

ORDINANCE NUMBER O- 19283 (NEW SERIES)

ADOPTED ON MAY 24 2004

AN ORDINANCE OF THE CITY OF SAN DIEGO GRANTING
A WATER SERVICE FRANCHISE TO THE CALIFORNIA-
AMERICAN WATER COMPANY.

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

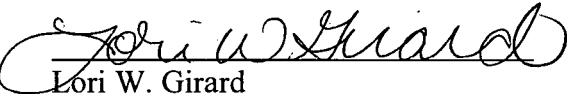
Section 1. That a water service franchise is hereby granted to the California-American Water Company [Cal-Am] under the terms and conditions set forth in that Water Service Franchise Agreement on file in the office of the City Clerk as Document No. OO-19283 [Agreement], a copy of which is attached hereto and incorporated herein by this reference, contingent upon execution of the Agreement by the parties.

Section 2. That the City Manager or his duly designated representative is authorized, on behalf of the City of San Diego, to execute the Agreement.

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

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

APPROVED: CASEY GWINN, City Attorney

By 
Lori W. Girard
Deputy City Attorney

LWG:lc
05/04/04
Or.Dept: Water
O-2004-135

**WATER SERVICE FRANCHISE AGREEMENT
BETWEEN THE CITY OF SAN DIEGO
AND CALIFORNIA-AMERICAN WATER COMPANY**

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WATER SERVICE FRANCHISE AGREEMENT
BETWEEN THE CITY OF SAN DIEGO AND
CALIFORNIA-AMERICAN WATER COMPANY

This Water Service Franchise Agreement is made and entered into by and between the City of San Diego, a municipal corporation in the State of California (City), and California-American Water Company, a California Corporation and public utility (Grantee), (Party(ies)).

R E C I T A L S :

WHEREAS, Grantee currently purchases water from the City and also provides Water Service to customers in South San Diego (herein defined as "Service Area") pursuant to and in accordance with a series of Agreements and Amendments thereto, dating back to 1912 ("Water Supply Agreements"); and

WHEREAS, pursuant to the Water Supply Agreement executed between the City and California Water & Telephone Company ("CWTC") on July 20, 1960 ("1960 Agreement"), the City granted to CWTC the right to use the streets, alleys and roads within or near the current Service Area for the purpose of installing, maintaining and repairing pipelines, and other installations and facilities for service of water in the area, at no cost to CWTC or its successors, other than the costs for doing such work, for so long as CWTC or its successors continue the service of water in said area, up until either July 1, 2004, or such time as City exercised its power of eminent domain to acquire CWTC's property in the Service Area; and

WHEREAS, pursuant to the terms of the 1960 Agreement, CWTC agreed to purchase water from the City for Water Service in the Service Area, and CWTC agreed to provide the infrastructure necessary to provide Water Service to the Service Area; and

WHEREAS, pursuant to the terms of the 1960 Agreement, City agreed that it would not, at any time prior to July 1, 2004, provide Water Service in the Service Area in competition with CWTC and its successors; and

WHEREAS, Grantee became the successor-in-interest to CWTC in 1965 and Grantee currently provides, pursuant to the 1960 Agreement and the amendments thereto, Water Service within the City's boundaries to approximately 11,000 households in the Service Area, in an area contiguous to Grantee's Coronado and Imperial Beach service territories; and

WHEREAS, the Grantee currently provides infrastructure required to deliver the water, customer service, water quality reports, meter reading and billing, repairs, system maintenance and all other services generally provided by a water company to the customers located in the Service Area; and

WHEREAS, the terms under which Grantee provides Water Service in the Service Area are set to expire under the 1960 Agreement on July 1, 2004, and therefore, Grantee has requested that the City negotiate and grant to it a Franchise to operate, maintain, construct, install, and use the Water System within the Service Area for domestic, commercial, industrial, and irrigation purposes; and

WHEREAS, on January 28, 2002, Grantee filed an application with the California Public Utilities Commission ("CPUC") seeking the CPUC's authorization for RWE Aktiengesellschaft ("RWE") to acquire Grantee's parent corporation, American Water Works Company, Inc. ("AWWC") and to merge AWWC with Apollo Acquisition Company, thereby acquiring and transferring control of Grantee to RWE's subsidiary, Thames Water Aqua Holdings GmbH ("Thames"); and

WHEREAS, City appeared in the in the aforementioned CPUC proceedings as an interested party on April 4, 2002, and filed testimony on July 1, 2002, protesting the proposed merger and recommending to the CPUC that it be denied; and

WHEREAS, the City agreed to withdraw its protest on August 7, 2002, and to support the proposed Office of Ratepayer Advocates' Settlement Agreement, on the condition that management of Grantee will continue to have full authority with regard to any decisions concerning Grantee's relationship with the City, including but not limited to any future water supply or Franchise Agreements, and that Grantee will continue to submit to the jurisdiction of the CPUC; and

WHEREAS, the City has determined that granting a Franchise on the terms set forth herein shall serve the public interest by providing the City and its residents with safe, reliable, affordable water services.

NOW, THEREFORE, in consideration of and reliance upon the respective representations, promises, concessions, terms and conditions contained herein, the Parties agree as follows:

SECTION 1 DEFINITIONS

- 1.1 "Affiliate" shall mean each Person who, or which, falls into one or more of the following categories: (i) each Person having, directly or indirectly, a controlling interest in Grantee; (ii) each Person in which Grantee has, directly or indirectly, a controlling interest; (iii) each officer, director, general partner, and joint venturer or joint venture partner of Grantee, as well as each limited partner holding an interest of fifteen percent (15%) or more of Grantee; and (iv) each Person, directly or indirectly, controlling, controlled by, or under common control with Grantee; provided that "Affiliated Person" shall in no event mean the City, any limited partner or member of a limited liability company holding an interest of less than fifteen percent (15%) of Grantee, or any creditor of Grantee solely by virtue of its status as a creditor.
- 1.2 "Administrative Enforcement Order" shall mean an order issued by an Enforcement Hearing Officer.

- 1.3 "Agency" shall mean any governmental Agency other than the City of San Diego, including the CPUC, having jurisdiction over any relevant term or condition of this Franchise.
- 1.4 "Business Service Center" shall mean the facility or facilities which shall include Grantee's administrative management offices, customer service business office, and customer service center.
- 1.5 "CEQA" shall mean the California Environmental Quality Act.
- 1.6 "City" shall mean the City of San Diego, a municipal corporation in the State of California, and its agents, servants, officials, employees, agencies, affiliates and successors, and each of them.
- 1.7 "City Auditor" shall mean the City of San Diego Auditor and Comptroller or duly authorized designee.
- 1.8 "City Facility" shall mean any and all facilities, buildings, and structures that are owned, operated, leased, maintained, or used by the City of San Diego. City Facilities include, but are not limited to, City administration buildings, conference centers, libraries, fire stations, police stations and police storefront offices, recreation centers, operations centers, communications facilities, public works facilities, structures, and leased office facilities or portions thereof which are devoted exclusively to City use.
- 1.9 "City Manager" shall mean the City of San Diego City Manager or designee including, but not limited to, Deputy City Manager, City Engineer, or Water Department Director.
- 1.10 "Complaint" shall mean any verbal or written allegation or assertion of dissatisfaction with Water Service or other related services or operations of the Grantee, including but not limited to issues of water quality and Customer billing, made by a Person to either Grantee or the City, which requires (i) dispatch of a technician or a service call or (ii) the referral of the verbal or written allegation or assertion of dissatisfaction to Grantee.
- 1.11 "Council" shall mean the City Council of the City and successors in interest of the Council.
- 1.12 "CPUC" shall mean the State of California Public Utilities Commission.
- 1.13 "Customer" means any Person lawfully receiving any Water Service provided by Grantee by means or in connection with the Water System, who is required to pay a fee for such Water Service.
- 1.14 "Effective Date" shall mean the thirtieth (30th) day from and after the adoption by the City Council of the ordinance granting this Franchise.
- 1.15 "Enforcement Hearing Officer" shall be the City Manager or representative designated to preside over administrative hearings authorized pursuant to this Franchise.

- 1.16 "Force Majeure Event" shall include acts of war, sabotage, riots or civil disturbances, restraints imposed by order of a governmental Agency or court, explosions, acts of public enemies, labor strikes and natural disasters such as floods, earthquakes, landslides, and fires.
- 1.17 "Franchise Agreement" or "Franchise" shall mean this document allowing Grantee to operate, maintain, construct, install and use the Water System within the current Service Area for domestic, commercial, industrial, and irrigation purposes on, along, under, over, and across the Public Rights-Of-Way located within the corporate limits of the City.
- 1.18 "Franchise Fee" shall mean payments to the City constituting two percent (2%) of the Gross Receipts collected or received by Grantee within the City, calculated annually based upon the Gross Receipts for the prior calendar year.
- 1.19 "Grantee" shall mean California-American Water Company, a California corporation regulated by the California Public Utilities Commission, and any lawful successor or assignee of the original Grantee.
- 1.20 "Gross Receipts" shall mean and include:
- 1.20.1 Any and all income and other consideration earned or in any manner gained or derived by Grantee from the operations and business of providing Water Service within the Service Area, including:
- (A) Any revenue received for Water Service, including but not limited to revenue for basic service, tier service, additional connections, commercial service, industrial service, agricultural or irrigation service;
 - (B) Any revenue received for installation, change in Water Service and reconnection charges and similar fees;
 - (C) Any revenue received for Customer equipment leased or rented in connection with the delivery of Water Service;
 - (D) Any revenue received for service charges, collection charges and late fees attributable to delinquent accounts.
 - (E) Any revenue received from Water Service-related activities, including but not limited to imputed revenue derived from trades and barter equivalent to the full retail value of services provided by Grantee;
 - (F) Any revenue, payment, or consideration earned by Grantee for direct payment to a third party as a cost of doing business (including, but not limited to, Franchise Fees), and such revenue, payment or consideration shall be included in, and not deducted from, the total Gross Receipts figure on which Franchise Fees are to be paid;

- (G) In computing Gross Receipts from sources other than those exclusively from the Service Area in which the revenue is attributable to the operation of Grantee's Water System both inside the Service Area and outside the Service Area, the aggregate revenue received by Grantee from such other sources shall be multiplied by a fraction, the numerator of which shall be the number of Grantee's customers in the Service Area as of the last date of such period and the denominator of which shall be the number of Customers within all areas served by the Grantee from which the revenue was associated or derived as of the last day of such period.

