

**TERMS AND CONDITIONS OF FRANCHISE ISSUED  
BY SAN BERNARDINO COUNTY TO  
SAN GABRIEL VALLEY WATER COMPANY**

**CHAPTER 1 - GENERAL REGULATIONS**

**Parts:**

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2. **Compensation**
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**PART 1 - GENERAL PROVISIONS AND DEFINITIONS**

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**1 Definitions:** For the purposes of this Agreement, the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

- A. “Agreement” means the document containing the terms and conditions under which a public or nonpublic utility holds a franchise and operates within the County.
- B. “Board” means the Board of Supervisors of San Bernardino County.

- C. "Company" means San Gabriel Valley Water Company.
- D. "County" means San Bernardino County, State of California.
- E. "Department" means the San Bernardino County Administrative Office.
- F. "Director" means the County's Chief Executive Officer or his/her authorized designee.
- G. "Facilities" or "appurtenances" means all property of the franchisee, including, but not limited to, pipelines, pump stations, mains, and service connections with the franchisee's facilities, whether installed by the franchisee or not, which are erected, constructed, laid, operated or maintained in, upon, over, under, along or across any highway pursuant to any right or privilege granted by the franchise.
- H. "Franchisee" or "grantee" means the person to whom a franchise is granted.
- I. "Franchise payment period" is the period from January 1<sup>st</sup> through December 31<sup>st</sup> of the year granting the franchise, or fractional calendar year thereof, and each calendar year thereafter, during the term of the franchise.
- J. "Franchise report period" means the period from January 1<sup>st</sup> through December 31<sup>st</sup> of the year granting the franchise, or fractional calendar year thereof, and each year thereafter, during the term of the franchise.
- K. "Gross Annual Receipts" means all revenue, as determined in accordance with generally accepted accounting principles, which is received, directly or indirectly, by Company from or in connection with the sale, operation or distribution of utilities. Revenue shall not include: income received from the sale of merchandise; investment or interest income; bad debt write-offs or bad check collection fees or re-deposited checks.
- L. "Highway" means any public highway, freeway (except a state freeway), street, road, alley, lane or court or other public easement, and any public places, above and below the same, which now exists or which may hereafter exist, in any unincorporated territory of the County for which the County has the authority to grant a franchise.
- M. "Main" means any pipeline or conduit laid in, along or approximately parallel with any highway for the collection, transmission or distribution of any substance or commodity.
- N. "Person" means any individual, person, firm, partnership or corporation.
- O. "Road Department" means the San Bernardino County Department of Public Works.

P. "Service connection" means the wire, pipes or conduits connecting the building or place where the service or commodity supplied by the franchisee is used or delivered, or is made available for use or delivery, with the supply line or supply main in the highway, or with such supply line or supply main on private property.

**2 Continuation of Provisions:** The provisions of this Agreement, insofar as they are substantially the same as existing provisions relating to the same subject matter, shall be construed as restatements and continuations thereof, and not as new enactments.

**3 General Conditions for Franchises:** Every franchise hereafter granted by the County to lay or construct, from time to time, and for the period covered by the franchise, to maintain, operate, renew, repair, change the size of, remove or abandon in place, pipes and pipelines for utilities, for any purpose, together with all manholes, valves, appurtenances and service connections necessary or convenient for the operation of said pipes or pipelines in, under, along, or across any and all highways, shall be subject to the rules, regulations, restrictions and terms and conditions of this Agreement.

**4 Term of Franchise:** The term of the franchise shall be Twenty-five (25) years from the Effective Date (as defined below).

**5 Acceptance of Franchise:** The franchisee shall, within thirty (30) days after the adoption of the Ordinance granting the franchise, file with the Clerk of the Board a written acceptance of the terms and conditions of said Agreement by signing the acceptance on the last page of the Agreement. The "Effective Date" of the franchise shall be the date when both of the following conditions are satisfied: 1) the Ordinance granting the franchise is in effect; and 2) the franchisee files an acceptance of said franchise as provided in this Section.

**6 Grant Nonexclusive – Compliance with Regulations:** The granting of the franchise shall not be construed to prevent the County from granting any identical or similar franchise to any person other than the franchisee. Nothing herein contained shall be construed as a waiver, limitation, or surrender of the County's police power or to exempt the franchisee from compliance with all ordinances, resolutions, rules or regulations of the County now in effect, or which may be hereafter adopted, which are not inconsistent with the terms of the franchise. Nothing in this franchise, nor in any ordinance, regulation, or order adopted by the County pursuant to this Section, shall apply to or interfere with a public utility's operations, facilities, or services to the extent such matters are subject to the exclusive or primary jurisdiction of the California Public Utilities Commission.

**7 Insurance Requirements and Indemnification:** On or before commencement of any franchise operations, franchisee shall obtain, or provide satisfactory evidence of having, policies of insurance set forth below from companies authorized to transact business in

the State of California by the Insurance Commissioner of California.

