plant
16 (NCWRP) and planned Pure Water facilities and indirect potable use. Pure Water San Diego will
17 significantly reduce flows to the PLWTP and will make San Diego more water independent. It is
18 a 20-year program to maintain regulatory compliance for the wastewater system, and to provide
19 a safe, secure and sustainable local potable water supply for San Diego. Recycled water will be
20 turned into potable water through the use of water purification technology.

21 7. Phase 1 of the Pure Water Program will create 30 million gallons per day (MGD)
22 of locally controlled potable water and reduce flows to the PLWTP, which is necessary in order
23 to reduce total suspended solids (TSS) discharged to the ocean. Phase 1 of the Pure Water
24 Program involves the construction of advanced water purification facilities near the existing
25 NCWRP. New pump stations and pipeline facilities will convey flows to and from the treatment
26 facilities for: 1) intercepting, diverting, and pumping wastewater flows to water reclamation
27 facilities; 2) conveying tertiary recycled water to advanced water purification facilities; 3)
28 conveying purified water from Pure Water facilities to local reservoirs; and 4) transporting waste

1 flows (brine and sludge) from treatment processes to solids handling facilities or back into the
2 Metro Wastewater System.

3 8. On January 17, 1971 by Ordinance Nos. 10465 and 10466, the City of San Diego
4 granted to defendant SDG&E franchises to install and operate gas and electric service facilities
5 in the streets of the City (“Gas Franchise” and “Electric Franchise,” collectively the
6 “Franchises.”) The franchises have a term of fifty (50) years and were effective at all relevant
7 times herein.

8 9. Each of the Franchise Agreements contains an identical Section 8 entitled “City
9 Reserved Powers” which reserves to the City the paramount right to use the streets for any
10 governmental purpose, the right to change the streets, and the right to vacate the streets. Section
11 8 of each Franchise provides that if in the City’s necessary exercise of these rights a conflict
12 exists with defendant SDG&E’s facilities, then within 90 days of receiving notice from the City
13 SDG&E must commence the physical relocation of its facilities at its own expense whether or
14 not they were there first.

15 10. Through open communication with SDG&E and an iterative design process for
16 Phase 1 of the Pure Water Program, the City endeavored to avoid or minimize conflicts with
17 existing SDG&E utilities. As far back as 2016, the City and SDG&E performed several reviews
18 to identify any conflicts across the various Phase 1 project alignments. However, there are
19 several locations where numerous SDG&E facility conflicts cannot be avoided and SDG&E
20 facilities must be relocated.

21 11. In a series of communications, the City sent notice to SDG&E of the alignment
22 conflicts and requested that SDG&E commence design and relocation of its conflicting facilities.
23 Contrary to the terms of the Franchise Agreement between the City and SDG&E, SDG&E
24 refused to commence any relocation activity, and instead stated in a letter dated June 7, 2018 that
25 it will not incur the costs associated with the design and construction of the relocations
26 associated with the conflicts between its facilities and the City’s Pure Water Program facilities.
27 SDG&E contended that it would not perform any relocation work associated with its conflicting
28 facilities unless the City paid for it.

1 12. The Pure Water Program is subject to financing and schedule requirements. In
2 light of the June 7, 2018 letter and to avoid costly delays and schedule impacts to the Pure Water
3 Phase 1 Projects, the City was left with no choice but to agree to a Reservation of Rights
4 Agreement (ROR Agreement). The City and SDG&E entered into the ROR Agreement on or
5 about January 2, 2019, attached hereto as Exhibit 1 and incorporated as though set forth in full.
6 (The June 7, 2018 letter is an exhibit to the ROR Agreement.) The City provided initial funding
7 to SDG&E in the amount of \$35,678,521 so that SDG&E would complete the design work and
8 relocate the existing gas and electric utilities in the public right of way.

9 13. Under Article XI, Section 7 of the California Constitution, a county or city may
10 make and enforce within its limits all local, police, sanitary, and other ordinances and regulations
11 not in conflict with general laws.

12 14. Under Article I, Section 1 of the San Diego City Charter, the City may own and
13 operate public utility systems, including the joint or sole operation and ownership of utilities for
14 the purchase, development, and supply of water and electrical power for the use of the City and
15 its inhabitants and others; and generally shall have all municipal powers, functions, rights,
16 privileges and immunities of every name and nature whatsoever now or hereafter authorized to
17 be granted to municipal corporations by the Constitution and laws of the State of California.

18 15. Under Article I, Section 2 of the San Diego City Charter, the City shall have the
19 right and power to make and enforce all laws and regulations in respect to municipal affairs.

20 16. Under Article VII, Section 103 of the San Diego City Charter, the City Council
21 shall have power to grant to any person, firm or corporation, franchises, and all renewals,
22 extensions and amendments thereof, for the use of any public property under the jurisdiction of
23 the City.

24 17. Under Article VII, Section 103.1 of the San Diego City Charter, the City Council
25 shall have power to provide reasonable terms and conditions under which any business may
26 supply the inhabitants of the City with light, water, power, heat, transportation, telephone
27 service, or other means of communication, or furnish services of a public utility nature.

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1 improvements of any type or description in, upon, along, across, under or over the streets of the
2 City. City further reserves the right to relocate, remove, vacate or replace the streets themselves.
3 If the necessary exercise of the aforementioned reserve rights conflicts with any poles, wires,
4 conduits, and appurtenances of Grantee constructed, maintained and used pursuant to the
5 provisions of the franchise granted hereby, whether previously constructed, maintained and used
6 or not. Grantee shall, without cost or expense to City within ninety (90) days after written notice
7 from the City Manager, or his designated representative, and request so to do, begin the physical
8 field construction of changing the location of all facilities or equipment so conflicting. Grantee
9 shall proceed promptly to complete such required work.”

10 24. Section 8(b) of the each of the Franchise Agreements, titled “City Reserved
11 Powers,” states that, “Irrespective of any other provision of this ordinance. Grantee's right to
12 construct, maintain and use, or remove poles, wires, conduits, and appurtenances thereto shall be
13 subject at all times to the right of the City, in the exercise of its police power, to require the
14 removal or relocation, to either overhead or underground locations, of said poles, wires, conduits
15 and appurtenances thereto at the sole cost and expense of Grantee.”

16 25. Under the ROR Agreement entered into on or about January 2, 2019, the City and
17 SDG&E reserved their respective rights to file a lawsuit in order to determine the legal
18 obligations of each party with respect to resolving the conflicts between SDG&E facilities and
19 the City’s Pure Water Program facilities. This action is brought in accordance with terms of the
20 ROR Agreement and the two Franchise Agreements.

21 26. In order to protect the viability of the Pure Water Program, the City had no
22 reasonable alternative and that it was necessary to enter into the ROR Agreement (Exhibit 1) and
23 pay SDG&E \$35,678.521 to begin performance of work that SDG&E was obligated to perform
24 at its own expense under the two Franchise Agreements.

25 27. An actual controversy has arisen and now exists between City and SDG&E
26 concerning their respective rights, duties, and obligations including but not limited to those
27 rights, duties, and obligations to perform and pay for design and relocation work to make way for
28 City infrastructure.

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2. For a declaration that SDG&E be required to return the \$35,678,521 deposited with SDG&E under the Reservations of Rights Agreement plus pre-judgment interest from the date of the deposit;
3. For reasonable costs of other damages suffered by plaintiff, according to proof;
4. For costs of suit incurred herein; and
5. For such other and further relief as the court deems proper.

Dated: January 17, 2020

MARA W. ELLIOTT, City Attorney

By Jon E. Taylor
JON E. TAYLOR
Senior Deputy City Attorney
Attorneys for Plaintiff
CITY OF SAN DIEGO

EXHIBIT 1

RESERVATION OF RIGHTS AGREEMENT

This Reservation of Rights Agreement ("Agreement") is entered into as of January 2, 2019, by and between the City of San Diego, a municipal corporation ("CITY") and San Diego Gas & Electric Company, a California corporation ("SDG&E"). For purposes of this Agreement, the CITY and SDG&E shall be referred to collectively as the "Parties."

RECITALS

The Parties have existing between them a dispute arising out of the need to relocate SDG&E facilities. The Parties dispute who is responsible for the cost of relocating SDG&E facilities located in the public right-of-way in order to accommodate the design and construction of Phase I of the Pure Water Project (the "Project").

The CITY believes, pursuant to Section 8 of the gas and electric franchise agreements between the CITY and SDG&E ("Franchise Agreements"), SDG&E is required to relocate certain SDG&E facilities in conflict with the Project in the public right-of-way at SDG&E's expense. SDG&E disagrees that it is required to pay for the relocation of these facilities because of the nature of the Project. Neither Party is disputing the need for such relocations. The "Dispute" is further defined by letters between the Parties (See *Letter from Andy Renger*, SDG&E Project Manager, dated June 7, 2018, and *Letter from Thomas Zeleny*, San Diego City Attorney's Office, dated June 20, 2018; both attached hereto as Exhibit A). This Agreement does not address any known or unknown utility disputes outside of the public right-of-way.

The CITY has provided designs for the Project to SDG&E indicating which SDG&E facilities must be relocated to eliminate utility location conflicts and to accommodate the Project. There are several areas of known conflict identified in the design, including but not limited to those listed and/or shown on Exhibit B. The Parties agree that additional areas of conflict may arise and that currently identified areas of conflict may change during the course of the Project.

In order to move forward with the relocation work under Dispute, the Parties agree as follows:

AGREEMENT

1. On November 15, 2018, the San Diego City Council approved a Resolution (R-2019-213Cor.Copy) approving thirty-five million, six hundred and seventy-eight thousand, five hundred and twenty-one dollars (\$35,678,521) to be provided to SDG&E for design and relocation work for the Project. These funds and any subsequent funds provided to SDG&E, all at the CITY's discretion, are referred to herein as "Funding." Once any portion of the Funding is received by SDG&E, SDG&E will utilize such Funding to begin the relocation of SDG&E gas and electric facilities located in the public right of way to accommodate the Project (the "Work"). The Work shall be phased in accordance with the CITY's Priority Work Schedule attached hereto as Exhibit C and the terms of this Agreement; provided that the Priority Work Schedule shall be revised to incorporate SDG&E's designs upon completion.

2. Upon receipt of Funding, SDG&E shall perform the Work in accordance with SDG&E's standard operating procedures, processes and methods, pursuant to the relocation designs for the Work reasonably approved by the Parties in a prompt manner. SDG&E shall be solely in control of the Work, and nothing in this Agreement shall require SDG&E to perform any Work in a manner that SDG&E reasonably determines to be unsafe or in violation of applicable laws, including, without limitation, determining whether protect-in-place plans are adequate or require facility relocation. The CITY does waive any rights to dispute a protect-in-place determination by SDG&E and any right to reimbursement. SDG&E may perform the Work using its existing contractors or hire new contractors using SDG&E's customary selection process, in its discretion. SDG&E is only obligated to perform Work for which it has received adequate funding as reasonably determined by SDG&E.

3. The CITY may add or change its relocation priorities during the performance of the Work by revising the Priority Work Schedule as new information becomes available and providing such revisions to SDG&E in a format approved by the parties, provided that the CITY acknowledges that SDG&E will require a reasonable amount of time to accommodate changes to the Priority Work Schedule, and that changes to the Priority Work Schedule or the Work, especially changes that require re-relocation of SDG&E's facilities, will increase the cost of the Work at the CITY's expense.

4. SDG&E's calculation of the overall "Cost Estimate" for the Work is attached hereto as Exhibit D. The Cost Estimate approximates the cost of the Work, as calculated by SDG&E based on information available on or around August 24, 2018. The CITY has not performed an independent confirmation of the Cost Estimate and, therefore, does not confirm the accuracy of such estimate. The Parties acknowledge that the Cost Estimate may increase or decrease depending on changes to Project design and other factors including, but not limited to, changes in SDG&E loaders, environmental requirements, taxes, conflicts not previously identified or encountered during construction, design changes proving infeasible, and other factors.

5. The Work shall be billed on an actual cost basis, meaning that all costs will be reconciled at completion of the Work and SDG&E will bill or refund to the CITY any differences larger than \$100. SDG&E shall not perform any Work for which it has not received adequate advance payment (other than limited Work at SDG&E's discretion); except to the extent a court with jurisdiction over the Dispute determines otherwise. The timing of reconciliation of funds paid under this Agreement does not apply to or override any applicable court order relating to payment of relocation costs by either Party.

6. Upon receipt, SDG&E will create two budget codes (one each for gas and electric Work) to track the Funding provided by CITY pursuant to this Agreement. SDG&E will provide the following information in connection with expenditure of the Funding:

- a. On a monthly basis, SDG&E will submit a summary of all the charges incurred for the Work by any party, entity or contractor to the CITY (example spreadsheet attached as Exhibit E).
- b. Contributions in Aid of Construction, discussed in Section 8, will be documented separately from the cost of the Work.

c. ~~The CITY will have the right to request return of all unspent and unassigned Funding at any time, provided that Work will cease if Funding is returned.~~

7. The Parties do not dispute the existence of utility conflicts, as set forth in Exhibit B, and the necessity to relocate SDG&E's assets. This Agreement does not govern any relocations originating outside of the public right-of-way, new services necessary for the Project, or any work necessary to accommodate the Project in any location (within the public right-of-way or otherwise) that does not arise out of an actual conflict between Project facilities and SDG&E facilities.

8. For purposes of this Agreement, payments made by the CITY to SDG&E for the Work are considered "Contributions In Aid of Construction" ("CIAC") for utility facilities by the California Public Utilities Commission ("CPUC") and the Internal Revenue Service, and considered taxable income to SDG&E under section 118(b) of the Internal Revenue Code. The CPUC has directed investor-owned utilities, including SDG&E, to recover from parties paying CIAC a specific amount to compensate SDG&E for the difference between the taxes paid by SDG&E on such income and the time value of tax depreciation deductions received by SDG&E over the life of the property, collected through a tax gross up rate set by the CPUC for SDG&E, which is currently set at 24% but may change over time.¹ As CITY disagrees that it is responsible for relocation payments to SDG&E relating to the Dispute, CITY also disagrees that it is responsible to pay CIAC taxes to SDG&E because it believes it has no duty to pay for the relocations in the first instance. However, for purposes of this Agreement, the CITY agrees to pay SDG&E, in protest, such tax gross up rate on all payments made by the CITY for the Work. Any such tax gross up payments shall be refundable to the CITY to the extent a court with jurisdiction over the Dispute determines that CITY is not responsible to SDG&E for relocation work as described in the Dispute. Refund of the monies paid by the CITY under this paragraph is not contingent on a tax refund from any state, local, or federal agency or proceedings or third-party corporate or financial arrangements.

