CITY OF HUNTINGTON BEACH

MEETING DATE: January 18, 2005 **DEPARTMENT ID NUMBER: CA 05-01**

Council/Agency Meeting Held:_____ Deferred/Continued to:_____ ❑ Approved ❑ Conditionally Approved ❑ Denied	_____ City Clerk's Signature
Council Meeting Date: January 18, 2005	Department ID Number: CA 05-01

CITY OF HUNTINGTON BEACH
REQUEST FOR COUNCIL ACTION

CITY CLERK
CITY OF
HUNTINGTON BEACH, CA
2005 JAN -6 A

SUBMITTED TO: HONORABLE MAYOR and CITY COUNCIL MEMBERS

SUBMITTED BY: PENELOPE CULBRETH-GRAFT, CITY ADMINISTRATOR

PREPARED BY: JENNIFER McGRATH, City Attorney

ROBERT F. BEARDSLEY, Director of Public Works

SUBJECT: Adopt A Resolution of Intention to Grant a Water Pipeline Franchise to Southern California Water Company. Res. No. 2005-7

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue: Staff recommends that the City Council adopt a resolution declaring its intention to grant a water pipeline franchise to Southern California Water Company. A public hearing and adoption of an ordinance granting the franchise will follow the resolution.

Funding Source: None

Recommended Action: Motion to:

1. Adopt Resolution No. 2005-7 entitled: A Resolution of the City Council of the City of Huntington Beach of Intention to Grant a Water Pipeline Franchise to Southern California Water Company.

2. Direct the City Clerk to notice a public hearing for February 22, 2005 at 6:00 p.m. or as soon thereafter as the matter may be heard, for the adoption of an ordinance granting a water pipeline franchise to Southern California Water Company.

Alternative Action(s): Do not adopt the resolution.

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Analysis:

On July 23, 2002, the County of Orange recommended that the Coastal Commission approve Hearthside Homes' 378 single-family unit development on the upper bench of the Bolsa Chica Mesa. The Coastal Commission rejected the project on October 13, 2004, although it is expected to reconsider it in the next few months.

In order to build this project, Hearthside contracted with Southern California Water Company ("SCWC") to provide water service. SCWC is a water utility regulated by the California Public Utilities Commission ("CPUC"). Consequently, SCWC applied in November 1998 to the CPUC for authority to build the water pipeline to serve the development. The CPUC approved the pipeline in October 2000.

With the CPUC approval in hand, on February 1, 2002, SCWC applied to the City for a franchise to install the pipeline underneath Bolsa Chica Road. When the City deferred consideration of the franchise application, on January 23, 2003, SCWC sued to compel the City to grant a franchise: *Southern California Water Company v. City of Huntington Beach, et al.,* OCSC Case No. 03CC02021. Based upon the CPUC approval, in December 2003, the Orange County Superior Court ordered the City to issue a franchise.

However, instead of issuing a franchise, the City appealed the Court order. In order to avoid the lengthy appeal process, on August 2, 2004, SCWC filed an eminent domain suit to condemn an easement in Bolsa Chica Street for the pipeline: *Southern California Water Company v. City of Huntington Beach, et al.,* OCSC Case No. 04CC08141. Ultimately, if the City did not grant a franchise, SCWC could condemn an easement and still build the water pipeline. Alternatively, if the Court of Appeal affirmed the Superior Court order, the City would be compelled to grant the franchise.

Consequently, City Staff began negotiating a franchise ordinance and settlement of the litigation. Three separate documents have been completed: Franchise Ordinance, Construction Agreement and Settlement Agreement. The Settlement Agreement was approved by the City Council at its January 3, 2005 closed session. The settlement is conditioned upon the approval of the Franchise Ordinance and Construction Agreement.

Briefly, the three documents provide as follows:

1. The Franchise Ordinance. The Franchise Ordinance is modeled after standard water franchises, and is very similar to the franchise agreement the City of Los Alamitos granted SCWC in 2000 to serve that City. It also resembles franchises Huntington Beach has granted Southern California Gas Company and Southern California Edison. The Franchise is for a fifteen-year term, and will yield franchise fee payments of less than $3,000 per year.

2. The Settlement Agreement. The Settlement Agreement provides for a $126,000 payment to the City for settling both suits. The payment is due if and when the City

Council approves the Franchise Ordinance and the Construction Agreement. By approving the Settlement Agreement, the City Council did not commit itself to approving the Franchise Ordinance or the Construction Agreement. The Council retains full discretion to reject or modify the Franchise or Construction Agreement, after conducting a noticed public hearing. However, if either agreement is rejected, or modified in a manner SCWC finds unacceptable, the Settlement Agreement is null and void. SCWC may then proceed with condemnation in Superior Court.

3. Construction Agreement. The Construction Agreement contains the conditions designed to mitigate the effect of pipeline construction on traffic on Bolsa Chica Road. Briefly, these conditions are as follows:

1. Construction will be open trench in the number 1, northbound lane, except that the intersections at Warner, Heil, Edinger, McFadden and Rancho Road will be bored.

2. Hours of construction and lane closures on Bolsa Chica are limited to 9:00 a.m. to 4:00 p.m., except that work from Argosy to Rancho will be performed at night, from 7:00 p.m. to 5:00 a.m.

3. Warner will remain open at all times.

4. The maximum length of lane closure on Bolsa Chica shall be one-quarter mile in each direction, excluding lane reduction tapering. At a minimum there will be two northbound and three southbound lanes from Rancho Road to Warner Avenue, and one northbound and one southbound lane from Los Patos to Warner Avenue.

5. Instead of the standard "T" patch repaving, SCWC shall grind and overlay the full width of the lane excavated, to a maximum of 12 feet in roadway width for any given section of roadway.

6. Pursuant to the encroachment permit, the Public Works Director will establish a construction schedule. Violating the schedule results in a fine of $800 per lane closed, per day.

7. Any disputes regarding enforcement of the Construction Agreement, specifically the reasonableness of the construction schedule and the imposition of liquidated damages, shall be submitted to binding arbitration. SCWC shall pay for the cost of the arbitrator.

Environmental Status: The CPUC approved the EIR for this project as part of its Decision No. 00-129-029 on October 5, 2000.