1.20.2 Gross Receipts shall not include:

- (A) Any tax of general applicability imposed upon Grantee or upon Grantee's Customers by the state, federal or any other higher taxing authority and required to be collected by Grantee and passed through to the taxing entity;
- (B) Other services which the City is legally prohibited from including in Gross Receipts.

1.20.3 There shall be deducted from Gross Receipts:

- (A) Bad debts written off by Grantee in the normal course of business, however, bad debt recoveries shall be included in Gross Receipts with no deduction therefrom for any and all expenses related to the collection of the related bad debt;
- (B) Refunds made to Customers or other third parties.

1.21 "Person" shall mean any natural person or any association, firm, joint partnership, association, joint venture, joint stock company, trust, corporation, or any other governmental or non-governmental, legally recognized entity.

1.22 "Provision" shall mean any agreement, clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this Franchise that defines, otherwise controls, establishes, or limits the performance required or permitted by either Party to this Franchise Agreement. All Provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

1.23 "Public Right-of-Way" or "Rights-of-Way" shall mean in, upon, above, along, across, under, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, that are located within the corporate limits of the City. This term shall not include any property owned by any Person or Agency other than the City, except as provided by applicable laws or pursuant to an agreement between the City and such Agency.

1.24 "Security Fund" shall mean the fund described in Section 18 of this Franchise Agreement.

- 1.25 "Service Area" shall mean the entire area within the corporate limits of the City where Grantee currently provides Water Service, and as further identified by the map attached hereto as Exhibit A.
- 1.26 "Water Service" shall mean the provision of safe, reliable potable drinking water in accordance with all applicable local, state, and federal statutes, regulations, ordinances and guidelines and in accordance with all local, state and federal regulatory agencies with jurisdiction over Grantee's activities.
- 1.27 "Water System" shall mean all applicable infrastructure, facilities, and equipment located within the Service Area and therein utilized to provide Water Service.

SECTION 2 GRANT OF RIGHTS AND RULES OF CONSTRUCTION

- 2.1 Franchise Grant. By this Franchise Agreement the City issues to Grantee the right to construct, operate, maintain and use a Water System within the Service Area for domestic, commercial, industrial and irrigation purposes for which water can be used on, along, under, over, and across Public Rights-Of-Way located within the Service Area. The grant of this Franchise is subject to the faithful performance and observance by Grantee of all of the terms and conditions described in and incorporated by this Franchise Agreement.
- 2.2 Acceptance of This Franchise Agreement. Grantee accepts and agrees to all the Provisions of this Franchise Agreement (including every law, statute, ordinance, rule, regulation, and order incorporated into this Franchise Agreement) and the obligations imposed upon Grantee thereby.

This Franchise Agreement is subject to and shall be governed by all requirements of applicable City, local, state, and federal laws, ordinances, and regulations.

No privilege or exemption is granted or conferred by this Franchise except those privileges and exemptions specifically prescribed herein. Any privilege claimed under this Franchise by Grantee in any Public Right-of-Way shall be exercised in such a manner so as not to disrupt, displace, or interfere with any prior lawful occupancy of that Public Right-of-Way.

Grantee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage arising out of any Provision or requirement of this Franchise Agreement and its lawful enforcement by the City.

- 2.3 Grant Exclusive. This grant of authority to operate a Water System within the Service Area and the right to use and occupy the Public Rights-Of-Way for the purposes herein set forth shall be exclusive with respect to the Water Service provided within the Service Area. Nothing in this Franchise Agreement shall be construed to prevent City from marketing and selling reclaimed water throughout the Service Area.
- 2.4 Reservation of Rights. In addition to any rights specifically reserved to the City by this Franchise Agreement, the City reserves to itself every right and power vested in the City

by applicable law, as well as the Charter of the City and any ordinance adopted by the City Council.

The rights reserved to the City and Grantee under this Franchise Agreement are in addition to all other rights held by the City and Grantee, whether authorized by the San Diego Municipal Code, or any other applicable federal, state, or local law, ordinance, rule, or regulation. No action, proceeding or exercise of a right by the City or Grantee shall affect any other right which may be held by the City or Grantee.

Neither the grant of this Franchise nor of any other franchise, nor any Provisions contained therein, shall constitute a waiver or bar by the City to the lawful exercise of any governmental right or power. This Franchise does not relieve Grantee of any applicable requirement or provision of the San Diego Municipal Code; of any federal or state law; or of any federal, state, or City rule, regulation, or specification, including, but not limited to, any requirement imposed upon all other utilities (excluding the City Water Department) relating to Public Right-of-Way work, Public Right-of-Way excavation permits, or the use, removal or relocation of property in Public Right-of-Ways, except as specifically prescribed herein.

Any use of the Water System for provision of services not authorized by this Franchise Agreement must be approved by the City outside of this Franchise Agreement, to the extent allowed by federal, state, or local law.

The City reserves the right, and in accepting this Franchise, Grantee shall acknowledge and accept the City's right to adopt, to incorporate into the San Diego Municipal Code and to incorporate by reference into the Franchise Agreement, any additional rules, regulations, terms, conditions authorized or permitted by state or federal law as the City Council finds necessary in the lawful exercise of the City's constitutional powers, the City's police powers to protect the public health, safety or welfare, the City's powers of taxation, and the City's powers of eminent domain. Neither the granting of any Franchise by the City nor any Provision of this Franchise Agreement shall constitute a waiver or bar to the lawful exercise of any governmental right or power, including those rights and powers vested in the City.

- 2.5 Force Majeure. In the event Grantee's performance of any of the terms, conditions or obligations required by this Franchise Agreement is prevented by an event of Force Majeure, such inability to perform shall be deemed excused and no liquidated damages or sanctions shall be imposed as a result thereof, but only to the extent such Force Majeure Event prevents Grantee from performing its Franchise obligations.

SECTION 3 DESIGNATED SERVICE AREA

- 3.1 Service Area. The Service Area shall constitute those areas within the corporate limits of the City of San Diego set forth in Exhibit A, attached hereto and incorporated herein by reference.

SECTION 4 FRANCHISE TERM

- 4.1 Term. The term of this Franchise shall be twenty-five (25) years, commencing on the Effective Date of the Franchise.
- 4.2 Termination. This Franchise and all rights of Grantee hereunder shall automatically terminate on the expiration of the term of this Franchise, unless an extension is granted by the City or the Franchise previously has terminated or been revoked, in accordance with this Franchise Agreement.

SECTION 5 MAPS

- 5.1 Maps Required. Grantee shall maintain at its local office an accurate set of maps showing any of Grantee's Water System equipment installed in the Public Right-of-Way of the City. Such maps shall be made available for inspection 8:00 a.m. through 4:30 p.m., Monday through Friday by the City upon request to Grantee. Upon request, the City shall be provided up to three (3) duplicates of any and all maps maintained by Grantee at no charge to the City.

SECTION 6 CONSTRUCTION PRACTICES

- 6.1 Standards. Grantee agrees to perform any and all construction in accordance with the San Diego Municipal Code, state, and federal laws and all water industry construction practices and procedures while constructing, operating, and maintaining the Water System within the Public Right-of-Way. Such construction practices shall include, but not be limited to the most current version of: (i) Current Standard Specifications for Public Works Construction Including Regional and the City of San Diego Supplement Amendments, (ii) Current City of San Diego Standard Drawings, (iii) City Utility Coordination Committee Policies and Procedures Manual, and all future policies, procedures, rules and regulations as may required by the City, state, or federal requirements.
- 6.2 No Burden on Public Right-of-Way. Grantee shall not erect, install, construct, repair, replace or maintain the Water System in such a fashion as to unduly burden the present or future use of the Public Right-of-Way. If the City in its reasonable judgment determines that any portion of the Water System is an undue burden, Grantee at its expense, shall modify it, or take such other actions as the City may determine are in the public interest, to remove or alleviate the burden, and Grantee shall do so within the time period established by the City and at no cost to the City.
- 6.3 Restoration of Property. Grantee shall immediately restore, at its sole cost and expense, and as required by the San Diego Municipal Code, any portion of the Public Right-of-Way that is in any way disturbed by the construction, operation, maintenance, installation or removal of the Water System, to the same or better condition than that which existed prior to the disturbance. Such a restoration shall start promptly but no more than fifteen (15) days from Grantee becoming aware of the problem unless provided otherwise in the San Diego Municipal Code.

- 6.4 Relocation of Facilities. Grantee shall at its own cost and expense, protect, support, disconnect or remove from the Public Right-of-Way any portion of the Water System when required to do so by the City as provided in the San Diego Municipal Code.
- 6.5 Private Property. Grantee shall be subject to all laws and regulations regarding private property in the course of constructing, installing, operating, or maintaining the Water System in the City.
- 6.6 Street Trench Cut Moratorium/Warranty. Grantee shall pay all fees and comply with all the provisions of the San Diego Municipal Code and related procedures established by the City Engineer pertaining to street cut moratoriums and street cut warranties.
- 6.7 Utility Planning/Underground Conversion. Grantee shall be a member and participant in the City's Utilities Planning Committee for the coordination of underground construction.
- 6.8 Aboveground Equipment and Structures. Aboveground equipment and structures shall be located to an extent possible in the least obtrusive location to minimize negative impacts including the following types of areas:
- (A) adjacent to non-residential properties;
 - (B) adjacent to the sides of rear yards of residential properties on major streets; or
 - (C) located as close as possible to the property line, or as specified in Section 6.1, Standards.

Prior to the installation of aboveground equipment structures, Grantee shall notify, by first class mail, all property owners of those properties where such facilities are to be located. Such notice shall show the size, type and specific location of the proposed facility, type of screening, the intended date of installation, and telephone numbers where residents can contact Grantee. This mailing shall occur not less than fifteen (15) days prior to any such installation. Prior to the installation, Grantee shall investigate all protests and, after contacting the property owner, determine the appropriate action necessary to resolve the situation including the addition of landscaping, barriers or the selection of an alternative location for such structure.