9. ~~All payments made by the CITY for Work are made under protest. The CITY fully reserves (and does not waive) all rights to make any and all legal, statutory, contract, franchise or regulatory claims in any administrative or legal tribunal to recover the money and any damages arising out of the CITY's payment to SDG&E under this Agreement, including interest accruing to the CITY for Funding provided to SDG&E, subject to proof. Neither Party is waiving any claims it may have against the other regarding the Dispute or other claims either Party may make under the Franchise Agreements. Nothing in this Agreement is intended to or shall be construed to mean that either Party has a valid claim or defense. This Agreement does not preclude the Parties from reaching resolution or settlement of the Dispute without filing a court or administrative action; provided that the Parties acknowledge that any such resolution or settlement may require regulatory approval.~~

10. The CITY and SDG&E will work together to update the Priority Work Schedule on a regular basis during the performance of the Work to account for the expenditure of CITY funds by SDG&E with respect to each conflict described therein that is part of the Dispute, including the estimated percentage completion of the relocation Work for each conflict, the prime contractor performing the Work, and the amount of funds spent. The CITY and SDG&E will endeavor to meet twice monthly to review and update the Priority Work Schedule. SDG&E shall notify the

¹ SDG&E Advice Letter 3319-E/2727-G, dated December 7, 2018.

CITY when it reasonably anticipates that the amount of CITY funds made available to SDG&E to perform the Work will not be sufficient to pay for the Work scheduled to be performed in the next 90 days pursuant to the Priority Work Schedule. In no event will SDG&E be obligated to perform any Work for which it has not received CITY funds except to the extent a court with jurisdiction over the Dispute determines otherwise.

11. The CITY will provide environmental consultation and coordination to SDG&E as requested. Although SDG&E will be responsible for its own environmental clearances it determines to be necessary with respect to the performance of the Work by SDG&E and its contractors, the CITY is responsible for ensuring the Work is consistent with the CITY's environmental impact report (EIR) for the Project at the CITY's expense.

12. The Parties shall be responsible for their own attorneys' fees in connection with any lawsuit involving the Dispute.

13. The Parties agree that the running of time as to any claim or causes of action regarding any statute of limitations, laches, or other principle of legal, statutory, or equitable limitations of action ("Time Defense") which may relate to or arise out of the Dispute is tolled for a period of three (3) years from execution of this Agreement ("Tolled Period"). This Agreement applies to any defense, legal or equitable, based upon the lapse of time, including but not limited to the statute of limitations, laches, estoppel, waiver or timely action or notice. This tolling provision does not prevent or prohibit either Party from filing a claim or action relating to the Dispute or seek any remedy allowable by law during the Tolled Period.

14. State prevailing wage laws apply to the Work to the extent paid for by the CITY, SDG&E and its contractors shall comply with the prevailing wage requirements set forth in Exhibit F. For the purposes of compliance with such requirements, the CITY acknowledges and agrees that SDG&E is not a contractor of the CITY for any purpose related to the Project. The CITY represents that no "Buy America/n" or other steel or iron purchasing requirements apply to the Work; provided that if the CITY decides to obtain funds that may impose such requirements on the Work, the CITY shall immediately notify SDG&E and the Parties shall meet and confer regarding such requirements and come to agreement before such requirements are imposed, including, without limitation, determination of applicable compliance obligations associated with such funds, if any.

15. This Agreement (including all Exhibits) is the final and entire agreement between the Parties concerning the Dispute. All agreements of the Parties with respect to the subject matter hereof are in writing and supersede all prior written and oral agreements and understandings of the Parties. This Agreement does not supersede or amend the Franchise Agreements, but rather provides a mechanism to move the Project forward while the Dispute is pending. Unless otherwise specifically provided herein, this Agreement cannot be modified except by a written document signed by all of the Parties. None of the Parties are relying upon any other negotiations, discussions or agreements in connection with the subject matter of this Agreement. This is a fully integrated Agreement. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof, whether similar, nor shall such waiver constitute a continuing waiver.

16. Notwithstanding anything to the contrary contained herein, the Parties hereby stipulate and agree that the Superior Court of the County of San Diego, State of California (the "Court") shall have subject matter jurisdiction for the enforcement of this Agreement and personal jurisdiction over the Parties.

17. A finding of invalidity as to any provision of this Agreement or any portion thereof only voids that provision or a portion thereof and not any other, and the Agreement shall be interpreted as if the invalid provision or a portion thereof were not contained in the Agreement.

18. The Parties hereby agree to execute such other documents and to take such other action as may be reasonably necessary to further the purpose of this Agreement, with the Parties to bear their own costs and attorney's fees for these additional actions. This Agreement may be executed by authorize representatives of the Parties in counterparts, including electronically.

[SIGNATURES ON FOLLOWING PAGE]

AGREED TO AND ACCEPTED:

SAN DIEGO GAS & ELECTRIC COMPANY

DATE: JANUARY 8TH, 2019

[Signature]

By: JOHN D. JENKINS

Its: VICE PRESIDENT - ELECTRIC ENGINEERING & CONSTRUCTION

CITY OF SAN DIEGO

DATE: JANUARY 28, 2019

[Signature]

By: JOHNNIE PERKINS

Its: DEPUTY CHIEF OPERATING OFFICER

I hereby approve the form of the foregoing Agreement this 2 day of January, 2019.

Attorney for San Diego Gas & Electric Company

By: [Signature]

Hollye Bierman

I hereby approve the form of the foregoing Agreement this 26th day of January, 2019.

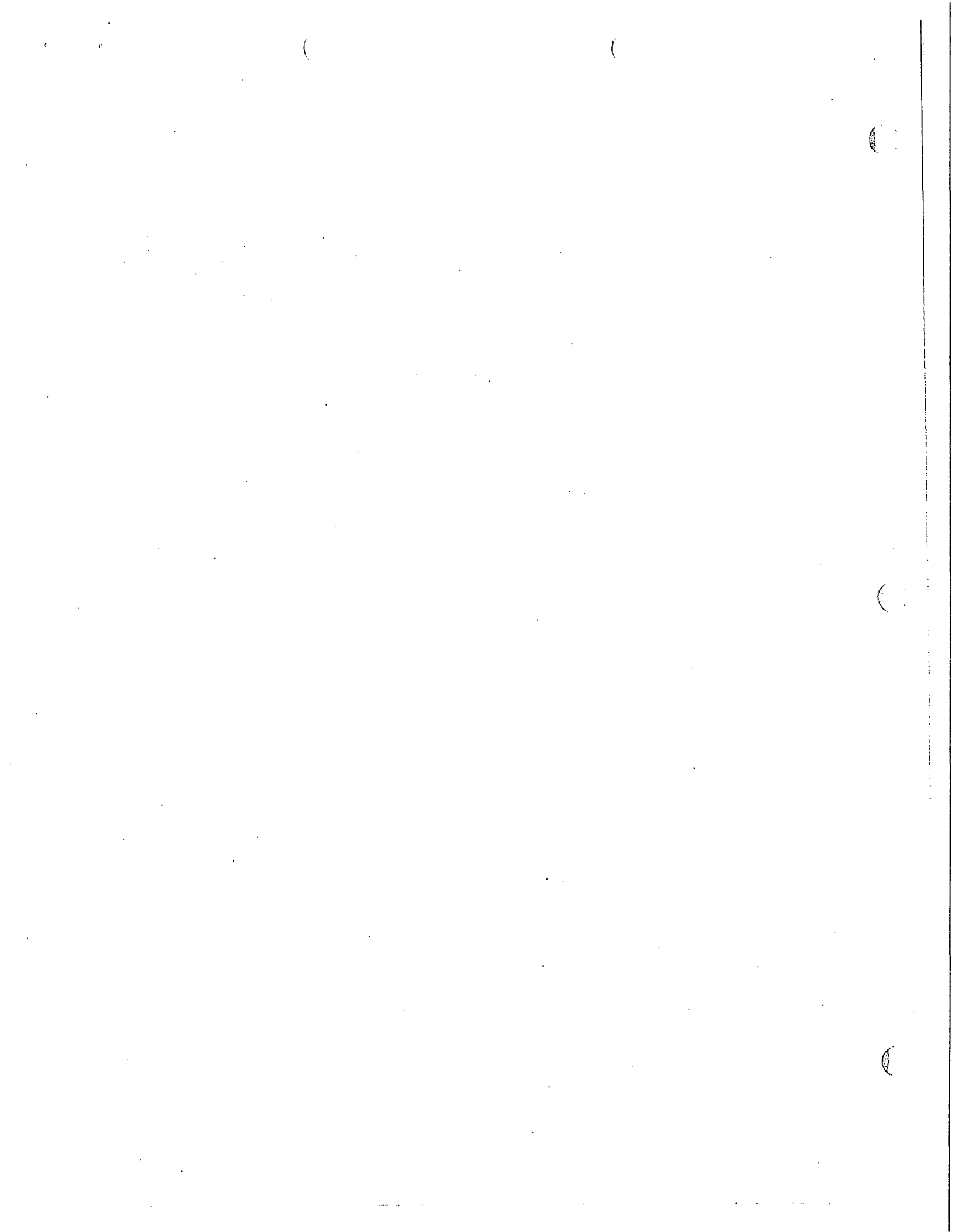
MARA W. ELLIOTT, City Attorney

By: [Signature]

Christine Leone
Deputy City Attorney

Exhibit A – Letters

[attached]



SANNA R. SINGER
ASSISTANT CITY ATTORNEY

THOMAS C. ZELENY
CHIEF DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

CIVIL DIVISION
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Mara W. Elliott
CITY ATTORNEY

June 20, 2018

Via email to: bsyz@semprautilities.com

Brittany Applestein Syz
Senior Real Estate Counsel
San Diego Gas & Electric Company
8330 Century Park Court, CP32B
San Diego, CA 92123

Subject: Pure Water Project and SDG&E Utility Conflicts

Dear Ms. Syz:

It was a pleasure meeting you at the MCLE presentation at our Office last week. The regulatory framework SDG&E must navigate is more complex than many of us expected. Thank you for the presentation.

In anticipation of our meeting tomorrow, I want to briefly address some of the issues raised in a letter dated June 7, 2018 from Andy Renger, SDG&E Project Manager to Vic Bienes, the Public Utilities Director for the City. Mr. Renger says that the City is responsible for SDG&E's costs of relocating its facilities to accommodate the City's Pure Water project. He relies on a common law rule that a municipality acting in a "proprietary capacity" must pay to relocate conflicting utilities, and that SDG&E ratepayers should not bear the cost of a project that only benefits "select residents" of the City.

The terms of both the electric and natural gas franchises require SDG&E to start relocating its facilities within 90 days at its own expense when necessary to accommodate the City's use of its streets:

City reserves the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade or maintain below surface or above surface improvements of any type or description in, upon, along, across, under or over the streets of the City. City further reserves the right to relocate, remove, vacate or replace the streets themselves. If the necessary exercise of the aforementioned reserve rights conflicts with any poles, wires, conduits, 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

Ms. Syz
June 20, 2018
Page 2

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.

San Diego Ordinance No. O-10466, Section 8(a) (Dec. 17, 1970); *See also* San Diego Ordinance No. O-10465, Section 8(a) (Dec. 17, 1970) [natural gas franchise relocation requirement applying to "pipes" instead of "poles, wires, conduits."]

Municipalities providing water and sewer service are acting in their governmental capacities. The *South Pasadena* and *Hansen* cases cited by Mr. Renger do not apply to this situation. *South Pasadena* addressed a city's acquisition of a water utility franchise operating in a neighboring city over 100 years ago. The controlling law is stated in *Southern California Gas Company v. City of Los Angeles*, 50 Cal. 2d 713, 717 (1958) ["The laying of sewers is a governmental as distinct from a proprietary function under the foregoing rule."] The *Hansen* case, which allowed municipal utilities to charge rates that realize a reasonable return on investments, has been superseded by Proposition 218. *Green Valley Landowners Association v. City of Vallejo*, 241 Cal. App. 4th 425, 439 (2015).

Also, the Pure Water project is a regional project with two primary purposes. The first is to offload wastewater from the Point Loma Wastewater Treatment Plant to help ensure the City will receive future permits without expensive upgrades to the plant. Recognizing this benefit, the following local agencies are directly contributing to the cost of the Pure Water project: the cities of Chula Vista, Coronado, Del Mar, El Cajon, Imperial Beach, Poway, and National City, the Lemon Grove Sanitation District, the Padre Dam Municipal Water District, the Otay Water District, and the San Diego County Sanitation District. The second purpose is to provide a local, drought-resistant source of potable water. The Pure Water project has been incorporated into the San Diego County Water Authority's long-range water resource plans, postponing other expensive capital projects to the benefit of the Authority's 24 member agencies. Combined, the local agencies benefitting from the Pure Water project represent almost all of SDG&E's service area, not just the City of San Diego.

Hopefully providing this information in advance will help with our discussion tomorrow. We look forward to seeing you then.

Sincerely,

MARA W. ELLIOTT, City Attorney

By


Thomas C. Zelény
Chief Deputy City Attorney

cc: Vic BIANES, PUD Director
Doc.No: 1776582



Andy Reinger
Project Manager, Major Projects
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AReinger@SempraUtilities.com

City of San Diego Pure Water Project

June 7, 2018

Dear Vic Blanes, City of San Diego Public Utilities Director

San Diego Gas & Electric Company ("SDG&E") reviewed the plans submitted by the City of San Diego ("City") for the Pure Water system ("Project") and determined that the cost of the utility relocations required for the Project should be paid by the City. As you know, the Project is a multi-phase water infrastructure project designed to increase San Diego's current water supply by producing clean drinking water. We understand that Phase 1 of the construction for the Project is expected to begin in early 2019 and conclude in late 2021.

Prior to our full analysis of the current proposal for the Project, on February 6, 2018, SDG&E sent a letter to Ms. Christina Leone, Deputy City Attorney, stating that SDG&E is not responsible for the utility relocation costs related to the Morena Pump Station and Conveyance System ("MPS") (which is part of the Project). This determination was made because the MPS is not a public street project and therefore, not covered by the relocation provisions of the franchise agreement between SDG&E and the City ("Franchise"). Now that we have analyzed the current proposed Project, SDG&E finds that it is not responsible for any utility relocation costs in the Franchise area for the reasons described below.

First, the Project benefits select residents of the City of San Diego. The high costs of this project should not be spread among SDG&E's entire territory, which includes other cities and counties. The funding of this Project, which ultimately will be recouped from City of San Diego residents, should include utility relocation costs.

