

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20____, by and between the person or persons listed in paragraph 1 hereof, hereinafter collectively referred to as "Applicant," and CALIFORNIA WATER SERVICE COMPANY, a California corporation, hereinafter referred to as "Utility,"

WITNESSETH:

WHEREAS, Applicant desires to have made available mains and appurtenances needed to meet various local fire protection requirements substantially as shown on that certain map attached hereto, marked Exhibit A and by this reference made a part hereof, to be installed in accordance with Utility's usual practices, said mains and appurtenances being hereinafter referred to as the "Facilities"; 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 _____ **District**, or that may from time to time be lawfully established in said district; and

WHEREAS, Utility will supply only such water at such pressures as may be available from time to time as a result of its normal operations of its _____ system;

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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Reviewed by New Business

Date

2. **Applicant's Deposits.** Utility's estimated construction overhead, including engineering, inspection and administrative cost is \$_____. Utility's estimated cost of connecting the Facilities to its existing distribution system is \$_____ and in accordance with Commission Decision No. D.16-12-042 dated January 1, 2017, Applicant's C.I.A.C. tax liability is estimated to be \$_____. In accordance with Commission Decision No. D.16-12-042 dated January 1, 2017, applicant's special facility fee is \$_____. After Utility has determined its actual construction overhead cost and has ascertained its actual costs in connecting the Facilities to its existing mains and has determined Applicants C.I.A.C. tax liability based on final installation cost, it will provide Applicant with a statement of said cost and liability. If such actual costs and C.I.A.C. tax liability as finally determined are greater or less than the Estimated Amounts, the difference shall be advanced by Applicant to Utility or repaid by Utility to Applicant, as the case may be. Utility hereby acknowledges receipt from Applicant of \$_____, representing the total of said costs. Applicants cost of installing the facilities is not subject to refund, therefore subject to the provisions of this paragraph, no other refunds will be made to Applicant.

3. **Installation of Facilities.**

(a) The Facilities are designed to meet the minimum fire flow requirements 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 _____. The Facilities shall be installed strictly in accordance with the specifications attached hereto as Exhibit B, 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 5 hereof;

(iv) The insurance requirements of paragraph 4 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. 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.

4. 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 and property damage liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) annual aggregate, 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 canceled 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 canceled or altered without thirty (30) days prior written notice to Utility.

5. 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 (a) 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, (b) 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, (c) that promptly upon completion of installation of the Facilities in accordance with said specifications and acceptance of the same by Utility, Applicant will furnish to Utility a reasonably detailed statement of the actual construction cost of the Facilities.

6. **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. Utility will refund the entire deposit relating to such proposed relocation, raising or lowering when appropriate authority determines that such displacements are not required.

7. **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: 1720 North First Street
San Jose, CA 95112

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

8. **Jurisdiction of Public Utilities Commission.** This agreement shall at all times be subject to such changes or modifications by the California Public Utilities Commission 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.

CALIFORNIA WATER SERVICE COMPANY

By _____
(Signature)

By _____
Vice President

By _____
(Print Name and Title)

By _____
(Print Name)

By _____
(Signature)

By _____
Secretary

By _____
(Print Name and Title)

By _____
(Print Name)

Applicant

Utility

Federal Income Tax Identification
Number or Social Security Number