

SAN JOSE WATER WORKS (U168W)
San Jose, California

Original
Canceling _____

Cal. P.U.C. Sheet No. 460-W
Cal. P.U.C. Sheet No. _____

Form No. 13
MAIN EXTENSION CONTRACT
"C RULE"
INSTALLATION OF WATER FACILITIES
IMPROVEMENT DISTRICT

PLEASE REFER TO TARIFF BOOK FOR SAMPLE FORM

(To be inserted by utility)

Issued by

(To be inserted by Cal. P.U.C.)

Advice No. 171

Fred R. Meyer
Chief Fin. Officer
and Treasurer

Date Filed Oct 20 1982

Effective Nov 19 1982

Dec. No. _____

Resolution No. _____

TITLE

MAIN EXTENSION CONTRACT
"C RULE"
INSTALLATION OF WATER FACILITIES
IMPROVEMENT DISTRICT

THIS AGREEMENT, made and entered into this _____ day of _____, 19 ____, by and between _____, a municipal corporation of the State of California (hereinafter called "City"), and SAN JOSE WATER WORKS, a California corporation (hereinafter called "Utility"),

WITNESSETH:

RECITALS:

A. The City Council of City, pursuant to the provisions of the Municipal Improvement Act of 1913, adopted its Resolution of Intention No. _____ on _____, 19 ____, for the formation of special assessment district designated as _____ (hereinafter called the "District"), to accomplish, among other things, the installation of a water supply service consisting of water mains, fire hydrants, valves, meters, services, connectors, and related facilities.

B. The water facilities contemplated for construction and installation within the District are shown and depicted on the sketch attached hereto, marked Exhibit "A" and by this reference made a part hereof, and include services (including service pipes, fittings, gates and housings therefor, meter boxes and hydrant connections) to be installed in accordance with the approved Plans

and Specifications and with Utility's usual practices, and are hereinafter referred to as the "Facilities".

C. Under the special assessment district proceedings referred to above, said Facilities are to be constructed by Utility.

D. Pursuant to the provisions of Section 10111 of the Streets and Highways Code of the State of California, title to said facilities shall vest in Utility after they have been completed and accepted, and the same shall constitute a part of its system and at all times thereafter be used, operated, maintained and managed by it as a part of such system.

NOW, THEREFORE for and in consideration of their mutual covenants and agreements, and subject to the terms and provisions herein contained, the parties hereto do hereby agree as follows:

1. Applicable Rule. This agreement is entered into pursuant to the requirements and in accordance with the various applicable provisions of Utility's Main Extension Rule No. 15, hereinafter referred to as the "Rule", in effect and on file with the California Public Utilities Commission ("Commission"); a copy of the Rule is attached hereto as Exhibit B. This agreement does not, therefore, require specific authorization of the Commission to carry out its terms and conditions.

2. City's Deposit. The estimated total installed cost of the Facilities, hereafter referred to as the "Estimated Cost", is \$_____ of which \$_____ represents the value of oversizing mains to meet City's fire flow demand

requirements.

City, upon receipt of cash from the sale of assessment bonds in said proceedings, will advance to Utility an amount equal to the Estimated Cost. The \$_____ amount, representing the value of oversizing mains to meet City's fire flow demand, shall not be Subject to refund hereunder.

3. Installation of Facilities. Utility agrees that it will, as soon as necessary materials and labor are available and necessary permits, franchises, licenses or other governmental authorizations have been obtained, commence and prosecute to completion in accordance with the timetable to be established by City, the work of installing the Facilities. Utility reserves the right to make such changes in design or materials as it may deem necessary subject to the prior approval of City. Within sixty (60) days after Utility has ascertained its actual costs in installing the Facilities, it will provide City with a statement of the same showing in reasonable detail the costs incurred for materials, labor and other direct and indirect costs, overhead and total costs, or unit costs or contract costs, whichever are appropriate. If such actual construction costs shall not have been determined within one hundred twenty (120) days after completion of construction work, a preliminary determination of actual costs shall be submitted, based upon the best available information at that time. If such actual costs as finally determined shall be greater or less than the Estimated Cost, the difference shall be paid by City to Utility, or repaid by Utility to City, as the case may be, and the Estimated Cost adjusted

accordingly. The estimated Cost, as so adjusted, shall be City's Advance Subject to Refund. If at any time following installation of the Facilities, Utility, upon written request of City, shall abandon a portion of the Facilities, Utility shall promptly notify City of the installed cost of the Facilities so abandoned, and City's Advance Subject to Refund shall, as of the date of such notice by Utility, be reduced by the amount of such installed cost set forth in such notice.

City shall make any payment to Utility hereunder only from the proceeds of assessments levied and bonds sold in said special assessment proceedings. There shall be no liability upon the City to make such payment from any other source of funds.

4. Engineering and Street Grades. City agrees to set or cause to be set stakes on the street within the limits of the District, as shown on said Exhibit "A", and provide Utility or cause Utility to be provided with finished street grades and typical cross sections to enable Utility to determine a location for the mains and the depth to which they are to be laid. Utility shall determine the locations and depths of the mains in relation to the data furnished or caused to be furnished by City. City shall provide or cause Utility to be provided with horizontal and vertical control in the field sufficient to allow Utility to proceed with the installation of Facilities. Utility shall commence with the installation of the Facilities upon notification by the Director of Public Works of City that horizontal and vertical controls have been set.

5. Operation of Facilities. Upon completion of the Facilities and acceptance thereof by City, and subject to all of the terms and conditions hereof, Utility agrees to accept City's conveyance thereof in the form hereinafter specified, and thereafter said Facilities shall constitute a part of Utility's system and at all times thereafter be used, operated, maintained and managed by Utility as a part of such system in accordance with Utility's applicable rates and rules on file with and authorized from time to time by the California Public Utilities Commission.