Second, in California, the common law rule is that in the case of development of a "water system, even within [a city's] own limits, a city does not act in its governmental capacity, but in a proprietary" capacity. (*South Pasadena v. Pasadena Land and Water Company* (1908) 152 Cal. 579); see also *Hansen v. City of Buenaventura* (1986) 42 Cal. 3d 1172). When a municipality is acting in a "proprietary" capacity, as distinct from a "governmental use", the municipality should bear the costs to relocate, remove, or abandon its facilities. (*Postal Telegraph - Cable Co.*

v. *City and County of San Francisco* (1921) 53 Cal.App. 188). The common law rule has been embodied in California case law for nearly a century and, importantly, has never been overruled by the California Supreme Court.

Third, SDG&E's Franchise with the City authorizes SDG&E to install utility facilities in the public streets. It also requires that the City and SDG&E prepare a manual of administrative practices "which shall govern the installation and removal of Grantee's facilities in the streets." (Franchise at Section 7). Such manual "shall govern the practices of [SDG&E] in its installation and removal of [SDG&E's] facilities in the streets of the City." (Franchise at Section 7). The City Manual of Administrative Practices for Utility Installation, dated February 24, 1986, ("Manual") reaffirms the City's commitment to the common law governmental-proprietary distinction in determining who should bear the costs of utility relocations. The Manual, which was jointly entered into by the City's utilities (including the City's Water Department) and private utility companies (including SDG&E), expressly acknowledges that where facilities or improvements are proprietary in nature, as opposed to governmental, the City should bear the cost for such relocations. Section VII(2) provides that utility relocations are to be borne by the utility only when "City facilities and improvements are financed by the City, and where such facilities or improvements are governmental in nature as opposed to proprietary in nature." (Manual, Section VII (2)).

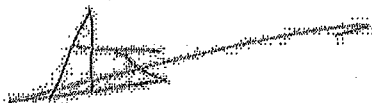
Additionally, our regulators may not permit SDG&E to socialize the costs to relocate our facilities for a project that only benefits select City of San Diego's residents among the 28 other municipalities we serve.

SDG&E will cooperate with the City in a timely manner to effectuate any desired utility relocations. However, the City is responsible for the costs of the relocations required by the Project.

We would like to set up a meeting with you to discuss this further so that a project agreement can be put in place that will provide the terms for the construction work and related payments. Please let us know when you are available. This is time sensitive as the SDG&E relocation designs are on hold pending payment.

Thank you for your time and attention.

Sincerely,



Andy Renger

Exhibit B – Conflict List

[attached]

Exhibit C – Priority Schedule

[attached]

Pure Water North City Projects

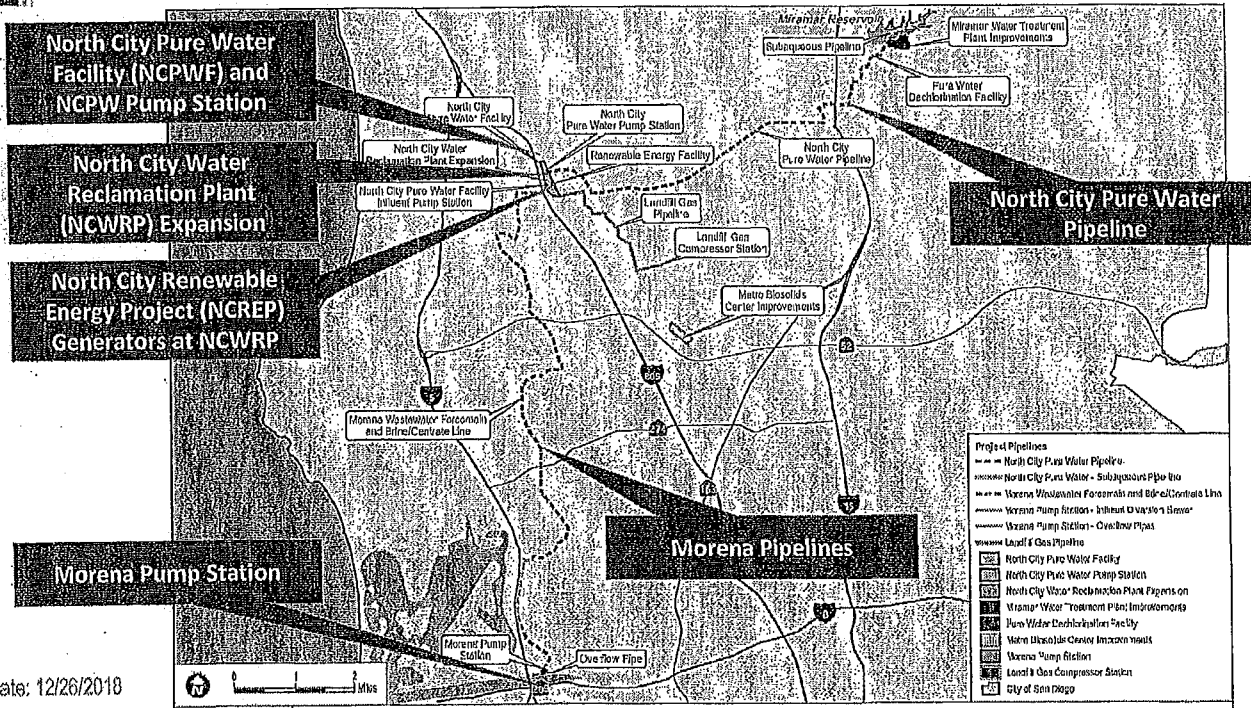


Exhibit D – Project Cost Estimate

[attached]

Pure Water Preliminary Cost Estimate Division of Work: August 24, 2018

The following is a basic estimate of the division of costs on the Pure Water project for SDG&E relocations by type of work and location of conflict. This estimate is preliminary, and SDG&E reserves the right to edit or revise these estimates as necessary. This estimate is based on initial land rights research, does not take relocated positions into account, and assumes that the City of San Diego is rerouting its pipelines at Meanly Drive so that SDG&E does not need to relocate its gas and electric facilities in that location. Numbers are in \$000's.

SDG&E Facility Type	Easement/Fee	Franchise	Railroad	Private Property/Other	Total
ED	\$0	\$36,388	\$0	\$0	\$36,388
ET	\$0	\$0	\$0	\$602	\$602
Gas	\$3,131	\$44,370	\$469	\$8,293	\$56,263
Protect in Place (PNP)	\$0	\$0	\$0	\$1,500	\$1,500
Total	\$3,131	\$80,758	\$469	\$10,395	\$94,753

ED = Electric Distribution

ET = Electric Transmission

"Other" includes costs the City would pay for independent of the dispute, such as the cost to monitor the City's PNP measures, SDG&E moving to accommodate City construction sans actual facilities conflicts, installing a new gas regulator station to accommodate the Project because new load exceeds current capacity, etc.

Exhibit E – Invoice Spreadsheet Example

[attached]

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Exhibit F – Prevailing Wage Requirements

[attached]

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**EXHIBIT F-1
PREVAILING WAGE (DESIGN)**

4.20 Prevailing Wage Rates. Prevailing wage rates apply to this Agreement.

Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Agreement is subject to State prevailing wage laws. For construction work performed under this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Agreement cumulatively exceeding \$15,000, the Design Professional and its subconsultants shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.

4.20.1 Compliance with Prevailing Wage Requirements. Pursuant to sections 1720 through 1861 of the California Labor Code, the Design Professional and its subconsultants shall ensure that all workers who perform work under this Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

4.20.1.1 Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. The Design Professional and its subconsultants shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

4.20.1.2 The date of the City's Request for Cost Proposal for a Task Order Letter (Proposal Letter) shall be used for the purpose of determining which published prevailing wage rate shall apply on a Task Order. All wage rates published and all predetermined wage rate increases known at the date of the Proposal Letter shall apply for the duration of said Task Order. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of that particular Task Order. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to that particular Task Order in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of that particular Task Order, each successive predetermined wage rate shall apply to that particular Task Order on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of that particular Task Order, such wage rate shall apply to the balance of that Task Order.

4.20.2 Penalties for Violations. Design Professional and its subconsultants shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.

4.20.3 Payroll Records. Design Professional and its subconsultants shall comply with California Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Design Professional shall require its subconsultants to also comply with section 1776. Design Professional and its subconsultants shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Design Professional is responsible for ensuring its subconsultants submit certified payroll records to the City.

4.20.3.1 In addition to the requirements in 4.20.3, the Design Professional and its subconsultants shall also furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

4.20.4 Apprentices Design Professional and its subconsultants shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Design

**EXHIBIT F-1
PREVAILING WAGE (DESIGN)**

Professional shall be held responsible for the compliance of their subconsultants with sections 1777.5, 1777.6 and 1777.7.

4.20.5 Working Hours. Design Professional and its subconsultants shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight (8) hours a day and forty (40) hours a week, unless all hours worked in excess of eight (8) hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than eight (8) hours per day and forty (40) hours per week in violation of California Labor Code sections 1810 through 1815.

4.20.6 Required Provisions for Subcontracts. Design Professional shall include at a minimum a copy of the following provisions in any contract they enter into with a subconsultant: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

4.20.7 Labor Code Section 1861 Certification. Design Professional in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Agreement, Design Professional certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Agreement."

4.20.8 Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred.

4.20.9 Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A Design Professional or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, subject to the requirements of section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

4.20.9.1 A Design Professional's inadvertent error in listing a subconsultant who is not registered pursuant to Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a protest or grounds for considering the bid or proposal non-responsive provided that any of the following apply: (1) the subconsultant is registered prior to proposal due date; (2) within twenty-four hours after the proposal due date, the subconsultant is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subconsultant is replaced by another registered subconsultant pursuant to Public Contract Code section 4107.

4.20.9.2. By submitting a bid or proposal to the City, Design Professional is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Design Professional shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.

4.20.10 Stop Order. For Design Professional or its subcontractor(s) engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered

**EXHIBIT F-1
PREVAILING WAGE (DESIGN)**

Design Professional or unregistered subcontractor(s) on ALL public works until the unregistered Design Professional or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.

4.20.11. List of all Subcontractors. The Design Professional shall provide a complete list of subcontractors (regardless of tier) utilized on this Agreement, along with their DIR registration numbers, if applicable, prior to any work being performed on this Agreement, and Design Professional shall provide a complete list of subcontractors, regardless of tier, with each invoice. Additionally, Design Professional shall provide the City with a complete list of all subcontractors utilized on this Agreement, regardless of tier, within ten working days of the completion of the Agreement, along with their DIR registration numbers, if applicable. The City shall withhold final payment to Design Professional until at least thirty (30) days after this information is provided to the City.

4.20.12 Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Design Professional shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

4.20.12.1 Registration. The Design Professional will not be required to register with the DIR for small projects. (Labor Code section 1771.1).

4.20.12.2 Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Design Professional will need to keep those records for at least three years following the completion of the Agreement. (Labor Code section 1771.4).

4.20.12.3 List of all Subcontractors. The Design Professional shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 4.20.11 above. (Labor Code section 1773.3).

EXHIBIT F-2

PREVAILING WAGES (CONSTRUCTION)

1. **PREVAILING WAGE RATES:** Pursuant to San Diego Municipal Code section 22.3019, construction, alteration, demolition, repair and maintenance work performed under this Contract is subject to State prevailing wage laws. For construction work performed under this Contract cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Contract cumulatively exceeding \$15,000, the Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below.
 - 1.1. **Compliance with Prevailing Wage Requirements.** Pursuant to sections 1720 through 1861 of the California Labor Code, the Contractor and its subcontractors shall ensure that all workers who perform work under this Contract are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
 - 1.1.1. Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on request. Copies of the prevailing rate of per diem wages also may be found at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>. Contractor and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.
 - 1.1.2. The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Contract in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Contract, each successive predetermined wage rate shall apply to this Contract on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Contract, such wage rate shall apply to the balance of the Contract.
 - 1.2. **Penalties for Violations.** Contractor and its subcontractors shall comply with California Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed. This shall be in addition to any other applicable penalties allowed under Labor Code sections 1720 – 1861.
 - 1.3. **Payroll Records.** Contractor and its subcontractors shall comply with California Labor

Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City.

1.3.1. Contractor and their subcontractors shall also furnish records specified in Labor Code section 1776 directly to the Labor Commissioner in the manner required by Labor Code section 1771.4.

1.4. Apprentices. Contractor and its subcontractors shall comply with California Labor Code sections 1777.5, 1777.6 and 1777.7 concerning the employment and wages of apprentices. Contractor is held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

1.5. Working Hours. Contractor and their subcontractors shall comply with California Labor Code sections 1810 through 1815, including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on contractors and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of California Labor Code sections 1810 through 1815.

1.6. Required Provisions for Subcontracts. Contractor shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: California Labor Code sections 1771, 1771.1, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

1.7. Labor Code Section 1861 Certification. Contractor in accordance with California Labor Code section 3700 is required to secure the payment of compensation of its employees and by signing this Contract, Contractor certifies that "I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."

1.8. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after an investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the City of San Diego's Prevailing Wage Unit at 858-627-3200.

1.9. Contractor and Subcontractor Registration Requirements. This project is subject to compliance monitoring and enforcement by the DIR. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, subject to the requirements of section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant

to Labor Code section 1725.5 It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

- 1.9.1.** A Contractor's inadvertent error in listing a subcontractor who is not registered pursuant to Labor Code section 1725.5 in response to a solicitation shall not be grounds for filing a bid protest or grounds for considering the bid non-responsive provided that any of the following apply: (1) the subcontractor is registered prior to bid opening; (2) within twenty-four hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in Labor Code section 1725.5; or (3) the subcontractor is replaced by another registered subcontractor pursuant to Public Contract Code section 4107.
- 1.9.2.** By submitting a bid or proposal to the City, Contractor is certifying that he or she has verified that all subcontractors used on this public work project are registered with the DIR in compliance with Labor Code sections 1771.1 and 1725.5, and Contractor shall provide proof of registration for themselves and all listed subcontractors to the City at the time of bid or proposal due date or upon request.
- 1.10. Stop Order.** For Contractor or its subcontractors engaging in the performance of any public work contract without having been registered in violation of Labor Code sections 1725.5 or 1771.1, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractors or unregistered subcontractor(s) on ALL public works until the unregistered contractor or unregistered subcontractor(s) is registered. Failure to observe a stop order is a misdemeanor.
- 1.11. List of all Subcontractors.** The Contractor shall provide the list of subcontractors (regardless of tier), along with their DIR registration numbers, utilized on this Contract prior to any work being performed; and the Contractor shall provide a complete list of all subcontractors with each invoice. Additionally, Contractor shall provide the City with a complete list of all subcontractors (regardless of tier) utilized on this contract within ten working days of the completion of the contract, along with their DIR registration numbers. The City shall withhold final payment to Construction Management Professional until at least thirty (30) days after this information is provided to the City.