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REQUEST FOR COUNCIL ACTION

MEETING DATE: January 18, 2005 **DEPARTMENT ID NUMBER: CA 05-01**

Attachment(s):

City Clerk's Page Number	No.	Description
5	1.	Resolution No. 2005-7, entitled: A Resolution of the City Council of the City of Huntington Beach of Intention to Grant a Water Pipeline Franchise to Southern California Water Company with Exhibit A – Proposed Ordinance, Exhibit B – Proposed Construction Agreement and Exhibit C – Public Hearing Notice

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ATTACHMENT #1

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RESOLUTION NO. 2005-7

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH DECLARING ITS INTENTION TO GRANT A WATER PIPELINE FRANCHISE TO SOUTHERN CALIFORNIA WATER COMPANY

On October 5, 2000, Southern California Water Company, a California corporation ("SCWC," or "Grantee"), pursuant to Decision No. 00-129-029 of the California Public Utilities Commission ("CPUC"), obtained a Certificate of Public Convenience and Necessity ("CPCN") to construct a pipeline to provide water service to a development on Bolsa Chica Mesa; and

SCWC applied to the City on February 1, 2002 for a franchise to construct, operate and maintain a water pipeline pursuant to the CPCN;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Huntington Beach as follows:

SECTION 1. It is the intention of the City to grant a water pipeline franchise to Southern California Water Company. The terms of the proposed franchise are set forth in "An Ordinance Of The City Council Of The City Of Huntington Beach Granting A Pipeline Franchise For Transmitting Water In, Under, Along And Across Streets In The City Of Huntington Beach," attached hereto as Exhibit A. Concurrently with approving the Ordinance, the City intends to approve "An Agreement Between The City Of Huntington Beach And Southern California Water Company Regarding Construction Of A Water Pipeline," attached hereto as Exhibit B.

SECTION 2. On Tuesday, February 22, 2005, at 6:00 p.m. or as soon thereafter as the matter may be heard, in the regular meeting place of this City Council, City Council Chambers, City Hall, 2000 Main Street, Huntington Beach, California, the City Council will conduct a public hearing on an "An Ordinance Of The City Council Of The City Of Huntington Beach Granting A Pipeline Franchise For Transmitting Water In, Under, Along And Across Streets In The City Of Huntington Beach," at which time all persons having any objection to the granting of the franchise to Southern California Water Company may appear before the City Council and be heard thereon.

SECTION 3. The City Clerk is hereby directed to cause notice of said public hearing to be given by publication one time within fifteen (15) days of the adoption of this resolution, in a newspaper of general circulation. The notice shall be substantially in the form of Exhibit C hereto.

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SECTION 4. This Resolution shall take effect upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2005.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

1/5/05

REVIEWED AND APPROVED:

_____
City Administrator

INITIATED AND APPROVED:

_____
Director of Public Works

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EXHIBIT A

Exhibit A to
Res. No. 2005-7

ORDINANCE NO. Unnumbered

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH GRANTING A PIPELINE FRANCHISE FOR TRANSMITTING WATER IN, UNDER ALONG AND ACROSS STREETS, IN THE CITY OF HUNTINGTON BEACH

On October 5, 2000, Southern California Water Company, a California corporation ("SCWC," or "Grantee"), pursuant to Decision No. 00-10-029 of the California Public Utilities Commission ("CPUC"), obtained a Certificate of Public Convenience and Necessity ("CPCN") to construct a pipeline to provide potable water service to a development on Bolsa Chica Mesa; and

SCWC applied to the City on February 1, 2002 for a franchise to construct, operate and maintain a water pipeline pursuant to the CPCN;

WHEREAS, on _____, 2005, the City Council of the City of Huntington Beach adopted Resolution No. _____ setting forth the Council's intention to grant a water pipeline franchise; and,

WHEREAS, pursuant to Resolution No. _____, the City Council set the date of _____, 2005, at the hour of 6:00 p.m., as the time for a public hearing to allow interested persons to voice any objections to the granting of the franchise; and,

WHEREAS, on _____, 2005, the City Council conducted and concluded the duly noticed public hearing and it is now the desire of this Council to grant the franchise, in accordance with the terms and conditions specified in this Ordinance; and,

NOW, THEREFORE, the City Council of the City of Huntington Beach does ordain as follows:

SECTION 1. Definitions. Whenever in this Ordinance the words or phrases set forth in this Section are used, they shall have the respective meanings ascribed to them in the following definitions (unless, in the given instance, the context clearly indicates a different meaning):

(a) "Applicable Law" shall mean all present or future Federal, State, City, or other local laws, rules, regulations, franchises, codes, orders, permit requirements, judgments, injunctions, or decrees, or any judgment or order or decree by a court applicable to Grantee's Facilities or activities under this Franchise. Whenever the term "Applicable Law" is used, it shall be understood that SCWC shall not be required to comply with any City or other local laws, rules, regulations, orders, or permit requirements which are unconstitutional or which conflict with or which are inconsistent with the paramount authority of the State of California.

(b) "City" shall mean the City of Huntington Beach, a charter city, in its present incorporated form or in any later reorganized, consolidated or reincorporated form;

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(c) "City Property" shall mean the property or facilities owned by the City of Huntington Beach or the Redevelopment Agency of the City of Huntington Beach.

(d) "Contaminant" shall mean any "hazardous waste" as that term is defined in Section 1004(3) of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6903(5)).

(e) "Damages" shall mean all claims, losses, liabilities, causes of action, damages, judgments, debts, costs, contribution or indemnity, expenses (including but not limited to attorney's fees and costs) fines, penalties, orders injunctions and liens of every kind and nature, including, but not limited to claims relating to any Release of any Contaminant, claims for personal or bodily injury, wrongful death, injury to real or personal property, and including claims based on active negligence, gross negligence, contractual, statutory or strict liability, or otherwise, and any claims seeking judicial or administrative relief, or relating to any administrative proceedings by any governmental agency, whether or not any such claim is ultimately defeated.

(f) "Director" shall mean the Public Works Director of the City;

(g) "Facility" or "Facilities" shall mean the water pipeline, together with such related equipment including but not limited to valves, fittings, manholes, vaults, pumps and other appliances, appurtenances, or attachments located within the City, as Grantee may deem necessary or convenient for the purpose of conducting, transporting, conveying and carrying water under, along, across and upon the public Streets.

(h) "Franchise" shall mean this Ordinance granting a Franchise to SCWC, unless some other franchise is specified.

(i) "Grantee" shall mean Southern California Water Company, a California corporation and its lawful successors or assigns;

(j) "Lay and use" shall mean to lay, construct, erect, install, operate, maintain, use, repair, replace or remove;

(k) "Municipal Code" shall mean the Municipal Code of the City of Huntington Beach.

(l) "Person" shall mean any individual, person, firm, partnership or corporation.

(m) "Release" shall mean any release (as that term is defined in Section 101(22) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. §9601(22)), or disposal (as that term is defined in Section 1004(3) of the Resource Conservation and Recovery Act (RCRA, 42 U.S.C. §6903(3)), originating from any Facility(s) under this Franchise.

