

COPY

ASSIGNMENT AND CONSENT

This Assignment and Consent is entered into by and among San Diego Central Cooling Company ("SDCCC"), RSD Power Partners, L.P., a Delaware limited partnership ("RSD"), and The City of San Diego ("CITY").

RECITALS

A. By Ordinance 10639NS dated July 29, 1971, CITY granted to Applied Energy, Incorporated, that certain Nonexclusive Franchise (the "franchise"). By Ordinance 17169NS dated October 11, 1988, CITY consented to the assignment of the franchise to SDCCC.

B. SDCCC desires to assign its rights and obligations under the franchise to RSD, pursuant to Section 15 thereof, and to guarantee RSD's performance under the franchise.

C. CITY desires to accept the above assignment of the franchise.

DOCUMENT NO. 00-18075

NOW, THEREFORE, the parties hereby agree as follows:

FILED MAY 31 1994

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

1. Assignment. As of the effective date of the ordinance approving the assignment, SDCCC assigns the franchise to RSD. In connection therewith, RSD hereby agrees to be bound by and comply with the terms and conditions of the franchise.

2. Guarantee. Upon the effective date of the assignment of the franchise to RSD, SDCCC hereby guarantees the performance by RSD of its obligations under the franchise.

3. Acceptance. CITY hereby agrees, accepts, and consents to the assignment of the franchise from SDCCC to RSD in accordance with the terms and conditions set forth herein.

RSD POWER PARTNERS, L.P.

SAN DIEGO CENTRAL COOLING COMPANY

By: RSD POWER CORP.

By: Robert C. Gold

Title: General Partner

Title: Vice-President

By: Robert E. Swanson

Title: President

THE CITY OF SAN DIEGO

By: J. T. [Signature]

Title: Real Estate Assets Director

JOHN W. WITT, CITY ATTORNEY

BY: [Signature]
CHIEF DEPUTY

I:\WPO\CRAWFORD\A&C

0-18075

(O-94-111)

18075

ORDINANCE NUMBER O- (NEW SERIES)

ADOPTED ON MAY 31 1994

AN ORDINANCE OF THE CITY OF SAN DIEGO, WHICH GRANTED ORDINANCE NO. O-10639 (NEW SERIES), TO APPLIED ENERGY, INCORPORATED, A NON-EXCLUSIVE FRANCHISE FOR A PERIOD OF FIFTY YEARS TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES TO CARRY TEMPERATURE-CONTROLLED WATER FOR HEATING AND COOLING PURPOSES IN STREETS WITHIN THE CITY OF SAN DIEGO AND TO UTILIZE SAID PIPES AND APPURTENANCES IN SAID STREETS FOR TRANSMITTING TEMPERATURE-CONTROLLED WATER FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR HEATING AND COOLING PURPOSES, IS HEREBY SUPPLEMENTED TO AUTHORIZE THE FRANCHISE TO BE ASSIGNED TO RSD POWER PARTNERS, L.P., PURSUANT TO THE PROVISIONS OF SECTION 15 OF THE AGREEMENT.

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

Section 1. That San Diego Central Cooling Company is hereby authorized to assign its rights and obligations under that certain Contract Regarding Non-exclusive Franchise by and between City and Applied Energy, Incorporated, dated July 29, 1971, (the "Agreement") to RSD POWER PARTNERS, L.P., a Delaware limited partnership, pursuant to Section 15 of the Agreement and to guarantee RSD Power Partners' performance under the Agreement.

Section 2. That City hereby accepts the above assignment of the Agreement, under the terms and conditions on file in the office of the City Clerk as Document No. OO- 18075 and releases San Diego Central Cooling Company from any liability thereafter occurring under the Agreement.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By


Harold O. Valderhaug
Chief Deputy City Attorney

HOV:ps
05/03/94
Or.Dept:REA
O-94-111
Form=o+t

Passed and adopted by the Council of The City of San Diego on
MAY 31 1994 by the following vote:

YEAS: Mathis, Roberts, Kehoe, Stevens, Warden, Stallings, McCarty, Vargas,
Mayor Golding.

NAYS: None.

