

SAN JOSE WATER WORKS (U168W)
San Jose, California

Revised
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Cal. P.U.C. Sheet No. 459-W
Cal. P.U.C. Sheet No. 290-W

Form No. 12
MAIN EXTENSION CONTRACT
"C RULE"
DISTRIBUTION PLANT
FIRE FLOW REQUIREMENTS EXCEED GENERAL ORDER NO. 103
SUBDIVIDER INSTALL - UTILITY OVERSIZING

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

FORM 12
MAIN EXTENSION CONTRACT
"C RULE"
DISTRIBUTION PLANT
FIRE FLOW REQUIREMENTS EXCEED GENERAL ORDER NO. 103
SUBDIVIDER INSTALL - UTILITY OVERSIZING

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 WORKS, a
California corporation, hereinafter referred to as "Utility,"

W I T N E S S E T H:

WHEREAS, the Applicant is the developer of that
certain subdivision of real property situate, lying and being
in the County of Santa Clara, State of California, which
is known as _____ Subdivision, in accordance with
the map thereof filed in the office of the County Recorder
of said County on _____, 19 ____, in Book _____
of Maps at Page _____, and which is hereinafter referred to
as the "Subdivision"; and

WHEREAS, Applicant is now selling or proposes in
the near future to sell lots in the Subdivision and to this
end desires to have water service available in the Subdivision
through and by means of mains and appurtenances, and by services
(including service pipes, fittings, gates and housings therefor,
and meter boxes), hereinafter referred to as the "Facilities,"
to be installed therein substantially as shown on that certain
map prepared by Utility attached hereto, marked Exhibit A
and by this reference made a part hereof; and

WHEREAS, upon the terms and conditions herein set forth, Applicant is willing to install the Facilities, or cause the same to be installed, at its own expense, all in accordance with the provisions hereinafter set forth; and

WHEREAS, upon the terms and conditions herein set forth, Utility is willing to acquire the Facilities and is willing to furnish water service through and by means thereof at the rates and in accordance with the rules of Utility now in force in its service area, or that may from time to time be lawfully established in said service area;

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

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

<u>Name</u>	<u>Address</u>	<u>Description</u>
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2. 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, 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.

3. Applicant's Deposit. Utility's cost in preparing detailed plans, specifications and cost estimates for the Facilities is \$_____, and Utility's cost of inspecting the installation of the Facilities is \$_____, and Utility's cost for installing the final connection(s) is \$_____. Utility hereby acknowledges receipt from Applicant of \$_____, representing the total of said costs. Upon completion of installation of the Facilities, Utility will connect the same to its existing mains and submit a statement of the cost thereof to Applicant. The aggregate amount of the foregoing costs is hereinafter referred to as "Applicant's Deposit".

4. Installation of Facilities.

(a) At Utility's instance, the Facilities are designed to meet fire flow requirements in excess of the minimum fire flows set forth in Section VIII.1.(a) of the Commission's General Order No. 103, as ordered by Decision 82-04-089, dated April 21, 1982. Applicant agrees to install the Facilities, or cause the same to be installed, at its own expense on or before _____, 19____. The Facilities shall be

installed strictly in accordance with the specifications attached hereto as Exhibit "C", and the installation thereof shall be subject to inspection by and approval of Utility in all respects. The Facilities shall be installed by Applicant, or by _____, a contractor, hereinafter referred to as "Contractor", selected by Applicant pursuant to competitive bidding procedures initiated by Applicant and limited to bidders who were qualified in Utility's judgment. Utility will perform the work of connecting the Facilities to its existing mains at the points designated on Exhibit "A" hereto.

(b) If Contractor is to install the Facilities pursuant to the provisions of the preceding subparagraph (a), Applicant agrees that its construction contract ("Construction Contract") with Contractor shall specifically provide, among other things, that:

(i) The Construction Contract is entered into for the direct benefit of Utility who shall be entitled to institute and maintain legal proceedings to recover any damages it may sustain by reason of the failure of Contractor to duly perform the provisions of the Construction Contract, including, without limitation, the failure of Contractor to install the Facilities within the time herein provided and in accordance with said specifications;

(ii) Installation of the Facilities shall be subject to the inspection and approval of Utility in all respects;

(iii) Title to the Facilities shall vest in Utility in accordance with the provisions of paragraph 6 hereof;

(iv) The insurance requirements of paragraph 5 hereof shall be fulfilled.

(c) Applicant agrees to reimburse Utility upon demand by utility for the cost to Utility of all replacements and repairs to the Facilities made necessary within one (1) year from completion of installation thereof by reason of defective materials or workmanship; such reimbursement shall not be subject to refund hereunder. Utility's acceptance of the Facilities shall under no circumstances be deemed to constitute approval of such materials and workmanship for purposes of the preceding sentence.