1.12. Exemptions for Small Projects. There are limited exemptions for installation, alteration, demolition, or repair work done on projects of \$25,000 or less. The Contractor shall still comply with Labor Code sections 1720 et. seq. The only recognized exemptions are listed below:

1.12.1. Registration. The Contractor will not be required to register with the DIR for small projects. (Labor Code section 1771.1)

1.12.2. Certified Payroll Records. The records required in Labor Code section 1776 shall be required to be kept and submitted to the City of San Diego, but will not be required to be submitted online with the DIR directly. The Contractor will need to keep those records for at least three years following the completion of the Contract. (Labor Code section 1771.4).

1.12.3. List of all Subcontractors. The Contractor shall not be required to hire only registered subcontractors and is exempt from submitting the list of all subcontractors that is required in section 4.20.11 above. (Labor code section 1773.3).

EXHIBIT 2

ORDINANCE NO. 10466
(New Series)

DEC 17 1970

ORDINANCE GRANTING TO SAN DIEGO GAS & ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE (1) TO USE, FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY SUITED FOR LIGHTING BUT FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES OTHER THAN LIGHTING, ALL POLES, WIRES, CONDUITS AND APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE LAWFULLY PLACED AND MAINTAINED IN THE STREETS WITHIN THE CITY OF SAN DIEGO UNDER THAT CERTAIN FRANCHISE OF GRANTEE ACQUIRED PURSUANT TO SECTION 19 OF ARTICLE XI OF THE CONSTITUTION OF THE STATE OF CALIFORNIA, AS SAID SECTION EXISTED PRIOR TO ITS AMENDMENT ON OCTOBER 10, 1911, (2) TO CONSTRUCT, MAINTAIN AND USE IN SAID STREETS ALL POLES, WIRES, CONDUITS AND APPURTENANCES WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE IS NOT NOW NOR SHALL HEREAFTER BE AVAILABLE THEREFOR, NECESSARY TO TRANSMIT AND DISTRIBUTE ELECTRICITY SUITED FOR, AND FOR USE BY CONSUMERS FOR, ANY AND ALL LAWFUL PURPOSES, AND (3) TO UTILIZE SAID POLES, WIRES, CONDUITS AND APPURTENANCES IN SAID STREETS FOR TRANSMITTING ELECTRICITY FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR ANY AND ALL LAWFUL 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 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 San Diego Gas & Electric Company, 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 "poles, wires, conduits and appurtenances" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults,

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manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances, and, without limitation to the foregoing, any other property located or to be located in, upon, along, across, under or over the streets of the City, and used or useful in transmitting or distributing electricity, 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 poles, wires, conduits and appurtenances thereto in, upon, along, across, under or over the streets of the City;

(f) The phrase "constitutional franchise" shall mean the right acquired through acceptance by Grantee or its predecessor in estate of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as said Section existed prior to its amendment on October 10, 1911;

(g) The phrase "gross receipts" shall mean all gross operating revenues received by Grantee from the sale of electricity to Grantee's customers with points of service within the corporate limits of the City (including, but not limited to, sales to military reservations with points of service within the City's corporate limits) which are credited in Account Nos. 440, 442, 444, 445 and 446 of the current Uniform System of Accounts of the Federal Power Commission as adopted by the California Public Utilities Commission or similar superseding accounts, less uncollectible amounts and less any refunds or rebates made by Grantee to such customers pursuant to California Public Utilities Commission orders or decisions;

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(h) The phrase "total system gross receipts" shall mean all gross operating revenues received by Grantee from the sale of electricity to Grantee's customers within its entire service territory which are credited in Account Nos. 440, 442, 444, 445 and 446 of the current Uniform System of Accounts of the Federal Power Commission as adopted by the California Public Utilities Commission or similar superseding accounts, less uncollectible amounts and less any refunds or rebates made by Grantee to such customers pursuant to California Public Utilities Commission orders or decisions;

(i) The phrase "allocation ratio" shall, unless and until otherwise modified by the California Public Utilities Commission, mean a numerical ratio determined by the proportion which the number of Grantee's electric customers in the City bears to all of Grantee's electric customers throughout its entire electric service territory.

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Section 2. PURPOSE

The franchise (1) to use, for transmitting and distributing electricity suited for lighting but for use by consumers for any and all lawful purposes other than lighting, all poles, wires, conduits and appurtenances which are now or may hereafter be lawfully placed and maintained in the streets within City under the constitutional franchise of Grantee, (2) to construct, maintain and use in said streets all poles, wires, conduits and appurtenances whenever and wherever the constitutional franchise of Grantee is not now nor shall hereafter be available therefor, necessary to transmit and distribute electricity suited for, and for use by consumers for, any and all lawful purposes, and (3) to utilize said poles, wires, conduits and appurtenances in said streets for transmitting electricity for use outside the boundaries of City for any and all lawful purposes is hereby granted to San Diego Gas & Electric Company, its successors and assigns.

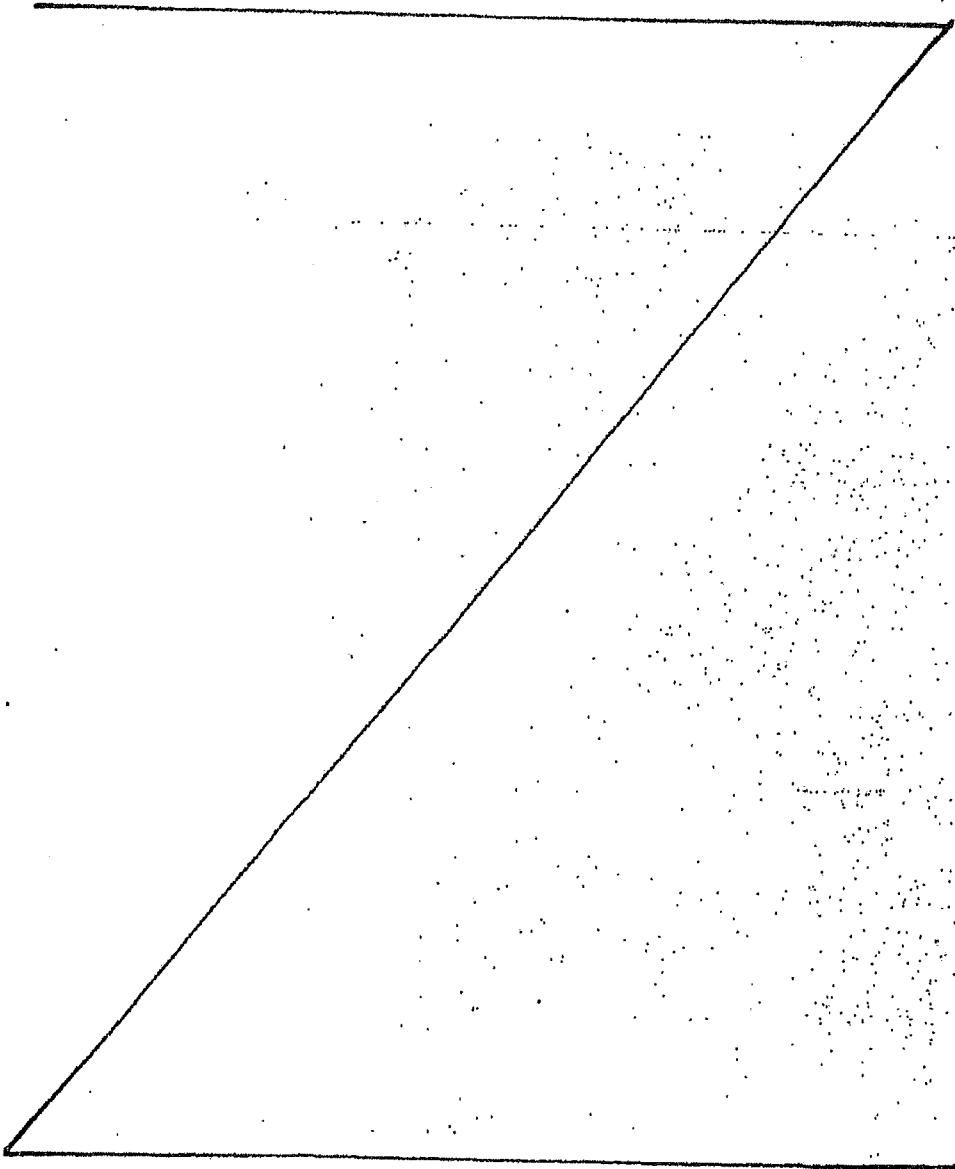


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Section 3. TERM

The right, privilege and franchise, subject to each and all of the terms and conditions contained in this ordinance hereby is granted to San Diego Gas & Electric Company, 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.



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Section 4. CONSIDERATION

(a) 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 ~~three per-~~ cent (3%) of Grantee's gross receipts during the pre-
ceding calendar year, or a fractional year, commencing with the date of adoption of this ordinance by the City Council, for the first thirty (30) years of the term of this franchise by the dates, in the manner, and on the conditions as set forth in Section 5 hereof.

(b) For the last twenty (20) years of the term of this franchise Grantee, as consideration and compensation for the rights and privileges herein granted and 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 an amount to be determined as set forth below of Grantee's gross receipts during the preceding calendar year, or a fractional year, for the remainder of the term of this franchise by the dates, in the manner and on the conditions as set forth in Section 5 hereof.

(c) Determination of the amount to be paid as set forth in Section 4(b) above shall be made by good faith negotiation between City and Grantee commencing not less than six (6) months prior to the expiration of the first thirty (30) year period. In the event that at the conclusion of the first thirty (30) year period said good faith negotiation does not result in a determination of the amount to be paid by Grantee during the

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last twenty (20) years (or 19 years, 6 months, as the case may be) of the term of this franchise, then this question (and no other) shall be submitted to binding arbitration as hereinafter set forth; provided however that no later than fifteen (15) days prior to the end of the first thirty (30) year period the parties may mutually agree to extend the time for said good faith negotiation for an additional six (6) months if they so desire, during which time Grantee shall continue to pay a sum equal to three percent (3%) of Grantee's gross receipts as consideration for the rights and privileges herein granted. Unless City and Grantee mutually agree in writing to a modification prior to the conclusion of the first thirty (30) year period (or at the conclusion of the additional six (6) month period as provided for above) then the determination of the number of arbitrators, the time and mode of their selection, and the rules of practice and procedure to be followed shall be as set forth herein.

(d) Within thirty (30) days after the end of the first thirty (30) year period or within thirty (30) days after the six (6) month extension provided for above, as the case may be, Grantee and City shall each appoint a person to serve as an arbitrator and shall give written notice to the other party of such appointment.

(e) The two persons so appointed shall then agree upon and secure a third arbitrator. If the third arbitrator should not be secured within thirty (30) days from the selection of the arbitrators by Grantee and City respectively, then upon application in writing by either City or Grantee to the Chief Justice of the California State Supreme Court, said Chief Justice shall be empowered to appoint a third arbitrator. No person shall be

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eligible for appointment by said Chief Justice who is an officer or employee of City or Grantee, or a shareholder of Grantee.

(f) The arbitrators so appointed shall hear evidence submitted by both City and Grantee and may call for additional information, which additional information City or Grantee shall furnish to the extent feasible. An award, decision or determination in writing and signed by a majority of the arbitrators shall be made within sixty (60) days after the selection of the third arbitrator and shall be conclusive with respect to the issue submitted and shall be binding upon both City and Grantee.

(g) Except as otherwise provided in this section, the arbitration shall be governed by the rules of practice and procedure of the American Arbitration Association from time to time in force, except that, if such rules and practice as herein modified shall conflict with the California Code of Civil Procedure or any other provision of California law then in force, such California rules and provisions shall govern. This submission and agreement to arbitrate shall be specifically enforceable. The award of the arbitrators or a majority of them upon the question submitted to them hereunder shall be final and binding upon the parties to the extent and in the manner provided by the California Code of Civil Procedure.

(h) Each party shall bear the fee and personal expenses of the arbitrator appointed by it together with the fees and expenses of its own counsel and of its own witnesses. All other costs and expenses of the arbitration, including the cost and expense incurred by reason of selection of the third arbitrator as hereinabove provided, shall be borne equally by City and Grantee.

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

(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 1971, 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

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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 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.

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(h) In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(1) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(2) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.



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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 orders of the Public Utilities Commission or other governmental authority having jurisdiction in the premises.



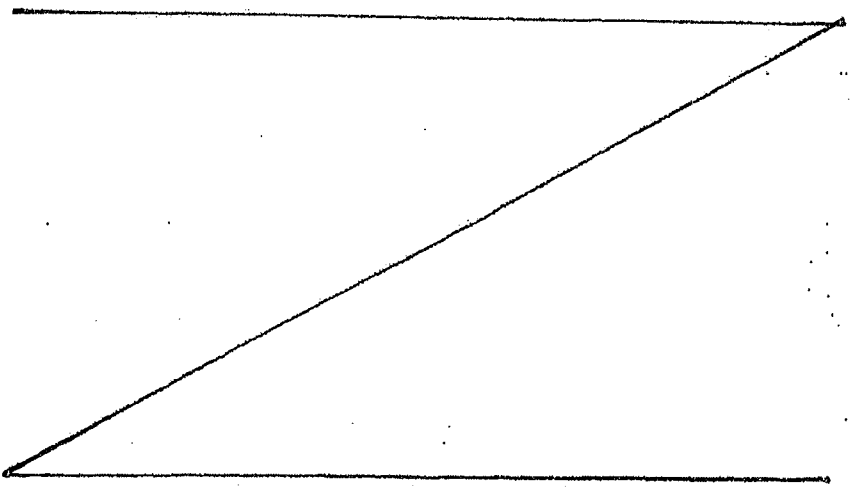
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Section 7. ADMINISTRATIVE PRACTICES

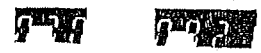
Grantee is herewith charged with the responsibility of cooperating with City in preparing a manual of administrative practices which shall govern the installation and removal of Grantee's facilities in the streets of City which shall include, but not be limited to, cathodic protection practices. Once each year, commencing with the first full calendar year of the franchise granted herein, it is to be the joint responsibility of Grantee and City to review and update such administrative practices. Both Grantee and City are charged with the duty to prepare, review and update such administrative practices by a method of mutual cooperation which shall take into consideration the reasonable needs and convenience of each party; provided that said administrative practices and the terms and conditions thereof shall be at all times subject to approval of the City Council as expressed by appropriate legislative action.

Following the preparation of said manual, and its approval by the City Council, it shall govern the practices of the Grantee in its installation and removal of Grantee's facilities in the streets of City.