(n) "Remediation Costs" shall mean all costs and expenses, including the City's current rate of overhead, incurred by the City in performing any Remedial Work.

(o) "Remedial Work" means all "Remedial Action," as that term is defined in Section 101(24) of CERCLA [42 U.S.C. § 9601(24)], and all other actions necessary to Respond to,

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Remove, or Remedy, as those terms are defined in Sections 101(23), 101(24) and 101(25) of CERCLA [42 U.S.C. § 9601(23)(24) and (25)] a Release of a Contaminant.

(p) "Streets" shall mean the public streets, ways, alleys and places as the same may now or hereafter exist within the City.

SECTION 2. Grant of Franchise.

The City hereby grants a non-exclusive water pipeline franchise to Grantee to lay and use up to an 18-inch pipeline, together with such related equipment and Facilities as Grantee may deem necessary or convenient for the purpose of conducting, transporting, conveying and carrying water, under, along, across or upon the Streets and extending generally along the following route: southerly along Bolsa Chica Street from and including the intersection of Bolsa Chica Street and Rancho Road to the intersection of Bolsa Chica Street and Los Patos Street, then westerly on Los Patos Street to the intersection of Los Patos Street and Lynn Street, as more particularly depicted in Exhibit A attached hereto and in any additional territory, if any, annexed pursuant to Section 5, in which SCWC has a franchise.

This Franchise only authorizes the transportation of water in an underground pipeline. This Franchise does not authorize the transportation of any other hazardous or non-hazardous substances in the pipeline.

All street coverings or openings of traps, vaults, and manholes shall be constructed flush with the surface of the streets; provided, however, that vents for underground traps, vaults and manholes may extend above the surface of the streets when said vents are located in parkways between the curb and the property line subject to the prior approval of the Director, which approval shall not be unreasonably withheld.

SECTION 3. Term.

The term of this Franchise shall commence thirty (30) days after this Ordinance is adopted, and shall continue for a period of fifteen (15) years, unless (1) shortened by the voluntary surrender or abandonment by Grantee, (2) the State of California or some municipal or public corporation duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, this Franchise or all property actually used and useful in the exercise of this Franchise, and situated within the territorial limits of this state, municipal or public corporation purchasing or condemning such property; (3) this Franchise is forfeited for non-compliance with its terms and provisions; or (4) the CPUC revokes or terminates Grantee's CPCN to serve Bolsa Chica.

SECTION 4. Franchise Fee.

A. Amount of Franchise Fee.

The Grantee shall pay annually to the City at the times and places hereinafter specified, in lawful money of the United States, a sum equivalent to two percent (2%) of the gross annual

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receipts of Grantee arising from the use, operation or possession of the Franchise; provided, however, that such payments be not less than one percent (1%) of the Grantee's gross annual receipts derived under this franchise from the sale of water within the limits of the City.

B. Verified Statement.

The Grantee shall file with the City Clerk, within three months after the expiration of each calendar year, or fractional calendar year, following the effective date of this Franchise, and within three months after the expiration of each and every calendar year thereafter, a verified statement setting forth in detail the total gross receipts of the Grantee for the preceding calendar year or such fractional calendar year derived from the sale of water within the City, or otherwise arising from the use, operation or possession of this Franchise. Within fifteen (15) days after the time for filing such verified statement, Grantee shall pay to the City, the specified percentage of its gross receipts for the calendar year, or fractional calendar year, covered by the verified statement. Any neglect, omission or refusal by the Grantee to file the verified statement, or to pay the specified percentage of gross receipts at the times or in the manner herein provided shall constitute grounds for the declaration of a forfeiture of this Franchise and all rights of the Grantee hereunder.

C. Late Franchise Fee Payments.

Franchise fees due from Grantee are delinquent if not received by the City Treasurer on or before the due date during normal business hours. Should the due date occur on a weekend or legal holiday, the Franchise fees must be received by the Treasurer during normal business hours on the first regular working day following the weekend or legal holiday. If Grantor fails to remit any Franchise fee on or before the due date, Grantee shall pay interest at the rate of one percent (1%) per month or any fraction thereof on the amount of the fee from the date on which the fee first became delinquent, until paid.

D. Records. SCWC shall keep and preserve for a period of five (5) years subsequent to the date of the most recent Franchise fee determination all the records necessary to determine the amount of such Franchise fee. Upon request, Grantee shall permit the City or its duly authorized representative to examine all of Grantee's books, accounts, papers, maps, and other records kept or maintained by SCWC or under its control which concern the calculation of the Franchise fee. Said records shall be made available to the City for review at a location in the County of Orange designated by SCWC.

SECTION 5. Written Acceptance; Annexation/Consolidation.

The Franchise granted hereunder shall not become effective until written acceptance thereof shall have been filed by Grantee with the City Clerk of City. When so filed, such acceptance shall constitute a continuing agreement of Grantee that if and when City shall thereafter annex or consolidate with additional territory, any and all franchise rights and franchise privileges owned by Grantee therein, except a franchise derived under Section 19 of Article XI of the California Constitution as that section existed prior to the amendment thereof adopted on October 11, 1911, shall be deemed abandoned in the additional territory.

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SECTION 6. City's Right of Eminent Domain.

The Franchise granted hereunder shall not in any way or to any extent impair or affect the right of City to acquire the property of Grantee hereof either by purchase or through the exercise of the right of eminent domain, and nothing herein contained shall be construed to contract away or to modify or to abridge, either for the term hereof, or in perpetuity, City's right of eminent domain in respect to Grantee or any public utility, nor shall this Franchise ever be given any value before any court or other public authority in any proceeding of any character in excess of the cost to Grantee of the necessary publication and other sum paid by it to City at the time of acquisition thereof.

SECTION 7. Grantee's Construction, Repair and Indemnity Obligations.

A. Construction.

Grantee shall construct all Facilities, in accordance and in conformity with the parties' "Agreement Between the City of Huntington Beach and Southern California Water Company Regarding Construction of a Water Pipeline" and Applicable Law, including but not limited to the National Pollutant Discharge Elimination System (NPDES) and governing Air Quality Management District (AQMD) requirements, and all local ordinances, rules and regulations heretofore, or hereafter adopted by the City Council of City in the exercise of its police powers and not in conflict or inconsistent with the paramount authority of the United States of America, the State of California and, as to state highways, subject to the provisions of general laws relating to the location and maintenance of such facilities.