- A. The franchisee shall, at its sole expense, indemnify, defend (with counsel reasonably acceptable to County), and hold harmless the County, its agents, officers and employees from and against any and all liability, expense, including defense costs and legal fees, all liability for damages proximately resulting from any and all operations under the franchise as required by Section 6296 of the Public Utilities Code, including, but not limited to, bodily injury, death, or property damage, including property of the franchisee, arising from or connected with, either directly or indirectly, franchisee's activities, operations or services hereunder, including any Workers' Compensation suits, liability, or expense arising from or connected with services performed on behalf of franchisee by any person pursuant to this franchise.
  
- B. Without limiting franchisee's indemnification of County pursuant to Section 7 A of Part 1 of this Agreement, franchisee shall provide and maintain at its own expense during the term of the franchise, the following programs of insurance covering its operations hereunder. Such insurance shall be provided by insurers satisfactory to the Director and satisfactory evidence of such programs shall be delivered to the Department, on or before the effective date of the franchise. Insurance policies and certificates evidencing coverage shall name San Bernardino County, its officers, agents, and employees as additional insured with respect to franchisee's operations under the franchise. Such evidence shall specifically identify the franchise and shall contain express conditions that the County is to be given written notice by registered mail at least thirty (30) days in advance of any modification or termination of any program of insurance.
  1. **Liability:** Such insurance shall be primary to and non-contributory with any other insurance maintained by County and shall name San Bernardino County, its officers, agents, and employees as additional insured, and shall include:
    - a. Comprehensive General Liability Insurance endorsed for Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than \$1,000,000 per occurrence. If the above insurance is written on a Claims Made Form, such insurance shall be endorsed to provide an extended reporting period of not less than five (5) years following termination of the policy.
  
  2. **Auto:** Comprehensive Auto Liability Insurance endorsed for all owned, non-owned and hired vehicles with a combined single limit of at least \$1,000,000 per occurrence.
  
  3. **Workers' Compensation:** A program of Workers' Compensation Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability Insurance with a \$250,000 limit,

covering all persons providing services on behalf of franchisee and all risks to such persons under the franchise. Franchisee may provide, if applicable, a certificate of consent to self-insure, issued by the Director of Industrial Relations of the State of California. Should franchisee utilize the self-insurance provision of this Section, and franchisee's Certification of Consent to Self-insure expires or is revoked, franchisee shall be required to provide a program of Workers' Compensation Insurance upon said expiration or revocation.

- a. Franchisee shall furnish the Director, prior to commencement of any franchise operations, either certified copies of said policies required by Subsection B of this Section, or a certificate of insurance for each of the required policies executed by the company issuing the policy, certifying that the policy is in force.
- b. No franchise operations shall commence until franchisee has complied with the aforementioned provisions of this Section, and any such operations shall be suspended during any period that franchisee fails to maintain said policies in full force and effect.
- c. It shall be the franchisee's obligation to provide evidence of current insurance policies.

**8 Faithful Performance Bond:** Within five (5) days after the effective date of the Agreement granting the franchise, franchisee shall file, and thereafter at all times during the life of the franchise keep on file with the Director, a corporate surety bond furnished to the County, in the penal sum of not less than \$100,000, or such other sum as may be specifically provided for in the Agreement granting the franchise, with surety to be approved by the Director, conditioned that franchisee shall well and truly observe, fulfill and perform each condition of the franchise and that in case of any breach of condition of the bond, as an alternative to revocation of the franchise, the whole amount of the penal sum shall be deemed to be liquidated damages and shall be recoverable from the principal and sureties of the bond. If said bond is not filed within five (5) days after the effective date of the Agreement granting the franchise, the award of the franchise may be set aside and the Agreement granting the franchise may be repealed at any time prior to the filing of said bond, and any money paid in consideration for award of the franchise shall be deemed forfeited. In the event that the bond, after it has been filed, shall at any time during the term of the franchise, in the opinion of the Director, become insufficient, franchisee agrees to renew said bond, with sureties to be approved by the Director, within ten (10) days after written notice to do so from the Director.

**9 Alternative to Bonds– Assignment of Certificates of Deposit or Share Certificates:**

A. As an alternative to the filing of a bond, the franchisee may deposit with the Director, and assigned to the County, certificates of deposit, or share certificates, or both, in the same amount as required on such bond, subject to all of the provisions of the County Code.

B. Letter of Credit or Security Fund: In addition to the performance bond required in Section 8 of Part 1 of this Agreement, the County may require a clean, irrevocable letter of credit or establishment of a security fund, to be maintained in an amount to be specified in this Agreement granting the franchise, as security for compliance with time and performance requirements of the franchise. In the event the County withdraws any funds from any such instrument(s), franchisee shall replenish the amount withdrawn within ten (10) business days. The rights reserved with respect to a letter of credit or a security fund are in addition to all other rights of the County.

## **10 Grant and Forfeiture Conditions:**

1. The franchise is granted and shall be held and enjoyed upon each and every condition contained in the Agreement granting the franchise and shall be construed against the franchisee.

