WHEREAS, the City of San Diego (City) entered into fifty-year franchise agreements with San Diego Gas & Electric (SDG&E) for natural gas and electric services in 1970; and

WHEREAS, these franchises governed the usage of the public right-of-way for SDG&E and set franchise fees to be recovered by the City; and

WHEREAS, both the electric and natural gas franchises are set to expire on January 17th, 2021; and

WHEREAS, the City, in anticipation of these expiring franchises, retained expert consultants to prepare reports on the valuation of the natural gas and electric systems within the City, the potential severance costs of separating from the utility, and the potential costs and benefits and risks of municipalization; and

WHEREAS, through these studies, it has been recommended to be in the City’s best interest to solicit new franchises for natural gas and electric services containing certain provisions; and

WHEREAS, citizen input from organizations, individuals, potential franchise bidders, and City departments played a substantial role in shaping the consultant’s recommendations; and

WHEREAS, these proposed recommendations are built upon several major goals, firstly, to provide safe and reliable natural gas and electric service to the customers in the City,
secondly, to fairly compensate the City for the use of its public right-of-way, thirdly, to align the franchise with the interests of the City and the ratepayers, and finally, to protect the City and ratepayers through transparency and accountability; and  

WHEREAS, the City Manager (the Mayor assumed all executive authority, power, and responsibilities conferred upon the City Manager), pursuant to Charter Sections 260 and 265, seeks to issue these proposed franchises through an Invitation to Bid to provide an “opportunity for free and open competition,” as required by Charter Section 103; and

WHEREAS, prior to releasing the Invitation to Bid, the Mayor seeks Council advice and consent regarding certain terms of the proposed franchises to be advertised; and  

WHEREAS, the Council of the City of San Diego, upon due consideration, after public hearings, and upon the recommendation of the Mayor, has determined that it is in the best interests of the City of San Diego and its inhabitants to solicit bids through free and open competition for franchises for electric and natural gas facilities; and that bids should be received for such franchises, and that they should be awarded to the highest responsible bidder; and

WHEREAS, it is the desire of the City Council that the City Attorney and Mayor shall prepare forms of ordinances based upon the recommendations of the City Manager and the determination of the Council which, if adopted by the Council, would grant such franchises;

NOW, THEREFORE,

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

1. Council desires for the Mayor to include in proposed ordinances issued with the Invitation to Bid the following provisions:

   a. That the proposed franchises for natural gas and electric services have set terms for 20 years.
b. To the extent legally permissible, the prevailing bidder shall for ten years as of the effective date of the franchise and subject to the provisions of any existing collective bargaining agreement:

(1) To the extent legally permissible, use reasonable efforts to hire and retain all employees who had been employed by the electrical or natural gas corporation as of the effective date of the franchise whose principal place of employment was transferred to the new owner; and

(2) To the extent legally permissible, use reasonable efforts to provide no less than the wages, benefits, hours and other terms and conditions of employment provided to these employees by the electrical or natural gas corporation as of the effective date of the franchise, including any previously negotiated increase in wages.

2. That the proposed annual franchise fee for electric service be three percent (3%) of gross receipts.

3. That the proposed annual franchise fee for natural gas service shall be three and one-half percent (3.5%) of gross receipts.

4. That the minimum bid be set at fifty-four million dollars ($54,000,000) for the electric franchise and eight million dollars ($8,000,000) for the natural gas franchise, that the Grantee may not seek to recover these amounts in rates or surcharges, and provided that the City may consider payment for the minimum bid in the form of cash and in-kind contributions or services if in the City’s sole discretion the services are of equivalent value to cash and are not in-kind contributions or services which the Grantee would provide in the ordinary course of utility service and provided that neither the cash nor the services are charged to the City or to utility ratepayers. The in-kind contributions can include, but are not limited to:
a. Undergrounding
b. Street lights
c. Energy Efficiency
d. Electric vehicle chargers for the City
e. Solar on City facilities
f. Utility box beautification
g. Median improvements
h. Sidewalk repair
i. Tree trimming
j. Exploring the addition of a Climate Equity Fund

5. That the proposed franchises for natural gas and electric services include provisions for other consideration to the City that include the following:
   a. Sales taxes: Grantee will arrange its retail sales and purchases so that the City collects sales taxes on all utility purchases of materials and equipment.
   b. Use of Poles/Trenches: Grantee will make the unused space of their utility infrastructure within the City, including poles, trenches, and conduits, available to the City without rent.
   c. Use of Property: Grantee will make available to the City, for governmental use without rent, unused real property for City use or other purposes designated by the City which do not conflict with the Grantee’s core function of serving electricity and natural gas.
   d. First Right of Refusal: Grantee will offer a first right of refusal for all property Grantee puts up for sale within the geographical boundaries of the City.
6. That the proposed franchise for electric services include provisions to reduce the current municipal electric franchise fee differential surcharge by 0.35%.

7. That the proposed franchises for natural gas and electric services include provisions requiring Grantee and City to develop a Joint Policy Guide for Climate Action, Local Energy, and Energy Justice Goals.

8. That the proposed franchise for electric service include provisions requiring compliance with the Community Choice Aggregation Code of Conduct.

9. That the proposed franchises for natural gas and electric services include provisions for a biennial Master Administrative Permit requiring Grantee to coordinate with City in uses of the streets, to relocate its facilities at Grantee’s cost when their location conflicts with City’s uses of the streets, and to provide facility locational information subject to confidentiality.

10. That the proposed franchises for natural gas and electric services have a Right to Purchase provision that utilizes an appraisal process as a primary alternative to condemnation.

11. That the proposed franchises for natural gas and electric services shall include provisions requiring the quadrennial performance and compliance auditing of the Grantee, and that such reports shall be made public and reported to the City Council.

12. That the proposed franchises for natural gas and electric services include provisions for Dispute Resolution, including meet and confer, and non-binding mediation.

13. That the proposed franchises for natural gas and electric services include provisions allowing for franchise forfeiture for breach of any condition, but shall also include alternative provisions for assessing liquidated damages for specified breaches.
BE IT FURTHER RESOLVED, that the Mayor, or his designee, shall return to the City Council after the Invitation to Bid has been advertised to recommend the award of these franchises be struck off and sold to the highest responsible and responsive bidder.

APPROVED: MARA W. ELLIOTT, City Attorney

By

Frederick M. Ortlieb
Deputy City Attorney

FMO:als
07/10/2020
Or.Dept: Office of the Mayor
Doc. No.: 2424152

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of ________________________________.

ELIZABETH S. MALAND
City Clerk

By ______________________________________________________
Deputy City Clerk

Approved: _____________________________________________
(date) KEVIN L. FAULCONER, Mayor

Vetoed: _______________________________________________
(date) KEVIN L. FAULCONER, Mayor