B. Repair.

Grantee shall replace, relocate, abandon, remove, operate and maintain all Facilities, in accordance and in conformity with Applicable Law, including but not limited to the National Pollutant Discharge Elimination System (NPDES) and governing Air Quality Management District (AQMD) requirements, and all local ordinances, rules and regulations heretofore, or hereafter adopted by the City Council of City in the exercise of its police powers and not in conflict or inconsistent with the paramount authority of the United States of America, the State of California and, as to state highways, subject to the provisions of general laws relating to the location and maintenance of such facilities.

C. Indemnity.

Grantee shall indemnify, defend and hold harmless the City, its officers and employees, when acting within the scope of their employment, from and against any and all liability for all Damages proximately resulting from any operations under this Franchise, and for all Damages proximately resulting from the failure of Grantee to well and faithfully observe and perform each and every provision of this Franchise. Nothing contained herein shall be construed to require the Grantee to indemnify the City, its officers or employees against any Damages or liability caused by the active

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negligence or willful misconduct of the City, its officers, agents, employees or independent contractors. Grantee shall be solely responsible for complying with Applicable Law in connection with the installation, repair, relocation or removal by Grantee of any of its facilities or by any person engaged by Grantee to install, repair, relocate or remove any such Facilities.

D. Compliance With Applicable Law.

Grantee shall comply at all times with Applicable Law.

E. Relocation.

Grantee shall, at the request of the City and at Grantee's sole cost and expense, remove or relocate any Facilities installed, used or maintained under this Franchise if and when made necessary by any change in grade, alignment or width of any public street, way, alley or place, or the construction of any subway or viaduct, or any other street improvement of any kind required by the City or the City Redevelopment Agency. Grantee shall relocate its Facilities to the nearest alternative location or other location as reasonably established by the Director, and within such time as the Director reasonably establishes. If Grantee fails to relocate its Facility within the required time, the City may cause the work to be done and shall keep an itemized account of the entire cost thereof, and Grantee shall reimburse the City or other public entity for its reasonable costs within ninety (90) days after presentation to Grantee of an itemized account of such costs.

F. Sale, Transfer or Assignment

At least thirty (30) days prior to any sale, transfer, assignment or lease of this Franchise, or any part thereof, or any of the rights or privileges granted thereby, Grantee shall file with the City written evidence of the same, certified thereto by Grantee or its duly authorized officers.

SECTION 8. Emergency Response Plans.

Grantee shall, at all times during the term of this franchise, maintain emergency response plans as required by regulatory agencies having jurisdiction.

SECTION 9. Authority of Director.

Grantee shall not perform any work pursuant to the Franchise without first obtaining an encroachment permit from the Director pursuant to Applicable Law; provided, that in cases of emergency affecting public health or safety or the preservation of life or property, Grantee shall to the extent reasonably practicable, apply for such permits no later than the next business day. All modifications and repairs of the Facilities shall be accomplished pursuant to Applicable Law.

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SECTION 10. Facility Location Maps.

Within ninety (90) days following the installation of any Facility, Grantee shall file a map or maps showing the accurate location and size of all its Facilities then in place, and shall, upon installation of any additional Facilities or upon removal, change or abandonment of all or any portion thereof, file a revised map or maps showing the location and size of all such additional and/or abandoned Facilities as of that date.

SECTION 11. Tunnel or Bore When Possible.

Where it is necessary to lay any underground pipes in or under any portion of a paved street, the same shall be done by a tunnel or bore, so as not to disturb the foundation of such paved street, to the extent it is practicable and economically reasonable to do. In the event that the same cannot be done, such work shall be done under a permit to be granted by the Director upon application therefor and subject to ordinances and rules adopted by the City in the exercise of its police powers and not in conflict with or inconsistent with the paramount authority of the State.

SECTION 12. Damage to Street or Property.

If any portion of any street shall be damaged by reason of defect in any of the Facilities maintained or constructed under this Franchise, or by reason of any other cause arising from the operation or existence of any Facilities constructed or maintained under this Franchise, Grantee shall, as soon as reasonably practicable and at its own cost and expense, repair such damage and restore such street or portion of street to as good a condition as existed before such defect or other cause or damage occurred, and so that the useful life of the street is not reduced. Such work shall be completed under the direction and approval of the Director, which approval shall not be unreasonably withheld, and in accordance with Applicable Law. Grantee shall obtain from the City an encroachment permit before doing any such work.

In the event of Release of a Contaminant by Grantee or from any Facility of Grantee, Grantee shall immediately conduct such Remedial Work and pay all Remediation Costs, at its sole expense, as is reasonably necessary to remedy the same in accordance with Applicable Law.

In the event that Grantee shall fail or neglect to make such Street repair, replacement, restoration work or conduct such Remedial Work, then thirty (30) days after written notice therefor has been given Grantee by the Director, the City may repair, replace or restore said Street at the expense of Grantee. Grantee agrees to pay to the City the reasonable cost of performing such work. The amount so chargeable shall be the direct cost of such work or the reasonable cost of such work (whichever is lower) plus the current rate of overhead being charged by the City for reimbursable work.

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SECTION 13. Grantee's Failure to Comply With Franchise.

The City may declare this Franchise forfeited at such time that Grantee fails, neglects, or refuses to comply with any of the provisions or conditions hereof following thirty (30) days' written demand for compliance or as soon thereafter as is reasonably practicable under the circumstances and as mutually agreed by the Director and the Grantee. Grantee shall, upon commencement of the work of compliance, prosecute the same with due diligence to completion. Grantee's obligations under Section 7(c) shall survive termination of this franchise.

SECTION 14. Grantee's Obligations Upon Expiration, Revocation or Termination.

Upon the permanent discontinuation of use of the Facilities or any portion thereof, Grantee shall, within twenty (20) days thereafter, provide written notice to the Director of Grantee's intention to either (1) abandon all, or a portion, of such Facilities in place, or (2) remove all, or a portion, of such Facilities. Such notice shall describe the location of the Facilities desired to be abandoned or removed and the relative physical condition of such Facilities. The Director shall determine whether such abandonment or removal may be effected without detriment to the public interest and under what conditions and terms the proposed abandonment or removal may be safely accomplished and shall then notify Grantee of such requirements. Grantee shall, within ninety (90) days thereafter, either remove or abandon all or a portion of such Facilities as may be reasonably necessary to comply with all provisions of Applicable Law.

SECTION 15. Surety Bond.