2. In this Agreement, the County reserves the right to suspend or revoke and terminate a franchise and all rights and privileges of a franchisee in the event of a material breach of its terms and conditions. In interpreting this Section, material provisions shall include all labeled as such and all others, which, under all the facts and circumstances indicated, are a significant provision of the Agreement. A material breach by franchisee shall include, but shall not be limited to, the following:

- a. Violation of any material provision of the franchise or any material rule, order, regulation or determination of the County made pursuant to the franchise;
- b. Any fraud or deceit upon the County;
- c. Failure to complete system construction, reconstruction, or system extensions, as provided under the franchise;
- d. Failure to provide the types of facilities, equipment or services promised;
- e. Material misrepresentation of fact in the application for or negotiation of the franchise. The foregoing shall not constitute a material breach if in the opinion of the Director, the violation occurs without fault of the franchisee or occurs as a result of circumstances beyond its control. Franchisee shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its shareholders, directors, officers or employees.
- f. Failure to maintain insurance, bonding, emergency preparedness, accurate reporting, or timely relocation or abandonment of facilities.
- g. Repeated violations, even if individually non-material, may constitute cumulative grounds for material breach, suspension, or forfeiture.

3. The Director, prior to any suspension or revocation and termination of the franchise, shall give to the franchisee not less than fifteen (15) days' notice in writing of any default thereunder. If the franchisee fails to begin curing the default within the cure period established by the Director, or, after beginning such corrective action, fails to diligently pursue it to completion within the time specified by the Director, the Board shall hold a hearing at which the franchisee shall have the right to appear and be heard. Notice of the hearing shall be provided to the franchisee by certified mail not less than fifteen (15) days prior to the hearing.

4. Upon the conclusion of the hearing, the Board may determine whether such conditions are material and essential to the franchise and whether the franchisee is in material default with respect thereto and may declare the franchise suspended or revoked and terminated. No suspension, revocation, and termination shall become effective less than thirty (30) days after the Board's declaration to suspend, revoke, and terminate; and no lapse of time, expenditure or any other thing shall be deemed to give the franchisee any vested right or interest in the continuation of the franchise granted.

**11 Costs of Technical Assistance:** Franchisee shall pay the reasonable costs incurred by the County for any technical assistance deemed necessary by the County for obtaining independent verification of technical compliance with all franchise imposed standards. County shall not incur any such costs without fifteen (15) day written notice to franchisee

**12 Sale, Transfer, Stock Transfer, Lease, Assignment, Hypothecation or Change in Control of Franchise - Conditions:**

A. No direct or indirect Change in Control shall occur without prior written approval of the County, and payment of fees required by Part 2, Section 20, including transactions accomplished by merger, reorganization, asset sale, or management agreement. Approval may be conditioned on updated financial assurances, revised insurance, or operational commitments necessary to protect the public interest. The franchisee shall not sell, transfer, assign, lease, hypothecate, place in trust, or change the control of the franchise or any part thereof, except with the prior written approval of the Director, and after payment of the fees required by Part 2, Section 20, of this Agreement. The Director's consent shall not be unreasonably withheld. As used in this Section, "transfer" includes stock transfer and "control" includes actual working control in whatever manner exercised.

B. Franchisee shall inform the Director in writing of any pending sale, transfer, lease, assignment, hypothecation, placing in trust, or change in control, except as excluded in Subsection D. Transferor and transferee must file an application for Director's consent to transfer control of or assign the franchise as set forth in Subsections F and G of this Section. Such applications shall be accompanied by the fees required

in Part 2, Section 18 of this Agreement and shall be signed by duly authorized representative(s) with the signature(s) acknowledged by a notary.

C. Franchisee shall file with Director a certified copy of the duly executed instrument of such sale, transfer, assignment, lease, hypothecation, trust or change in control within thirty (30) days of the effective date of such transaction. If such instrument is not filed with the Director within thirty (30) days after the effective date of such transaction, the franchise shall be subject to forfeiture, and the Board may proceed to repeal the franchise.

1. As a condition to the granting of consent to such sale, transfer, assignment, lease, hypothecation, trust, or change in control, the Board may impose such additional terms and conditions upon the franchise and upon the grantee or assignee which the Director recommends or the Board deems to be in the public interest. Nothing herein contained shall be construed to grant to the franchisee the right to sell, transfer, assign, lease, hypothecate, place in trust, or change control of the franchise or any part thereof, except in the manner aforesaid. This Section applies to any assignment, whether by operation of law, by voluntary act of the franchisee, or otherwise.

D. Shareholders and/or partners of the franchisee may transfer, sell, exchange, assign or divest themselves of any interest they may have. However, in the event any such sale, transfer, exchange, assignment, divestment or other change gives control of twenty-five percent (25%) or more interest in franchisee's operations to any person, corporation, partnership or legal entity other than the holder of the controlling interest on the effective date of the franchise, or the effective date of the last assignment, sale, transfer, or other action requiring the County's consent, then prior approval of the current transaction shall be obtained from the County.