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Section 8. CITY RESERVED POWERS

(a) City reserves the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade or maintain below surface or above surface improvements of any type or description in, upon, along, across, under or over the streets of the City. City further reserves the right to relocate, remove, vacate or replace the streets themselves. If the necessary exercise of the aforementioned reserve rights conflicts with any poles, wires, conduits, 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 poles, wires, conduits, and appurtenances thereto 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, to either overhead or underground locations, of said poles, wires, conduits and appurtenances thereto at the sole cost and expense of Grantee.

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Section 9. UNDERGROUNDING OF FACILITIES

(a) Presently, Grantee is engaged in a program of converting to underground certain of its facilities in accordance with Decision No. 73078 of the California Public Utilities Commission. At this time, said decision requires Grantee to budget prior to the end of each calendar year certain sums of money for said program for the next succeeding year and allocate these sums to undergrounding projects in the various governmental jurisdictions throughout Grantee's entire electric service territory on the basis of the number of electric customers in each governmental jurisdiction. Grantee is willing to increase the amounts of money budgeted for said program and as a portion of the consideration for the granting of the rights and privileges contained in this franchise shall accomplish this in the following manner.

(b) Grantee shall apply annually to the California Public Utilities Commission for authority to budget amounts of money for the undergrounding of existing overhead facilities in the City. In its application for calendar year 1971 Grantee shall apply to increase the amounts of money to be budgeted for such undergrounding in the City from the amount budgeted for 1970 by an amount equivalent to one-half of one percent (1/2%) of its total system gross receipts for the calendar year preceding the year of application (i.e., 1969) multiplied by the allocation ratio. Thereafter Grantee shall increase each year the amount so applied for by one-half percent (1/2%) of its total system gross receipts for the calendar year preceding the year of application

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multiplied by the allocation ratio until such budgeted amounts of money for undergrounding in the City reach a sum which is equal to four and one-half percent (4 1/2%) of said total system gross receipts multiplied by the allocation ratio. Thereafter Grantee shall continue to apply to budget an amount of money equal to four and one-half percent (4 1/2%) of said total system gross receipts multiplied by the allocation ratio for such undergrounding conversion.

(c) If the amounts so budgeted for any calendar year are not expended in that calendar year or the next two succeeding calendar years following the budgeting thereof because of forces beyond the control of Grantee, then in that event and that event only Grantee may reallocate the unexpended amounts of money, in its discretion, for any other lawful purpose.

(d) This section shall not be deemed in any way to be an impairment of City's rights as more particularly set forth in Section 8 of this ordinance. Nothing contained herein is intended to prevent Grantee from informing City and the California Public Utilities Commission of then existing or foreseeable economic conditions or other factors which in the opinion of Grantee make unwise the granting in whole or in part, of the particular annual application.

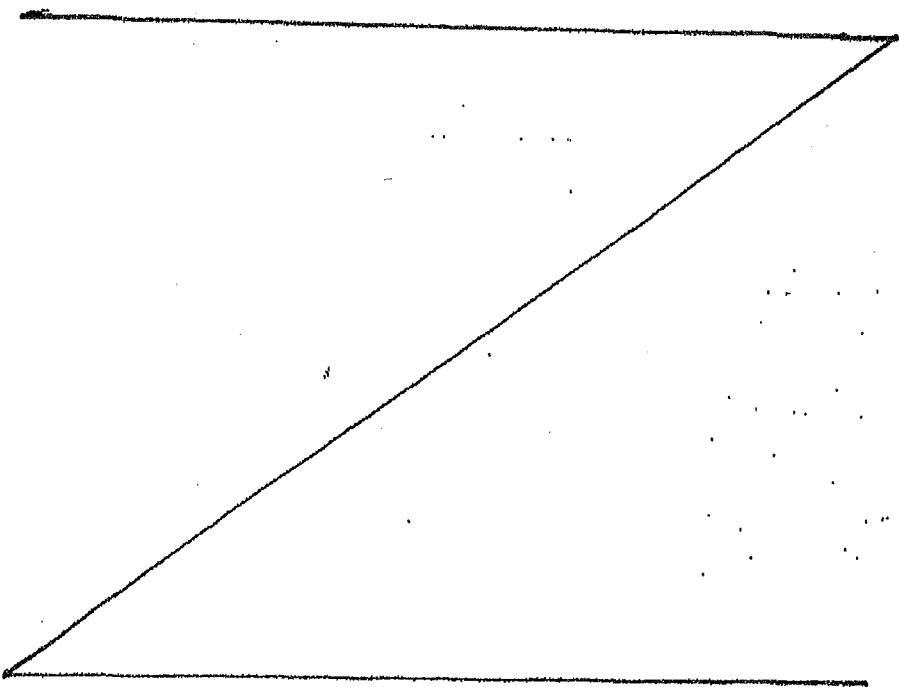
(e) This section is intended only to be a measure of a portion of the consideration to be paid by Grantee to City for the rights and privileges granted herein and therefore it does not create or confer any rights or obligations to any one other than City or Grantee.

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Section 10. 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.

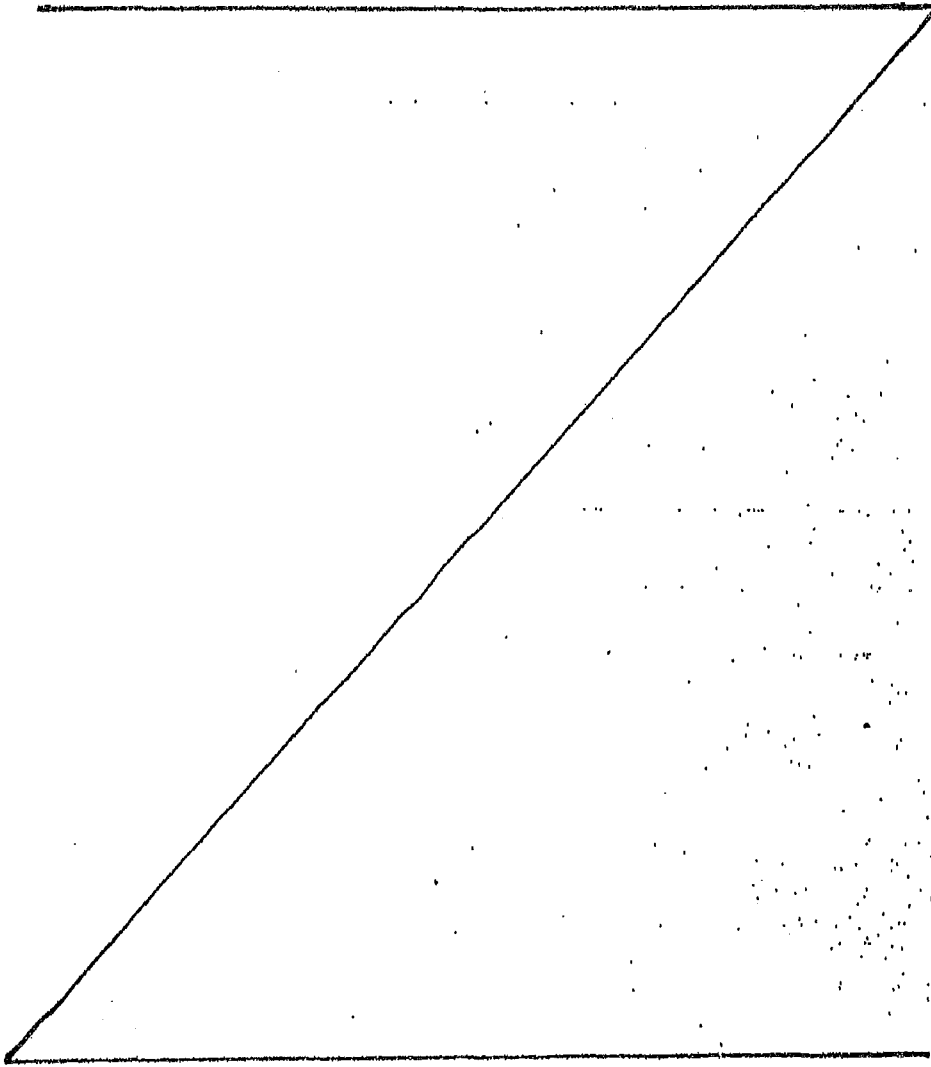


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Section 11. REPAIR COSTS

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.



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Section 12. 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.

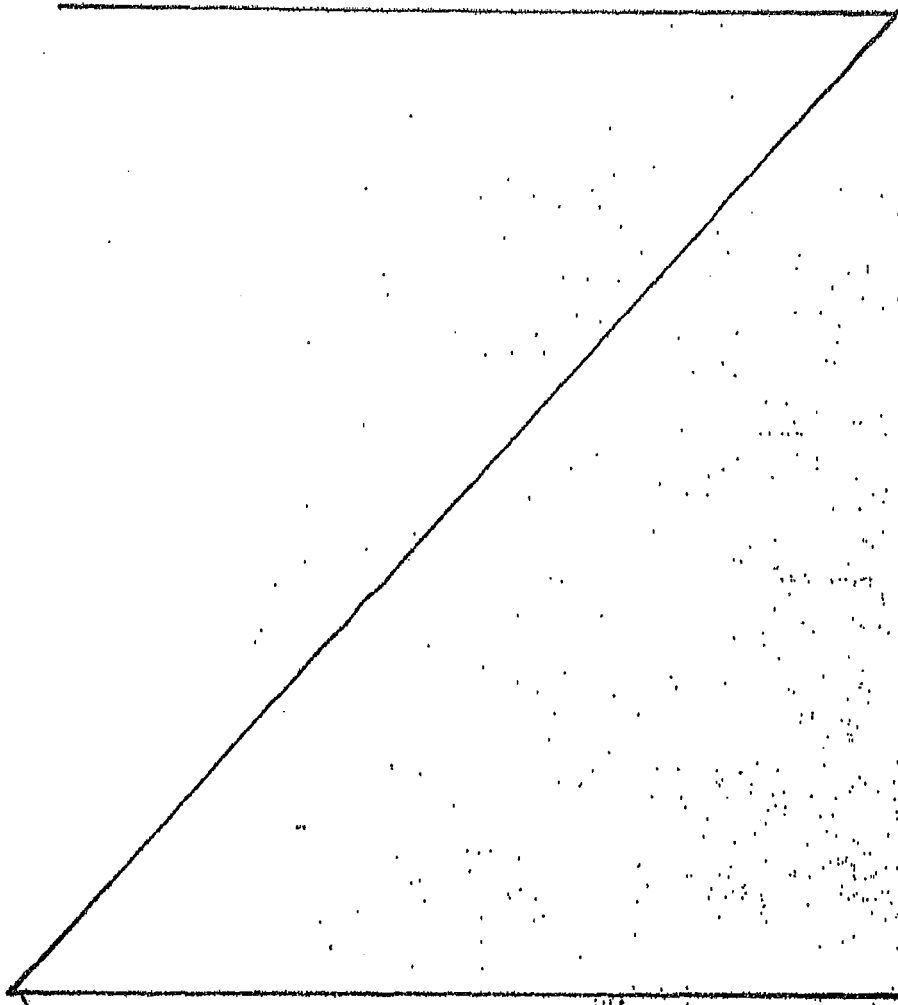
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Section 13. ACQUISITION AND VALUATION

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.

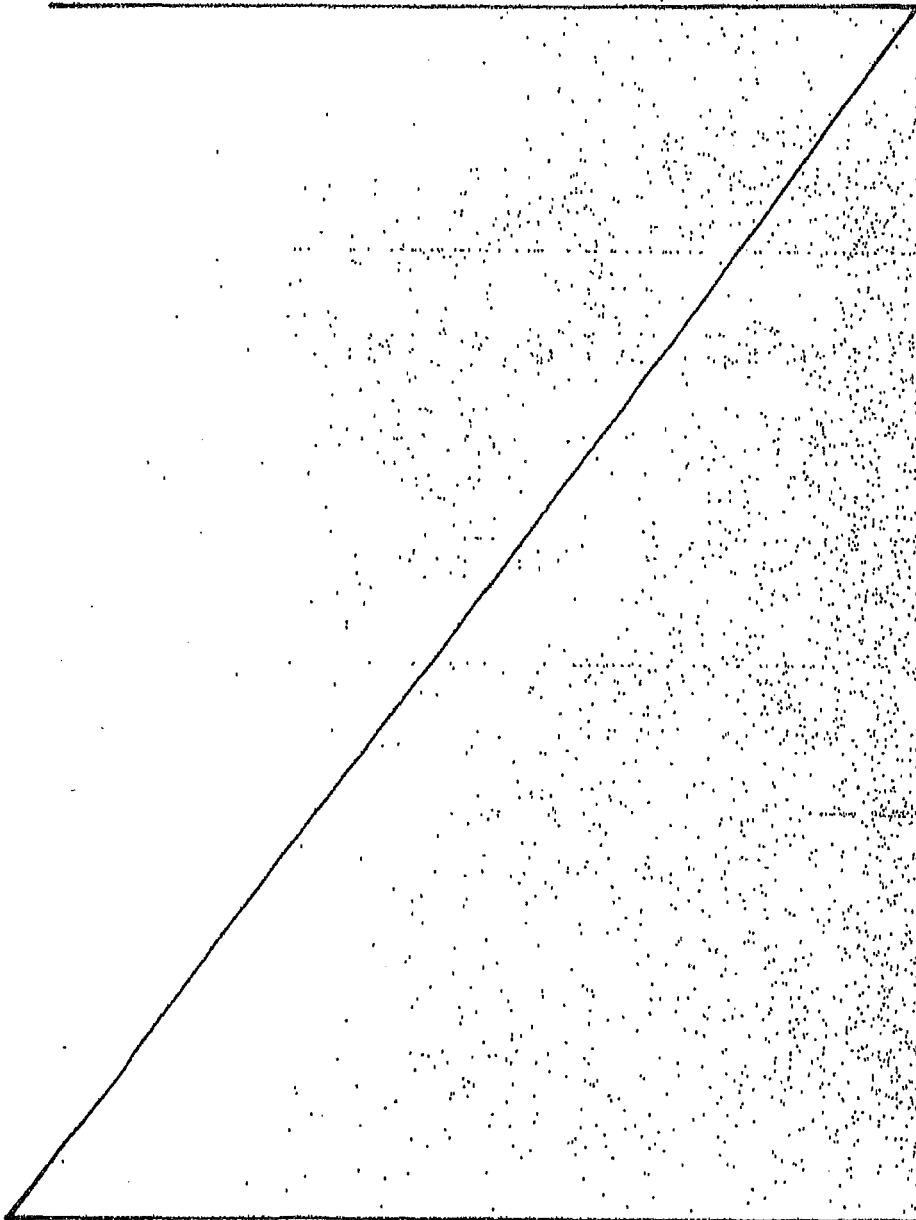


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Section 14. PUBLICATION EXPENSE