NOT PRESENT: _____

AUTHENTICATED BY:

SUSAN GOLDING
Mayor of The City of San Diego, California

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

(Seal)

By: Esther Cerezo, Deputy

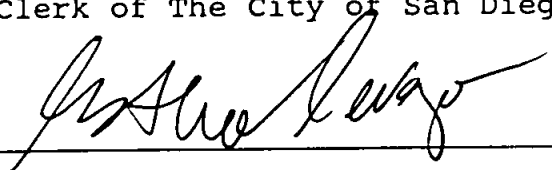
I HEREBY CERTIFY that the above and foregoing is a full, true and
correct copy of ORDINANCE NO. O-18075 (New Series) of The
City of San Diego, California.

I FURTHER CERTIFY that said 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
MAY 16 1994 and on MAY 31 1994.

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.

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

(Seal)

By: , Deputy

ASSIGNMENT AND CONSENT

This Assignment and Consent (the "Assignment") is entered into by and among Applied Energy, Incorporated ("AEI"), Energy Factors, Incorporated ("EFI"), San Diego Central Cooling Company ("SDCCC") and The City of San Diego ("Customer").

RECITALS

A. AEI desires to assign its rights and obligations under that certain Contract Regarding Nonexclusive Franchise by and between Customer and AEI dated July 29, 1971 (the "Agreement") to EFI, pursuant to Section 15 to the Agreement.

B. EFI desires to assign its rights and obligations under the Agreement to SDCCC, pursuant to Section 15 of the Agreement, and to guarantee SDCCC's performance under the Agreement.

C. Customer desires to accept the above assignments of the Agreement and to release AEI from any liability thereafter occurring under the Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1. Assignment. Effective August 1, 1988, AEI assigns the Agreement to EFI, and EFI simultaneously assigns the Agreement to SDCCC. In connection therewith, SDCCC hereby agrees to be bound and to comply with the terms and conditions of the Agreement.

2. Guarantee. Upon the effective date of the assignment of the Agreement to SDCCC, EFI hereby guarantees the performance by SDCCC of its obligations under the Agreement.

3. Acceptance. Customer hereby agrees, accepts and consents to the assignment of the Agreement from AEI to EFI and from EFI to SDCCC in accordance with the terms and conditions set forth herein.

APPLIED ENERGY, INCORPORATED

By: [Signature]
Title: PRESIDENT

SAN DIEGO CENTRAL COOLING COMPANY

By: [Signature]
Title: PRESIDENT

ENERGY FACTORS, INCORPORATED

By: [Signature]
Title: PRESIDENT

THE CITY OF SAN DIEGO

By: [Signature]
Title: ASSISTANT TO THE CITY MANAGER

DOCUMENT NO. 00-17169

FILED _____

OF THE CITY CLERK
COUNTY OF SAN DIEGO

ORDINANCE NUMBER O- 17163 (NEW SERIES)

ADOPTED ON _____

Oct 2

AN ORDINANCE OF THE CITY OF SAN DIEGO, WHICH GRANTED ORDINANCE NO. O-10639 (NEW SERIES), TO APPLIED ENERGY, INCORPORATED, A NON-EXCLUSIVE FRANCHISE FOR A PERIOD OF FIFTY YEARS TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES TO CARRY TEMPERATURE-CONTROLLED WATER FOR HEATING AND COOLING PURPOSES IN STREETS WITHIN THE CITY OF SAN DIEGO AND TO UTILIZE SAID PIPES AND APPURTENANCES IN SAID STREETS FOR TRANSMITTING TEMPERATURE-CONTROLLED WATER FOR USE OUTSIDE THE BOUNDARIES OF THE CITY FOR HEATING AND COOLING PURPOSES, IS HEREBY AUTHORIZED TO BE ASSIGNED TO ENERGY FACTORS, INCORPORATED, WHICH WILL ASSIGN THE AGREEMENT TO SAN DIEGO CENTRAL COOLING COMPANY, PURSUANT TO THE PROVISIONS OF SECTION 15 OF THE AGREEMENT.

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

Section 1. That Applied Energy, Incorporated is hereby authorized to assign its rights and obligations under that certain Contract Regarding Non-exclusive Franchise by and between City and Applied Energy, Incorporated, dated July 29, 1971, (the "Agreement") to Energy Factors, Incorporated.

Section 2. That Energy Factors, Incorporated, is hereby authorized to assign its rights and obligations under the Agreement to San Diego Central Cooling Company, pursuant to Section 15 of the Agreement, and to guarantee San Diego Central Cooling Company's performance under the Agreement.

