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**MASTER AGREEMENT WITH: SAN JOSE WATER COMPANY**

**Reference to this Master Agreement should be “per agreement dated January 8, 1968”.**

This is the Master Agreement with San Jose Water Works which changed its name to San Jose Water Company.

This brief highlights only the major points of the Master Agreement. The Agreement should be studied carefully before taking any action under its terms.

This Agreement governs the apportionment of the cost of rearrangement of facilities owned by this Company in connection with freeway projects in lieu of the provisions of Section 700, et seq. of the Streets and Highways Code. In other words, the provisions of the Streets and Highways Code and other laws have no application to the rearrangement of the facilities on freeway projects for this Company, and are replaced by the terms of this Master Agreement. This Agreement does not affect relocations on conventional highways.

The Agreement apportions the cost of rearrangements on a 50/50 basis subject to the following exceptions:

1. The State will pay 100% for the relocation or discontinuance of use of existing utility facilities consisting of a water pipeline of twelve inches (304.8 mm) outside diameter or more situate on "private right of way of Utility" and within the right of way of a freeway or a service road for an aggregate distance measured along such pipeline of 1320 lineal feet (402.34 m) or more. (Section 9(B))
2. The State pays 100% of the cost of changes. (Section 9(C))

3. The State pays 100% of the cost of a second, or subsequent move, within a five-year period. (Section 9(D))

Section 5(D) (a) specifies credits to which the State may be entitled:

1. When new facilities are constructed and the replacement cost is charged to the State, the State is to receive credit for the value of all salvaged materials, and for depreciation charged to all materials, whether salvaged or not, even where a replacement facility requires less material or fewer components than the dismantled facility.
2. Where no replacement facilities are constructed, however, the State is not entitled to these credits and does not need them to insure that the utility has not bettered its position.

Encroachment Permits will be issued for placements under this Agreement. The statement "For record purposes only," will not be used on these permits. "Freeway Permits" are not to be issued in connection with this Agreement.

Joint Use Agreements will not be entered into to cover any case that falls under this Agreement, as all installations that are to be made within the State highway right of way shall be under standard Encroachment Permit.

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**MASTER AGREEMENT**

**AGREEMENT**

THIS AGREEMENT, made and entered into as of the 8th day of January, 1968, by and between the STATE OF CALIFORNIA, acting through the

Department of Public Works, hereinafter designated "DEPARTMENT", and SAN JOSE WATER WORKS, a corporation, hereinafter designated "UTILITY".

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**WITNESSETH:**

WHEREAS, Department and Utility entered into that certain agreement dated January 2, 1957, providing for the apportionment between the parties of liability for the rearrangement of facilities of Utility necessary to accommodate the construction of State Highways, said agreement providing that it may be amended, changed, or altered by mutual consent of the parties; and

WHEREAS, the parties desire to enter into a new agreement which shall affect only those State highways which are freeways.

NOW, THEREFORE, the parties agree as follows:

**Section 1.** This contract shall supersede in its entirety the agreement between the parties hereto dated January 2, 1957, and is made and executed by the parties hereto pursuant and subject to the provisions of Section 707.5 of the Streets and Highways Code of the State of California as said section now exists. It is in compromise and settlement of the diverse disputes between the parties hereto in respect to the subject matter covered hereby. It is not intended to, and shall not, establish any precedent, principle, rule or guide to interpretation, as between the parties hereto after its termination or as between either of the parties hereto and any third party at any time.

**Section 2.** This contract may be amended, changed or altered by mutual consent of the parties hereto in writing.

**Section 2.5.** This contract shall inure to the benefit of, and shall be binding upon, the successors and assigns of the parties hereto.