6. Construction Delay. Utility shall not be responsible for any delay in construction of the Facilities resulting from shortage of labor or materials, strikes, labor disturbances, war, riots, weather conditions, governmental rule, regulation or order, including orders or judgments of any Court or commission, delays in obtaining necessary rights-of-way, act of God, or any cause or condition of like or unlike characteristic, which is beyond the control of Utility.

7. Refund. Provided that Applicant is not in default hereunder, Utility agrees to make annual refunds hereunder to Applicant or such other party as may be entitled thereto in cash, without interest, for a period not to exceed forty (40) years from the date hereof, commencing not later than six months after the first anniversary of the date hereof. Each such annual refund shall equal 2½ of Applicant's Advance Subject to Refund. If any portion of Applicant's Advance Subject to Refund shall not have been refunded upon termination of said 40 year period, Utility

shall refund said portion to Applicant with the last refund payment hereunder. The total amount so refunded shall not exceed Applicant's Advance Subject to Refund, without interest.

8. Utility's Right of Offset. In the event City shall become entitled to a repayment or refund under the provisions of this Agreement, Utility shall have the right at such time to offset against the amount then due City the total amount of any indebtedness then due or owing by City to Utility.

9. Notices. Any notice which it is herein provided may or shall be given by either party to the other shall be deemed to have been duly given when deposited in the United States mail, registered or certified, postage prepaid, and addressed to the party to whom such notice is given at its following respective address:

To City:

To Utility: SAN JOSE WATER WORKS
 P.O. Box 229
 374 W. Santa Clara Street
 San Jose, CA 95196

Either party, by notice given as hereinabove provided, may change its address to which notice shall thereafter be addressed.

10. Assignment. This Agreement shall not be assignable by operation of law, or otherwise, by City or Utility, unless the party desiring such assignment first obtains the consent

thereto of the other party, and the assignee in writing assumes and covenants to perform all of the obligations that would be transferred by such assignment.

11. Successors and Assigns. Subject to the provisions of the preceding Paragraph 10, this Agreement shall inure to the benefit of and shall bind the respective successors and assigns of the parties hereto.

12. Jurisdiction of Public Utilities Commission. This Agreement shall at all times be subject to such changes or modifications by the Public Utilities Commission of the State of California as the Commission may from time to time direct in the exercise of its jurisdiction.

13. Bonds Securing Performance and Labor and Materials. Utility agrees to provide City and deposit with the City Clerk, prior to commencement of installation of said Facilities, a good and sufficient bond securing the faithful performance by Utility of all of the work and construction of all of the Facilities, required by this Agreement within the time hereinabove specified, and also a good and sufficient payment bond securing the payment by Utility of all bills for labor and materials incurred in the construction of any and all of said Facilities, and the doing of all other work herein agreed to be done by Utility. Each of said bonds shall be written for a penal sum of \$_____.

14. No Agreement with Developer. Utility agrees that, pursuant to the provisions of subsection (d) of Section 10110 of the Streets and Highways Code of the State of California to the extent that the utility facilities aforesaid have been financed

by special assessments, no main extension refund agreement shall be entered into with any developer.

15. Sale of Facilities to Utility. City shall; upon completion and acceptance of the Facilities, execute and deliver to Utility a deed of conveyance in the form attached hereto and identified as Exhibit "C", conveying the Facilities to Utility.

16. Refund for Benefit of Lands. City agrees that it shall pay any and all refunds made by Utility under the terms of Paragraph 7 hereinabove to those persons whose lands have been specially assessed to pay the costs of constructing and installing the Facilities who have paid all or some portion of such assessment, said repayments to be made by City in accordance with the provisions of Section 10110.1 of the Streets and Highways Code of the State of California.

17. Indemnification. Utility agrees to indemnify hold City harmless from and against any and all damages for injury to persons or property caused by Utility in the construction, reconstruction, repairs, maintenance or operation of the Facilities.

18. Signature. It is agreed that the signature of all parties to this Agreement is based upon and predicated upon consummation of special assessment and assessment bond proceedings to be undertaken by City. It is agreed that City is signing this Agreement solely as trustee for the property owners within the area of _____
_____ that it is assuming no direct liability for payment of any money provided for herein and that

its only liability and responsibility is that of conducting the special assessment proceedings referred to in the form provided by law, except to the extent that City makes a City contribution with respect thereto. It is further understood that City cannot pledge itself in advance that said special assessment proceedings will give City jurisdiction to confirm said assessment and that all terms and provisions of this Agreement are subject to said special assessment and assessment bond proceedings being consummated. City is to pay sums to be paid pursuant to this Agreement only out of monies raised in said special assessment proceedings and out of no other funds.

WITNESS THE EXECUTION HEREOF the day and year first hereinabove written.

a municipal corporation

ATTEST:

By _____
Its

"City"

By _____
Its

SAN JOSE WATER WORKS
a California corporation

By _____
Vice President

By _____
Secretary

"Utility"

CONVEYANCE

KNOW ALL MEN BY THESE PRESENTS

That _____ , a municipal corporation of the State of California, for good and valuable consideration, the receipt whereof is hereby acknowledged, does hereby assign, transfer, sell and convey to San Jose Water Works, a California corporation, those certain water service facilities heretofore installed and constructed in _____ pursuant to its Resolution of Intention No. _____, adopted on _____, 19 ____, in the approximate locations shown on the sketch marked Exhibit "A" and made a part hereof, and composed of the facilities particularly described thereon.

Dated: _____

a municipal corporation

By _____
Its

ATTEST

By _____
Its