Grantee shall promptly remove all graffiti on any structure. In the event Grantee fails to remove all graffiti from the structure within two (2) business days after notice by the City, the City shall have the right to remove any graffiti and the Grantee shall reimburse the City for all costs incurred for the removal within thirty (30) days of receipt of a bill for work done.

- 6.9 Notice of Water System Construction. Grantee shall, at least forty-eight (48) hours prior to commencement of such work, notify the City and residents or business owners on affected streets of any material construction, resulting in material interference with the use of Public Right-of-Way, or major repairs including any which require street or sidewalk trenching, but excluding routine repair and maintenance activities which do not cause material interference with the use of Public Right-of-Way. Notification may be

provided on a phase-in basis to notify residents or business owners in areas immediately affected rather than to all residents or business owners generally. Grantee shall provide such notification by either leaving one appropriate notice (e.g., a door hanger notice) at each affected residence or place of business or by sending one appropriate notice by first-class mail, whichever form of notification, in the reasonable judgment of Grantee, is more likely to provide all affected Persons with adequate advance notice at least forty-eight (48) hours prior to work commencement.

- 6.10 New Developments. Grantee shall serve new subdivisions and developments within the Service Area to the reasonable limit of its facilities and as required by applicable law.
- 6.11 Failure to Perform Street Work. Upon failure of Grantee to commence, pursue, or complete any work required by law or by the Provisions of this Franchise to be done in any Street within a reasonable period of time and to the reasonable satisfaction of the City Manager, the City Manager may, in accordance with the San Diego Municipal Code, cause such work to be done and Grantee shall pay to the City the cost thereof and the itemized amounts reported by the City Manager to Grantee, within thirty (30) days after Grantee's receipt of such itemized report.
- 6.12 Discontinuance of Public Right-of-Way. If a Public Right-of-Way where Grantee has facilities is vacated, eliminated, discontinued or closed, Grantee shall be notified of said street vacation. All rights of Grantee under this Franchise to use the Public Right-of-Way shall terminate and Grantee, within the time period designated by the City Manager, shall remove at no cost to the City, the Water System from such former Public Right-of-Way unless Grantee obtains all necessary easements or court order allowing Grantee to use the area and space pertaining to the former Public Right-of-Way. Where reasonably possible, and to the extent consistent with the treatment of other utility facilities in the Public Right-of-Way, the City shall reserve easements for Grantee to continue to use the former Public Right-of-Way. Grantee shall be provided at least thirty (30) days written notice of any proposed vacation proceedings involving its facilities.
- 6.13 Termination of Franchise. Upon the revocation, termination, or expiration of this Franchise, Grantee shall have no further right to use of the Public Right-of-Way under this Franchise. The Parties agree to negotiate in good faith to reach a mutually satisfactory arrangement with respect to the use of the Public Right-of-Way by Grantee upon such revocation, termination, or expiration.

SECTION 7 PAYMENTS TO THE CITY

- 7.1 Franchise Fee. Grantee agrees to pay to the City in lawful money of the United States two percent (2%) of Gross Receipts earned, or in any manner gained or derived by Grantee from the operations and business of providing Water Service within the Service Area in each calendar year or portion thereof, during the term of this Franchise Agreement. Franchise Fee payments made to the City by Grantee pursuant to this Section shall not include and shall be separate from other City fees and taxes such as, but not limited to, business tax, inspection, permit and street-cut fees.

This Franchise Fee shall be paid as follows: Grantee shall make a lump sum cash payment to the City in the amount of one million, two hundred and fifty thousand dollars (\$1,250,000), within sixty (60) days of the execution of this Franchise Agreement. Grantee shall be entitled to retain, for its own account, all ratepayer collections attributable to the two percent (2%) Franchise Fee payments until such time as its one million, two hundred and fifty thousand dollar (\$1,250,000) payment has been recouped. Thereafter, all further collections of Gross Receipts attributable to the two percent (2%) Franchise Fee shall be remitted to the City. Such payments shall be made within thirty (30) days after the calendar quarters ending on March 31, June 30, September 30, and December 31 in each year during the term of this Franchise Agreement and thirty (30) days after the expiration or termination of the term of this Franchise Agreement.

Revenues collected as Franchise Fees shall be included in Gross Receipts, unless and until such a practice is prohibited by an authority of competent jurisdiction and said prohibition has been upheld by a final order or judgment issued by a court of competent jurisdiction. For purposes of this Section, an order or judgment shall be considered "final" when such order or judgment is not appealed or, if such judgment or order is appealed, upon the final conclusion of such appeal upholding such order or judgment.

7.2 Use Fee. If the City adopts a Public Right-of-Way or other such fee levied against all utilities, including the City of San Diego Water Department, or other users that represents compensation for the use of the City's Public Rights-of-Way and the like ("Use Fee"), Grantee agrees to pay the Use Fee. The two percent Franchise Fee will be credited against the Use Fee, however, if the Use Fee exceeds two percent (2%), then Grantee agrees to pay the full amount of the Use Fee over the Franchise Fee over the entire term of the Franchise Agreement.

7.3 No Fee Deductions. Grantee expressly acknowledges and agrees that:

7.3.1 Except for the payments expressly required by Section 7.1, none of the costs incurred due to payments or contributions made by, or to the services, equipment, facilities, support, resources, or other activities provided or performed by, Grantee at the direction of the City or otherwise pursuant to this Franchise Agreement, or otherwise in connection with the construction, operation, maintenance or upgrade of any Water System or other system, are Franchise Fees chargeable against the compensable payments to be paid to the City by Grantee pursuant to Section 7.1.

7.3.2 Except with respect to the taxes described in Section 7.6, the compensation and other payments to be made pursuant to this Franchise Agreement shall not constitute a tax, and shall be in addition to any and all taxes of general applicability or other fees or charges which Grantee or any Affiliate shall be required to pay to the City or to any state or federal Agency or authority, all of which shall be separate and distinct obligations of Grantee and Affiliates.

7.3.3 Neither Grantee nor any Affiliate shall have or make any claim for any deduction or other credit of all or any part of the amount of the compensation

or other payments to be made pursuant to this Franchise Agreement from or against any City or other governmental taxes of general applicability (including any such tax, fee, or assessment imposed on water utilities or their services but not including a tax, fee, or assessment which is unduly discriminatory against water operators or water Customers or income taxes) or other fees or charges which Grantee or any Affiliate is required to pay to the City or other Agency.

- 7.3.4 Neither Grantee nor any Affiliate shall apply or seek to apply all or any part of the amount of the compensation or other payments to be made pursuant to this Franchise Agreement as a deduction or other credit from or against any City or Agency taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate and distinct obligations of Grantee and Affiliates; and
- 7.3.5 No acceptance of any payment by the City shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provisions of this Franchise Agreement.
- 7.4 Franchise Fee Statement. Throughout the term of this Franchise Agreement, Grantee shall prepare and submit to the City quarterly Franchise Fee statements, verified by Grantee or a duly authorized representative of Grantee, in a form acceptable to the City Auditor, showing in such form and detail the facts material to determine the amount of Franchise Fee due to the City for the previous calendar quarter. Grantee shall submit each quarterly Franchise Fee statement to the City within thirty (30) days after the calendar quarters ending on March 31, June 30, September 30, and December 31. Grantee shall submit a final Franchise Fee statement to the City no later than thirty (30) days after expiration or termination of this Franchise Agreement.
- 7.5 Financial Records. Grantee shall permit the City or duly authorized representative of the City upon thirty (30) days written notice to audit, examine, make excerpts or transcripts of all records and data pertaining to enforcement of all matters covered by this Franchise Agreement which are created, kept, or maintained by the Grantee or under the Grantee's control concerning the operations or transactions of the Grantee. Such records and data shall be made available within the City of San Diego and shall be retained for a period of not less than three years following the City's receipt of said payments under this Franchise Agreement. To the extent permitted by law, the City agrees to treat as confidential the information disclosed by the Grantee.
- 7.6 Possessory Interest Tax Statement. In accordance with and as required by Section 107.6 of the California Revenue and Taxation Code, the City hereby notifies Grantee that by entering into this written contract, a possessory interest subject to property taxation may be created and may be subject to property taxation if created and that Grantee may be subject to the payment of property taxes levied on the interest. Grantee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory

interest taxes or other taxes levied against Grantee's right to possession, occupancy or use created by this Franchise Agreement.

- 7.7 Failure to Make Payments. In the event Grantee fails to make the payments for this Franchise on or before the dates due as provided herein, Grantee shall pay as additional consideration a sum of money equal to one percent (1%) of the amount due for each month or fraction thereof during which the payment is due and unpaid, as interest and for loss of use of the money due. The sanctions of this paragraph are not exclusive and do not preclude action by the City under the terms of Section 19, Procedures for Addressing Franchise Violations, in the event payments become overdue by more than sixty (60) days.

SECTION 8 RATES

- 8.1 General. Grantee's rates and charges for the provision of Water Service shall be in accordance with all applicable laws, including the California Public Utilities Code and applicable CPUC General Orders.
- 8.2 Rate Uniformity. Grantee's rates and charges for the provision of Water Service shall be uniform throughout the Service Area, except as otherwise allowed by state and federal law.

SECTION 9 CUSTOMER SERVICE STANDARDS

- 9.1 Customer Service Compliance. With respect to Water Service, Grantee shall at all times comply with the more stringent of the Provisions of the customer service and consumer protection Provisions of this Franchise Agreement, CPUC Rules and Regulations, state law, and those adopted by the Grantee which differ from state or federal regulations and which are applied equally to all providers of similar services.
- 9.2 Right to Amend. The City reserves the right to alter or amend the customer service standards as set forth in this Section, including adopting ordinances stricter than or covering items not presently set forth in this Section, provided, however, any such alteration or amendment shall have equitable application to any and all Water franchises in the City. The City agrees to meet and confer with Grantee on any proposed change prior to taking such action, and to provide Grantee with at least forty-five (45) days prior notice of such action.
- 9.3 Anti-Redlining. Grantee shall comply with applicable local ordinances, state law, and federal law and assure that access to Services is not denied to any group of potential residential Customers or group of Customers, because of social or economic status, race, gender, or sexual orientation.
- 9.4 Service Calls. All Grantee personnel and contract personnel contacting Customers or potential Customers outside of the customer service business office shall be clearly identified through picture identification and uniform apparel as associated with the Grantee. Grantee shall make service calls available during its normal business hours.