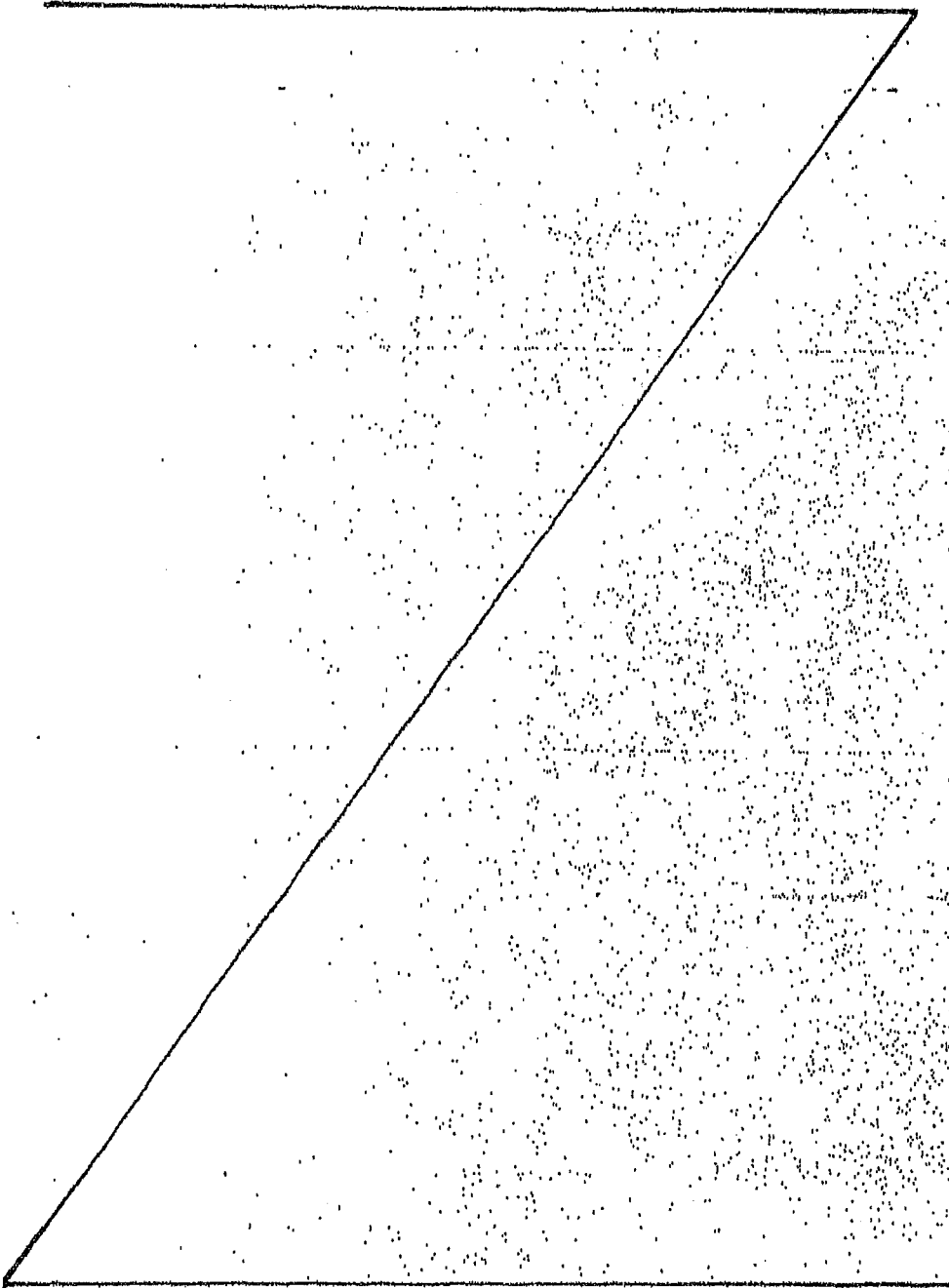
Grantee of said franchise shall pay to City a sum of money sufficient to reimburse it for all publication expenses incurred by it in connection with the granting thereof; such payment to be made within thirty (30) days after City shall have furnished Grantee with a written statement of such expenses.



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Section 15. 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.



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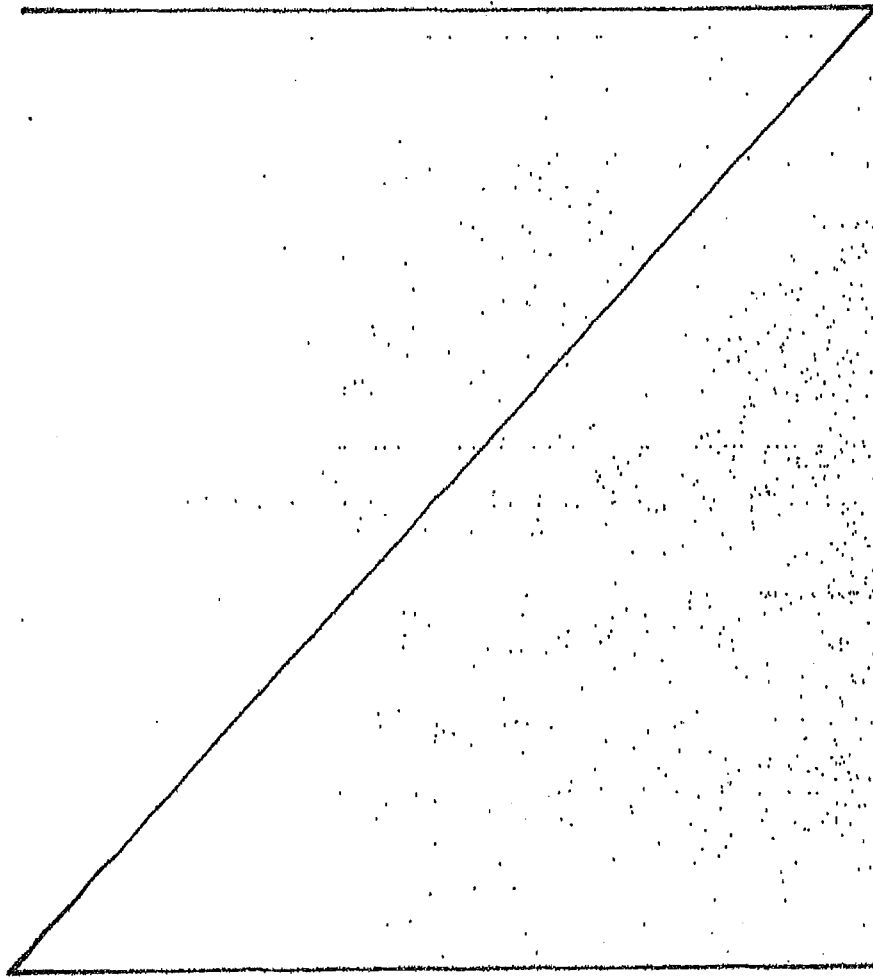
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Section 17. RIGHT OF CITY'S ELECTORS

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 reserved to said electors; and it is 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.

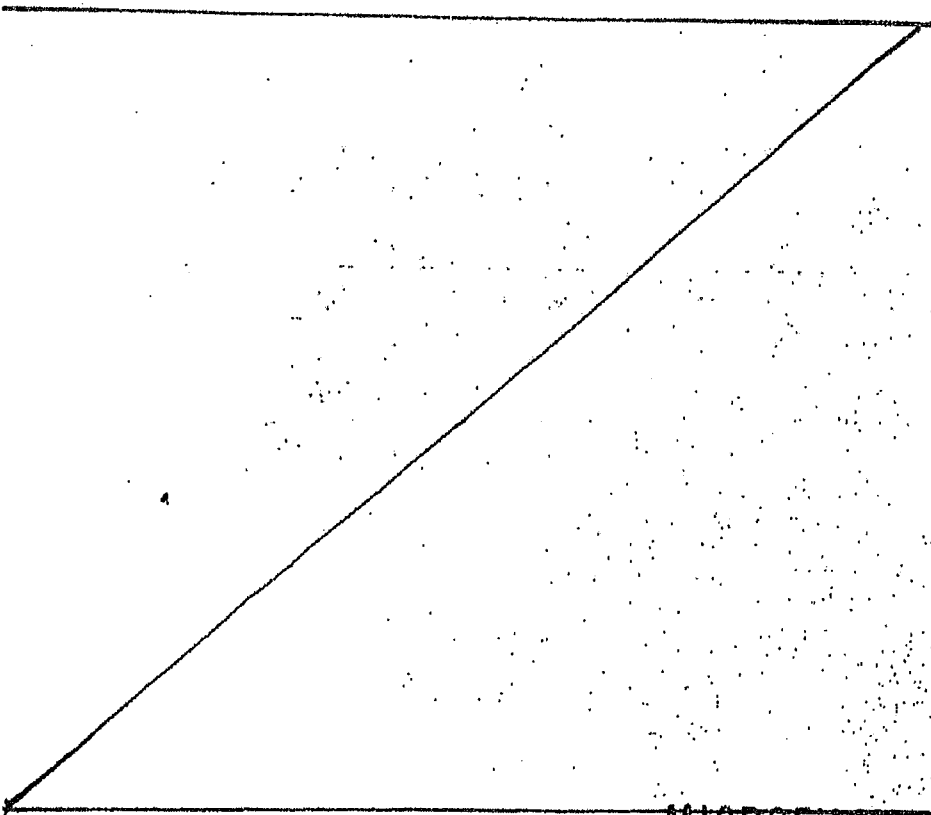


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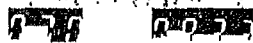


Section 18. **PERFORMANCE BOND**

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.



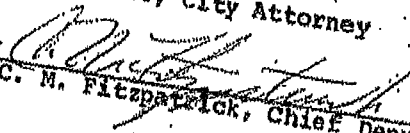
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Section 19. EFFECTIVE DATE

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

APPROVED: JOHN W. WITT, City Attorney

BY 
C. M. Fitzpatrick, Chief Deputy

CME:vl
10-1-70

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10166

Passed and adopted by the Council of The City of San Diego on DEC 17 1970
 by the following vote:

RECEIVED
 CITY CLERK'S OFFICE
 1970 DEC 10 AM 11:57
 SAN DIEGO, CALIF.

Councilmen	Yeas	Nays	Excused	Absent
Helen Cobb	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sam T. Loftin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Landt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Martinet	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Allen Hlich	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Schaefer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Frank Curtan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

FRANK CURRAN

Mayor of The City of San Diego, California.

JOHN LOCKWOOD

City Clerk of The City of San Diego, California.

(Seal)

By Edgar D. Hamel, 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

DEC 3 1970

DEC 17 1970

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

JOHN LOCKWOOD

City Clerk of The City of San Diego, California.

(Seal)

By Edgar D. Hamel, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 10466 Adopted DEC 17 1970

FORM CC-1255-A (1-70)

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MR.

ATTORNEY (S)

CITY OF SAN DIEGO
202 C Street
Community Concourse
San Diego, California

RECEIVED
CITY CLERK'S OFFICE
1970 DEC 28 PM 4:39
SAN DIEGO, CALIF.

CERTIFICATE OF PUBLICATION

No.

IN THE MATTER OF

ORDINANCE GRANTING TO SAN DIEGO GAS & ELECTRIC
COMPANY, ITS SUCCESSORS AND ASSIGNS, ECT.

I, Patricia M. Applestill hereby certify
that The Daily Transcript is a daily newspaper of general
circulation within the provisions of the Government Code of
the State of California, printed and published in the City of
San Diego, County of San Diego, State of California; that
I am the principal clerk of said newspaper; that the

ORDINANCE NO. 10466 (NEW SERIES)

to a true and correct copy of which this certificate is annexed
was published in said newspaper on

December 25, 1970

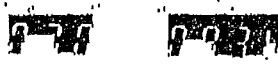
I certify under penalty of perjury that the foregoing is
true and correct, at San Diego, California, on

December 25, 1970

Patricia M. Applestill
(Signature)

10466

7278-306.08



ORDINANCE NO. 10466
(NEW SERIES)

ORDINANCE GRANTING TO SAN DIEGO GAS & ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE (1) TO USE, FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY SUITED FOR LIGHTING BUT FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES OTHER THAN LIGHTING, ALL POLES, WIRES, CONDUITS AND APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE LAWFULLY PLACED AND MAINTAINED IN THE STREETS WITHIN THE CITY OF SAN DIEGO UNDER THAT CERTAIN FRANCHISE OF GRANTEE ACQUIRED PURSUANT TO SECTION 10 OF ARTICLE XI OF THE CONSTITUTION OF THE STATE OF CALIFORNIA, AS SAID SECTION EXISTED PRIOR TO ITS AMENDMENT ON OCTOBER 19, 1911, (2) TO CONSTRUCT, MAINTAIN AND USE IN SAID STREETS, ALL POLES, WIRES, CONDUITS AND APPURTENANCES WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE IS NOT NOW NOR SHALL HEREAFTER BE AVAILABLE THEREFOR, NECESSARY TO TRANSMIT AND DISTRIBUTE ELECTRICITY SUITED FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES AND (3) TO UTILIZE SAID POLES, WIRES, CONDUITS AND APPURTENANCES IN SAID STREETS FOR TRANSMITTING ELECTRICITY FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR ANY AND ALL LAWFUL 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 phrase 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 San Diego Gas & Electric Company, 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 "poles, wires, conduits and appurtenances" shall mean poles, towers, supports, wires, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances, and, without limitation to the foregoing, any other properly located or to be located in, upon, along, across, under or over the streets of the City, and used or useful in transmitting or distributing electricity, 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 poles, wires, conduits and appurtenances thereto in, upon, along, across, under or over the streets of the City.

(f) The phrase "constitutional franchise" shall mean the right acquired through acceptance by Grantor or its predecessor in estate of the offer contained in the provisions of Section 10 of Article XI of the Constitution of the State of California, as said Section existed prior to its amendment on October 10, 1911.

(g) The phrase "gross receipts" shall mean all gross operating revenues received by Grantee from the sale of electricity to Grantee's customers with points of service within the corporate limits of the City (including, but not limited to, sales to military reservations with points of service within the City's corporate limits) which are credited in Account Nos. 410, 442, 441, 443 and 446 of the current Uniform System of Accounts of the Federal Power Commission as adopted by the California Public Utilities Commission or similar superseding accounts, less uncollectible amounts and less any refunds or rebates made by Grantee to such customers pursuant to California Public Utilities Commission orders or decisions.