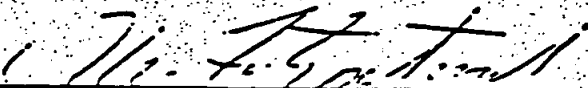
Section 3. That City hereby accepts the above assignments of the Agreement, under the terms and conditions on file in the

office of the City Clerk as Document No. 00- 17163 and
releases Applied Energy, Incorporated from any liability
thereafter occurring under the Agreement.

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

APPROVED: John W. Witt, City Attorney

By



C. M. Fitzpatrick
Assistant City Attorney

CMF:js:smm

08/26/88

Or.Dept:Atty.

O-89-42

Form=o.none

Passed and adopted by the Council of The City of San Diego on _____
by the following vote:

YEAS: Wolfsheimer, Roberts, McColl, Pratt, Struiksma, Henderson, McCarty
Filner, and O'Connor.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

MAUREEN O'CONNOR

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

(Seal)

By TENA M. MARTIN, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy
of ORDINANCE NO. O-17169 (New Series) of the City of San Diego, California.

I FURTHER CERTIFY that said 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 OCT 11 1988, and on _____.

~~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.

CHARLES G. ABDELNOUR

City Clerk of The City of San Diego, California

By Tena M. Martin, Deputy

(Seal)



Home Office: 4247 Brooklyn Ave. N.E., Seattle, Washington 98105

BOND NO. 887749
PREMIUM: \$63.00

KNOW ALL MEN BY THESE PRESENTS:

That APPLIED ENERGY, INC., a corporation duly organized and existing under and by virtue of the laws of the State of California, and having its office and principal place of business in the City and County of San Diego, State of California, as Principal, and GENERAL INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Washington and duly authorized to do business in the State of California, as Surety, are held and firmly bound unto the CITY OF SAN DIEGO, a municipal corporation duly created and existing under and by virtue of the laws of the aforesaid state, in the penal sum of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00), for the payment whereof well and truly to be made to said city said Principal binds itself, its successors and assigns, and said Surety bind itself, its successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION of the above obligation is such that

WHEREAS the City Council of said city under and pursuant to the laws of the State of California relating to the granting of franchises by municipalities, did on the 29th day of July, 1971 by Ordinance No. 10639, New Series, duly and regularly adopted by said Council, grant to said APPLIED ENERGY, INC., its successors and assigns, a franchise in said city to construct, maintain and use pipes and appurtenances to carry temperature-controlled water for heating and cooling purposes in streets within the City of San Diego, for the period and upon the terms and conditions as more fully set forth in said ordinance, which is now on file in

ORDINANCE NO.
(New Series)

10639

JUL 29 1971

ORDINANCE GRANTING TO APPLIED ENERGY,
INCORPORATED, A NON-EXCLUSIVE
FRANCHISE FOR A PERIOD OF FIFTY YEARS TO
CONSTRUCT, MAINTAIN AND USE PIPES AND
APPURTENANCES TO CARRY TEMPERATURE-
CONTROLLED WATER FOR HEATING AND COOLING
PURPOSES IN STREETS WITHIN THE CITY OF SAN
DIEGO AND TO UTILIZE SAID PIPES AND APPUR-
TENANCES IN SAID STREETS FOR TRANSMITTING
TEMPERATURE-CONTROLLED WATER FOR USE OUT-
SIDE THE BOUNDARIES OF THE CITY FOR HEATING
AND COOLING PURPOSES, AND PROVIDING THE
TERMS AND CONDITIONS OF THE FRANCHISE SO
GRANTED.

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

Section 1. DEFINITIONS

Whenever in this ordinance the words or phrases 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 APPLIED ENERGY,
INCORPORATED, a corporation organized and existing
under and by virtue of the State of California; 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 free-
ways, highways, streets, ways, alleys and places as the
same now or may hereafter exist within the City;

(d) The phrase "pipes and appurtenances" shall mean pipes, pipelines, mains, services, traps, vents, vaults, manholes, meters, gauges, regulators, valves, conduits, appliances, attachments, appurtenances and, without limitation to the foregoing, any other property located in, upon, along, across, under or over the streets of the City and used or useful in transmitting or distributing temperature controlled water, sometimes otherwise referred to as "facilities";

(e) The phrase "construct, maintain and use" shall mean to construct, erect, install, operate, maintain, use, repair, relocate or replace pipes and appurtenances thereto in, upon, along, across, under or over the streets of the City;

(f) The phrase "gross receipts" shall mean all gross operating revenues received by Grantee from the sale of the service of providing temperature controlled water to Grantee's customers with points of service within the corporate limits of the City to the extent that said gross operating revenues are derived from service which requires the use by Grantee of the pipes and appurtenances located upon, along, across, under or over the streets of the City under the terms and conditions of the franchise granted herein.