- 9.5 Account Deactivation. Grantee shall promptly deactivate any Customer account who so requests discontinuation of service. No period of notice prior to requested discontinuation of Service shall be required of Customers by Grantee. No charges shall be imposed upon the Customer for, or related to, disconnection or for any Services delivered after the effective date of the disconnect request. If a Customer fails to specify an effective date for disconnection, the effective date shall be deemed to be the day following the date the disconnect request is received by the Grantee.
- 9.6 Emergency Pipeline Service. During the term of this Franchise, Grantee shall maintain on a twenty-four hour daily basis an available emergency service located within twenty-five miles of the City for the repair of pipeline leaks. Grantee shall keep on file with the City Manager the name, address, and telephone number of the person or entity providing such emergency service.
- 9.7 Service Interruption Response. Excluding events of Force Majeure, the Grantee will begin working on Service Interruptions promptly and in no event later than 12 hours after the Interruption becomes known. The term "Service Interruption" means the loss of Water Service. Grantee shall be deemed to have begun work under the Provisions of this Section when a technician begins work on the problem in question.
- 9.8 Office Availability. Grantee shall maintain a fully operational field office for the Service Area. Grantee shall comply with CPUC Decision No. 02-12-068.
- 9.9 Voluntary Service Interruptions. Grantee may voluntarily interrupt Service only for good cause and for the shortest time possible. To the extent reasonably possible, any such interruption shall be preceded by twenty-four (24) hour advance notice to the Customer based upon the foreseeability of said Interruption.
- 9.10 Telephone Availability. Grantee shall maintain a toll-free telephone number listed in the directories of the telephone companies serving the City to be so operated that Complaints and requests for repairs and may be received any time, day or night, seven days a week. Trained Grantee representatives will be available to respond to all Customer telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative by the next business morning.
- 9.11 Telephone Response. Grantee's customer call center shall meet the service level targets set forth in CPUC Decision No. 02-12-068. Upon request by City, Grantee shall provide City with a copy of its quarterly filings with the Director of the Water Division and the Office of Ratepayer Advocates that list the service quality targets.
- 9.12 Customer Information. Grantee shall not disclose the name and address of a Customer for commercial gain to be used in mailing lists or for other commercial purposes not directly related to the conduct of the business of the Grantee or Grantee's Affiliates.

Grantee shall honor any individual Customer request to deny use of Customer's social security number for the purposes of providing Services and shall offer reasonable alternatives to the Customer for such purposes.

- 9.13 Customer Privacy Notices. At the time of entering into an agreement to provide any Service to a Customer, Grantee shall provide notice in the form of a separate written document to such Customer which clearly and conspicuously informs the Customer of:
- (1) the nature of personally identifiable information collected or to be collected with respect to the Customer, and the nature of the use of such information;
 - (2) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of Persons to whom the disclosure may be made;
 - (3) the period during which such information will be maintained by the Grantee;
 - (4) the times and place at which the Customer may have access to such information;
 - (5) the limitations provided by this Section with respect to the collection and disclosure of information by a water utility operator and the right of the Customer to enforce such limitations; and
 - (6) other information as set forth in local, state and federal law.
- 9.14 Customer Notices. At the time of installation of Water Service, and at any other time upon request, the Grantee shall provide its Customers with written information on its current rules included in its tariff schedules filed with the CPUC. The information shall include: i) procedures for bill payment and disputed bills; ii) customer service telephone number and office hours; iii) discontinuance and restoration of service; and iv) location and business hours of office where tariff schedules can be reviewed.
- 9.15 Consumer Confidence Report. Grantee shall publish an annual Consumer Confidence Report which it shall provide to its Customers upon publication, at the time of installation of Water Service, and at any other time upon request by a Customer.
- 9.16 Notices on Service Modifications. Customers will be notified of any changes in rates or Water Service as soon as possible and in writing. Except to the extent such notice periods are inconsistent with CPUC requirements: i) notice must be given to Customers a minimum of thirty (30) days in advance of such changes except for changes not known sufficiently in advance by Grantee and not under Grantee's control; and ii) Grantee shall notify Customers thirty (30) days in advance of any significant changes in the other information provided in accordance with the preceding Sections. Grantee shall make every reasonable effort to submit draft versions of such notices to the City fifteen (15) days in advance of their distribution to Customers, so that the City may review and comment upon these notices.
- 9.17 Franchise Authority Identification. At least once per year, Grantee shall notify its Customers of the name, address, and telephone number of the City department responsible for addressing unresolved Water Service complaints and indicate that Customers may contact the City/franchising authority on issues not resolved after using

Grantee's customer service procedures. This language must be approved by the City prior to being provided to Customers.

9.18 Billing Itemization. Service billing will be clear, concise, and understandable. Bills must be fully itemized, with itemization including, but not limited to, all Water Service related charges.

9.19 Billing Disputes. In case of a billing dispute, Grantee must resolve a written Complaint from a Customer to the Customer's reasonable satisfaction within thirty (30) days of Grantee's receipt of such a Complaint, if reasonably possible. If Grantee is unable to resolve such a Complaint within this thirty-day period, Grantee shall resolve such a Complaint to the complaining Customer's reasonable satisfaction as soon thereafter as reasonably possible, if such a resolution is reasonably possible.

9.20 Refunds and Credits. Refund checks will be issued promptly, but no later than either:

- (A) the Customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
- (B) the return of any equipment supplied if Water Service is terminated.

Credits for Service will be issued no later than the Customer's next billing cycle following the determination that a credit is warranted.

9.21 Security Deposit Refunds. After a twelve month period of time has lapsed without a delinquent payment, Grantee shall return any security deposits received from a Customer to ensure timely payment.

9.22 Service Billing. Grantee shall allow every residential Customer who pays his or her bill directly to the Grantee at least 15 days from the date the bill for Services is mailed to the Customer to pay the listed charges. Customer payments shall be posted promptly.

9.23 Notices of Termination: Notices of termination shall include the following:

- (1) the name and address of the Customer who is delinquent;
- (2) the amount of the delinquency;
- (3) the date by which payment is required to avoid termination of Service; and,
- (4) the telephone number of a representative of the Grantee who can provide additional information and handle Complaints or initiate an investigation concerning the Services and charges in question.

Grantee shall not terminate residential service for non-payment of a delinquent account unless the Grantee furnishes notice of the delinquency and impending termination at least 15 days prior to the proposed termination.

Any Service termination notice shall be mailed, postage prepaid, to the Customer to whom the Service is billed. Notice shall not be mailed until the 30th day after the date the bill for Services was mailed to the Customer. The notice of delinquency and impending termination may be part of a billing statement.

Services may only be terminated on days in which the Customer can reach a representative of the Grantee either in person or by phone.

Any Service terminated without good cause shall be restored without charge for the Service restoration. Good cause includes, but is not limited to, failure to pay, payment by check for which there is insufficient funds, theft of Service, abuse of equipment, facilities or Water System personnel, or other similar Customer actions.

Grantee shall not disconnect a Customer's Service for failure to pay amounts that are legitimately in dispute.

The Parties agree to work together in good faith to implement a procedure which would authorize Grantee to terminate Water Service for nonpayment of any delinquent sewerage and/or storm drain account owed to City by a Customer in the Service Area.

- 9.24 Late Fees. Grantee may not assess a late fee for non-payment of a delinquent account unless Grantee furnishes notice of the impending late fee at least 10 days prior to the date a fee is imposed. This notice shall specify the date on or after which a late fee will be charged.

The notice shall be mailed, postage prepaid, to the Customer to whom the service is billed. Such a notice shall not be mailed earlier than 32 days after the date the bill for Services has been mailed to the Customer. The notice of the late fee may be part of a billing statement.

Grantee may not assess a late fee any earlier than 42 days after the bill for Services has been mailed.

Late fees may be assessed on delinquent balances and in an amount permitted by state law. Late fees are to be assessed in an amount that is fair and reasonably related to the Grantee's direct cost of administering delinquent accounts.

- 9.25 Negative Options. Grantee shall not engage in the practice of negative option marketing, and shall not charge a Customer for any Service which the Customer has not affirmatively requested.

- 9.26 Service Call Charges. Grantee shall not charge a Customer for any service call except as authorized in accordance with applicable law, including applicable CPUC General Orders.

- 9.27 Complaints Referred by the City. If the City refers a Water Service Complaint from a Customer to Grantee for resolution, Grantee shall initiate resolution of such Complaint

within a reasonable time after receipt of the referral. Grantee shall respond to the City in a form satisfactory to City regarding the resolution of all referred complaints.

- 9.28 Record of Customer Complaints. Grantee shall maintain a written log, or an equivalent stored data record capable of reproduction in printed form, of all Water Service related Customer Complaints and requests for Service requiring a Service call or further corrective action by Grantee. This log shall be in a form acceptable to the City and at a minimum list the date of each such Complaint and describe the nature of the Complaint and when and what actions were taken by Grantee in response. The log shall be kept at Grantee's customer service business office for a period of at least two (2) years and shall be available for inspection during regular business hours by the City upon written request.
- 9.29 Test Results. Upon City's request, Grantee shall provide City with copies of any water quality test results for the Water System required by the federal or California Safe Drinking Water Acts.

SECTION 10 TRANSFER, ASSIGNMENT, OWNERSHIP, AND CONTROL

- 10.1 Prior Written Consent is Required Before the Sale, Assignment, or Transfer of the Franchise. The Franchise and any of Grantee's rights or obligations under the Franchise shall not be sold, assigned, transferred, leased or sublet, either in whole or in part, in any manner, nor shall title thereto, either legal or equitable, or any right or interest therein (other than a mortgage or other security interest, as provided in Section 10.11), pass to or vest in any Person without prior written consent of the City Council, which shall not be unreasonably denied or delayed.
- 10.2 Ownership or Control Shall not be Transferred Without Prior Written Consent. Ownership or control of Grantee also shall not be transferred without the prior written consent of the City Council.
- 10.3 Grantee's Application. Grantee shall meet the following specifications with regard to any action or proposed action requiring consent of the City Council pursuant to this Section:
- 10.3.1 Grantee shall notify the City of any proposed action requiring consent of the City Council pursuant to this Section and in accordance with applicable law.
- 10.3.2 Grantee shall submit to the City Council an original application and four copies, which application shall comprehensively describe the terms and conditions of the action or proposed action subject to this Section and clearly state the basis on which the application should be approved. The application shall also contain all documentation and information required by Sections 10.4 and 10.5.
- 10.3.3 At any time during this review process, the City reserves the right to require that Grantee or any other Person involved in the action or proposed action under review to provide to the City information or documentation necessary

for such review. Grantee shall assist the City in its inquiry into any proposed successor's capabilities concerning the qualifications addressed in this Section.