(h) The phrase "total system gross receipts" shall mean all gross operating revenues received by Grantee from the sale of electricity to Grantee's customers within its entire service territory which are credited in Account Nos. 440, 442, 444, 445 and 446 of the current Uniform System of Accounts of the Federal Power Commission as adopted by the California Public Utilities Commission or similar superseding accounts, less uncollectible amounts and less any refunds or rebates made by Grantee to such customers pursuant to California Public Utilities Commission orders or decisions.

(i) The phrase "arbitration ratio" shall, unless and until otherwise modified by the California Public Utilities Commission, mean a numerical ratio determined by the proportion which the number of Grantee's electric customers in the City bears to all of Grantee's electric customers throughout its entire electric service territory.

Section 2. PURPOSE

The franchise (1) to use, for transmitting and distributing electricity suited for lighting but for use by consumers for any and all lawful purposes other than lighting, all poles, wires, conduits and appurtenances which are now or may hereafter be lawfully placed and maintained in the streets within City under the constitutional franchise of Grantee, (2) to construct, maintain and use in said streets all poles, wires, conduits and appurtenances whenever and wherever the constitutional franchise of Grantee is not now nor shall hereafter be available therefor, necessary to transmit and distribute electricity suited for, and for use by consumers for, any and all lawful purposes, and (3) to utilize said poles, wires, conduits and appurtenances in said streets for transmitting electricity for use outside the boundaries of City for any and all lawful purposes is hereby granted to San Diego Gas & Electric Company, 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 San Diego Gas & Electric Company, 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

(a) The rights and privileges hereinafter 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 three percent (3%) of Grantee's gross receipts during the preceding calendar year, or a fractional year, commencing with the date of adoption of this ordinance by the City Council, for the first thirty (30) years of the term of this franchise by the date, in the manner, and on the conditions as set forth in Section 5 hereof.

(b) For the last twenty (20) years of the term of this franchise Grantee, as consideration and compensation for the rights and privileges herein granted and 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 an amount to be determined as set forth below of Grantee's gross receipts during the preceding calendar year, or a fractional year, for the remainder of the term of this franchise by the date, in the manner, and on the conditions as set forth in Section 5 hereof.

(c) Determination of the amount to be paid as set forth in Section 4(b) above shall be made by good faith negotiation between City and Grantee commencing not less than six (6) months prior to the expiration of the first thirty (30) year period. In the event that at the conclusion of the first thirty (30) year period said good faith negotiation does not result in a determination of the amount to be paid by Grantee during the last twenty (20) years (or 19 years, 6 months, as the case may be) of the term of this franchise, then this question (and no other) shall be submitted to binding arbitration as hereinafter set forth;

provided however that no later than fifteen (15) days prior to the end of the first thirty (30) year period the parties may mutually agree to extend the time for said good faith negotiation for an additional six (6) months if they so desire, during which time Grantee shall continue to pay a sum equal to three percent (3%) of Grantee's gross receipts as consideration for the rights and privileges herein granted. Unless City and Grantee mutually agree in writing to a modification prior to the conclusion of the first thirty (30) year period (or at the conclusion of the additional six (6) month period as provided for above) then the determination of the number of arbitrators, the time and mode of their selection, and the rules of practice and procedure to be followed shall be as set forth herein.

(d) Within thirty (30) days after the end of the first thirty (30) year period or within thirty (30) days after the six (6) month extension provided for above, as the case may be, Grantee and City shall each appoint a person to serve as an arbitrator and shall give written notice to the other party of such appointment.

(e) The two persons so appointed shall then agree upon and secure a third arbitrator. If the third arbitrator should not be secured within thirty (30) days from the selection of the arbitrators by Grantee and City respectively, then upon application in writing by either City or Grantee to the Chief Justice of the California State Supreme Court, said Chief Justice shall be empowered to appoint a third arbitrator. No person shall be eligible for appointment by said Chief Justice who is an officer or employee of City or Grantee, or a shareholder of Grantee.

(f) The arbitrators so appointed shall hear evidence submitted by both City and Grantee and may call for additional information, which additional information City or Grantee shall furnish to the extent feasible. An award, decision or determination in writing and signed by a majority of the arbitrators shall be made within sixty (60) days after the selection of the third arbitrator and shall be conclusive with respect to the issue submitted and shall be binding upon both City and Grantee.

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(g) Except as otherwise provided in this section, the arbitration shall be governed by the rules of practice and procedure of the American Arbitration Association from time to time in force, except that, if such rules and practices as herein modified shall conflict with the California Code of Civil Procedure or any other provision of California law then in force, such California rules and provisions shall govern. This submission and agreement to arbitrate shall be specifically enforceable. The award of the arbitrators or a majority of them upon the question submitted to them hereunder shall be final and binding upon the parties to the extent and in the manner provided by the California Code of Civil Procedure.

(h) Each party shall bear the fee and personal expenses of the arbitrator appointed by it together with the fees and expenses of its own counsel and of its own witnesses. All other costs and expenses of the arbitration, including the cost and expense incurred by reason of selection of the third arbitrator as hereinabove provided, shall be borne equally by City and Grantee.

Section 7. REPORTS, DATES OF PAYMENT TO CITY, AUDITS

(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 1971, 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(a) 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 the 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.

(h) In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(1) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment including but not limited to, the costs 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 8. 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 orders of the Public Utilities Commission or other governmental authority having jurisdiction in the premises.

Section 9. ADMINISTRATIVE PRACTICES

Grantee is herewith charged with the responsibility of cooperating with City in preparing a manual of administrative practices which shall govern the installation and removal of Grantee's facilities in the streets of City which shall include, but not be limited to, cathodic protection practices. Once each year, commencing with the first full calendar year of the franchise granted herein, it is to be the joint responsibility of Grantee and City to review and update such administrative practices. Both Grantee and City are charged with the duty to prepare, review and update such administrative practices by a method of mutual cooperation which shall take into consideration the reasonable needs and convenience of each party; provided that said administrative practices and the terms and conditions thereof shall be at all times subject to approval of the City Council as expressed by appropriate legislative action.

Following the preparation of said manual, and its approval by the City Council, it shall govern the practices of the Grantee in its installation and removal of Grantee's facilities in the streets of City.

Section 10. CITY RESERVED POWERS

(a) City reserves the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade or maintain below surface or above surface improvements of any type or description in, upon, along, across, under or over the streets of the City. City further reserves the right to relocate, remove, vacate or replace the streets themselves. If the necessary exercise of the aforementioned reserve rights conflicts with any poles, wires, conduits, 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 poles, wires, conduits, and appurtenances thereto 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, to either overhead or underground locations, of said poles, wires, conduits and appurtenances thereto at the sole cost and expense of Grantee.

Section 11. UNDERGROUNDING OF FACILITIES

(a) Presently, Grantee is engaged in a program of converting to underground certain of its facilities in accordance with Decision No. 75078 of the California Public Utilities Commission. At this time, said decision requires Grantee to budget prior to the end of each calendar year certain sums of money for said program for the next succeeding year and allocate these sums to various governmental jurisdictions throughout Grantee's entire electric service territory on the basis of the number of electric customers in each governmental jurisdiction. Grantee is willing to increase the amounts of money budgeted for said program and as a portion of the consideration for the granting of the rights and privileges contained in this franchise shall accomplish this in the following manner:

(b) Grantee shall apply annually to the California Public Utilities Commission for authority to budget amounts of money for the undergrounding of existing overhead facilities in the City. In its application for calendar year 1971 Grantee shall apply to increase the amounts of money to be budgeted for such undergrounding in the City from the amount budgeted for 1970 by an amount equivalent to one-half of one percent (1/2%) of its total system gross receipts for the calendar year preceding the year of application (i.e., 1969) multiplied by the allocation ratio. Thereafter Grantee shall increase each year the amount so applied for by one-half percent (1/2%) of its total system gross receipts for the calendar year preceding the year of application until such budgeted amounts of money for undergrounding in the City reach a sum which is equal to four and one-half percent (4 1/2%) of said total system gross receipts multiplied by the allocation ratio. Thereafter Grantee shall continue to apply to budget an amount of money equal to four and one-half percent (4 1/2%) of said total system gross receipts multiplied by the allocation ratio for such undergrounding conversion.

(c) If the amounts so budgeted for any calendar year are not expended in that calendar year or the next two succeeding calendar years following the budgeting thereof because of forces beyond the control of Grantee, then in that event and that event only Grantee may reallocate the unexpended amounts of money, in its discretion, for any other lawful purpose.

(d) This section shall not be deemed in any way to be an impairment of City's rights as more particularly set forth in Section 8 of this ordinance. Nothing contained herein is intended to prevent Grantee from informing City and the California Public Utilities Commission of their existing or foreseeable economic conditions or other factors which in the opinion of Grantee make unwise the granting in whole or in part, of the particular initial application.

(e) This section is intended only to be a measure of a portion of the consideration to be paid by Grantee to City for the rights and privileges granted herein and therefore it does not create or confer any rights or obligations to any one other than City or Grantee.

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Section 10. 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 11. 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 12. 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 13. 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 procedure 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 14. PUBLICATION EXPENSES

Grantee of said franchise shall pay to City such 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. 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 16. 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 17. 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 reserved to said electors; and it is expressly agreed that at any election held by 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 18. 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 accretions 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 19. EFFECTIVE DATE

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

APPROVED:
JOHN W. WITT,
City Attorney
By C. M. FITZPATRICK,
Chief Deputy

Passed and adopted by the Council of The City of San Diego on December 17, 1970, by the following vote:

YEAS: Cobb, Loftin, Landt, Hitch, Scheifer, Curran, Horrow.
NAYS: Williams, Morrow.
EXCUSED: Martinez.
ABSENT: None.

AUTHENTICATED BY:
FRANK CURRIAN,
Mayor of The City of San Diego, California.
JOHN LOCKWOOD,
City Clerk of The City of San Diego, California.
By ELFA F. HAMEL,
Deputy.

(Seal)
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 December 3, 1970, and on December 17, 1970.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

JOHN LOCKWOOD,
City Clerk of The City of San Diego, California.
By ELFA F. HAMEL,
Deputy.

(Seal)
Published Dec. 25, 1970 D-317

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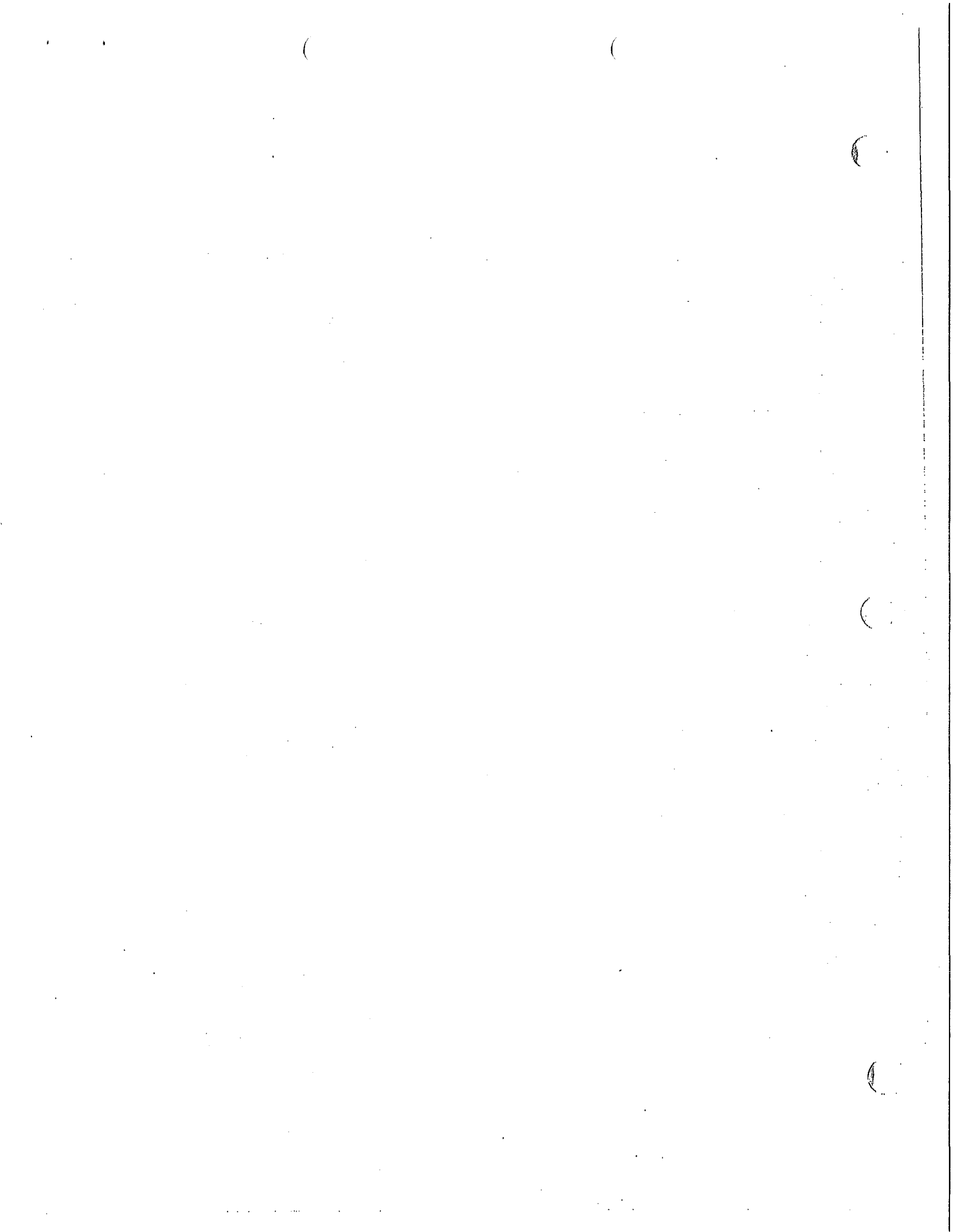


EXHIBIT 3

ORDINANCE NO. 10465 DEC 17 1970
(New Series)

ORDINANCE GRANTING TO SAN DIEGO GAS & ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS, THE FRANCHISE (1) TO USE FOR TRANSMITTING AND DISTRIBUTING GAS SUITED FOR LIGHTING BUT FOR USE BY CONSUMERS FOR ANY AND ALL LAWFUL PURPOSES OTHER THAN LIGHTING, ALL PIPES AND APPURTENANCES WHICH ARE NOW OR MAY HEREAFTER BE LAWFULLY PLACED AND MAINTAINED IN THE STREETS WITHIN THE CITY OF SAN DIEGO UNDER THAT CERTAIN FRANCHISE OF GRANTEE ACQUIRED PURSUANT TO SECTION 19 OF ARTICLE XI OF THE CONSTITUTION OF THE STATE OF CALIFORNIA, AS SAID SECTION EXISTED PRIOR TO ITS AMENDMENT ON OCTOBER 10, 1911, (2) TO CONSTRUCT, MAINTAIN AND USE IN SAID STREETS ALL PIPES AND APPURTENANCES WHENEVER AND WHEREVER SAID CONSTITUTIONAL FRANCHISE IS NOT NOW NOR SHALL HEREAFTER BE AVAILABLE THEREFOR, NECESSARY TO TRANSMIT AND DISTRIBUTE GAS SUITED FOR, AND FOR USE BY CONSUMERS FOR, ANY AND ALL LAWFUL PURPOSES, AND (3) TO UTILIZE SAID PIPES AND APPURTENANCES IN SAID STREETS FOR TRANSMITTING GAS FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR ANY AND ALL LAWFUL 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 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 San Diego Gas & Electric Company, 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 word "gas" shall mean natural or artificial gas, or a mixture of natural and artificial gas;

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(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 streets of 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 the streets of the City;

(g) The phrase "constitutional franchise" shall mean the right acquired through acceptance by Grantee or its predecessor in estate of the offer contained in the provisions of Section 19 of Article XI of the Constitution of the State of California, as said Section existed prior to its amendment on October 10, 1911;

(h) The phrase "gross receipts" shall mean all gross operating revenues received by Grantee from the sale of gas to Grantee's customers with points of service within the corporate limits of the City (including, but not limited to, sales to military reservations with points of service within the City's corporate limits) which are credited in Account Numbers 480, 481 and 482 of the current Uniform System of Accounts of the Federal Power Commission as adopted by the California Public Utilities Commission, or similar superseding accounts, less uncollectible amounts and less any refunds or rebates made by Grantee to such customers pursuant to orders or decisions of the California Public Utilities Commission.

