

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
RENEWING THE GRANT OF A FRANCHISE FOR UNDERGROUND WATER
PIPELINES TO THE CALIFORNIA-AMERICAN WATER COMPANY**

County Counsel Summary

This ordinance renews the County of Monterey's grant of a nonexclusive franchise to the California-American Water Company (Cal Am) for a period of twenty-five (25) years from February 11, 2014 through February 10, 2039 on the terms specified. On February 11, 1963, by Ordinance No. 1278, the Board of Supervisors of the County of Monterey granted a fifty-year franchise to California Water & Telephone Company, Cal-Am's predecessor in interest. This Ordinance extends the grant of the franchise and authorizes California-American Water Company to install and thereafter maintain, replace, and use underground water pipelines and appurtenances for the distribution of water to the public and collection of wastewater for the public for all lawful purposes in so many and such parts of the public highways, roads, streets, and ways within the unincorporated area of the County of Monterey as the franchisee may from time to time elect to use.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS:

1. Pursuant to Government Code section 26001, the Board of Supervisors may grant franchises along and over the public roads and highways for all lawful purposes, upon such terms, conditions, and restrictions as in its judgment are necessary and proper, and in such manner as to present the least possible obstruction and inconvenience to the traveling public.
2. California-American Water Company (hereinafter "Franchisee") is a public utility regulated by the California Public Utilities Commission, which owns and operates pipelines and other facilities and appurtenances in the County of Monterey (hereinafter "County") for the transmission of water and collection of wastewater.
3. By Ordinance Number 1278 adopted on February 11, 1963, the County of Monterey granted to California Water & Telephone Company, Franchisee's predecessor in interest, a nonexclusive Franchise for underground water pipelines and appurtenances for a term of fifty (50) years, which term ended on February 10, 2013 (hereinafter "Franchise").
4. On February 5, 2013, the County of Monterey temporarily extended said Franchise for period of one year through February 10, 2014.

5. The Franchise granted Franchisee the right to install and thereafter maintain, replace, and use underground water pipelines and appurtenances, for the distribution of water to the public for any and all purposes in so many and such parts of the public highways, roads, streets, and ways within the unincorporated territory of the County of Monterey as the Franchisee from time to time elected to use.

6. Franchisee has requested renewal of the Franchise for a period of twenty-five (25) years.

7. The Franchise must be amended to include wastewater pipes that Franchisee owns and operates for the collection of wastewater.

8. The County desires to grant Franchisee a renewal of the Franchise for a period of twenty-five (25) years, which is specified to be from February 11, 2014 through February 10, 2039.

SECTION 2. The County of Monterey hereby renews its grant of a nonexclusive franchise (hereinafter "Renewal" or "Franchise Renewal") to the California-American Water Company, Franchisee, for a period of twenty-five (25) years upon the terms and conditions hereinafter set forth.

1. Purpose and Term. The Franchise Renewal shall be for a period of twenty-five (25) years, which is specified to be from February 11, 2014 through February 10, 2039. This Renewal includes the right to install and thereafter maintain, replace and use underground water pipeline(s) and appurtenances (hereinafter "Franchise Facilities") for the distribution of water to the public and collection of wastewater for the public for all lawful purposes in so many and such parts of the public highways, roads, streets, and ways within the unincorporated area of the County of Monterey (hereinafter "County Property") as the Franchisee may from time to time elect to use.

2. Workmanship. The Franchise Facilities shall be constructed in a good and workmanlike manner and thereafter kept in such condition and repair as to prevent injury or damage to the County Property and to persons and property, including but not limited to the installation, construction, and maintenance of such pipelines by Franchisee. Franchisee shall have the obligation to repair, replace, or maintain the County Property to the extent that the repair, replacement, or maintenance is necessitated or caused by the Franchisee's operation of the Franchise Facilities, including, but not limited to damage to the roadway surface or structural section caused by leaks or discharges from Franchisee's pipelines, meters, valves, and any other Franchise Facilities.

Franchisee shall maintain access to shut-off valves so that said valves can be turned off by Franchisee in a reasonable amount of time in the event of a line break. In the event that the County reports to Franchisee that maintenance is necessary to allow access to a valve(s), or a valve(s) is in need of maintenance to properly function, Franchisee will respond within twenty-four (24) hours to clear any dirt, debris, or other obstructions, to enable access to valve(s), or repair valve(s) so that it properly functions. If any leak or poor workmanship is reported to

Franchisee by County, Franchisee shall meet County staff in the field within five (5) working days to discuss the repair strategy. If failure of Franchisee to timely respond necessitates repairs to be performed by County, such repairs shall be performed at Franchisee's expense.

3. Compliance with Laws. Franchisee shall at all times comply with all State laws, including regulations of the California Public Utilities Commission, and all County regulations now existing or hereafter enacted, including all applicable ordinances of the County of Monterey relating to work, excavations, and encroachments onto the County Property. Such compliance shall include obtaining all necessary permits required by such laws and regulations.