- 10.3.4 The City Council shall render a final decision on an application requiring the City's consent under this Section within 120 days after the City's receipt of a complete application (including all initial information required by the City pursuant to this Franchise Agreement), provided that: (i) if the City brings any deficiencies in the original application to the attention of the applicant(s) within thirty (30) days of the City's receipt of the original application, the running of this 120-day period shall not begin until the City's receipt of all information requested by the City; or (ii) the City Manager and Grantee mutually agree to an extension of this deadline for a final decision. Applicant shall be required to deliver any additional information requested by the City within ten (10) days of being notified.

An application for the City's consent to the types of transfers described in this Section shall be presumed to be valid and deemed approved if the City Council fails to render a final decision on the application by the deadline required in this Section or a mutually agreed deadline.

The City Council may deny such an application, upon a determination: (i) Grantee's failure to timely submit the information required by this Section; (ii) Grantee's inability or refusal to correct existing deficiencies in Grantee's performance of its Franchise Agreement obligations brought to Grantee's attention by the City, prior to the City Council granting its approval of the application; (iii) the inability or refusal of a proposed successor in interest to the Franchise to provide prior written assurances reasonably satisfactory to the City concerning the timely and full correction of any existing deficiencies in a Grantee's performance of its Franchise obligations; or (iv) the demonstrated inability of the proposed successor to meet the duties and obligations of this Franchise.

- 10.4 Contents of Initial Application/Compliance with Franchise Terms. In an initial application, a proposed assignee or transferee must demonstrate that it possesses the legal, financial, and technical qualifications necessary to perform all the terms, conditions, and obligations under the Franchise Agreement for the remaining term thereof. The City may request, and assignee or transferee shall provide, all reasonable financial data relative to the transfer, including, but not limited to any information reasonably related to the assignee's or transferee's acquisition of Grantee's Water System and related assets which are needed to demonstrate the qualifications of the assignee or transferee and such reasonable additional obligations required of the proposed assignee or transferee by the City Council for the specific and limited purpose of assuring the performance by the proposed assignee or transferee of all the terms, conditions, and obligations of the Franchise Agreement.

The proposed assignee or transferee shall agree to comply with all Provisions of the Franchise Agreement, as well as such reasonable requirements as the City Council may

impose for the specific and limited purpose of assuring the proposed assignee's or transferee's compliance with such Provisions.

10.5 Ownership Change. Grantee shall provide City with detailed information and documentation regarding any proposed transfer of Franchise control. Transfer of Franchise control occurs with a change of the Person exercising management authority over Grantee or with the obtainment of a thirty percent (30%) or greater change in voting or equity interest by a Person who previously did not have an interest of this magnitude.

10.5.1 The word "control", as used in this Section is not limited to major stockholders but includes de facto control (as more specifically set forth below).

10.5.2 A presumption that transfer of control has occurred, including transfer of control in fact (i.e., transfer of de facto control), shall arise upon the acquisition or accumulation by any Person, or group of Persons, of fifty percent (50%) of the voting interest or the equity interest of a publicly held Grantee or of the Person exercising management authority over such a publicly held Grantee, or of fifty percent (50%) of the voting interest or the equity interest of a privately held Grantee or of the Person exercising management authority over such a privately held Grantee, where the Person or group of Persons previously did not own such a fifty percent (50%) interest.

10.6 Transfer Without Consent. Any assignment of the Franchise or transfer of ownership or control of Grantee without the prior consent of the City Council shall be null and void unless later ratified by the City Council and shall be deemed a material breach of the Franchise Agreement subject to procedures under Section 19, Procedures for Addressing Franchise Violations, until the City Council approves the Franchise assignment or transfer in ownership or control, or if not approved, until the prior ownership, control, or other status quo ante is restored to a condition satisfactory to the City Council.

10.7 Unauthorized Transfer. If the City Council affirmatively acts to withhold or deny its consent to an assignment of the Franchise or transfer of ownership or control of Grantee requiring the City's approval and such action has nevertheless been effected, the City Council may revoke said Franchise and terminate any applicable Franchise Agreement unless control of Grantee or the Water System is promptly restored to its status prior to such unauthorized action or to a status acceptable to the City Council.

10.8 No Waiver of City Rights. The consent or approval of the City Council to any assignment of the Franchise or transfer of control of the Franchise or of its ownership shall not constitute a waiver or release of any of the rights of the City unless the City Council specifically releases or waives such rights. In no event shall such a consent or approval result in an estoppel, release, or waiver of any power vested in the City or the waiver of the right to exercise such vested power.

10.9 Successor-in-interest. In no event shall an assignment of this Franchise be approved without the successor-in-interest becoming a signatory to the existing Franchise

Agreement or an amended Franchise Agreement satisfactory to the City Council and successor-in-interest.

10.10 Management Transfer. Grantee shall not, without the prior consent of the City Council, enter into any contract or other arrangement whereby the management of the entire Water System will be undertaken by another entity not under the de facto control of the Grantee as defined in this Franchise.

10.11 Circumstances or Transactions not Requiring the City's Prior Consent. Notwithstanding the other Provisions of this Section, any financial institution having a pledge of Grantee or its assets for the advancement of money for the construction and/or operation of the Water System shall have the right and obligation to notify the City that the financial institution or designee satisfactory to the City shall take control of and operate the Water System, in the event of a Grantee default of its financial obligations. However, said financial institution shall also agree in writing to continue Water Service and comply with all Franchise obligations during the term the financial institution exercises control over the Water System. Furthermore:

10.11.1 The granting of a security interest in any Grantee assets, or any mortgage, hypothecation, or assignment of any right, title or interest in the Water System, or use of the Water System as collateral in order to secure indebtedness, shall not require the consent of the City Council; and

10.11.2 The consent of the City Council shall not be required for an intra-corporate or intra-company transfer from one wholly-owned subsidiary of Grantee to another wholly-owned subsidiary of Grantee. However, in the event that a parent of Grantee desires to transfer the Franchise to another subsidiary, the City Council may require a written guarantee from the parent stating that the parent will be ultimately responsible for the performance of all Franchise Agreement obligations.

10.12 Surety, Bond, Insurance, and Similar Franchise Agreement Provisions. Before a Franchise transfer or change in control may be effective, the successor-in-interest must demonstrate to the City that the successor-in-interest has satisfied all surety, bond, insurance, and similar Provisions contained in the Franchise Agreement.

SECTION 11 RIGHTS RESERVED TO THE CITY

11.1 Rights Reserved to the City. Except as specifically set forth herein, no Provision of this Franchise shall constitute a waiver or bar to the reasonable exercise of any governmental right or power of the City.

SECTION 12 INDEMNIFICATION

12.1 Indemnification and Hold Harmless Agreement. With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any Person or property caused or claimed to be caused by the acts or omissions of the Grantee or Grantee's employees, agents, and officers, arising out of, or alleged to have

arisen out of, in whole or in part, or in connection with any Services performed on this Franchise, the Grantee agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, or employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Grantee, its employees, agents or officers, or any third party. The Grantee's duty to defend, indemnify, protect, and hold harmless shall not include any claims or liabilities arising from the sole negligence or established sole willful misconduct of the City, its agents, officers or employees.

- 12.2 Franchise Approval. If as a result of the City's approval and issuance of this Franchise the City is named in any legal or regulatory proceeding challenging such approval and issuance filed within one-hundred eighty (180) days of the Effective Date of this Franchise Agreement, Grantee shall indemnify the City against all costs, expenses, and fees, including attorney's fees, arising from the defense of such challenge.
- 12.3 Enforcement Costs. Grantee shall pay any and all reasonable costs the City incurs in enforcing the indemnity and defense provisions set forth in this Section.

SECTION 13 INSURANCE

- 13.1 Insurance. During the term of the Franchise, Grantee shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the types and limits of insurance set forth in this Section 13. Grantee's obligations under this Franchise Agreement, however, shall not be deemed limited in any way to the insurance coverage required herein.
- 13.2 Commercial General Liability. For all of Grantee's operations, including contractual, broad form property damage, and completed operations, Grantee shall keep in full force and effect, during any and all work and operations, all applicable insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of ten million dollars (\$10,000,000) for general liability, completed operations and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability of City as set forth in Section 12.1 up to the limits specified in this Section 13.2. The per occurrence limits required may be achieved by combining layers of excess or umbrella insurance with underlying Commercial General Liability Coverage, provided that the sum of the limits of all policies meet or exceed the required limits.
- 13.3 Comprehensive Automobile Liability. For all of Grantee's automobiles including owned, hired and non-owned automobiles, Grantee shall keep in full force and effect, automobile insurance for bodily injury and property damage providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence. Insurance certificate shall reflect coverage for any automobile. The City shall be named as an additional insured, but only for liability arising out of this Franchise.

- 13.4 Workers' Compensation. For all of Grantee's employees who are subject to this Franchise and to the extent required by the State of California, Grantee shall keep in full force and effect, a worker's compensation policy. That policy shall provide a minimum of five hundred thousand dollars (\$500,000) of employer's liability coverage, and shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents, and representatives.
- 13.5 Additional Insured. The City and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds, except for workers' compensation. The City's additional insured status must be reflected on an additional insured endorsement for or a certificate of insurance, as required by City, which shall be submitted to the City.
- 13.6 Cancellation or Change. All insurance required by express Provision of this Franchise cannot be canceled, non renewed, or materially changed except after thirty (30) calendar days prior written notice by Grantee to the City by certified mail, as reflected in an endorsement which shall be submitted to the City, except for non-payment of premium, in which case ten (10) days notice will be provided.
- 13.7 Certificates of Insurance. Prior to performing any work under this Franchise, Grantee shall provide the City with all Certificates of Insurance accompanied with all required endorsements. Grantee shall provide all current Certificates of Insurance with the City throughout the term of this Franchise.
- 13.8 Qualified Carriers. All insurance required by express Provision of this Franchise shall be carried only by responsible insurance companies that have been given at least an "A-" & "VII" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City which approval shall not be unreasonably withheld.