E. Consent to any such transfer shall only be refused if the Director finds that the franchisee is in noncompliance with terms and conditions of the franchise and/or if the transferee is lacking in financial ability to continue the operations authorized by the franchise.

F. Franchisee / Transferor's (assignor's) application shall include:

1. Identification and ownership of transferee. In its application for approval, transferor shall identify the transferee and its ownership as if transferee were an applicant for an initial grant.

2. Financial Statements. Current financial statements showing the financial condition of the franchisee as of the date of the application. Transferor shall also agree to submit financial statements showing the condition of franchisee as of the closing. Said financial statements must have been audited and certified by an independent certified public accountant and shall be submitted within ninety (90) days of the closing.

3. The submittal of a final accounting and report of franchise fees set forth in Part 1, Section 14 of this Agreement, within thirty (30) days of the effective date of approval of transfer/assignment of the franchise, or as of the date of close of the transfer/assignment. The transferee shall be responsible for any underpayment and shall be entitled to a credit for any overpayment.

G. Proposed Transferee's (assignee's) application shall include:

1. Current financial statements of the proposed transferee and other information and data, including but not limited to, sources of capital, as will demonstrate conclusively that transferee has all the financial resources necessary to acquire the pipeline system, carry out all of the terms and conditions of the franchise, remedy any and all defaults and violations of the provisions of this Chapter and Agreement granting the franchise in the transferor's past and present operations and make such other improvements and additions as may be required or proposed in the services and facilities, including but not limited to, upgrading, rebuilds, and extensions of facilities and equipment.

2. A statement of any changes in rates and charges which transferee proposes to make during the first three (3) years following approval of the transfer or assignment.

3. An express and unconditional written acceptance of the terms and conditions of the existing franchise, and the franchise as modified, as a condition to the transfer, accompanied by such guarantees as meet the requirements of Part 1, Section 5 of this Agreement.

4. A summary of the plans and commitments of the transferee to remedy the specific defaults and violations, if any, in the operations of transferor under the existing franchise.

**13 Overlapping Franchise Areas Held By One Franchisee:** In the event a franchisee acquires an additional franchise which results in the overlapping, in whole or in part, of any franchise service area(s), the Director shall determine which of the two (2) franchises shall prevail as to the overlapping area(s), and the franchise service area granted in the non-prevailing franchise shall be amended to delete the overlapping area(s).

**14 Franchise Fee Report Requirements:** The franchisee, during the term of the franchise, within ninety (90) days after the expiration of each calendar year, shall file with the Department, the following reports:

A. Four (4) copies of a report, verified by the oath of a duly authorized representative of the franchisee, setting forth in detail the computation of the

amount of the franchise payment due for the immediately preceding calendar year, or partial calendar year, as applicable.

Franchisee shall also provide, a detailed, audited profit and loss statement showing all gross receipts and expenses derived from the franchisee's franchise use, operation, or possession of the franchise during the reporting period; and, upon request, such additional data as is reasonably necessary in the opinion of the Director and the County Auditor-Controller to calculate or verify the calculation of the annual payment. Gross Annual Receipts shall include all revenue received in connection with water service.

B. A street and highway map or maps of any convenient scale on which shall be plotted the location of the entire distribution system, systems, or facilities covered by the report as of the last day of the franchise payment period, with that part of said system or systems located in County highways indicated by distinctive coloration or symbols.

If there are no pipeline additions or pipeline abandonment within the system for the reporting year, reference to the preceding year's map submission shall be sufficient.

C. A report, in duplicate, showing the lineal length and internal diameter of pipelines installed or abandoned, segregating such footage as to new mains laid, old mains removed, old mains abandoned in place, pursuant to each excavation permit during the immediately preceding franchise report period. The following types of reports shall be sufficient to satisfy the report requirement:

1. Copies of the excavation permits acquired from the appropriate County Department obtained for doing any work under the franchise, indicating the required information stated in this Subsection C, for which a permit is required during the immediately preceding franchise report period.
2. An internal report showing the amount of pipeline footage installed and/or abandoned pipeline during the immediately preceding franchise report period.

**15 Permit for Performance of Work:** Notwithstanding the granting of a franchise, the franchisee must first obtain any permits required by local, state, or federal agencies or governing bodies before commencing work under the franchise. The County, at its own discretion, may or may not issue an annual blanket permit for such work with limitations in compliance with Road Department standards. Franchisee shall be responsible for satisfying all permit conditions and adhere to all requirements of County standards to the extent permitted by applicable law.

**16 Severability:** If a court of competent jurisdiction holds any provision of the franchise invalid, the remainder of the franchise shall not be affected thereby.