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Section 2. PURPOSE

The franchise (1) to use for transmitting and distributing gas suited for lighting but for use by consumers for any and all lawful purposes other than lighting, all pipes and appurtenances which are now or may hereafter be lawfully placed and maintained in the streets within the City of San Diego under that certain franchise of Grantee acquired pursuant to Section 19 of Article XI of the Constitution of the State of California, as said Section existed prior to its amendment on October 10, 1911, (2) to construct, maintain and use in said streets all pipes and appurtenances whenever and wherever said constitutional franchise is not now nor shall hereafter be available therefor, necessary to transmit and distribute gas suited for, and for use by consumers for, any and all lawful purposes, and (3) to utilize said pipes and appurtenances in said streets for transmitting gas and for use outside the boundaries of the City for any and all lawful purposes is hereby granted to San Diego Gas & Electric Company, 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 San Diego Gas & Electric Company, 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

(a) 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

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permitted, shall pay each year to City in lawful money of the United States, a sum equal to three percent (3%) of Grantee's gross receipts during the preceding calendar year, or a fractional year, commencing with the date of adoption of this ordinance by the City Council, for the first thirty (30) years of the term of this franchise by the dates, in the manner, and on the conditions as set forth in Section 5 hereof.

(b) For the last twenty (20) years of the term of this franchise Grantee, as consideration and compensation for the rights and privileges herein granted and 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 an amount to be determined as set forth below of Grantee's gross receipts during the preceding calendar year, or a fractional year, for the remainder of the term of this franchise by the dates, in the manner and on the conditions as set forth in Section 5 hereof.

(c) Determination of the amount to be paid as set forth in Section 4(b) above shall be made by good faith negotiation between City and Grantee commencing not less than six (6) months prior to the expiration of the first thirty (30) year period. In the event that at the conclusion of the first thirty (30) year period said good faith negotiation does not result in a determination of the amount to be paid by Grantee during the last twenty (20) years (or 19 years, 6 months, as the case may be) of the term of this franchise, then this question (and no other) shall be submitted to binding arbitration as hereinafter set forth; provided however that no later than fifteen (15) days prior to the end of the first thirty (30) year period the parties may

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mutually agree to extend the time for said good faith negotiation for an additional six (6) months if they so desire, during which time Grantee shall continue to pay a sum equal to three percent (3%) of Grantee's gross receipts as consideration for the rights and privileges herein granted. Unless City and Grantee mutually agree in writing to a modification prior to the conclusion of the first thirty (30) year period (or at the conclusion of the additional six (6) month period as provided for above) then the determination of the number of arbitrators, the time and mode of their selection, and the rules of practice and procedure to be followed shall be as set forth herein.

(d) Within thirty (30) days after the end of the first thirty (30) year period or within thirty (30) days after the six (6) month extension provided for above, as the case may be, Grantee and City shall each appoint a person to serve as an arbitrator and shall give written notice to the other party of such appointment.

(e) The two persons so appointed shall then agree upon and secure a third arbitrator. If the third arbitrator should not be secured within thirty (30) days from the selection of the arbitrators by Grantee and City respectively, then upon application in writing by either City or Grantee to the Chief Justice of the California State Supreme Court, said Chief Justice shall be empowered to appoint a third arbitrator. No person shall be eligible for appointment by said Chief Justice who is an officer or employee of City or Grantee, or a shareholder of Grantee.

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(f) The arbitrators so appointed shall hear evidence submitted by both City and Grantee and may call for additional information, which additional information City or Grantee shall furnish to the extent feasible. An award, decision or determination in writing and signed by a majority of the arbitrators shall be made within sixty (60) days after the selection of the third arbitrator and shall be conclusive with respect to the issue submitted and shall be binding upon both City and Grantee.

(g) Except as otherwise provided in this section, the arbitration shall be governed by the rules of practice and procedure of the American Arbitration Association from time to time in force, except that, if such rules and practice as herein modified shall conflict with the California Code of Civil Procedure or any other provision of California law then in force, such California rules and provisions shall govern. This submission and agreement to arbitrate shall be specifically enforceable. The award of the arbitrators or a majority of them upon the question submitted to them hereunder shall be final and binding upon the parties to the extent and in the manner provided by the California Code of Civil Procedure.

(h) Each party shall bear the fee and personal expenses of the arbitrator appointed by it together with the fees and expenses of its own counsel and of its own witnesses. All other costs and expenses of the arbitration, including the cost and expense incurred by reason of selection of the third arbitrator as hereinabove provided, shall be borne equally by City and Grantee.

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

(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 1971, 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 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.

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(h) In the event Grantee fails to make the payments for this franchise on or before the dates due as hereinabove provided, Grantee shall pay as additional consideration both of the following amounts:

(1) A sum of money equal to two percent (2%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving revenue.

(2) A sum of money equal to one percent (1%) of the amount due per month as interest and for loss of use of the money due.

Section 6. COMPLIANCE WITH LAWS

All facilities or equipment of Grantee that Grantee shall construct, maintain and use or remove, pursuant to the provisions of the franchise granted herein shall be accomplished in accordance with the ordinances, rules and regulations of City now or as hereafter adopted or prescribed, and such rules or regulations as are promulgated under State law, or orders of the Public Utilities Commission or other governmental authority having jurisdiction in the premises.

Section 7. ADMINISTRATIVE PRACTICES

Grantee is herewith charged with the responsibility of cooperating with City in preparing a manual of administrative practices which shall govern the installation and removal of Grantee's facilities in the streets

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of City which shall include, but not be limited to, cathodic protection practices. Once each year, commencing with the first full calendar year of the franchise granted herein, it is to be the joint responsibility of Grantee and City to review and update such administrative practices. Both Grantee and City are charged with the duty to prepare, review and update such administrative practices by a method of mutual cooperation which shall take into consideration the reasonable needs and convenience of each party; provided that said administrative practices and the terms and conditions thereof shall be at all times subject to approval of the City Council as expressed by appropriate legislative action.

Following the preparation of said manual, and its approval by the City Council, it shall govern the practices of the Grantee in its installation and removal of Grantee's facilities in the streets of City.

Section 8. CITY RESERVED POWERS

(a) City reserves the right for itself to lay, construct, erect, install, use, operate, repair, replace, remove, relocate, regrade or maintain below surface or above surface improvements of any type or description in, upon, along, across, under or over the streets of the City. City further reserves the right to relocate, remove, vacate or replace the streets themselves. If the necessary exercise of the aforementioned reserve rights conflicts with any pipes and appurtenances of Grantee constructed, maintained and used pursuant to the provisions of the franchise granted hereby, whether previously constructed, maintained and used or not, Grantee

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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.

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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

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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.

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Section 16. RIGHT OF CITY'S ELECTORS

This grant of franchise and authority shall be and is subject to the right of the majority of the electors of City voting at any election at any time thereafter to repeal, change or modify the grant, and such right is hereby expressly reserved to said electors; and it is expressly agreed that at any election held in City a majority of the electors of City voting at said election shall have the right to repeal, change or modify the terms of this franchise and the authority granted hereunder.

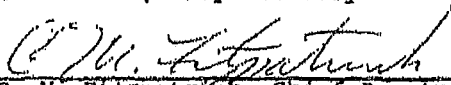
Section 17. PERFORMANCE BOND

Grantee shall file and maintain a faithful performance bond in favor of the City in the sum of Five 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 18. EFFECTIVE DATE

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

APPROVED: JOHN W. WITT, City Attorney

BY 
C. M. Fitzpatrick, Chief Deputy

CMF:vl
12-9-70

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APR 28 1978

10465

Passed and adopted by the Council of The City of San Diego on DEC 17 1970
 by the following vote:

RECEIVED
 CITY CLERK'S OFFICE

1970 DEC 10 AM 11:57
 SAN DIEGO, CALIF.

Councilmen	Yeas	Nays	Excused	Absent
Helen Cobb	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sam T. Loftin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Landt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Marrow	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Martinet	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Allen Hitch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mr. Mike Schaefer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Frank Curran	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

FRANK CURRAN

Mayor of The City of San Diego, California.

JOHN LOCKWOOD

City Clerk of The City of San Diego, California.

(Seal)

By Edna D. Hammett, 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

DEC 3 1970

DEC 17 1970

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

JOHN LOCKWOOD

City Clerk of The City of San Diego, California.

(Seal)

By Edna D. Hammett, Deputy.

Office of the City Clerk, San Diego, California

Ordinance
 Number

10465

Adopted

DEC 17 1970

FORM CC-1255-A (1-70)

MICROFILMED *mr.*
 APR 28 1978

ATTORNEY (S)

CITY OF SAN DIEGO
202 C Street
Community Concourse
San Diego, California

RECEIVED
CITY CLERK'S OFFICE
1971 JAN -6 PM 1:32
SAN DIEGO, CALIF.

CERTIFICATE OF PUBLICATION

No.

IN THE MATTER OF

ORDINANCE GRANTING TO SAN DIEGO GAS &
ELECTRIC COMPANY, ITS SUCCESSORS AND ASSIGNS,
ECT.

I, Patricia M. Applestill hereby certify
that The Daily Transcript is a daily newspaper of general
circulation within the provisions of the Government Code of
the State of California, printed and published in the City of
San Diego, County of San Diego, State of California; that
I am the principal clerk of said newspaper; that the

ORDINANCE NO. 10465 (NEW SERIES)

to a true and correct copy of which this certificate is annexed
was published in said newspaper on

December 25, 1970

I certify under penalty of perjury that the foregoing is
true and correct, at San Diego, California, on

December 25, 1970

Patricia M. Applestill

(Signature)

10465

63"-26460



Section 7. ADMINISTRATIVE PRACTICES

Grantee is herewith charged with the responsibility of cooperating with City in preparing a manual of administrative practices which shall govern the installation and removal of Grantee's facilities in the streets of City which shall include, but not be limited to, cathodic protection practices. Once each year, commencing with the first full calendar year of the franchise granted herein, it is to be the joint responsibility of Grantee and City to review and update such administrative practices. Both Grantee and City are charged with the duty to prepare, review and update such administrative practices by a method of mutual cooperation which shall take into consideration the reasonable needs and convenience of each party provided that said administrative practices and the terms and conditions thereof shall be at all times subject to approval of the City Council as expressed by appropriate legislative action.

Following the preparation of said manual, and its approval by the City Council, it shall govern the practices of the Grantee in its installation and removal of Grantee's facilities in the streets of City.

Section 8. CITY RESERVES 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, about, across, under or over the streets of the City. City further reserves the right to relocate, remove, vary or replace the streets themselves. If the necessary exercise of the aforementioned reserve rights conflicts with any pipes and appurtenances of Grantee constructed, maintained and used pursuant to the provisions of the franchise granted hereby, whether previously constructed, maintained and used or not, Grantee shall, without cost or expense to City within ninety (90) days after written notice from the City Manager, or his designated representative, and request to do so, begin the payment and 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 require 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 procedure 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. CITY'S CONSENT WITHOUT CONSENT

Grantee shall not sell, transfer or assign this franchise or the rights and privileges granted thereby without the consent of the City Council of The City of San Diego, as set forth in Section 103 of the Charter of The City of San Diego.

Section 16. RIGHT OF CITY'S ELECTORS

This grant of franchise and authority shall be and is subject to the right of the majority of the electors of City voting at any election at any time hereafter to repeal, change or modify the grant, and such right is hereby expressly reserved to said electors; and it is expressly agreed that at any election held in City a majority of the electors of City voting at said election shall have the right to repeal, change or modify the terms of this franchise and the authority granted hereunder.

Section 17. FIDELITY 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 recoverable from the principal and sureties upon said bond to compensate City for any damages it may suffer by reason of such breach. Said bond shall be acknowledged by Grantee as principal and by a corporation licensed by the Insurance Commissioner of the State of California to transact the business of a fidelity and surety insurance company as surety.

Section 18. EFFECTIVE DATE

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

APPROVED:

JOHN W. WITT,

City Attorney

By C. M. FITZPATRICK,

Chief Deputy

Passed and adopted by the Council of The City of San Diego on December 17, 1970, by the following vote:

YEAS: Cobb, Lufkin, Landt, Hitch,

Schaefer, Curran.

NAYS: Williams, Morrow.

EXCUSED: Martinet.

ABSENT: None.

AUTHENTICATED BY:

FRANK CURRAN,

Mayor of The City of

San Diego, California,

JOHN LOCKWOOD,

City Clerk of The City of

San Diego, California,

By ELFA F. HAMEL,

Deputy.

(Seal) 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 December 3, 1970, and on December 17, 1970.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

JOHN LOCKWOOD,

City Clerk of The City of

San Diego, California,

By ELFA F. HAMEL,

Deputy.

(Seal) Published Dec. 23, 1970

104.65