SECTION 14 FILING AND COMMUNICATION WITH REGULATORY AGENCIES

- 14.1 Filings. Upon written request Grantee shall provide the City with copies of all documents which Grantee sends to the CPUC and all records required by Grantee for Water Services under this Franchise.
- 14.2 Lawsuits. Grantee shall provide the City with copies of all pleadings in all lawsuits pertaining to the granting of this Franchise and the operation of the Water System to which it is a party within thirty (30) days of Grantee's receipt of same.

SECTION 15 RECORDS AND REPORTS

- 15.1 Reports. In addition to the documents described in Section 14, Grantee shall prepare and furnish to the City Manager or designee in a form prescribed by the City Manager such reports with respect to Grantee's operations, affairs, transactions, or property related to the Water System as may be reasonably necessary or appropriate to the performance of any of the duties of the City Manager or designee in connection with this Franchise.

SECTION 16 ALTERNATIVE DISPUTE RESOLUTION PROCEDURES

- 16.1 Mandatory Non-Binding Mediation. If a dispute arises out of, or relates to this Franchise, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory mediation under the Mediation Rules of the American Arbitration Association or any other neutral organization agreed upon before seeking recourse in a court of law.
- 16.2 Mandatory Mediation Costs. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other reasonable expenses of the mediation, including required traveling and expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise.
- 16.3 Selection of Mediator. A single mediator that is acceptable to both Parties shall be used to mediate the dispute. The mediator will be knowledgeable about public water systems as defined in the California Safe Drinking Water Act, California Health & Safety Code section 116275(h), and may be selected from lists furnished by the American Arbitration Association (AAA) or any other agreed upon mediator. To initiate mediation, the initiating Party shall serve a request for mediation on the opposing Party. If the mediator is selected from a list provided by AAA, the initiating party shall concurrently file with AAA a request for mediation along with the appropriate fees; a list of three requested mediators marked in preference order, and a preference for available dates.
- 16.3.1 If AAA is selected to coordinate the mediation (Administrator), within ten (10) working days from the receipt of the initiating Party's request for mediation, the opposing Party shall file the following: a list of preferred mediators listed in preference order, after striking any mediators to which they have any factual objection, and a preference for available dates. If the opposing party strikes all of initiating Party's preferred mediators, opposing Party shall submit a list of three preferred mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred mediators listed in preference order, after striking any mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a mediator.
- 16.3.2 The administrator will appoint or the Parties shall agree upon the highest, mutually preferred, mediator from the individual parties' lists who is available to serve within the designated time frames.
- 16.3.3 If the parties agree not to use AAA, then a mutually agreed upon mediator, date and place for the mediation shall be agreed upon.
- 16.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions

will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.

16.4.1 Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorneys or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.

16.4.2 Any agreements resulting from mediation shall be documented, in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

SECTION 17 ABANDONMENT

17.1 Abandonment of Service. After Grantee has established Water Service pursuant to this Franchise in the Service Area, such Water Service shall not be suspended or abandoned in any part of the Service Area unless the suspension or abandonment is authorized by the City Council.

Whenever Grantee shall file with the City Council a written application alleging that the public interest, convenience, and necessity no longer require that Grantee furnish Water Service pursuant to this Franchise to any part of the Service Area, the City Council, at a public hearing, shall take evidence upon that question and shall make a finding with respect to it. Notice of the hearing shall be given by Grantee in writing to each Customer in the part of the Franchise area in question at least fifteen (15) days prior to the date scheduled for the hearing. If the City Council shall find that the public interest, convenience, and necessity no longer require that Grantee furnish Water Service, the City Council, after hearing as provided herein, shall authorize suspension or abandonment of Water Service upon such reasonable terms and conditions as may be prescribed by the City Council.

17.2 Removal or Abandonment of Franchise Property. In the event that any Franchise property has been installed without complying with the requirements of this Franchise, Grantee shall, at the request of the City Manager, and at its sole cost and expense, either install the Franchise property in compliance with this Franchise or remove promptly from the Public Right-of-Way all Franchise property other than any which the City Manager may permit to be abandoned in place. In the event of any such removal, Grantee shall promptly restore to a condition satisfactory to the City Manager the Public Right-of-Way or other public places in the City from which the Franchise property has been removed.

Franchise property to be abandoned in place shall be abandoned in the manner prescribed by the City Manager. Upon permanent abandonment of any Franchise property in place,

Grantee shall submit to the City Manager an instrument satisfactory in form to the City Attorney, transferring to the City the ownership of the Franchise property abandoned.

SECTION 18 SECURITY FUND

18.1 Security Fund/Advance Payments. Upon recouping its initial \$1,250,000 payment as described in Section 7.1; Franchise Fee, Grantee shall immediately notify City in writing and shall either: i) establish and provide to the City a Security Fund as security for the faithful performance by Grantee of the payment provisions set forth in Section 7, Payments to the City; or ii) submit each quarterly Franchise Fee payment to the City in advance, and no later than the first day of the calendar quarters described in Section 7.1.

If Grantee elects to establish a Security Fund, it shall be in the amount of at least one quarter of the projected Franchise Fee payment due to the City for the twelve-month period following the date on which annual Franchise Fee payments begin as required by Section 7.1. If Grantee elects to make advance quarterly Franchise Fee payments, each payment shall be in the amount of at least the projected Franchise Fee payment for the quarter in which the payment would be due to the City pursuant to Section 7.1. The calculations of these amounts are subject to approval by the City, which approval shall not be unreasonably withheld.

If Grantee elects to make advance quarterly Franchise Fee payments, in January of each year of the remaining term of this Franchise Agreement, Grantee shall provide as a part of the Franchise Fee statement a reconciliation of the actual Franchise Fees due and the estimated Franchise Fees paid for the preceding calendar year. Any over or under payment will be included as an adjustment to the payment associated with the ensuing calendar quarter commencing on April 1.

If Grantee elects to establish a Security Fund, it shall be either: i) in the form of an irrevocable, standby letter of credit; or ii) a cash deposit established with a bank located within the corporate limits of the City in an interest-bearing account payable to the order of the City as trustee for Grantee with all interest distributed to Grantee.

The Security Fund shall be maintained at the same monetary level throughout the remainder of the Franchise term, unless City approves otherwise in writing. Grantee shall pay all fees or other charges required to keep the Security Fund in force and shall, within thirty days of any draw by the City, restore the value of the Security Fund to its original amount. Failure to replenish this portion of the Security Fund shall be deemed a material breach of this Franchise Agreement.

18.2 Issuing Institution Approval. The Security Fund instruments must be issued by an institution approved by the City Manager and must incorporate wording approved by the City Manager, enabling the City to draw such sums from time to time as the City may find necessary to meet any payments due the City under or in connection with this Franchise, upon ten (10) days written notice to Grantee. All such Security Fund instruments shall further require the provision of thirty (30) days written notice by certified mail by its issuer to the City of any pending expiration or cancellation, or other

language acceptable to the City attorney; with respect to the Security Fund, the delivery of said written notice shall, without further cause, constitute reason for the City to draw the full sum to be held in its own accounts until such letter of credit or Security Fund shall be re-established in good and satisfactory form to the City.

- 18.3 Right of City to Draw on Security Fund. If Grantee fails to make a quarterly Franchise Fee payment as provided in Section 7, the City may withdraw the payment from the Security Fund. Grantee, prior to any such withdrawal, shall not initiate litigation or administrative action in a non-City administrative forum in order to prevent or impair the City from drawing against the Security Fund. In the event Grantee reasonably believes any such withdrawal of Security Funds is improper, Grantee's only recourse shall be through legal or administrative action initiated after the City has drawn upon the Security Fund. If such action or taking by the City is found to be improper by any court or Agency, Grantee shall be entitled to a refund of the Security Funds plus interest and/or any other award awarded by such a court or Agency.
- 18.4 No Waiver of Bonding Requirements. Nothing herein shall constitute a waiver of the normal permit and bonding requirements pertaining to all entities working within the City's Public Rights-of-Way.

SECTION 19 PROCEDURES FOR ADDRESSING FRANCHISE VIOLATIONS

- 19.1 Franchise Violations. If Grantee violates any Provision in this Franchise Agreement other than Section 6.11, Failure to Perform Street Work, the City may, in addition to any other legal remedies available:
- 19.1.1 Assess against Grantee liquidated damages in the amounts and for the reasons set forth in this Franchise Agreement. With the exception of the liquidated damages and violations described in Section 7.7 (for which the City will not be required to provide prior notice on an intent to assess liquidated damages), the City shall not assess liquidated damages unless a violation has been determined to occur under this Section. The collection of liquidated damages shall not constitute a waiver by the City of any other right or remedy the City may have under this Franchise Agreement or applicable law, including without limitation, the City's right to recover from Grantee such additional damages, losses, costs and expenses, including actual attorney's fees incurred by the City due to Grantee's failure to timely cure the applicable Franchise violation.
- 19.1.2 Revoke this Franchise Agreement in accordance with this Section.
- 19.2 Procedures for Determining Franchise Violations. Procedures for determining whether a Franchise violation has occurred shall be as follows:
- 19.2.1 Prior to imposing any sanction against Grantee specified in this Franchise Agreement, the City Manager shall give Grantee notice and opportunity to be heard on the matter, in accordance with the following procedures.

19.2.2 The City Manager shall first notify Grantee of the alleged violation in a written Notice and Order that Grantee provide the City Manager with written evidence of having taken action fully correcting the deficiency or evidence that no violation exists. Such Notice and Order shall: (i) refer to all Provisions of this Franchise Agreement, rules, or regulations violated; (ii) refer to the dates of the alleged violations; and (iii) shall enumerate any consequences should the Grantee fail to comply with the terms and deadlines as prescribed in the Notice and Order. Grantee's response shall be due not less than thirty (30) calendar days after Grantee's receipt of this notification concerning any alleged types of violations.