## PART 2 - COMPENSATION

### Sections:

- 17 Rates
- 18 Franchise Fees
- 19 Proration of Payments
- 20 Prompt Payment – Delinquency Charge
- 21 Record Keeping Requirements
- 22 Audit

**17 Rates:** As consideration for the franchise granted, the franchisee shall pay to the County, the following:

**General:** In the case of an initial grant or renewal of franchise, in addition to the franchise fee in Section 18 of this Agreement, the franchisee shall pay to the County an initiation fee based upon the actual costs incurred in the execution of the franchise, and the sum of money sufficient to reimburse the County for all publication expenses incurred with the granting of the franchise, within thirty (30) days after the Board adopts the ordinance granting the franchise pursuant to the terms of this Agreement.

**18 Franchise Fees:** As further consideration for the franchise granted, franchisee shall pay to the County, two percent (2%) of the gross annual receipts of the franchisee arising from the use, operation, or possession of the franchise. These receipts shall include all revenue, as determined in accordance with the Uniform System of Accounts prescribed by the California Public Utility Commission, which is received, directly or indirectly, by franchisee from or in connection with the sale, operation or distribution of water. Revenue shall not include: income received from the sale of merchandise; investment or interest income; bad debt write-offs or bad check collection fees or re-deposited checks.

A. Such percentage shall be payable annually during the term of the franchise, according to the "franchise payment period" as defined in Subsection I of Part 1, Section 1 of this Agreement, and shall be due within fifteen (15) days after the time for filing of the report as defined in Part 1, Section 14 of this Agreement;

B. As used above, the phrase "two percent (2%) of the gross annual receipts of the Franchisee" shall be construed as that similar phrase is found in Sections 6006 and 6231 of the Public Utilities Code of the State of California.

1. The County reserves the right to change the franchise fee due at every five (5) year interval during the term, commencing from the effective date of the Agreement granting the franchise, after a public hearing determines that good cause exists and such action is not in conflict with the laws of the State of California.

2. Amendment of Franchise Act of 1937. If the Franchise Act of 1937 (Public Utilities Code Sections 6201-6302) is amended to increase the franchise payment formula, then the franchise payment formula shall be adjusted in conformity with the amended formula effective with the franchise fee due for the calendar year beginning closest to the effective date of such amendment.

3. Amendment or enactment of other applicable laws. If any applicable law, other than the Franchise Act of 1937, is amended to increase the franchise payment formula, then the franchise payment formula set forth herein shall be adjusted in conformity with the new formula beginning with the franchise fee due for the calendar year beginning closest to the effective date of such amendment; provided, however, that if such higher franchise payment formula is conditioned upon or enacted in consideration of other obligations, limitations, or requirements imposed upon the grantor of the franchise, then those obligations, limitations and requirements shall also become part of the franchise granted herein.

**19 Proration of Payments:** In the event of abandonment of facilities with the prior written approval of the County as provided herein, or in the event of removal of such facilities by the franchisee, the payments otherwise due the County for occupancy of the highways by such facilities shall be prorated for the calendar year in which such removal or abandonment occurs as of the end of the calendar month in which removal or abandonment took place.

**20 Prompt Payment – Delinquency Charge:** In the event franchisee fails to make the payments for the franchise on or before the dates due, as an alternative to revocation of the franchise, franchisee shall pay as an additional consideration the following amount: a sum of money equal to ten percent (10%) of the amount due. Said sum shall be due within thirty (30) days after written demand from the County, and failure to pay such charge will be grounds for forfeiture of the franchise.

**21 Record Keeping Requirements:** Franchisee shall keep and preserve all records, in connection with the use, operation, or possession of the franchise for the length of the franchise plus five years thereafter. This includes all records necessary to determine the amount of such franchise fees or other payments due under Part 2, Section 20 above. Franchisee, upon demand by County, shall make such records available for inspection by County or its authorized representative.

A. At all reasonable times, the franchisee shall permit County, or its duly authorized representative, to examine all facilities that the franchisee has erected, constructed, laid, operated, or maintained pursuant to the franchise, together with any appurtenances of the franchisee, and to examine and transcribe any and all books, accounts, papers, maps, and other records kept or maintained by the franchisee or under its control which relate to the operations, affairs, transactions, property or financial condition of the franchisee with respect to the franchise.

**22 Audit:** The County Auditor-Controller/Treasurer/Tax Collector, or any qualified

person designated by the County, upon reasonable advance notice to franchisee, at any reasonable time during regular business hours, may make examination at the franchisee's office or offices of its books and records for the purpose of verifying the franchise fees set forth in the statement required herein, subject to the following terms and conditions:

A. All books and records subject to examination by the County Auditor-Controller/Treasurer/Tax Collector, or other qualified person designated by the County, shall be made available within the franchisee's office where they are kept.

B. Records need not be made available until County executes and delivers to franchisee written confirmation that the County's request to examine the books and records is made pursuant to its audit rights herein and written confirmation that County will use the information obtained only for purposes of the audit, will not disclose any information it obtains to third parties without the prior written consent of franchisee, and it will maintain the confidentiality of any information reasonable designated by the franchisee as confidential. Nothing herein shall be construed to require franchisee to make available information which constitutes private or confidential information pertaining to specific customers of franchisee, without the prior written consent of the customer(s) involved.