Grantee shall, within ten (10) days after the posting of this Ordinance, file with the City Clerk of City a corporate surety bond in the sum of Fifty Thousand Dollars ($50,000.00) on condition that Grantee shall well and truly observe, fulfill and perform each and every term, condition and requirement of this franchise. In the event of any breach of any condition of the aforesaid bond, the whole amount of the sum therein named shall be deemed to be liquidated damages, and the same shall be recoverable from the principal and sureties upon the bond. In the event that such breach does not result in a forfeiture of the franchise, Grantee shall be required to replenish the bond in the original amount as a condition to continued operation of the franchise.

SECTION 16. Insurance.

Grantee shall, at Grantee's sole cost and expense, keep or cause to be kept in full force and effect at all times, for the mutual benefit of City and Grantee, a comprehensive form of general public liability insurance against claims and liability for personal injury, death, or property damages arising from the use, construction, or maintenance of this franchise of at least One Million Dollars ($1,000,000.00) for bodily injury or death to any one person, at least Two Million Dollars ($2,000,000.00) for any one accident or occurrence, and at least Five-Hundred-Thousand Dollars ($500,000.00) for property damage.

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Grantee shall furnish City with certificates or endorsements representing all insurance required by this Ordinance. All such certificates or endorsements shall contain language to the effect that (1) the City, its officers and employees are listed as additional insureds, (2) the insurer waives the right of subrogation against City and against City's agents and representatives, (3) the policies are primary and noncontributing with any insurance that may be carried by City, and (4) the policies cannot be canceled or materially changed except after thirty (30) days notice by the insurer to City. Grantee shall furnish City with copies of all such certificates or endorsements promptly upon receipt of them. Grantee may effect for its own account any insurance not required under this Ordinance.

Grantee shall deliver to City, in the manner provided for notices, certificates or endorsements of all insurance policies required by this Ordinance, together with evidence satisfactory to City of payment required for procurement and maintenance of the policy, within the following time limits:

(i) For insurance required at the commencement of this Ordinance, within ten (10) days after this Ordinance becomes effective; and

(ii) For any renewal or replacement of a policy already in existence, within ten (10) days following the expiration or other termination of the existing policy.

If Grantee fails or refuses to procure or maintain insurance as required by this Ordinance, or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and paid for, City shall have the right at City's election and on ten (10) days notice, to declare the forfeiture of this Franchise.

SECTION 17. Notices.

Any notice required to be given under the terms of this Franchise may be served as follows:

Upon City, by serving the City Clerk personally, or by sending a written notice to the City Manager of the City Clerk of the City of Huntington Beach, 2000 Main Street, Huntington Beach, California 92648, by certified mail, overnight mail service, confirmed or hand delivery.

Upon Grantee, by sending a written notice to Grantee addressed to Southern California Water Company, 2143 Convention Center Way, Suite 110, Ontario, California 91764, Attention: Vice President Customer Service, by certified mail, overnight mail service, or hand delivery.

Either party may from time to time provide the other a notice of change of address in writing, which shall become operative upon receipt for purposes of this agreement.

SECTION 18. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City

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Council of the City of Huntington Beach hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional.

SECTION 19. Effective Date.

This Ordinance shall take effect thirty (30) days after the date of its adoption. The City Clerk shall certify to the passage and adoption of this Ordinance and within fifteen (15) days shall cause same to be published in a newspaper of general circulation in the manner provided by law.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____ 2005.

_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

REVIEWED AND APPROVED:

_____
City Administrator

INITIATED AND APPROVED:

_____
Director of Public Works

INITIATED AND APPROVED

_____
Director of Administrative Services

E-9.18

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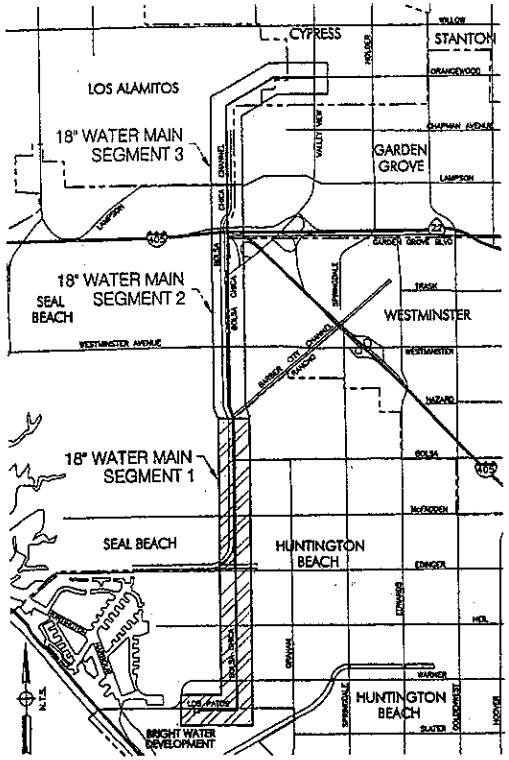
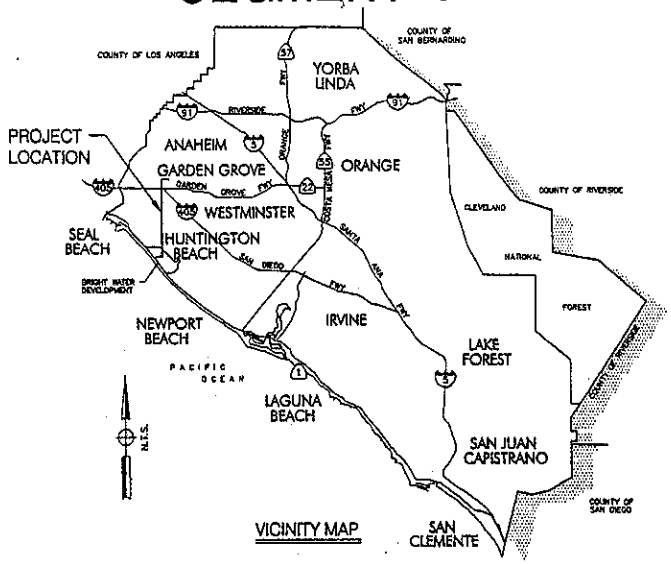
CONSTRUCTION PLANS FOR THE
BOLSA CHICA
18" DOMESTIC WATER TRANSMISSION PIPELINE
SEGMENT 1