19.2.3 Such proceedings shall terminate and no penalty or other sanction shall be imposed against Grantee, if the City Manager finds that:

- (A) Grantee has corrected the alleged violation; or
- (B) Grantee has diligently commenced correction of such alleged violation after notice thereof and is diligently proceeding to fully remedy such alleged violation pursuant to a schedule reasonably satisfactory to the City Manager; or
- (C) evidence shows that there is no violation.

19.2.4 If Grantee fails to comply with the terms of the Notice and Order within the time period specified therein, the City Manager shall appoint an Enforcement Hearing Officer and establish a date, time and place for an Enforcement Hearing within thirty (30) days of the date for compliance in the Notice and Order. The Enforcement Hearing Officer shall hear and consider relevant evidence, and thereafter render findings and a decision.

19.2.5 Such proceedings shall terminate and no penalty or other sanction may be imposed against Grantee, if the Enforcement Hearing Officer finds that:

- (A) Grantee has corrected the alleged violation; or
- (B) Grantee has diligently commenced correction of such alleged violation after notice thereof and is diligently proceeding to fully remedy such alleged violation pursuant to a schedule reasonably satisfactory to the City Manager; or
- (C) no material violation has occurred.

19.2.6 The Enforcement Hearing Officer may issue an Administrative Enforcement Order imposing one (1) or more of the remedies provided in this Franchise Agreement as the Enforcement Hearing Officer deems appropriate, if the Enforcement Hearing Officer finds that a violation exists and that Grantee:

- (A) has not corrected the violation in a satisfactory manner; or

- (B) has not diligently commenced correction of such violation after notice thereof and is not diligently proceeding to fully remedy such violation.

19.3 Assessment of Liquidated Damages. Liquidated damages shall be assessed as follows:

19.3.1 Grantee understands and agrees that failure to comply with any time and performance requirements as stipulated in this Franchise Agreement, will result in damage to the City, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the Parties to this Franchise Agreement hereby agree to the liquidated damages specified below. Except with respect to the liquidated damages addressed in Section 7.7, liquidated damages may only be assessed following notice to Grantee and an opportunity to cure, as provided in this Section. Liquidated damages shall not be assessed if Grantee's failure to comply with an obligation of this Franchise Agreement is caused by an event of Force Majeure. Liquidated damages will be assessed on a daily basis for each violation or series of violations under this Franchise Agreement.

19.3.2 If the City finds that a Franchise violation exists and that Grantee has not cured, or commenced to cure, said violation in a satisfactory manner, within the period of time specified in the Administrative Enforcement Order, the City may assess liquidated damages for the following reasons and in the following amounts:

- (A) For the failure to provide, upon written request, data, documents, reports, or information required to be supplied under this Franchise Agreement; Grantee shall pay fifty dollars (\$50.00) per day for each day, or part thereof, that each violation occurs or continues;
- (B) For any other Franchise Agreement violation not listed in this Section, Grantee shall pay two hundred fifty dollars (\$250.00) for each day, or part thereof, that each violation occurs or continues, provided that all violations of a similar nature occurring within the same two-week period of time shall be considered one (1) incident for which daily liquidated damages may be assessed.

19.4 Revocation of Franchise. The City Council may revoke this Franchise and rescind all rights and privileges associated with the Franchise when:

19.4.1 Grantee has engaged in a material breach of this Franchise Agreement and this material breach continues after the date specified in the Administrative Enforcement Order. For the purposes of this Franchise Agreement, a material breach of the Franchise Agreement shall include, but not be limited to the following actions or omissions:

- (A) Grantee has failed to provide or maintain in full force and effect the insurance coverage and/or Security Fund required by this Franchise

Agreement, or has failed to replenish the Security Fund or to make an advance quarterly payment as required by Section 18.1 herein;

- (B) Grantee has violated an Administrative Enforcement Order;
- (C) Grantee has engaged in a course of conduct which constitutes a fraud or deceit upon the City, Customers, or any other Person;
- (D) Grantee has become insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;
- (E) Grantee has failed to comply with the standards, terms, or schedule for Water System construction, as required by this Franchise Agreement;
- (F) Grantee has abandoned the Water System, in whole or in part, without the prior written consent of the City;
- (G) Grantee has repeatedly failed to comply with any of the Provisions in this Franchise;
- (H) Grantee has undertaken an action requiring approval or consent of the City Council, including the transferring or changing of control of the Franchise, without having first obtained the City Council's prior approval or consent;
- (I) Grantee has failed to cooperate fully and faithfully with any lawful investigation, audit or inquiry conducted by the City or any Person lawfully acting on behalf of the City or any Agency with jurisdiction over this Franchise;
- (J) Grantee has issued a written misrepresentation, intentionally made by or on behalf of Grantee in a proposal for this Franchise, or in connection with the negotiation or renegotiation of a Franchise, or any amendment or other modification to a Franchise, or in connection with an application, request, or negotiation for a Franchise transfer or change in control;
- (K) Grantee knowingly makes a material false entry or false statement in any document to be distributed to the City or upon which the City may rely;
- (L) Grantee, any Affiliate, any director or executive officer of Grantee or of an Affiliate, or any employee or agent of Grantee or of any Affiliate acting under the express direction or with the actual consent of Grantee, its directors or officers, has been convicted of a criminal offense, including, without limitation, bribery, fraud, arising out of or in connection with this Franchise or the award of this Franchise, provided that the right to terminate the Franchise in the event of said

conviction shall arise only with respect to any of the foregoing types of convictions of Grantee itself and, in the event of the conviction of any other Persons specified in this Section, only if Grantee fails to disassociate itself, from or terminate the employment of, such other Persons with respect to activities in the Service Area or any other activities affecting the Water System within the Service Area, within thirty (30) days after the time in which appeals from such conviction may be taken, if not taken, or within thirty (30) days following the final determination of all appeals which are in fact taken;

- (M) Any City officer, official, board member, employee, or agent is convicted of the offense of bribery or fraud with respect to this Franchise and which arises out of or in connection with any intentional action by Grantee, any Affiliate, any director or executive officer of Grantee or of any Affiliate, or of any employee or agent of Grantee or of any Affiliate acting under the express direction or actual consent of Grantee or any of the foregoing, which act was undertaken for the benefit of Grantee.

19.4.2 After the City has satisfied the procedures set forth in this Section, the City Manager will request the City Council to revoke this Franchise. The City Council shall begin a public hearing within sixty (60) days of the City Manager's request to determine whether this Franchise should be revoked.

19.5 Remedies Not Exclusive. The rights and remedies of the City set forth in this Franchise Agreement shall be in addition to, and not in limitation of, any other rights and remedies available to the City by law or in equity. The City and Grantee understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by the City of any one or more of such remedies shall not preclude the exercise by the City, at the same or different times, of any other such remedies for the same uncured material breach.

SECTION 20 RENEWAL

20.1 Renewal Rights and Remedies. The City shall have all available rights and remedies with respect to receiving a request to renew the Franchise granted herein, subject to applicable federal and state law as they exist at such time. Any renewal, denial of renewal and the consequences of and terms and conditions with respect to any such renewal or denial of renewal shall be subject to federal and state law in effect at such time.

SECTION 21 GENERAL PROVISIONS

21.1 Notices. Any notice, required to be given hereunder shall be in writing, and may be served personally or by United States mail, postage prepaid, addressed to Grantee at:

California-American Water Company
Vice-President and Treasurer

303 "H" Street, Suite 250
Chula Vista, CA 91910

or at such other address designated in writing by Grantee; and to the City as follows:

City of San Diego
City Manager
202 "C" Street
San Diego, CA 92101

Or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

Any party entitled or required to receive notice under this Franchise may by like notice, designate a different address to which notices shall be sent.

- 21.2 Venue and Compliance with Controlling Law. Grantee shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Franchise. The laws of the State of California shall govern and control the terms and conditions of this Franchise Agreement. The venue for any suit or proceeding concerning this Franchise, the interpretation of application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.
- 21.3 Conflicts. Where federal and state laws or regulations conflict with this Franchise Agreement, this Franchise Agreement shall govern to the extent not preempted by the conflicting federal and state laws or regulations. Where this Franchise Agreement conflicts with other City ordinances or City laws or regulations, this Franchise Agreement shall govern, except where the City, in the future, adopts additional ordinances, laws, or regulations, consistent with the City's police powers, taxation powers, powers of eminent domain, and other non-delegable powers.
- 21.4 No Waiver. No failure of either the City or the Grantee to insist upon the strict performance by the other of any covenant, term or condition of this Franchise Agreement nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Franchise Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Franchise, and each and every covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach. The failure of the City on one or more occasion to exercise a right under the Franchise Agreement or any applicable law, ordinance, rule, or regulation shall not constitute a waiver of such right unless the City has specifically waived such right in writing and the term "waive" or its equivalent is used in such a writing.
- 21.5 Legal Fees. Each Party to this Franchise shall bear its attorney's fees and costs arising from that Party's own counsel in connection with this Franchise. In the event of any dispute between the Parties, which is resolved by mediation, arbitration or litigation, the prevailing Party shall be awarded, and the non-prevailing Party shall pay, all the

prevailing Party's reasonable attorneys fees, costs and expenses, including the cost of expert witnesses.

- 21.6 Severability. Each section, part, term, covenant, or condition of this Franchise Agreement shall be considered severable, and if, for any reason, any section, part, term, covenant, or condition herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation, such invalidity, contravention, or conflict shall not impair the operation or affect the remaining portions, section, part, term, covenant, or condition of this Franchise Agreement, and the latter will continue to be given full force and effect and bind the Parties hereto; and said invalid section, part, term, covenant, or condition shall be deemed not to be part of this Franchise.
- 21.7 Captions. The Franchise Table of Contents, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Franchise Agreement. The numbers of the paragraphs and pages of this Franchise Agreement, if not consecutive, are intentional and shall have no effect on the enforceability of this Franchise Agreement.
- 21.8 Entire Understanding. This Franchise Agreement contains the entire understanding of the Parties. Grantee and the City, by signing this Franchise Agreement, agree that there is no other written or oral understanding between the Parties with respect to the matters covered in this Franchise Agreement other than the applicable terms and provisions of the Water Supply Agreements. Each of the Parties to this Franchise Agreement agrees that no other Party, agent, or attorney of any other Party has made any promise, representation, or warranty, whatsoever, which is not contained in this Franchise Agreement.