C. County shall provide franchisee with the results of its audit. In the event County's audit reveals a discrepancy in the franchise fee amount set forth in the Franchisee's statement being audited, and said discrepancy is in excess of two per cent (2%) of the amount of payment set forth in the Franchisee's statement being audited, the following provisions shall be applicable:

1. If the audit reveals that in the event of a discrepancy, any additional franchise fee shall be paid within thirty (30) days after County's written demand therefor and the franchisee shall reimburse County for all costs for said audit, including (without limitation) any employee time incurred.

2. If the audit reveals that there was an overpayment of the franchise fee, then County shall refund the amount of the overpayment within thirty (30) days after franchisee's written demand therefor.

3. In the event of a disagreement between the parties, each party shall have all of the rights and remedies provided by the franchise and by law.

D. Confidentiality provisions shall not limit the County's disclosure obligations under the California Public Records Act. To the extent that franchisee provides County with any writings or other information pursuant to this Agreement, said writings or other information shall be subject to public disclosure under the California Public Records Act, Government Code section 7920.000 et seq. Franchisee agrees to indemnify, defend and hold harmless County in any action

brought to disclose any information franchisee asserts to be confidential. In the event a request for disclosure of any part or all of any information which franchisee has reasonably requested County to hold in confidence is made to the County, the County shall notify the franchisee of the request and shall thereafter disclose the requested information unless the franchisee, within five (5) days of receiving notice of the disclosure request, requests nondisclosure, provides County a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the County harmless in any/all actions brought to require disclosure. Franchisee waives any and all claims for damages, lost profits, or other injuries of any and all kinds in the event County fails to notify franchisee of any such disclosure request and/or releases any information concerning this Agreement received from the franchisee or any other source

### **PART 3 - CONSTRUCTION**

#### **Sections:**

- 23 General Regulations
- 24 New or Replacement Installations
- 25 Highway Work – Conditions and Requirements
- 26 Annual Completion Statement
- 27 Emergency Equipment and Personnel
- 28 Relocation of Pipelines and Appurtenances
- 29 Removal or Abandonment of Facilities – Procedures
- 30 Removal or Abandonment of Facilities – Failure to Comply – Remedies

**23 General Regulations:** Pipelines and appurtenances shall be constructed and maintained in a good workmanlike manner, in conformity with the terms and conditions of Chapter 7 of Division 4 of Title 1 of the County Code, or any other ordinance, resolution, agreement, rule or regulation, now or hereafter amended, adopted or prescribed by the County as may be applicable to the construction and maintenance of pipelines and appurtenances. All pipes laid under the franchise shall be of first-class material.

**24 New or Replacement Installations:** New installations or replacements of pipelines and appurtenances and all other facilities necessary for the installation, operation, maintenance, and safety of pipelines and conduits shall be laid and maintained only pursuant to permits issued by the Road Department. All such installations or replacements shall be reviewed by the Director as to the most desirable location in the highways of the County, and their decision shall be final and binding on the franchisee.

**25 Highway Work – Conditions and Requirements:** The work of constructing, laying, replacing, maintaining, repairing, abandoning or removing all pipelines and appurtenances authorized under the provisions of this Agreement in, over, under, along, or across any highway shall be done to the satisfaction of the Director, at the expense of the franchisee, and in accordance with the terms and conditions of this Agreement.

**26 Annual Completion Statement:** The franchisee shall submit an Annual Summary to the Department, identifying the permit or permits issued by the Road Department during the preceding calendar year, identifying the total length of pipeline, the construction of which was authorized under such permit or permits, the nominal internal diameter of the pipeline(s), and the total length of pipeline(s) or appurtenances actually laid.

**27 Emergency Equipment and Personnel:** At all times during the term of this franchise, the franchisee shall maintain or arrange for, on a twenty-four (24) hour-a-day basis, adequate emergency equipment and a properly trained emergency crew within a reasonable distance from any facilities installed or maintained pursuant hereto for the purpose of shutting off the pressure and the flow of the contents of such facilities in the event of an emergency resulting from an earthquake, act of war, civil disturbance, fire, flood, or any other cause whatsoever. The franchisee shall provide to the County a telephone number that is not available to the public whereby the County will be able to obtain status reports from the franchisee on a twenty-four (24) hour basis concerning interruptions of the supply of water to any portion of the County. Franchisee shall maintain and annually submit an Emergency Response and Continuity Plan coordinated with the San Bernardino County Fire Protection District and Office of Emergency Services.