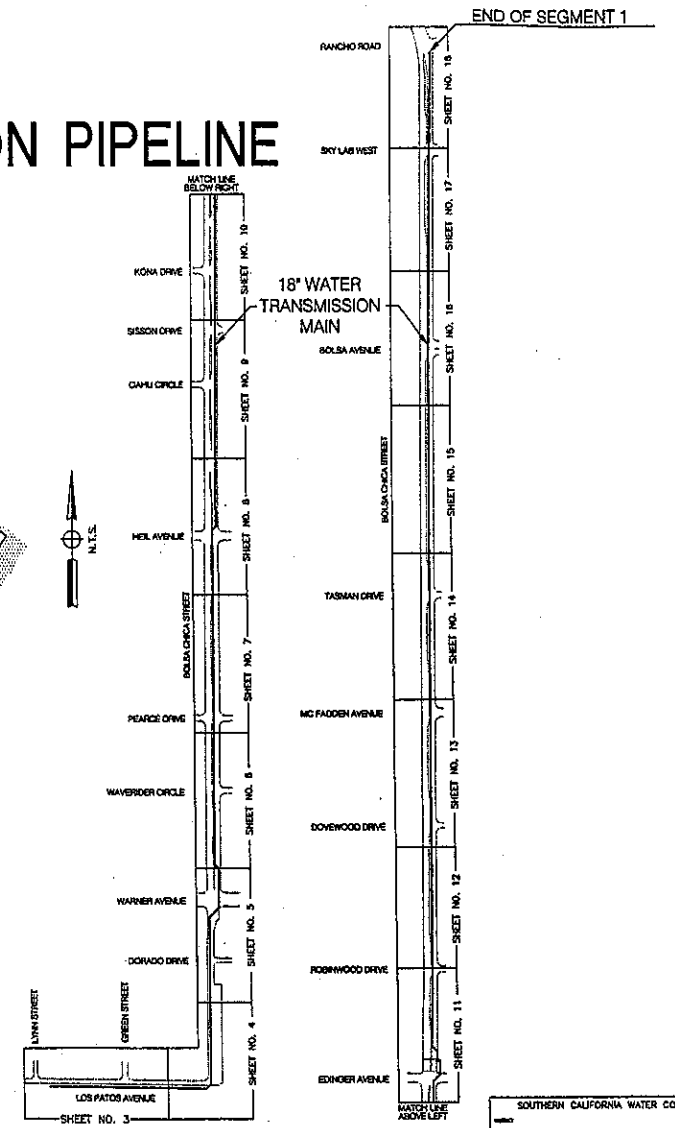
LOCATION MAP



VICINITY MAP

DRAWINGS INDEX

SHEET NO.	DWG. NO.	DESCRIPTION
1	T1	TITLE SHEET, MAPS, SHEET INDEX, GENERAL NOTES
2	T2	CONSTRUCTION NOTES, QUANTITIES, LEGEND, ABBREVIATIONS
3	L1	LOS PATOS AVE – FROM STA. 11+91.53 TO STA. 19+00.00
4	L2	LOS PATOS AVE – FROM STA. 19+00.00 TO STA. 23+50.00 BOLSA CHICA ST. – FROM STA. 23+50.00 TO STA. 28+00.00
5	L3	BOLSA CHICA ST. – FROM STA. 28+00.00 TO STA. 38+00.00
6	L4	BOLSA CHICA ST. – FROM STA. 38+00.00 TO STA. 48+00.00
7	L5	BOLSA CHICA ST. – FROM STA. 48+00.00 TO STA. 58+00.00
8	L6	BOLSA CHICA ST. – FROM STA. 58+00.00 TO STA. 68+00.00
9	L7	BOLSA CHICA ST. – FROM STA. 68+00.00 TO STA. 78+00.00
10	L8	BOLSA CHICA ST. – FROM STA. 78+00.00 TO STA. 87+00.00
11	L9	BOLSA CHICA ST. – FROM STA. 87+00.00 TO STA. 106+00.00
12	L10	BOLSA CHICA ST. – FROM STA. 106+00.00 TO STA. 116+00.00
13	L11	BOLSA CHICA ST. – FROM STA. 116+00.00 TO STA. 128+00.00
14	L12	BOLSA CHICA ST. – FROM STA. 128+00.00 TO STA. 136+00.00
15	L13	BOLSA CHICA ST. – FROM STA. 136+00.00 TO STA. 146+00.00
16	L14	BOLSA CHICA ST. – FROM STA. 146+00.00 TO STA. 156+00.00
17	L15	BOLSA CHICA ST. – FROM STA. 156+00.00 TO STA. 165+00.00
18	L16	BOLSA CHICA ST. – FROM STA. 165+00.00 TO STA. 172+00.00
19	L17	MISCELLANEOUS DETAILS
20–40	TC-1~TC-16	TRAFFIC CONTROL PLANS



KEY MAP

PLAN REVISION DATE: 02/25/02

CITY OF HUNTINGTON BEACH

APPROVED:

DIRECTOR OF PUBLIC WORKS DATE

DIGALERT
CIVIL TOLL FREE 1-800-422-4133
AT LEAST TWO DAYS BEFORE YOU DIG
UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA

MetroPointe Engineers
3151 Airway Avenue, Suite J-1
Costa Mesa, CA 92626
(714) 438-1095

TITLE SHEET

18" WATER TRANSMISSION MAIN SEGMENT 1

DEVELOPER: HEARTHSIDE HOMES

DATE	BY	REVISION	APP'D

SOUTHERN CALIFORNIA WATER COMPANY

PROJECT NO.

DRAWING NO. T1

SHT. 1 OF 40

SCALE: AS NOTED

E-9.20

EXHIBIT B

Exhibit B to
Res. No. 2005-7
(Proposed Agreement)

AN AGREEMENT BETWEEN THE CITY OF HUNTINGTON BEACH AND SOUTHERN CALIFORNIA WATER COMPANY REGARDING CONSTRUCTION OF A WATER PIPELINE

WHEREAS, on October 5, 2000, Southern California Water Company, a California corporation ("SCWC"), pursuant to Decision No. 00-10-029 of the California Public Utilities Commission ("CPUC"), obtained a Certificate of Public Convenience and Necessity ("CPCN") to extend water service to a development on the Bolsa Chica Mesa; and

WHEREAS, SCWC applied to the City on February 1, 2002, for a pipeline franchise pursuant to the CPCN; and

WHEREAS, a dispute has arisen between the City and SCWC regarding the terms of the franchise and the conditions under which SCWC will initially construct and install the pipeline and related appurtenances; and

WHEREAS, in order to resolve the dispute, the City and SCWC have agreed that prior to issuing a franchise to SCWC, the City and SCWC shall enter into this Agreement. This Agreement shall be null and void if the City does not issue a franchise in substantially the form of Exhibit A hereto (the "Franchise").

NOW, THEREFORE, the City Council of the City of Huntington Beach and SCWC agree as follows:

Section 1. Encroachment Permit.

