

**FRANCHISE AGREEMENT BETWEEN  
DEL REY OAKS AND CALIFORNIA AMERICAN WATER**

THIS FRANCHISE AGREEMENT ("Agreement") is made by and between the City of Del Rey Oaks, a municipal corporation and general law city of the State of California, and California-American Water Company, a California corporation, sometimes individually referred to herein as a "Party" and collectively as the "Parties."

**Recitals**

WHEREAS, the City has the authority to enter into a water franchise agreement with Company to use public streets and property to provide water service within the City boundary; and

WHEREAS, the Council of the City has agreed to grant a franchise to Company for the use of public streets and property for the purposes of supplying water to consumers; and

WHEREAS, Company is willing and qualified to acquire such franchise and perform thereunder.

NOW, THEREFORE, in consideration of the above Recitals, which are true and correct and incorporated herein by this reference, and of the mutual covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

As used in this Agreement, the following words and phrases shall be defined as follows:

"CPUC" means the California Public Utilities Commission;

"City" means the City of Del Rey Oaks, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form;

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

"Franchise" means the rights acquired through acceptance by Company of the terms and conditions of this Agreement pursuant to applicable law;

"Franchise Act of 1937" means the Public Utilities Code of the State of California, Division 3, Chapter 2, and as it may be amended from time to time.

"Franchise Property" means all property Installed, Maintained, and Used by Company in the Streets to supply water to consumers under the authority of this Franchise. Franchise Property includes pipes, pipelines, mains, services, fire hydrants, traps, vents, vaults, manholes, meters, gages, regulators, valves, conduits, appliances, attachments and appurtenances, and, without limitation to the foregoing, any other

property located or to be located in, upon, along, across, under or over the Streets, and used or useful in transmitting and/or distributing water;

"Install, Maintain, and Use" in all tenses means to lay, construct, erect, install, operate, maintain, use, repair, replace, relocate or remove;

"Streets" means the public streets, sidewalks, ways, alleys and places as the same may now or hereafter exist within City, including state roads now or hereafter established within City.

## 2. Grant of Franchise.

City hereby grants to Company a Franchise and Company hereby accepts from City a Franchise to use the Streets to Install, Maintain, and Use Franchise Property.

## 3. Removal/Relocation of Facilities; Cost of repairs; Notices; Restrictions.

3.1 Company shall relocate, without expense to City, any Franchise Property Installed, Maintained and Used under this Franchise, if and when made necessary by any lawful construction, or change of grade, alignment, or width of any streets, ways, alleys or other public places by City, including the construction of any storm drain, sanitary sewer, subway or viaduct. City agrees that, except for emergency situations, which include unexpected relocations necessitated by a fault of Company (such as erroneous pipe location data), City shall make a good faith effort to provide as much notice as possible of such relocations so as to afford Company an adequate opportunity to budget for such relocation expenses. As a general guideline, the City shall strive to provide at least 90 days' notice of proposed construction potentially necessitating relocation of Franchise Property. City agrees to work with Company in the design and specifications for each such relocation so as to minimize the expense of such relocation.

3.2 Subject to Article XII, section 8 of the California Constitution, which provides that a city may not regulate matters over which the Legislature grants regulatory power to the CPUC, and to the paramount authority of the State, City hereby reserves the right to impose upon Company restrictions, in conformity with all of the ordinances and rules adopted by the City Council of City, relating to the location, placement, and maintenance of any and all Franchise Property within City.

## 4. Term of Franchise; Termination.

The term of this Franchise shall be for a period of twenty-five (25) years from the date of entry into force of this Agreement, and shall be renewable by the Parties for subsequent twenty-five (25) year periods. Notwithstanding any other provision of this Section, this Franchise may be terminated sooner by the voluntary surrender or abandonment by Company, 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 non-compliance with the terms and provisions hereof by Company.

5. Franchise Fee

Company shall, during the term hereof, pay to City, 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 Company 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 per cent (1%) of the gross annual receipts derived by Company from the sale of water within the limits of City under this Franchise.

In addition, within thirty (30) days of execution of this Agreement, Company shall pay to City the amount of \$42,755, to settle and compromise a dispute between the Parties regarding the payment of franchise fees prior to the execution of this Agreement. In consideration of this payment by Company, City hereby forever releases, waives, and discharges Company and its employees, officers, agents, divisions, subsidiaries, parent corporations, affiliates, successors and assigns, from any and all claims, demands, actions, and causes of action relating to the payment of franchise fees prior to the execution of this Agreement as well as to Company's use of the Streets prior to the execution of this Agreement.

6. Annual Statement of Gross Receipts; Accounting.

As set forth in Sections 6299 and 6300 of the Franchise Act of 1937, Company shall file with the City Clerk of City, 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) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the total gross receipts of Company, its successors, or assigns, during the preceding calendar year, or such fractional calendar year, from the sale of water within City. Company shall pay to City 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 Company 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 forfeiture of this Franchise and of all rights of Company hereunder.

7. Restriction on Assignability of Franchise.

This Franchise shall not be sold, leased, assigned or otherwise alienated, without the express consent of the City Council of City given by ordinance and subject to referendum.

8. Effective Date.

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

## 9. 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 prepaid with return receipt requested, addressed as follows:

To City: City Manager  
City Hall  
City of Del Rey Oaks  
650 Canyon Del Rey Road  
Del Rey Oaks, CA 93940

To Company: General Manager  
California American Water  
511 Forest Lodge Road, Suite 100  
Pacific Grove, CA 93950

Each Party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of one (1) day after mailing.

## 10. Entire Agreement.

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

## 11. Partial Invalidity; Headings.

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

Headings are inserted for convenience only and shall not affect the construction of this Agreement.

## 12. Governing Law and Venue.

This Agreement will be governed by and construed in accordance with the laws of the State of California and the City. Venue shall be in the County of Monterey.

## 13. Disputes.

If any dispute arises respecting the interpretation or enforcement of rights under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, and all such fees and costs shall be awarded as costs in the underlying action without the need to prosecute a separate action to recover.

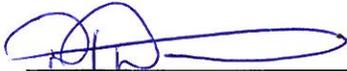
14. Authority.

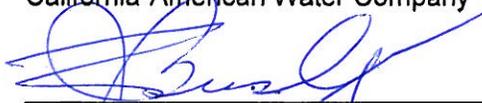
The City grants this Franchise pursuant to the applicable provisions of the Franchise Act of 1937.

IN WITNESS WHEREOF, the Parties have executed this Agreement by and through their lawfully authorized representatives.

City of Del Rey Oaks

California-American Water Company

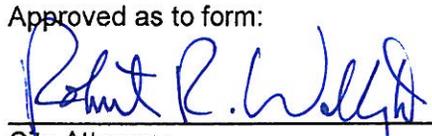
  
\_\_\_\_\_  
Daniel Dawson, City Manager

  
\_\_\_\_\_  
Tom Bunosky, Vice President

Dated: 12/1/09

Dated: 11/10/09

Attest:  
  
\_\_\_\_\_  
City Clerk

Approved as to form:  
  
\_\_\_\_\_  
City Attorney