The failure or refusal of any Party to read the Franchise Agreement or other documents, inspect the property which is the subject of this Franchise Agreement, and obtain legal or other advice relevant to this transaction, constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Franchise Agreement will be valid unless it is in writing and signed by all Parties.

- 21.9 City Approval. The approval or consent of the City, wherever required in this Franchise, shall mean the written approval or consent of the City Council, or the City Manager as specified. The approval or consent of the City, whether by the City Manager or the City Council, shall not be unreasonably withheld, conditioned or delayed.
- 21.10 Corporate Authority. Each individual executing this Franchise Agreement on behalf of Grantee represents and warrants that he/she is duly authorized to execute and deliver this Franchise Agreement on behalf of the corporation in accordance with a duly adopted resolution of the Board of Directors of the corporation or in accordance with the bylaws of the corporation, and that this Franchise Agreement is binding upon the corporation in accordance with its terms, and that all steps have previously been taken to qualify Grantee to do business in the State of California and to perform all operations undertaken pursuant to the grant of this Franchise Agreement.

- 21.11 Covenants and Conditions. All Provisions of this Franchise Agreement, expressed as either covenants or conditions on the part of the City or the Grantee, shall be deemed to be both covenants and conditions.
- 21.12 Municipal Powers. Nothing contained in this Franchise Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 21.13 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Franchise Agreement, and the decision of whether or not to seek advice of counsel with respect to this Franchise Agreement, is a decision which is the sole responsibility of each Party. This Franchise Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Franchise Agreement.
- 21.14 Conflicts of Interest. Grantee is subject to all applicable federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including California Government Code sections 1090, et. seq. and 81000, et. seq., and the City of San Diego Ethics Ordinance, codified in the San Diego Municipal Code at sections 27.3501 to 27.3595.

SECTION 22 EQUAL OPPORTUNITY REQUIREMENTS

- 22.1 Equal Opportunity Contracting. Grantee shall comply with the City's Equal Employment Opportunity Outreach Program, codified in the San Diego Municipal Code at Sections 22.2701 through 22.2708. Grantee shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Grantee shall provide equal opportunity in all employment practices. Grantee shall ensure that its subcontractors comply with this program. Nothing in this Section shall be interpreted to hold Grantee liable for any discriminatory practice of its subcontractors.
- 22.2 Nondiscrimination Ordinance. Grantee shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Grantee shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Grantee understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, or other sanctions. This language shall be in contracts between Grantee and any subcontractors, vendors and suppliers.
- 22.3 Compliance Investigations. Upon the City's request, Grantee agrees to provide to the City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Grantee has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Grantee for each subcontract or supply contract. Grantee further agrees to fully cooperate in any investigation conducted by the City pursuant to the City's Nondiscrimination in Contracting Ordinance (San Diego Municipal Code sections

22.3501-22.3517.) Grantee understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in remedies being ordered against Grantee up to and including contract termination, debarment, and other sanctions for violation of the provisions of the Nondiscrimination in Contracting Ordinance. Grantee further understands and agrees that the procedures, remedies and sanctions provided for in the Nondiscrimination Ordinance apply only to violations of said Nondiscrimination Ordinance.

SECTION 23 DRUG-FREE WORKPLACE

- 23.1 Drug-Free Workplace. Grantee shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:
- 23.2 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances as defined in schedules I-V of Section 202 of the controlled Substances Act (21 U.S.C., & 812) is prohibited in the Person's or organization's workplace and specifying the actions that be taken against employees for violations of the prohibition.
- 23.3 Establishing a drug-free awareness program to inform employees about all of the following:
- (1) The dangers of drug abuse in the workplace.
 - (2) The Grantee's policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations.

SECTION 24 DISABLED ACCESS COMPLIANCE

- 24.1 Disabled Access Compliance. Grantee agrees to comply with San Diego City Council Policy No. 100-04 regarding American with Disabilities Act Compliance. Grantee shall comply with the Americans with Disabilities Act of 1990 (ADA) and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. Grantee's compliance shall include, but not necessarily be limited to, the following:
- 24.1.1 Grantee shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.

- 24.1.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of Grantee.
- 24.1.3 Grantee shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 24.1.4 Grantee shall comply with all current California Building Standards Code, California Code of Regulations, Title 24 [Title 24] and Americans with Disabilities Act Accessibility Guidelines [ADAAG] requirements. When a conflict exists between Title 24 and ADAAG, the most restrictive requirement shall be followed. All improvements and alterations shall be at the sole cost of Grantee.

Grantee understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Franchise.

SECTION 25 EFFECTIVE DATE

- 25.1 Effective Date. This Agreement shall take effect and be in force on the Effective Date, which is the thirtieth (30th) day from and after adoption by the City Council of the ordinance granting this Franchise.

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SECTION 26 SIGNATURES

IN WITNESS WHEREOF, this Franchise Agreement is executed by the City of San Diego, acting by and through its City Manager, in accordance with Ordinance No. O- _____, and by California-American Water Company, acting by and through its lawfully authorized officers.

THE CITY OF SAN DIEGO

By: _____

Its: _____

Date: _____, 2004

I HEREBY CERTIFY I can legally bind CALIFORNIA-AMERICAN WATER COMPANY, and that I have read all of this Agreement, this ____ day of _____, 2004.

CALIFORNIA-AMERICAN WATER COMPANY

By: _____

Authorized Representative

Title: _____

I HEREBY APPROVE the form and legality of the foregoing Agreement this ____ day of _____, 2004.

CASEY GWINN, City Attorney

By _____

Deputy City Attorney

San Diego Bay

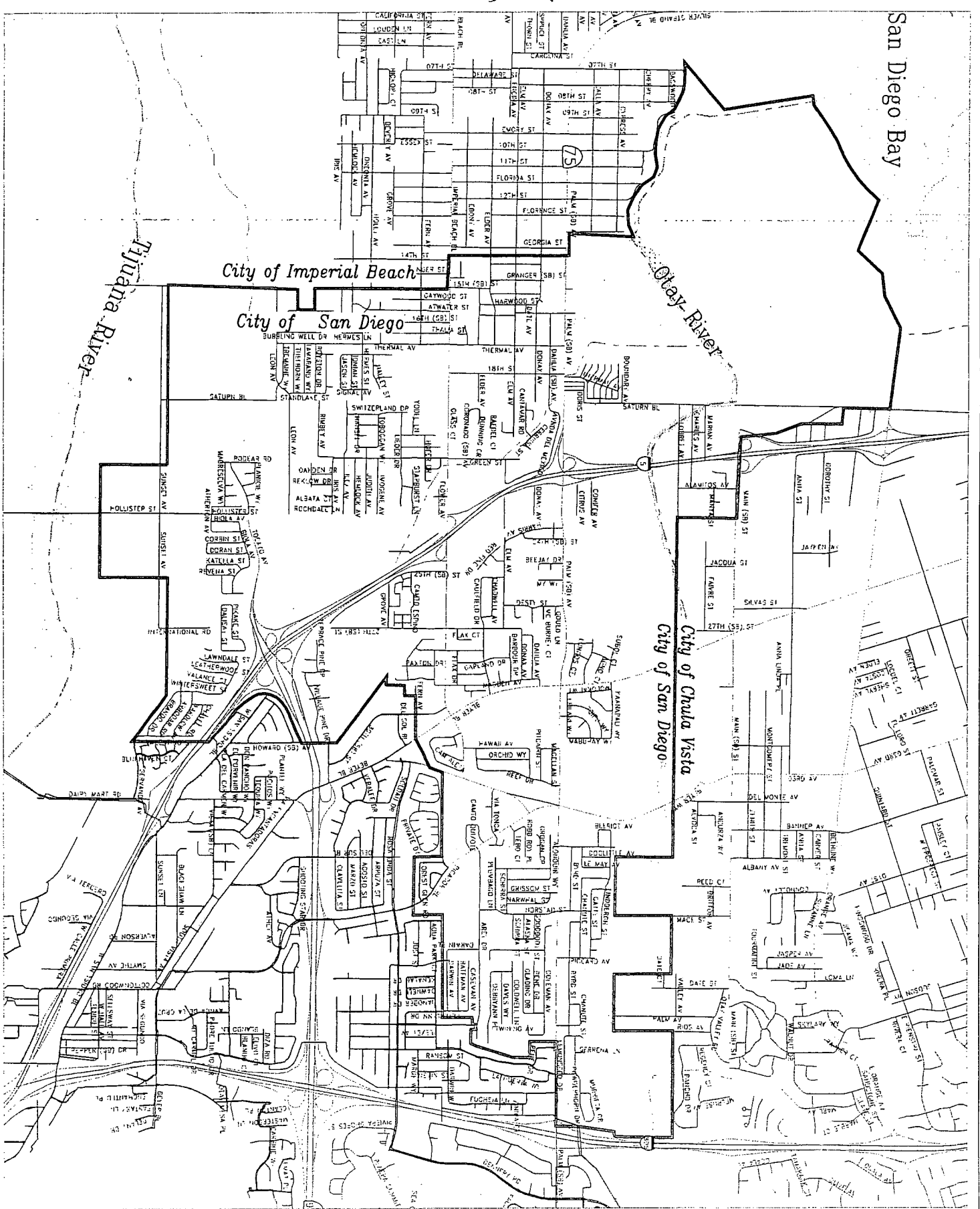
Tijuana River

Olney-River

City of Imperial Beach

City of San Diego

City of Chula Vista



THIS MAP IS FOR INFORMATION PURPOSES ONLY AND DOES NOT REPRESENT THE CITY OF SAN DIEGO'S LIABILITY FOR ANY DAMAGE TO PERSONS OR PROPERTY. THE CITY OF SAN DIEGO IS NOT RESPONSIBLE FOR ANY DAMAGE TO PERSONS OR PROPERTY. THE CITY OF SAN DIEGO IS NOT RESPONSIBLE FOR ANY DAMAGE TO PERSONS OR PROPERTY. THE CITY OF SAN DIEGO IS NOT RESPONSIBLE FOR ANY DAMAGE TO PERSONS OR PROPERTY.

City of San Diego
 Water Department, Operations Engineering
 Facility Information Management Section

EXHIBIT A



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