SCWC shall not begin constructing the Facilities authorized by the Franchise without first obtaining an encroachment permit from the City Director of Public Works pursuant to Chapter 12.13 of the Municipal Code. As part of the encroachment permit application, SCWC shall submit to the Director detailed engineering and traffic control plans, including site-specific hours of construction, prepared under the supervision of a professional civil engineer or traffic engineer licensed to practice in the State of California. The application shall include a construction schedule identifying reasonable time periods for the completion of each stage of construction. If SCWC applies for the encroachment permit within 365 days of the effective date of the Franchise, SCWC shall pay any permit and inspection fees required by the terms of City Council Resolution No. _____ as it exists on December 1, 2004. If SCWC applies for the encroachment permit more than 365 days after the effective date of the Franchise, SCWC shall pay any permit and inspection fees required by the terms of City Council Resolution No. _____ as it exists at the time SCWC applies.

Upon submission of such plans and payment of such fees, the Director shall issue SCWC an encroachment permit, which permit shall constitute the sole encroachment permit necessary to construct the pipeline including a construction schedule. Such encroachment permit shall be consistent with this Agreement, shall not discriminate against SCWC, and shall include such terms and conditions that the Director may reasonably establish which are not in conflict with or inconsistent with this Agreement or the paramount authority of the State of California.

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Upon request, the Director shall grant reasonable time extensions to the construction schedule or modifications to the other terms and conditions due to changed conditions, inclement weather or inspection delays. Such requests may be made at any time during construction of the Facilities.

Section 2. Liquidated Damages.

(a) The Director may levy, and SCWC shall pay liquidated damages of Eight Hundred Dollars ($800.00) per 1,320 feet of lane closure per day, or any portion thereof, that exceeds without good cause the lane closures permitted under the construction schedule submitted by SCWC or any extensions granted by the Director pursuant to Section 1.

(b) As a condition to the issuance of the encroachment permit, SCWC shall file with the City Clerk of City a corporate surety bond in the sum of Fifty Thousand Dollars ($50,000.00) to secure SCWC's obligations hereunder. In the event SCWC fails to pay the amount of any liquidated damages owed to City within thirty days of receiving written notification from the City or, if SCWC files an appeal, within the timeframe established by Section 9, the City may recover from the principal and sureties upon the bond the amount of liquidated damages owed by SCWC.

Section 3. Construction Requirements.

(a) Construction of the Facilities shall be accomplished pursuant to the terms of this Agreement, the encroachment permit and Applicable Law.

(b) SCWC shall provide the City a telephone contact number, and staff it during regular business hours, to enable the City to report any concerns regarding Street work. After business hours such calls will be routed to an on-call supervisor. In the event that the City reports any concerns to SCWC, SCWC shall use its best efforts to respond in such time as the Director reasonably establishes, but SCWC shall not be required by the City to deviate from the terms of construction set forth in this Agreement and the encroachment permit.

(c) SCWC shall use directional boring or trenchless construction on the segments of the pipeline traveling through the intersections at Warner, Heil, Edinger, McFadden and Rancho Road.

(d) Every working day during construction, SCWC shall notify the designated City staff member of the location of the next day's construction activities. The number of concurrent construction locations may be limited by the City.

(e) When repairing Street work, SCWC shall grind and overlay the full width of the primary lane which has been excavated or otherwise damaged. In no case, shall SCWC be required to grind and overlay more than 12 feet in roadway width for any given section of roadway.

(f) SCWC will provide at its sole cost such shoring or other support as shall be reasonably required to support, maintain, and protect City Property, any storm drain or sewer constructed by the County of Orange, or any similar facilities by any other governmental agencies, from damages during construction of the Facilities.

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(g) The bearing area for all thrust block restraints shall be constructed against undisturbed earth and shall not impact the existing City water pipelines. Bearing area calculations shall be prepared by a licensed civil engineer and submitted to the City for review and approval. The civil engineer shall verify that the existing City water pipelines are not affected by any surcharge loading caused by the Facilities. All mechanical restraints for the Facilities shall be identified on the construction plans.

(h) During the excavation and construction of the Facilities, SCWC shall use its best efforts to maintain the condition of plant material on the landscaped medians. At the conclusion of construction, SCWC shall replace in-kind any dead or damaged plant material, clean any valves, lines and heads that are plugged by materials entering the lines due to the cutting/breaking of lines caused by SCWC, and otherwise restore the medians to their condition at the beginning of construction.

(i) SCWC's construction activities shall be confined to the hours between 9:00 a.m. and 4:00 p.m., Monday through Friday, with the exception that Bolsa Chica, north of Argosy shall be limited to 7:00 p.m. to 5:00 a.m.

All traffic lanes shall be reopened for traffic outside of the identified lane closure periods.

(j) Parking prohibitions on all roadways, where parking is currently permitted, shall be confined to the hours between 7:00 a.m. and 5:00 p.m. or to the hours of 5:00 p.m. to 6:00 a.m. in the case of nighttime construction for Bolsa Chica, north of Argosy.

(k) Street closures will not be allowed during construction except as permitted by the Director, who shall not unreasonably prohibit them. The maximum length of any lane closure activity on Bolsa Chica Street shall be one-quarter mile in each direction, excluding lane reduction tapering. The following minimum lane requirements shall be provided at all times during construction, subject to time of day restrictions as established above. These lane requirements are based on the alignment using the number 1 northbound lane of Bolsa Chica Street. Any modification to this alignment may result in the minimum lane requirements being modified during construction of the pipeline. Arterial street closures shall be limited as follows:

(i) Bolsa Chica Street – Rancho Road to Warner Avenue: Maintain two northbound through travel lanes and three southbound lanes in each direction during work hours.

Bolsa Chica Street – Warner Avenue to Los Patos: Maintain one southbound travel lane and one northbound travel lane during working hours.

Warner Avenue: No lane closures at any time.

(ii) Trenchless intersections: As provided by Section 3(c), construction at the following intersections shall use directional boring or trenchless construction. Should lane closures still be necessary at these intersections, they shall be limited as follows:

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Rancho Road at Bolsa Chica Street: Maintain one eastbound through travel lane, one westbound left turn lane and one westbound right turn lane during working hours.

McFadden Avenue at Bolsa Chica Street: Maintain one eastbound through travel lane and one westbound left / right turn lane during working hours, in addition to required through lanes on Bolsa Chica Street.

Edinger Avenue at Bolsa Chica Street: Maintain one eastbound through travel lane and one westbound left turn lane during working hours, in addition to required through lanes on Bolsa Chica Street.

Heil Avenue at Bolsa Chica Street: Maintain one eastbound through travel lane and one westbound left turn lane during working hours, in addition to required through lanes on Bolsa Chica Street.