**Section 3.** Unless sooner automatically terminated as provided by law, this contract shall terminate not less than one (1) year after notice of termination in writing given by one party to the other, provided, however, that it shall not terminate prior to April 1, 1972 as a result of notice given by Utility to Department unless a State statute effecting a change in the law governing liability for the cost of relocating utility facilities for State freeway

construction shall have been enacted prior to such notice, which statute shall be beneficial to Utility in that, immediately following such enactment, were this contract not in effect, Utility's rights with respect to such relocations would be greater or more favorable to it than such rights immediately prior to such enactment; and in the event of either such termination, the laws applicable to the subject matter of this contract as existing at the time of such termination shall thereafter govern, save as to removals or relocations, hereinafter referred to as "rearrangements", of utility facilities of Utility theretofore required of Utility by the Department under notice mailed or delivered to Utility prior to such termination, whether work upon such rearrangement has theretofore commenced, is in progress, or has been completed.

**Section 4.** This contract shall govern exclusively the determination of the obligations and costs to be borne by each party hereto in regard to every rearrangement hereunder of utility facilities of Utility undertaken or completed or to be undertaken or completed by Utility as required by notice given by Department to Utility on or subsequent to April 1, 1967, in lieu of the determination thereof under prior agreements, the provisions of Sections 700 to 707, inclusive, of said Streets and Highways Code as now or hereafter existing, and all other laws which would be applicable to said subject matter but for this contract.

The parties hereto agree that notices given to Utility by the County of Santa Clara and/or the City of San Jose requiring the rearrangement of Utility facilities of Utility for the construction of subdivision (a) of Route 87 as a freeway shall be deemed to be given by Department.

**Section 4.5.** This contract shall have no application to any removal, relocation or rearrangement of utility facilities of Utility under notice given by Department to Utility prior to April 1, 1967, except that Department shall be and remain bound by the provisions in any such notice or in any Utilities Agreement relating thereto specifying that Department will pay the cost of the rearrangement thereunder in whole or in part.

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**MASTER AGREEMENT WITH: SAN JOSE WATER  
COMPANY (Cont.)**

(Form #)

EXHIBIT

13-EX-18H

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**Section 5.** As used in this contract, the following terms have the following meanings:

(A) (i) "Freeway" means

(a) a highway under the jurisdiction of the Department in respect to which, and along the right of way of which, the owners of abutting lands have no right or easement of access to or from their abutting lands or only limited or restricted right or easement of such access; or

(b) a like contemplated highway where the California Highway Commission has selected, adopted and determined the location of the same and declared the same to be a State freeway, and Department, acting through the headquarters office of the Right of Way Section of the Division of Highways, has approved a right of way map in conjunction with its property appraisal, which map delineates the no-access, limited or restricted right or easement of access as aforesaid. Said maps shall be available for inspection to Utility.

(ii) "Service road" means a highway or contemplated highway while under the jurisdiction of Department and which was or is about to be established along or adjacent to a freeway to provide ingress and egress to and from said freeway to the owners of abutting lands along such freeway, and Department or other proper public authority has delineated on its records the right of way thereof.

(iii) "Public road" includes freeways, service roads, and all other highways and streets, whether under the jurisdiction of Department or of any county, city, district or other public authority within this State, with right of way as delineated on the records of the public authority having jurisdiction thereof.

(B) (i) "Utility facilities" include every pipe, conduit, manhole, service, service meter, meter box, ditch, canal or flume, (which ditch, canal or flume is used for direct service of water to customers), every fitting and gate valve, and all appurtenances to the foregoing which constitute a part of a water transmission or distribution line owned by Utility, or a part of a communication line owned by Utility and used in aid, in whole or in

part, of any transmission or distribution line aforesaid. "Utility facilities" do not include:

(a) any buildings of Utility or any utility facilities therein; or

(b) any production, storage, purification or pumping facility; or

(c) any appurtenances of the foregoing situated on property in which Utility now holds an interest or in which Utility acquires an interest in the future; or

(d) any utility facilities situated on property owned in fee by Utility; or

(e) any other property of Utility, whether real or personal or whether or not devoted to public use, not included within "utility facilities" as above defined.