Section 2. PURPOSE

The nonexclusive franchise (1) to construct, maintain

and use in said streets all pipes and appurtenances whenever and wherever necessary to transmit and distribute temperature-controlled water for, and for use by consumers for, heating and cooling purposes, and (2) to utilize said pipes and appurtenances in said streets for transmitting temperature-controlled water for use outside the boundaries of the City for heating and cooling purposes is hereby granted to

APPLIED ENERGY, INCORPORATED, 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 APPLIED ENERGY, INCORPORATED, a corporation organized and existing under and by virtue of the laws of the State of California, for the term of fifty (50) years from and after the effective date hereof.

Section 4. CONSIDERATION

The rights and privileges herein granted are upon the express condition that Grantee, as consideration therefor and as compensation for the use of the streets of the City as herein authorized and permitted, shall pay each year to City in lawful money of the United States, a sum equal to the amounts or percentages of Grantee's gross receipts as set forth in the schedule below in the manner and on the conditions as set forth in Section 5 hereof.

SCHEDULE

<u>Calendar Year</u>	<u>Amount or Percentage</u>
1972	\$1,000 or 3% of gross receipts whichever is greater
1973	1,000 or 3% of gross receipts, whichever is greater
1974	1,000 or 3% of gross receipts, whichever is greater
1975	1,000 or 3% of gross receipts whichever is greater
1976	1,000 or 3% of gross receipts whichever is greater
1977 and thereafter to the end of the term of the franchise	3% of gross receipts

Section 5. RECEIPTS, DATES OF PAYMENT TO CITY, AUDITORS

(a) On or before the 15th day of February of each calendar year during the term of this franchise and forty-five (45) days after the expiration of the term of this franchise, Grantee shall file with the City Clerk of City, the original, and with the Auditor of City, one copy of a statement showing the gross receipts during the preceding calendar year or fractional calendar year.

(b) Within ten (10) days after the filing of the statement required to be filed on or before the 15th day of February 1972, Grantee shall pay to the City Treasurer the money herein required to be paid by Grantee to City upon the basis of the data set forth in said statement.

(c) Thereafter, no later than the 25th day of May, the 25th day of August and the 25th day of November of each calendar year during the term of this franchise Grantee shall pay to the said City Treasurer one-fourth (1/4) of the money herein required to be paid by Grantee to City upon the basis of the data set forth in the statement required by Section 5(a) hereof. By this method of payment it is contemplated and understood that Grantee is in effect paying the money herein required to be paid by Grantee to City under this subsection on the basis of gross receipts for the preceding calendar year and that an adjustment shall be made as more fully set forth in Section 5(d) hereof.

(d) Within ten (10) days after the filing of the statement required by Section 5(a) hereof, Grantee shall pay to the said City Treasurer, or receive as a refund from the City, as the case may be, a sum of money equal to the difference between the sum of the payments of money made in accordance with Section 5(c) hereof and the annual payment of money herein required to be paid by Grantee to City upon the basis of the data set forth in said statement.

(e) The City Auditor, or any qualified person designated by the City, at any reasonable time during business hours, may make examination at Grantee's office

or offices, of its books and records, germane to and for the purpose of verifying the data set forth in the statement required by Section 5(a) hereof.

(f) All books and records subject to examination by City Auditor, or qualified person designated by City, shall be kept within the County of San Diego, or in such other place as the reasonable convenience of Grantee may require; and in the event that it becomes necessary for said City Auditor, or any representative designated by the City to make such examination at any place other than within the County, then, in that event, all increased costs and expenses to City necessary or incident to such examination and resulting from such books and records not being available within the County, shall be paid City by Grantee on demand.

(g) Grantee shall file with the City Manager a copy of its annual report to its stockholders as soon as practicable after the original of said report has been filed with the stockholders.

(h) In the event Grantee fails to make the payments for this franchise on or before the dates due as 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 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 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 shall, without cost of expense to City within ninety (90) days after written notice from the City Manager, or his designated representative, and request so to do, begin the physical field construction of changing the location of all facilities or equipment so conflicting. Grantee shall proceed promptly to complete such required work.

(b) Irrespective of any other provision of this ordinance, Grantee's right to construct, maintain and use, or remove pipes and appurtenances shall be subject at all times to the right of the City, in the exercise of its police power, to require the removal or relocation, of said pipes and appurtenances thereto at the sole cost and expense of Grantee.