Warner Avenue at Bolsa Chica Street: Maintain one eastbound through travel lane, one eastbound left turn lane, one westbound through travel lane and one westbound left turn lane during working hours, in addition to required through lanes on Bolsa Chica Street.

(iii) During construction of the Facilities, lane closures of local streets shall allow one two-way travel lane with flagger control.

(iv) Where traffic signal detection is impacted by the construction activities, signal control for the impacted lanes shall be placed on recall. All modifications to existing signal controls will be coordinated with the City Engineer. If traffic signal detection is impacted longer than ten working days, the City may require video detection be furnished and installed by the contractor.

(l) Loop detectors shall be restored to full operation within 10 days of completion of an intersection. Under no circumstances shall detectors be out of operation at more than one intersection at the same time.

(m) Prior to construction, SCWC shall contact the City's traffic signal maintenance crew to coordinate the installation of the video detection and the replacement of traffic signal detection on an as-needed basis as is reasonably determined by the Director.

(n) K-rail may be used to control traffic on an as needed basis.

Section 4. Completion Statement.

Upon the completion of the construction of the Facilities, SCWC shall submit as-built drawings and a statement to the Director identifying the permit or permits issued by the Director, the total length of, material and diameter of the pipeline, and any other Facility actually constructed.

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Section 5. Damage to City Property.

SCWC shall promptly repair any damage it causes to City property while constructing the Facilities, at its sole cost and expense to as good a condition as it was before such damage occurred. If SCWC, within thirty (30) days after receipt of written notice from the City instructing it to repair such damage, fails to commence with such repairs, or thereafter fails to diligently complete them, then the City immediately may do all work reasonably necessary to complete the repairs at the cost and expense of SCWC, which cost and expense SCWC agrees to pay upon demand. The amount so chargeable shall be the reasonable or direct cost of such work (whichever is lower) plus the current rate of overhead being charged by the City for reimbursable work. The Director may establish a repair period shorter than 30 days if public safety so demands. If such damage constitutes an immediate danger to the public health or safety requiring the immediate repair thereof, the City, without notice, may repair such damage and SCWC agrees to pay all reasonable costs the City incurs.

Section 6. Changes by Mutual Agreement.

Any of the terms of this Agreement may be changed upon the mutual consent and written agreement of the Director and SCWC.

Section 7. Insurance.

In addition to the insurance required from SCWC pursuant to the Franchise, SCWC shall cause the City to be named as an additional insured on all insurance policies of SCWC's general contractor. In addition, the City shall be named as an additional insured on all insurance policies of SCWC's subcontractors where SCWC also is named as an additional insured.

Section 8. Definitions.

All capitalized terms used herein shall have the same meaning as in the Ordinance granting SCWC its pipeline franchise.

Section 9. Dispute Resolution.

(a) In the event SCWC disagrees with any City decision related to the obligations and duties imposed by Sections 1-6 of this Agreement (including but not limited to the terms of the encroachment permit, the reasonableness of the construction schedule and the imposition of liquidated damages), SCWC may appeal any such decision by filing a notice of appeal with _____ (the "Hearing Officer") within 30 days of receiving written notice of the City's decision. No other disputes relating to this Agreement, the Franchise Ordinance or the Settlement Agreement shall be subject to arbitration of any kind unless the parties voluntarily agree to submit such dispute to arbitration. The remedies SCWC may seek include, without limitation, specific performance, injunctive relief, damages, rescission and declaratory relief.

(b) After receiving notice of the appeal, the Hearing Officer shall promptly hold an evidentiary hearing and issue a written determination resolving the dispute. SCWC shall bear the cost of any fees charged by the Hearing Officer related to the hearing. Each party shall bear its own costs and fees in preparing and presenting their case to the Hearing Officer. The decision of the

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Hearing Officer shall be final and binding. There shall be no right of appeal, except as provided under California Code of Civil Procedure §§ 1285.8 - 1287.

(c) With respect to an appeal of the imposition of liquidated damages, SCWC shall pay the City any amount the Hearing Officer determines is owed to City hereunder within 30 days after receipt of the Hearing Officer's written determination.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of _____, to be effective as of the effective date of the Franchise.

SOUTHERN CALIFORNIA WATER COMPANY, a California corporation

By:_____

_____
print name

ITS: *(circle one)* Chairman/President/Vice President

AND

By:_____

_____
print name

ITS: *(circle one)* Secretary/Chief Financial Officer/Asst. Secretary – Treasurer

CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California

_____
Mayor

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

REVIEWED AND APPROVED:

_____
City Administrator

INITIATED AND APPROVED:

_____
Director of Building & Safety

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EXHIBIT C

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EXHIBIT C

NOTICE OF PUBLIC HEARING REGARDING WHETHER THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH SHALL GRANT A WATER PIPELINE FRANCHISE TO SOUTHERN CALIFORNIA WATER COMPANY

Notice is hereby given that on January 18, 2005, the City Council of the City of Huntington Beach adopted a Resolution entitled "A Resolution of the City Council of the City of Huntington Beach Declaring Its Intention To Grant a Water Pipeline Franchise to Southern California Water Company." The City Council of the City of Huntington Beach hereby gives notice as follows:

On Tuesday, February 22, 2005, at 6:00 p.m. or as soon thereafter as the matter may be heard, in the regular meeting place of this City Council, City Council Chambers, City Hall, 2000 Main Street, Huntington Beach, California, the City Council will conduct a public hearing on whether to adopt "An Ordinance Of The City Council Of The City Of Huntington Beach Granting A Pipeline Franchise For Transmitting Water In, Under, Along And Across Streets In The City Of Huntington Beach," If adopted, this ordinance will grant Southern California Water Company a water pipeline franchise to provide water service to the Bolsa Chica Mesa, pursuant to Decision No. 00-10-029 of the California Public Utilities Commission. If granted, the franchise will terminate in fifteen (15) years, and provides that Southern California Water Company will pay to the City of Huntington Beach an annual fee consistent with Section 6231(c) of the California Public Utilities Code, as amended from time to time, and that, in the event such payment is not made, the franchise may be forfeited.

At the above-mentioned time and place any person interested will be heard on the proposed ordinance. A copy of the proposed ordinance is on file in the City Clerk's office. Any questions on the proposed ordinance may be directed to Scott Field, Assistant City Attorney, (714) 536-5555.

Any person may make written protest stating objections against granting the franchise by delivering the written protest signed by the protestant to the City Clerk at a time not later than 3:00 p.m. on February 22, 2005.

Dated: _____

/s/ Joan Flynn
City Clerk,
City of Huntington Beach

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