

SAN JOSE WATER COMPANY
(U-168-W)
FORM 16
Relocation of Water Facilities

A G R E E M E N T

THIS AGREEMENT, made and entered into this _____ day of _____, 19 _____, by and between the person or persons listed in Paragraph 1 hereof, hereinafter collectively referred to as "Applicant," and SAN JOSE WATER COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of California, hereinafter referred to as "Utility,"

W I T N E S S E T H:

WHEREAS, Applicant is the owner of certain real property situated, in the County of Santa Clara, State of California; and

WHEREAS, Utility is presently legally operating and maintaining certain water facilities owned by Utility in an area in said County of Santa Clara, as more particularly shown on that certain map attached hereto marked Exhibit "A" and by this reference made a part hereof, said facilities being hereinafter referred to as the "Old Facilities"; and

WHEREAS, Applicant has requested Utility to undertake certain construction work involving the relocating, removing or abandoning of the Old Facilities and/or the installation of certain new water facilities, hereinafter referred to as the "New Facilities", all as more particularly set forth on Exhibit "A" hereto; and

WHEREAS, such work is not covered by Utility's Rule 15, a copy of which is attached hereto as Exhibit B.; and

WHEREAS, Utility is willing to accomplish such work upon the New and Old Facilities, said facilities being hereinafter sometimes referred to collectively as the "Total Facilities", provided that the actual total installed cost of the same shall be borne by Applicant as more particularly set forth below;

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements, terms and provisions herein contained, it is agreed as follows:

1. Applicant. The names, addresses and descriptions of the person or persons, partnership or corporation herein collectively referred to as Applicant are as follows:

| <u>Name</u> | <u>Address</u> | <u>Description</u> |
|-------------|----------------|--------------------|
|-------------|----------------|--------------------|

2. Applicable Form. This agreement is entered into pursuant to the requirements and in accordance with the form of agreement in effect and on file with the California Public Utilities Commission (Commission). This Agreement does not, therefore, require specific authorization of the Commission to carry out its terms and conditions.

3. Applicant's Deposit. The estimated total installed cost of accomplishing work upon the Total Facilities, hereinafter referred to as the "Estimated Cost," is \$ _____ Applicant has deposited with Utility an amount equal to the Estimated Cost, receipt of which is hereby acknowledged by Utility.

The Estimated Cost shall include any income tax component authorized by the Commission at the date of execution of this agreement.

4. Installation of Facilities. Utility agrees that it will, as soon as necessary material and labor are available and necessary permits, licenses, other governmental authorizations, easements and rights of way in form satisfactory to Utility have been executed by Applicant and delivered to Utility, commence and prosecute to completion with all reasonable diligence the work upon the Total Facilities. Utility reserves the right to make such changes in design or materials as it may deem necessary. If such change results in a 10% or greater increase in the Estimated Cost, Utility shall give written notice to Applicant of the amount of such cost increase and will demand an additional deposit to cover the increased cost. If within ten (10) days of giving such notice of cost increase, Applicant gives Utility written notice to discontinue such work upon the Total Facilities or fails to provide the additional required deposit, Utility shall discontinue the same and shall forthwith refund to Applicant the unexpended portion, if any, of Applicant's deposit. If Applicant does not give Utility written notice to discontinue

such work within ten (10) days after such notice of cost increase, Utility may proceed with such work at its option. Within sixty (60) days after Utility has ascertained its actual costs of installing the New Facilities, it will provide Applicant with a statement of the same showing in reasonable detail the costs incurred for material, labor and other direct and indirect costs, overheads 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. Upon completion of the work upon the Total Facilities, if the actual total installed cost thereof including applicable income taxes is greater or less than the total amount deposited by Applicant hereunder, the difference shall forthwith be paid by Applicant to Utility or refunded by Utility to Applicant as the case may be. It is expressly agreed that there shall be included in said actual total installed cost any sums paid for materials used in such work upon the Total Facilities by reason of price increases applicable to such materials. If Utility shall, for its own uses, replace any portion of the Old Facilities with a pipe or pipes of larger size (oversizing), then the current difference in price to Utility between such smaller and larger pipe shall be excluded from said actual total installed cost. However, if such oversizing is the result of Applicant's service requirements, then such costs will be included in the actual total installed

cost. Subject to the provisions of this paragraph, no other refund will be made to Applicant for any sums deposited or to be deposited by Applicant with Utility hereunder except pursuant to the terms of Paragraph 5.

5. Grades. If at the Applicant's request the New Facilities are installed in easements or rights of way where final grades have not been established or in streets whose grades have not been brought to those established by public authority, Applicant, upon written notice by Utility, shall deposit with Utility forthwith the estimated cost, including applicable income taxes, as determined by Utility, of relocating, raising or lowering the New Facilities upon establishment of final grades. Adjustment of any difference between the amount so deposited and the actual cost of relocating, raising or lowering the New Facilities shall be made within thirty (30) days after Utility has ascertained such actual cost. Utility will refund the entire deposit including applicable income taxes relating to such proposed relocation, raising or lowering when appropriate authority determines that such displacements are not required.

6. Applicants Agreements. Applicant agrees to use its best efforts to assist Utility to obtain any and all permits, franchises or other governmental authorizations which may be required for the work upon the Total Facilities or the subsequent operation and maintenance of the same. Applicant further agrees to convey or cause to be conveyed to Utility any and all easements and rights of way which may be later determined to be necessary or reasonably appropriate for the work upon the Total

Facilities or for the installation of the New Facilities or the subsequent operation and maintenance of the same. Applicant's agreement in this paragraph 6 is in no way limited to those easements and rights of way provided for in paragraph 4 hereof. Applicant further agrees to permit the abandonment in place of the Old Facilities

7. Ownership. The New Facilities to be installed hereunder and all construction work in connection therewith as well as such of the Old Facilities as are not abandoned in place by Utility shall be and remain at all times the property of Utility, and Applicant shall have no right, title or interest whatsoever in or to the same.

8. Construction Delay. Utility shall not be responsible for any delay in construction resulting from any cause beyond its control, including, but without limiting the generality of the foregoing, any delay resulting from inability to obtain sufficient proper materials and supplies, labor disturbances or shortages, or weather conditions. In the event Utility is unable to obtain sufficient materials to meet all construction requirements necessary to provide adequate service to all of its customers, it shall be entitled to allocate materials obtained by it to such construction projects as in its sole discretion it deems most important to the service needs of its customers, and any delay in the work upon the Total Facilities resulting from any such allocation of materials by Utility shall be deemed to be a cause beyond its control and it shall not be responsible for such delay.

9. Notices. Any notice which 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 the following addresses:

To Applicant: _____

To Utility: San Jose Water Company
374 W. Santa Clara St.
San Jose, CA 95196

Either party, by notice, may change the address to which notice shall thereafter be addressed.

10. Nature of Obligation of Applicant. If more than one person is named in paragraph 1 hereof, the obligations of the persons executing this agreement as Applicant shall be joint and several obligations. Until Applicant shall notify Utility in writing to the contrary, all refunds due under this agreement shall be paid by Utility to:

without recourse.

11. Successors and Assigns. This agreement shall inure to the benefit of and shall bind the respective heirs, executors, administrators, successors and assigns of the parties hereto.

12. Utility's Right to Offset. In the event Applicant 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 Applicant hereunder the total amount of any indebtedness then due or owing by Applicant to Utility.

13. Jurisdiction of the 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 said Commission may from time to time direct in the exercise of its jurisdiction.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate the day and year first above written.

APPLICANT

SAN JOSE WATER COMPANY

By _____

By _____
Designated Signature

By _____

By _____
Designated Signature