Section 9. HOLD HARMLESS

Grantee of the franchise granted hereby shall indemnify, save and hold harmless, City and any officers and employees thereof against and from all damages, judgments, decrees, costs and expenditures which City, or such officer or employee, may suffer, or which may be recovered from, or obtainable against City, or such officer or employee, for, or by reason of, or growing out of or resulting from the exercising by Grantee of any or all of the rights or privileges granted

hereby, or by reason of any act or acts of Grantee or its servants or agents in exercising the franchise granted hereby, and Grantee shall defend any suit that may be instituted against City, or any officer or employee thereof, by reason of or growing out of or resulting from the exercise by Grantee of any or all of the rights or privileges granted hereby, or by reason of any act or acts of Grantee, or its servants or agents, in exercising the franchise granted hereby.

Section 10. REPAIR COSTS

Grantee shall pay to City on demand the cost of all repairs to City property made necessary by any of the operations of Grantee under the franchise granted hereby, provided however that Grantee may make repairs to streets, sidewalks curbs and gutters itself at its own cost in accordance with City specifications if the same can be done without undue inconvenience to the public use of the streets.

Section 11. FORFEITURE

This franchise is granted upon each and every condition herein contained, and shall ever be strictly construed against Grantee. Nothing shall pass by the franchise granted hereby to Grantee unless it be granted in plain and unambiguous terms. Each of said conditions is a material and essential condition to the granting of the franchise. If Grantee shall fail, neglect or refuse to comply with any of the conditions of the franchise granted hereby, and if such failure, neglect or

refusal shall continue for more than thirty (30) days after written demand by the City Manager for compliance therewith, then City, by the City Council, in addition to all rights and remedies allowed by law, thereupon may terminate the right, privilege and franchise granted in and by this ordinance, and all the rights, privileges and the franchise of Grantee granted hereby shall thereupon be at an end. Thereupon and immediately, Grantee shall surrender all rights and privileges in and to the franchise granted hereby. No provision herein made for the purpose of securing the enforcement of the terms and conditions of the franchise granted hereby shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies and procedure outlined herein or provided, including forfeiture, shall be deemed to be cumulative.

Section 12. ACQUISITION AND VALUATION

Nothing in this ordinance or in the franchise granted hereby shall be construed as in any way impairing City's rights to acquire property of Grantee through the exercise of City's power of eminent domain or through voluntary agreement between City and Grantee. In the event that City chooses to exercise its power of eminent domain, it shall do so in accordance with the procedures provided by the general law of the State of California for the condemnation of 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, 104 and 105 of the Charter of The City of San Diego and under no other authority.

Section 15. NO TRANSFER WITHOUT CONSENT

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

Section 16. RIGHT OF CITY'S ELECTORS

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

Section 17. PERFORMANCE BOND

Grantee shall file and maintain a faithful performance bond in favor of the City in the sum of Five Thousand Dollars (\$5,000) 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 receiveable 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 July 29, 1971

_____, by the following vote:

YEAS: Loftin, Landt, Williams, Morrow, Martinet, Schaefer

NAYS: None

ABSENT: Cobb, Hitch, Curran

AUTHENTICATED BY:

FRANK CURRAN

Mayor of The City of San Diego, California.

EDWARD NIELSEN

City Clerk of The City of San Diego, California.

(Seal)

By ELEA F. 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 July 15, 1971, and on July 29, 1971

RESOLUTION NO. 202981

6-22-1971

NOTICE AND RESOLUTION OF INTENTION OF THE COUNCIL OF THE CITY OF SAN DIEGO TO SELL TO THE HIGHEST RESPONSIBLE CASH BIDDER A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN AND USE PIPES AND APPURTENANCES TO CARRY TEMPERATURE-CONTROLLED WATER FOR HEATING AND COOLING PURPOSES IN THE STREETS OF THE CITY OF SAN DIEGO.