(d) In the event Applicant prior to Utility's acceptance of the Facilities shall be unable to determine the size or location of any service required, Applicant shall deposit with Utility the cost of such service at the time service is requested, and such service shall be installed by Utility. The amount of any such deposit so made by Applicant shall be added to Applicant's Advance Subject to Refund determined pursuant to the provisions of paragraph 9 hereof.

(e) Applicant agrees to comply with applicable provisions of local building codes and/or ordinances relating to (i) interior plumbing requirements in new buildings covering toilets, shower heads, kitchen and lavatory faucets, as set forth in Section A.4.e.1. of the Rule, and (ii) design and operation of automatic irrigation systems in parks, median strips, landscaped

public areas and landscaped areas surrounding condominiums, townhouses, apartments and industrial parks, as set forth in Section A.4.e.2. of the Rule.

(f) For the convenience of Utility, certain designated mains shown on Exhibit "A" hereto are larger in size than the mains otherwise required to serve the Subdivision. Utility agrees to pay Applicant within thirty (30) days after the date of receipt by Utility of Applicant's detailed statement of actual construction cost of the Facilities required by the provisions of paragraph 9 hereof or within thirty (30) days after the date of notice of acceptance of the Facilities by Utility provided in paragraph 7 hereof, whichever shall occur the earlier, the sum of \$ _____, being the increase in cost of such increase in main size over the main size otherwise required to serve the Subdivision.

5. Indemnity; Insurance.

(a) Utility shall not be responsible or held liable in any manner whatsoever for any injury or damage which may be done to any person or property in the course of installation of the Facilities by or on behalf of Applicant or which may result from such installation, and Applicant agrees to indemnify Utility and hold it free, safe and harmless of, from and against any and all liability for the death of, or injury to, any person and for the loss of, or damage to, any property which may arise by reason of acts done or omitted to be done in the course of installation of the Facilities by or on behalf of Applicant or which may result from such installation, and Applicant further agrees to reimburse

Utility upon demand for all costs and expenses which Utility may incur in resisting any claim which may be made against Utility for any such injury or damage to any person or property. Applicant expressly agrees that the agreements contained in this paragraph shall survive the performance of the remainder of this Agreement and shall remain in full force and effect notwithstanding such performance. Applicant further agrees that during the period beginning with the commencement of construction of the Facilities and terminating upon final acceptance of the same by Utility, the following insurance will be maintained in full force and effect by Applicant or Contractor (if the Facilities are to be installed by Contractor) without cost or expense to Utility: (i) bodily injury liability insurance with limits of not less than Five Hundred Thousand Dollars (\$500,000) per person and One Million Dollars (\$1,000,000) per occurrence, and (ii) property damage insurance with a limit of not less than Two Hundred Fifty Thousand Dollars (\$250,000) per accident, insuring Utility against any and all liability for the death of or injury to any person and for the loss of or damage to any property, respectively, which may arise by reason of acts done or omitted to be done in the course of installation of the Facilities or which may result from such installation, and further insuring Utility against all costs and expenses incurred by Utility in resisting any claim which may be made against Utility for any such injury or damage to any person or property. Each such policy (A) shall be issued by an insurance company approved by Utility, which is qualified to do and doing business in the State of California, (B) shall name Utility as an

additional insured, (C) shall specify that it acts as primary insurance and that no insurance effected by Utility shall be called upon to cover a loss under the policy so procured or caused to be procured by Applicant, (D) shall provide that the policy shall not be cancelled or altered without thirty (30) days' prior written notice to Utility, and (E) shall otherwise be in form satisfactory to Utility. Each such policy or a certificate thereof shall be delivered to Utility concurrently with execution of this Agreement.

(b) An endorsement or a certificate thereof to the workers' compensation insurance policy of Applicant or Contractor (if the Facilities are to be installed by Contractor) providing that the underwriter thereof waives all right of subrogation against Utility by reason of any claim arising out of or connected with installation of the Facilities shall be delivered to Utility concurrently with execution of this Agreement. Said endorsement shall provide that it shall not be cancelled or altered without thirty (30) days' prior written notice to Utility.

6. Title to Facilities. Title to each part or portion of the Facilities shall pass to Utility forthwith as each such part or portion thereof shall be installed regardless of whether the same shall be installed by Applicant or Contractor and regardless of whether the same shall be attached to the balance of Utility's system, provided, however, that such passage of title shall under no circumstances be deemed to constitute acceptance by Utility of the Facilities as installed in accordance with said specifications. Such acceptance may only be effected by appropriate written notice

from Utility to Applicant. Applicant warrants that upon such passage of title, the title shall be free and clear of and from any and all liens, charges and encumbrances whatsoever. Applicant agrees to use its best efforts to assist Utility in obtaining any and all permits, franchises or other governmental authorizations which may be required for the operation of the Facilities. Applicant further agrees that if so requested in writing by Utility, subsequent to such acceptance of the Facilities by Utility, as aforesaid, Applicant will promptly make, execute and deliver to Utility an instrument or instruments, in form satisfactory to Utility, which shall confirm such passage of title to Utility.