**28 Relocation of Pipelines and Appurtenances:** The County reserves the right to change the grade, the width or to alter or change the location of any highway over which the franchise is granted. If any of the pipelines, facilities or appurtenances constructed, installed, or maintained by the franchisee pursuant to the franchise on, along, under, over, in, upon, or across any highway are located in a manner which prevents or interferes with the change of grade, traffic needs, operation, maintenance, improvement, repair, construction, reconstruction, widening, alteration or relocation of the highway, or any work or improvement upon the highway, the franchisee shall relocate permanently or temporarily any such facility at no expense to the County, upon receipt of a written request from the Director to do so, and shall commence such work on or before the date specified in such written request, which date shall be not less than thirty (30) days from receipt of such written request. Franchisee shall thereafter diligently prosecute such work to completion; provided, however, if such highway is subsequently established as a state highway, thereafter and so long as such highway remains a state highway, no such change of location shall be required for a temporary purpose.

- A. The County reserves the right for itself, and for all cities and public facilities which are now or may later be established, to lay, construct, repair, alter, relocate, and maintain subsurface or other facilities or improvements of any type or description in a governmental, but not proprietary, capacity within the highways over which the franchise is granted. If the County (or city or other public entity) finds that the location or relocation of such facilities or improvements conflicts with the facilities laid, constructed or maintained under the franchise, whether such facilities were laid before or after the facilities of the County (or such city or public entity), the

franchisee shall, at no expense to the County, city or public entity, on or before the date specified in a written request from the Director, which date shall be not less than thirty (30) days after the receipt of such notice and request, commence work to change the location either permanently or temporarily of all facilities conflicting with such improvements to a permanent or temporary location in said highways, with such work to be approved by the Director; thereafter franchisee shall diligently prosecute such work to completion. If such highway is subsequently established as a state highway, and while it remains a state highway, the rights of the State of California shall be as provided in Section 680 of the Streets and Highways Code.

**29 Removal or Abandonment of Facilities – Procedures:** At the expiration, revocation or termination of this franchise or the permanent discontinuance of the use of all or a portion of its facilities, the franchisee shall, within thirty (30) days thereafter, make written application to the Director for authority either (1) to abandon all or a portion of such facilities in place; or (2) to remove all or a portion of such facilities.

Such application shall describe the facilities desired to be abandoned, their location with reference to County highways, and shall describe with reasonable accuracy, the physical condition of such facilities. The Director shall determine whether any abandonment or removal, which is thereby proposed, may be effected without detriment to the public interest and under what conditions such proposed abandonment or removal may be effected. The Director shall then notify the franchisee of their determinations.

A. Within thirty (30) days after receipt of such notice, the franchisee shall apply for a permit from the Road Department to abandon or remove the facilities.

B. The franchisee shall, within sixty (60) days after obtaining such permit, commence and diligently prosecute to completion the work authorized by the permit.

**30 Removal or Abandonment of Facilities – Failure to Comply – Remedies:**

A. If any facilities to be abandoned "in place", subject to prescribed conditions, shall not be abandoned in accordance with all such conditions, the Director may make additional appropriate orders, including an order that the franchisee shall remove any or all such facilities. The franchisee shall comply with such additional orders.

B. In the event that the franchisee fails to comply with the terms and conditions of abandonment or removal as may be required by this Agreement, and within such time as may be prescribed by the Director, then the County may remove or cause to be removed such facilities at the franchisee's expense. The franchisee shall pay to the County the cost of such work, plus the current rate of overhead being charged by the County for reimbursable work.

C. If at the expiration, revocation or termination of this franchise, or the permanent discontinuance of the use of all or a portion of its facilities, the franchisee, within

thirty (30) days thereafter, fails or refuses to make written application for the above-mentioned authority, the Director shall make the determination as to whether the facilities shall be abandoned in place or removed. The Director shall then notify the franchisee of his determinations. The franchisee shall thereafter comply with the provisions of Part 3, Section 29 of this Agreement.

## **PART 4 – WATER PIPELINES – SPECIAL PROVISIONS**

### **Sections:**

- 31 Rights Granted
- 32 Plan Approval – By San Bernardino County Fire Protection District
- 33 Plan Approval – Conditions
- 34 Plan Approval – Exceptions Authorized
- 35 Fire Hydrants – Maintenance Agreement
- 36 Notices
- 37 Governing Law
- 38 Environmental Compliance
- 39 Levine Act Campaign Contributions Disclosure

**31 Rights Granted:** The franchisee holding a franchise for water pipelines shall have the right, during the term of the franchise, to make service connections with all property adjoining highways and to furnish and distribute water through said pipes and pipelines to all the unincorporated territory adjacent to said pipelines for any purpose. No vested property right is created by this franchise.

**32 Plan Approval – By San Bernardino County Fire Protection District:** All new pipelines, replacements, and extensions for domestic water service shall be constructed, laid, and designed according to plans approved by the San Bernardino County Fire Protection District (County Fire Chief).

**33 Plan Approval – Conditions:** The County Fire Chief shall approve such plans if the pipelines to be laid, extended, or replaced are so designed in conjunction with related facilities and the location of fire hydrants that they comply with required domestic demands and fire flows indicated by the Chief.

**34 Plan Approval – Exceptions Authorized:** The County Fire Chief may grant an exception to the requirements of Section 33 of this Agreement where there are practical difficulties or unnecessary hardships in carrying out the requirements of said Section.