WHEREAS, the Council of The City of San Diego, upon due consideration, after public hearings, and upon the recommendation of the City Manager, has determined this 22nd day of June, 1971 to advertise the fact that it is in the best interests of the City of San Diego and its inhabitants to grant a non-exclusive franchise for a period of fifty (50) years to construct, maintain and use pipes and appurtenances to carry temperature-controlled water for heating and cooling purposes in the streets of the City of San Diego; and that bids should be received for such franchise, and that it should be awarded to the highest responsible bidder; and

WHEREAS, the City Attorney has prepared a form of ordinance based upon the recommendations of the City Manager as aforesaid and the determinations of the Council which, if adopted by the Council, would grant such franchise; and

WHEREAS, the form of ordinance heretofore mentioned is attached to this resolution as Exhibit "A" and incorporated by reference hereto; NOW, THEREFORE,

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

1. That the City Clerk be and he is hereby authorized and directed to advertise for sealed bids in writing for the award of a franchise in the form set forth in Exhibit "A."

2. Said advertisement shall be in the form and manner as set forth in a Notice Inviting Bids attached hereto as Exhibit "B."

3. Sealed bids in writing, which shall be in the form set forth as Exhibit "C" attached hereto and no other form, will be received for such franchise up to the hour of 9:30 a m the 8th day of July, 1971, when the Council will, in open session, openly and publicly declare all bids. Any amendment, deletion, or modification of said bid form, other than the insertion of names and amounts as indicated, shall cause the bid to be declared nonresponsive and invalid.

Thereafter the franchise as above described will be struck off, sold and awarded to the person, firm or corporation who shall make the highest cash bid therefor, but not less than One Thousand Dollars (\$1,000); provided only, that at the time of opening said bids any responsible person, firm or corporation present or represented may bid for said franchise a sum not less than 10% above the highest sealed bid therefor, and said bid so made may be raised not less than 10% by any other responsible bidder, and said bidding may so continue until finally said franchise shall be struck off, sold and awarded by said Council to the highest bidder therefor, in lawful money of the United States.

A responsible person, firm or corporation, within the meaning of this notice and resolution shall be a person, firm or corporation responsible financially, capable and able to construct, maintain and use pipes and appurtenances to carry temperature-controlled water for heating and cooling purposes in the streets of the City of San Diego, and one who is able to commence the operation of such system on the effective date of the ordinance granting such franchise.

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

The successful bidder shall then immediately file a surety bond running to the City, to be approved by the Council, in the sum of Five Thousand Dollars (\$5,000) guaranteeing that such bidder shall well and truly observe, fulfill and perform each and every term and condition of such franchise, and that in case of any breach of any condition of the franchise the whole amount of the sum named in the bond may be recoverable from the principal and sureties upon said bond. The bond shall be filed with the Council immediately after such franchise is awarded, and upon the filing and approval of such bond the franchise shall by said Council be granted by ordinance to the person, firm or corporation to whom it has been struck off,

sold and awarded, and in the case that such bond shall not be so filed the award of such franchise shall be set aside, and any money paid therefor shall be forfeited, and said franchise shall, in the discretion of said Council, be readvertised and again offered for sale in the same manner and under the same restrictions as hereinbefore provided.

BE IT FURTHER RESOLVED, that the proposed ordinance granting such proposed franchise, with the exception of the dates that are left blank and the name of the successful bidder and grantee, is in words and figures, as set forth on Exhibit "A."

APPROVED: JOHN W. WITT, City Attorney

By C. M. Fitzpatrick, Chief Deputy

PY-1078 (REV. 3-73)

(For Record purposes only.)

DOCUMENT _____ RESOLUTION NO. _____ ORDINANCE NO. 10639

TERM: (50) Fifty years BEGINNING 8/29/71

LEGAL DESCRIPTION: <u>Various City Streets</u>	PROPERTY FILE CODE: <u>SDA-F/055</u> SIZE: _____ DRAWING NO. _____
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PURPOSE: To construct, maintain, and use City streets all pipes & appurtenances to transmit & distribute temperature controlled water use
REMARKS: for consumers.

Administered by Auditors & Comptrollers, also billed by Auditors.

RENT: _____ PER ~~MO/QT/YR~~ ~~XXXXXX~~ Quarterly, 3% gross as of 1-1977.

_____ CREDIT FUND n/a ACCOUNT n/a

BILLED ON Ortly FOR PERIOD IN ~~XXX~~ ~~ARRS.~~ ~~XXX~~ PENALTY: ^{2%} 5% AFTER 26th & 1 % INTEREST AMT DUE. 10% AFTER _____ DAYS

CONTACT N/A

ADDRESS N/A ZIP N/A PHONE N/A

(NAME OF LESSEE)

(BRIEF LEGAL)

(EXPIRATION DATE)

APPLIED ENERGY INC. VARIOUS CITY STREETS 8/28/21