

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (hereinafter Agreement) is made and entered into this ____ day of _____, 20____, by and between the County of Sonoma, a political subdivision of the State of California (hereinafter “County”) and California-American Water Company, a corporation organized and existing under the laws of the State of California (hereinafter “Grantee”), collectively referred to as the “Parties”.

WHEREAS:

The Board of Supervisors of the County of Sonoma has agreed to grant a Franchise for the use of public streets and property for the purposes of supplying water to consumers in the unincorporated areas of Sonoma County, California; and

Grantee is willing and qualified to acquire a Franchise and perform thereunder; and

Each Party enters into this Agreement in consideration of the other Party accepting the terms and conditions of mutual rights and obligations contained in this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions of Words and Phrases Used in this Agreement.

“Grantee” means California-American Water Company, to which the Franchise contemplated by this Agreement is granted, and its lawful successors and assigns;

“County” means the County of Sonoma, State of California;

“Streets” mean the public streets, sidewalks, ways, alleys, and places as the same may now or hereafter exist within County, including State freeways now or hereafter established within County;

“Pipes and Appurtenances” means pipes, pipelines, tubes, mains, services, fire hydrants, traps, vents, vaults, manholes, meters, gages, regulators, valves, conduits, appliances and attachments and appurtenances to such facilities, also referred to as “Franchise Property” and, without limitations to the foregoing, any other property located or to be located in, upon, along, across, under or over the Streets of County, and used or useful in transmitting, distributing and/or conveying water;

“Install, Maintain and Use” means to lay, construct, erect, install, operate, alter, reconstruct, maintain, use, repair, replace, relocate or remove all or part of a pipeline system together with all pipes and appurtenances, as defined in this Section, through which water may be transmitted, distributed and conveyed;

“Franchise Act of 1937” refers to the Public Utilities Code of the State of California, Division 3, Chapter 2, Section 6201, et seq., as it may be amended from time to time.

“Franchise” means the rights acquired through acceptance by Grantee of the terms and conditions of this Agreement pursuant to County’s police power and applicable provisions of the Franchise Act of 1937, and any revisions thereto;

“Franchise Property” means all property installed, maintained, used and retained by the Grantee in the Streets of the County, under authority of this Franchise.

2. Grant of Franchise.

County hereby grants to Grantee the Franchise and Grantee hereby accepts from County the Franchise to use the Streets to supply water to consumers for any and all lawful purposes, including the right to lay and use all Pipes and Appurtenances which are now or may hereafter be lawfully placed and maintained in the Streets within County. Grantee may Install, Maintain and Use in said Streets, all Pipes and Appurtenance necessary to supply water to consumers for lawful purposes. The rights and obligations created by this Franchise Agreement apply only to the regulated water system owned and operated by Grantee in the Larkfield-Wikiup area of unincorporated Sonoma County.

3. Removal/Relocation of Facilitates; Cost of Repairs; Notice; Restrictions.

(a) Grantee shall relocate, without expense to County, any Franchise Property used, installed or maintained under this Franchise if and when made necessary by any lawful change of grade, alignment, or width of any Streets, by County, including the construction of any subway or viaduct. County agrees that, except for emergency situations, which include unexpected relocations necessitated by a fault of Grantee (such as erroneous pipe location data), it shall make a good faith effort to provide as much notice as possible of each such relocation so as to afford Grantee an adequate opportunity to budget for such relocation expenses. As a general guideline, County should strive to provide at least ninety (90) days’ notice of proposed construction potentially necessitating relocation of Franchise Property. County agrees to work with Grantee in the design and specifications for each such relocation so as to minimize the expense of such relocation, and to assist Grantee in obtaining all permits necessary to accomplish the relocation.

(b) County hereby reserves the right to impose upon Grantee reasonable restrictions, in conformity with applicable County ordinances and rules, relating to the location, placement, and maintenance of any and all Pipes and Appurtenances within County.

4. Duration of Franchise; Termination.

The duration of this Franchise shall be for a period of twenty (20) years from the date of entry into force of this Agreement, and may be renewable by written agreement of both Parties through negotiations commencing a year prior to the expiration of the Agreement. If required, Grantee shall obtain the consent of the Public Utilities Commission of the State of California to enter into this Agreement. Notwithstanding any other provisions of this Paragraph, this Franchise may be terminated sooner by the voluntary surrender or abandonment of the Franchise by Grantee, or by the acquisition by the State of California, or any municipal or public corporation, by voluntary purchase or by the exercise of the power of eminent domain, or by the forfeiture by noncompliance by Grantee with the terms and provisions of this Agreement.

5. Franchise Fee.

Grantee shall, during the term of the Agreement, pay to County, a sum equivalent to the maximum allowed to be paid for said Franchise under Section 6231 of the Franchise Act of 1937, as it may be from time to time amended, currently equivalent to two percent (2%) of the gross annual receipts of Grantee arising from the use, operation, or possession of this Franchise; provided however, that such payment shall in no event be less than a sum which shall be equivalent to one percent (1%) of the gross annual receipts derived by Grantee from the sale of water within the unincorporated limits of County under this Franchise.