**35 Fire Hydrants – Maintenance Agreement:** As further consideration for the granting of the franchise, the franchisee agrees that the maintenance, relocation, repair and replacement of each and every fire hydrant within its area of service shall be provided for in an agreement between the franchisee, County, and/or San Bernardino County Fire Protection District.

**36 Notices:** Any notice, consent, approval or other communication required or

permitted relative to this Agreement shall be in writing and may be personally served, in one of the following manners; delivered by over-night courier or deposited in the United States mail, first-class, certified or registered, postage prepaid, return receipt requested, addressed to such party, or electronic transmission as available, at its address shown below. Either party may change its address for the purposes of this Section by giving written notice of such change to the other party in the manner provided in this Section.

**COUNTY:**

San Bernardino County  
County Administrative Office  
385 North Arrowhead, 5<sup>th</sup> Floor  
San Bernardino, CA 92415-0120  
Attn: Chief Executive Officer  
By email (on file)

**FRANCHISEE:**

San Gabriel Valley Water Company  
P.O. Box 6010  
El Monte, CA 91734  
Attn: General Counsel  
By email (on file)

Any such notice, consent, approval or other communication shall be deemed received, in the case of electronic transmission, on the date of sending if transmitted prior to 5:00 P.M. PST or PDT, whichever is applicable on the date of transmission; in the case of overnight mail, the next business day following the date of mailing; and, in the case of regular mail, three (3) business days after the date of deposit into the United States mail.

**37 Governing Law:** This franchise shall be governed by California law. Venue shall lie exclusively in San Bernardino County.

**38 Environmental Compliance:** Franchisee bears all responsibility and costs for CEQA compliance, hazardous materials, contamination, and remediation arising from franchise operations.

**39 Levine Act Campaign Contributions Disclosure:** Franchisee has disclosed to the County using Exhibit "A" – LEVINE ACT CAMPAIGN CONTRIBUTION DISCLOSURE, whether it has made any campaign contributions of more than \$500 to any member of the Board of Supervisors.

**[Signature on following page]**

San Gabriel Valley Water Company by execution hereof by its duly authorized officer, accepts the franchise granted hereunder in accordance with the Terms and Conditions of Franchise Issued By San Bernardino County to San Gabriel Valley Water Company as set forth herein.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## **EXHIBIT “A”**

### **Levine Act –**

### **Campaign Contribution Disclosure**

**(formerly referred to as Senate Bill 1439)**

The following is a list of items that are not covered by the Levine Act. A Campaign Contribution Disclosure Form will not be required for the following:

- Contracts that are competitively bid and awarded as required by law or County policy
- Contracts with labor unions regarding employee salaries and benefits
- Personal employment contracts
- Contracts under \$50,000
- Contracts where no party receives financial compensation
- Contracts between two or more public agencies
- The review or renewal of development agreements unless there is a material modification or amendment to the agreement
- The review or renewal of competitively bid contracts unless there is a material modification or amendment to the agreement that is worth more than 10% of the value of the contract or \$50,000, whichever is less
- Any modification or amendment to a matter listed above, except for competitively bid contracts.

#### **DEFINITIONS**

Actively supporting or opposing the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County’s decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County’s decision on the matter; or (d) when the person/company’s agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County’s decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsidiary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;

- (2) there is shared management and control between the entities; or
- (3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), “shared management and control” can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

**Franchisee must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.**

1. Name of Franchisee: \_\_\_\_\_
2. Is the entity listed in Question No.1 a nonprofit organization under Internal Revenue Code section 501(c)(3)?

Yes  If yes, skip Question Nos. 3-4 and go to Question No. 5      No

3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision:  
\_\_\_\_\_

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded ("closed corporation"), identify the major shareholder(s):  
\_\_\_\_\_

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship

6. Name of agent(s) of Franchisee:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district.

Company Name	Subcontractor(s):	Principal and/or Agent(s):

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name

9. Was a campaign contribution, of more than \$500, made to any member of the San Bernardino County Board of Supervisors or other County elected officer involved with this Contract within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No

Yes  If **yes**, please provide the contribution information in Question 11.

10. Has an agent of Franchisee made a campaign contribution of any amount to any member of the San Bernardino County Board of Supervisors or other elected officer involved with this Contract while award of this Contract is being considered?

No  If no, please skip question 11.

Yes  If **yes**, please provide the contribution information in Question 11.

11. Name of Board of Supervisor Member or other County elected officer: \_\_\_\_\_

Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing the Contract, Franchisee certifies that the statements made herein are true and correct. Franchisee acknowledges that agents are prohibited from making any campaign contributions, regardless of amount, to any member of the Board of Supervisors or other County elected officer involved with this Contract, while award of this Contract is being considered and for 12 months after a final decision by the County. Franchisee understands that the other individuals and entities (excluding agents) listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$500 to any member of the Board of Supervisors or other County elected officer involved with this Contract, while award of this Contract is being considered and for 12 months after a final decision by the County.