4. Public Improvements. Upon being given notice in writing, Franchisee shall with reasonable diligence and at its own expense protect, support, repair, disconnect, relocate, or remove that portion of the Franchise Facilities installed or maintained under the rights granted by the Franchise or this Franchise Renewal as necessary to make way for, or accommodate, a governmental use of the County Property.

5. Eminent Domain. In the event of the acquisition of the property of the Franchisee by exercise of the power of eminent domain, or by purchase of the County or other authorized body politic entitled to exercise the power of eminent domain, this Franchise shall be deemed to have no greater value than the sum paid to the County by Franchisee for the processing of this Franchise Renewal.

6. Indemnity. Franchisee shall indemnify, defend, and hold harmless the County, its officers, agents and employees from all liability for damages to third persons caused by or resulting from the exercise or enjoyment of this Franchise Renewal. Franchisee shall also indemnify, defend, and hold harmless the County, its officers, agents, and employees from any claim, action or proceeding to attack or set aside the approval of this Franchise Renewal. Franchisee's obligation to defend, indemnify, and hold County harmless shall not apply to liability arising from the County's sole negligence or willful misconduct.

7. Franchise Fees. Franchisee shall, during the life of this Franchise Renewal, pay to the County an annual fee consistent with the provisions set forth in sections 6006 and 6011 of the California Public Utilities Code, as follows:

- (A) Franchisee shall continue to pay to the County two (2) percent of its gross annual receipts arising from the use, operation, or possession of this Franchise Renewal, and if such payment is not made, this franchise shall be forfeited. Such payments shall be made annually on or before the last day of March of each year, for the preceding calendar year or fraction thereof, and shall be accompanied by a verified statement showing in detail the basis of computation thereof.
- (B) The County shall have the right to inspect, audit, and copy such of the Franchisee's books, records, and maps as may be pertinent in connection with the operations of the Franchisee under this Franchise Renewal.

8. Faithful Performance Bond.

- (A) The Franchisee shall, within five (5) days after County approval of this Franchise Renewal, provide security to the Monterey County Director of Public Works in the form of a bond or letter of credit in the amount of Fifty Thousand Dollars (\$50,000.00) naming the County of Monterey as beneficiary. Franchisee shall thereafter at all times for the entire term of this Franchise Renewal maintain said security in full force and effect to secure the faithful performance of said Franchise Renewal on the terms specified. The security shall be conditioned to require that the Franchisee shall well and truly observe, fulfill, and perform each and every term and condition of this Franchise Renewal, and that in case of any breach of a term or condition of said Franchise Renewal, the whole amount of the penal sum therein named shall be taken and deemed to be liquidated damages and shall be recoverable from the principal. Such security in the amount of \$50,000.00 shall be assigned to the County to be held by the County throughout the term of this Franchise Renewal plus one year thereafter.
- (B) Neither the provisions of this section, any security accepted by the County pursuant thereto, nor any damages recovered by the County thereunder shall be construed to excuse faithful performance by the Franchisee or limit the liability of the Franchisee under this Franchise Renewal or for damages, either to the full amount of the security or otherwise.
- (C) Whenever a security is taken and deemed to be liquidated damages for any breach of a term or condition of this franchise, the Franchisee must immediately file another security of like amount and character, and if the Franchisee fails to do so within the time set by the Board of Supervisors, the Board may by resolution declare said Franchise Renewal forfeited.
- (D) Nothing herein shall insulate Franchisee from liability in excess of the amount of said security or be construed as a waiver by the County of any remedy at law or equity against Franchisee for any breach of the terms and conditions of this Franchise Renewal, or for any damage, loss, or injury suffered by the County in case of any damage, loss, or injury suffered by any person, firm, or corporation by reason of any work done or any activity conducted by Franchisee in exercise of this Franchise Renewal.

9. Assignment. Franchisee shall not assign or transfer this Franchise Renewal without the prior written consent of the Board of Supervisors of the County of Monterey.

10. Forfeiture. Any neglect, failure, or refusal of Franchisee to comply with any term or condition of this Franchise Renewal or of the security shall constitute cause for the forfeiture thereof, and the Board of Supervisors may thereupon declare by resolution a forfeiture of this Franchise Renewal and may exclude the Franchisee from further occupancy or use of the County Property as authorized under this Franchise Renewal. Further, the County may file a complaint with the Attorney General to sue for the forfeiture of the Franchise Renewal in accordance with

Public Utilities Code section 6016. County may not declare a default or forfeiture without first giving thirty (30) days written notice to Franchisee, describing with particularity the activity or omission of Franchisee that constitutes a default by Franchisee of this Franchise Renewal. If Franchisee corrects the problem complained of by County to County's satisfaction within said thirty (30) days, or if the problem cannot be reasonably corrected within thirty (30) days, but Franchisee takes reasonable steps within said thirty (30) days that will reasonably lead to the correction of the problem in the judgment of County, then Franchisee shall not be in default. A forfeiture of this Franchise Renewal shall not of itself operate to release the security filed for said Franchise Renewal. Upon declaring forfeiture the Board of Supervisors may elect to take and accept the security as liquidated damages therefore or to pursue any other legal remedy for any damage, loss, or injury suffered by the County as a result of such breach or both.