7. Street Grades. If the Facilities are installed in easements or rights of way where final grades have not been established by public authority, Applicant, upon written notice by Utility, shall deposit with Utility forthwith the Estimated Cost, as determined by Utility, of relocating, raising or lowering the 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 Facilities shall be made within ten (10) days after Utility has ascertained such actual cost. The net deposit representing actual cost shall not be subject to refund. Utility will refund the entire deposit relating to such proposed relocation, raising or lowering when appropriate authority determines that such displacements are not required.

8. Applicant's Bond. Concurrently with execution of this Agreement Applicant shall deliver to Utility a surety bond in the aggregate amount of \$_____ in form satisfactory to Utility,

issued by a bonding company approved in writing by Utility which is qualified to do and doing business in the State of California guaranteeing unto Utility (a) the performance by Applicant and Contractor of all the obligations contracted to be performed hereunder, (b) installation of the Facilities in accordance with the provisions hereof, (c) vesting in Utility of title to the Facilities in accordance with the provisions hereof, (d) reimbursement of the cost to Utility of all replacements and repairs to the Facilities made necessary within one (1) year from completion of installation thereof by reason of defective materials or workmanship, and (e) payment in full by Applicant or Contractor of the claims of all persons performing labor upon or furnishing materials to be used in, or furnishing power contributing to, the Facilities.

9. Applicant's Advance Subject to Refund. Applicant agrees that promptly upon completion of installation of the Facilities in accordance with said specifications and acceptance of the same by Utility, Applicant will, at its own expense, furnish to Utility a reasonably detailed statement of the actual construction cost of the Facilities, subject to audit by Utility, including in said cost, (a) Applicant's Deposit, (b) the cost, if any, to Applicant of complying with the insurance requirements of paragraph 5 hereof, and (c) the cost, if any, to Applicant of the bond required by paragraph 8 hereof. The total amount of said actual cost as shown by said statement, or the sum of \$_____ (being the price quoted by Utility to Applicant in Utility's detailed estimate of the cost of installation of the Facilities), whichever is the lesser, shall be conclusively deemed to be the actual construction cost of

the Facilities, which actual construction cost less the sum of \$_____ (said sum being that portion of said actual construction cost attributable to the oversizing of certain portions of the Facilities, as more particularly set forth in subparagraph 4(f) hereof) is herein referred to as "Applicant's Advance Subject to Refund". Should quantities or footage installed differ from those originally estimated, Applicant's Advance Subject to Refund will be appropriately adjusted to reflect such difference. If, at any time following installation of the Facilities, Utility, upon written request of Applicant, shall abandon a portion of the Facilities, Utility shall promptly notify Applicant of the installed cost of the Facilities so abandoned, and Applicant'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.

10. Refunds. Provided that Applicant is not in default hereunder, Utility agrees to make annual refunds hereunder to Applicant in cash, without interest, for a period not to exceed forty (40) years from the date hereof, commencing not later than six (6) months after the first anniversary of the date hereof. Each such annual refund shall equal two and one-half percent (2-1/2%) 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 forty-year period, Utility shall refund said portion to Applicant with the last refund payment hereunder. The total amount refunded hereunder shall not exceed Applicant's Advance Subject to Refund, without interest.

11. Utility's Right to Offset. In the event Applicant shall become entitled to a 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.

12. 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 the following respective addresses:

To Applicant:

To Utility: San Jose Water Works
P.O. Box 229
374 West Santa Clara Street
San Jose, CA 95196

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

13. Nature of Obligations; Assignment. 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. Until Applicant shall notify Utility in writing to the contrary, all refunds hereunder shall be paid by Utility to _____
_____. Applicant may assign this Agreement only after (a) determination of the amount of Applicant's Advance Subject to Refund, and (b) written notice to Utility. Any

such assignment shall apply only to those refunds hereunder which become due more than thirty (30) days after the date of receipt by Utility of such notice of assignment. Utility will not make any single refund payment hereunder to more than one person.

14. Successors and Assigns. Subject to the provisions of the preceding paragraph 13, this Agreement shall inure to the benefit of and shall bind the respective heirs, executors, administrators, successors and assigns of the parties hereto.

15. Jurisdiction of Public Utilities Commission. This Agreement shall at all times be subject to such changes or modifications by the Commission as the 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.

SAN JOSE WATER WORKS

By _____
Its Vice President

By _____
Its Secretary

Applicant

Utility