6. Annual Statement of Gross Receipts; Accounting.

As set forth in Sections 6299 and 6300 of the Franchise Act of 1937, Grantee shall file with the County Clerk of County, within three (3) months after expiration of the calendar year, or fractional calendar year, following the entry into force of this Agreement, and within three (3) month after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of Grantee, its successors, or assigns, during the preceding calendar year, or such fractional calendar year, from the sale of water within County. By delivery to the County Clerk and Finance Director of the County, Grantee shall pay to the Finance Department of the County within fifteen (15) days after the time for filing such statement, in lawful money of the United States, the aforesaid percentage of its gross receipts for such calendar year, or such fractional calendar year, covered by such statement. Any neglect, omission or refusal by Grantee to file such verified statement, or to pay said percentage at the time and in the manner specified in this agreement, shall be grounds for the declaration of a forfeiture of this Franchise and of all rights of Grantee hereunder.

7. Restriction on Assignability of Franchise.

This Franchise Agreement shall not be revised, sold, leased, assigned or otherwise alienated, without the mutual express written consent of the County and the Grantee, which shall not be unreasonably withheld by either party.

8. Repairs to Public Property.

Grantee shall pay to County on demand the cost of all repairs to public property made necessary by any of the operations of the Grantee under this Franchise.

9. Enforcement Remedies.

(a) If Grantee shall fail or refuse to comply with any of the provisions, conditions, obligations or duties set out in this Franchise, County may notify Grantee in writing to perform such obligations or duties. In the event that Grantee shall fail to comply with said notice within thirty (30) days, County may, at its option, proceed to perform the duties or obligations itself; provided, however, that in case of emergency, County may proceed without notice to Grantee to perform such duties and obligations. All cost incurred by County thereby shall be charged to the Grantee. If Grantee fails or refuses to pay the amount of such costs within thirty (30) days from the date such costs are submitted to Grantee in writing, the County may proceed to collect such costs by an action at law.

(b) As a separate and alternate remedy, if Grantee shall consistently fail or refuse to comply with the provisions of this Franchise Agreement, County may declare a forfeiture, and/or may sue Grantee for damages for such noncompliance, and/or may exercise any other rights or remedies provided by law.

10. Compliance with Ordinances, Rules and Laws.

Grantee shall construct, install and maintain all Pipes and Appurtenances in accordance and in conformity with all County ordinances and rules adopted by the County in the exercise of its police powers and not in conflict with the authority of the State, and, as to state highways, subject to the laws relating to the location and maintenance of such facilities therein.

11. Reimbursement for Publication Expenses.

Grantee shall pay to County a sum sufficient to reimburse County for all publication expenses incurred by County in connection with the granting of the Franchise, such payment to be made within 30 days after County shall have furnished Grantee with a written statement of such expenses.

12. Indemnification.

Grantee shall indemnify and hold harmless the County and its officers from all liability for damages proximately resulting from any operations of Grantee under this Franchise.

13. Independent Status.

Grantee is an independent entity and not an officer, agent, servant or employee of the County. Grantee is solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Nothing in this Franchise shall be construed as creating a partnership or joint venture between County and Grantee.

14. Attorney's Fees and Court Venue.

Should either Party to this Agreement bring legal action against the other, the case shall be venued in Sonoma County, California, and the party prevailing in such action shall be entitled to a reasonable attorney's fee which shall be fixed by the judge hearing the case and such fee shall be included in the judgment, together with all costs.

15. Effective Date.

This Agreement and the Franchise granted thereby shall enter into force and be binding upon the signing and dating of same by both Parties.

16. Notices and Communications.

Any notice required by this Agreement or communications between the Parties regarding this Agreement shall be effected by personal delivery or registered or certified mail, postage pre paid with return receipt requested as follows:

To County: _____

To California American Water: _____

Each Party may change its above-identified address by written notice to the other Party in accordance with this Paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two (2) days after mailing.

17. Entire Agreement.

This Agreement constitutes the entire Agreement between the Parties hereto and supersedes any and all prior agreements, whether oral or written, relating to the subject matter of the Agreement. Any modification of this Agreement will be effective only if it is in writing signed by both Parties.

18. Partial Invalidity.

If any provision in this Agreement is for any reason held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.

19. Dispute Resolution.

The Parties agree that if any dispute arises over the interpretation or performance or enforcement of this Franchise Agreement, the Parties will first attempt to negotiate any such dispute informally. If such information negotiation fails, the parties shall then submit the dispute for formal mediation to the American Arbitration Association (AAA), Judicial Arbitration and Mediation Services (JAMS), or such mediation service as the parties may agree upon. Expenses of such mediation shall be shared equally between the parties.

20. Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the State of California.

21. Authority.

County grants this Franchise pursuant to the County's police power and the Franchise Act of 1937, as it may be amended from time to time.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written in Sonoma County, California.

For: County of Sonoma

For: California-American Water Company

Chair, Board of Supervisors

[Title]

Date: _____

Date: _____

Attest:

Clerk of the Sonoma County Board of Supervisors