After declaration of a forfeiture of said Franchise Renewal, the security shall remain in full force and effect for a period of one year unless exonerated or liquidated by the Board of Supervisors. No security shall be exonerated unless a release is obtained from the Monterey County Director of Public Works and is filed with the Clerk of the Board of Supervisors. The release shall state whether all excavations have been backfilled, all obstructions removed, and whether the substrata and surface of County roads occupied or used have been placed in a good and serviceable condition. The release shall not constitute a waiver of any right or remedy which the County may have against Franchisee or any person, firm, or corporation for any damage, loss, or injury suffered by County as a result of any work or activity performed by the Franchisee in the exercise of this Franchise Renewal.

11. Title to Property. Title to all Franchise Facilities placed on, embedded in, or buried under the substrata or surface of County Property by Franchisee in exercise of this Franchise Renewal shall remain in Franchisee.

12. Removal of Facilities. Within one hundred and eighty (180) days after termination or a final decision with no further right to appeal by a court of law or the California Public Utilities Commission on an action for forfeiture of this Franchise Renewal, Franchisee shall abandon in place or remove, as determined by public utility standards or practices then in effect, without expense to the County, all facilities installed or maintained pursuant to the terms of this Franchise Renewal. If such abandonment or removal is not completed at the expiration of said period or such additional period granted by the Board of Supervisors, then the Board may provide for such abandonment or removal of said facilities or part thereof and Franchisee agrees to pay for the costs of such abandonment or removal.

13. Insurance. Concurrent with approval by the Board of Supervisors of the County of Monterey of this Franchise Renewal, Franchisee shall secure and maintain at all times during the term of this Franchise Renewal a commercial general liability policy of insurance, including bodily injury and property damage coverage, written on an "occurrence" form with limits of not less than Two Million Dollars (\$2,000,000) insuring Franchisee against injury to persons or damage to property arising from or in connection with any action permitted under this Franchise Renewal, naming the County of Monterey, its officers, agents, and employees as an additional insured under that coverage, and containing primary coverage and stating that the County will remain non-contributory for contractual liability for actions taken by Franchisee resulting in

personal injury or property damage obligations under this Franchise Renewal. Prior to the effective date of this Franchise Renewal, Franchisee shall deliver to the County of Monterey Department of Public Works a copy of a certificate evidencing such coverage is in force, and required endorsements as stated above.

14. Notices. All notices and demands shall be given in writing either by personal service or by registered or certified mail, postage prepaid, and return receipt requested, or by facsimile transmission with a confirmation copy delivered by mail. Notice shall be considered given on the date received by personal service or transmitted by facsimile, or the date appearing on the return receipt. Notices shall be addressed as shown below for each party, except that, if any party gives written notice of a change of name or address, notices to that party shall thereafter be given as shown in that notice.

IF TO FRANCHISEE: California-American Water Company
511 Forest Lodge Rd, Ste 100
Pacific Grove, CA 93950
Attn: General Manager
Phone 831-646-3291
Fax 831-375-4367

IF TO COUNTY: Monterey County Public Works Department
168 W. Alisal Street 2nd Floor
Salinas, CA 93901
Attn: Robert Murdoch, Director of Public Works
Phone 831-755-4930
Fax 831-755-4958

15. Governing Law. The laws of the State of California shall govern the validity, enforcement, and interpretation of this Franchise Renewal, and venue for all purposes shall be in Monterey County, California.

16. Waiver. No waiver by a party of any provision of this Franchise Renewal shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision. The exercise by a party of any remedy provided in this Franchise Renewal or at law shall not prevent the exercise by that party of any other remedy provided in this Franchise Renewal or at law, including, but not limited to, remedies for breach of contract or the equitable remedy of specific performance.

17. Binding on Successors. This Franchise Renewal and all of its provisions, rights, obligations, and duties inure to the benefit of and shall be binding upon Franchisee and Franchisee's successors and assigns.

18. Captions. The captions heading the various paragraphs of this Franchise Renewal are for convenience and shall not be considered to limit, expand, or define the contents of the respective paragraphs.

SECTION 3. EFFECTIVE DATE. This Ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED this ____ day of January, 2014 by the following vote:

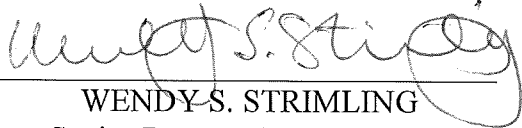
AYES:
NOES:
ABSENT:
ABSTAIN:

Chair,
Monterey County Board of Supervisors

A T T E S T:

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

WENDY S. STRIMLING
Senior Deputy County Counsel