(ii) Where Utility is the owner of a part of, or of a present undivided part interest in, any such utility facilities, whether through ownership of stock in a subsidiary corporation or otherwise, this agreement shall apply to such utility facilities to the extent of such interest.

(iii) Where Utility is lessor or licensor of any such utility facilities or any part thereof or of space thereon or therein, this agreement shall also apply to those utility facilities owned by or under the control of the lessee or licensee unless Utility notifies Department of the interest of such lessee or licensee not later than thirty (30) days after receipt from Department of a notice of rearrangement hereunder; and in such case the parties hereto shall thereupon endeavor to make satisfactory arrangements with such lessee or licensee; and failing such arrangements, Department shall proceed as to said interest of such lessee or licensee pursuant to law or any contract between Department and such lessee or licensee.

(iv) Where Utility is the lessee or licensee of any such utility facilities not owned by Utility, this agreement shall not apply and Utility shall have no claim against Department in respect to any rearrangement thereof unless Utility notifies Department of its said interest at its earliest opportunity after knowledge of any such rearrangement affecting said interest; and in such case, this agreement shall apply to the extent of such interest of Utility unless other satisfactory

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arrangements be made by the parties hereto in respect thereto.

(C) "Rearrangement of utility facilities" includes the following as required by a notice given by Department to Utility:

(i) It must include expenditures in respect to existing utility facilities necessary to accommodate a freeway or service road or any portion thereof. The work involved therein must consist of

(a) the dismantling of, or other work upon, existing utility facilities within the right of way of a freeway or any other public road or on other real property or

(b) the replacing of such existing utility facilities with other utility facilities within the right of way of a freeway or any other public road or on other real property where such work is occasioned by, and of benefit to, the construction, improvement, maintenance, operation or use of a freeway or service road.

(ii) It also includes any other expenditures in respect to other utility facilities occasioned by the work specified in subdivision (i) hereof and where necessary to furnish Utility with utility facilities of corresponding standards and usefulness and to enable Utility to continue a corresponding service.

(iii) It may also include additional expenditures upon utility facilities, commonly known as "betterments", added at the instance of Utility for its purposes.

Further, the work involved within said term "rearrangement of utility facilities" includes the dismantling of, or other work upon, existing utility facilities, with or without reinstallations to continue the service, whether such reinstallations are of the dismantled or other utility facilities; and may be temporary or permanent in nature or both; and may be performed within or without the right of way of a freeway or other public road; and may be performed within, over or across real property owned in whole or in part by Department, Utility or a third party.

(D) "Cost of a rearrangement" includes the actual and reasonable (or, if indeterminable, the

estimated) cost of:

(a) all necessary labor and transportation, and all necessary materials exclusive of any dismantled utility facilities used in any of the reinstallations, involved in the rearrangement, together with reasonable and usual indirect and overhead charges attributable to any thereof, exclusive of the cost, computed in like manner, attributable to any betterments hereinabove mentioned involved in the rearrangement, and less:

(i) the value as salvage, as ascertained under the regular public utility accounting practices of Utility, of all utility facilities dismantled and removed by Utility and not used in any of the reinstallations;

(ii) the accrued depreciation, as ascertained under the regular public utility accounting practices of Utility for its depreciation reserve purposes, of all dismantled utility facilities not used in any of the reinstallations; and

(iii) any charges appertaining to the rearrangement paid or required to be paid by any customer of Utility (including Department where a customer of Utility) pursuant to law or agreement between such customer and Utility (or an agreement between Department and such customer for the express benefit of Utility) and

(b) any necessary new private right of way of utility for any of the reinstallations involved in the rearrangement, exclusive of such right of way for such of said reinstallations as may reasonably be located within the right of way of a public road, or on other real property under the jurisdiction of Department, and without charge to Utility or credit to Department.

**Section 6.** Whenever Utility claims reimbursement for the cost, in whole or in part, of any rearrangement hereunder, Utility shall, upon the completion of such a rearrangement, submit to Department an itemized statement of such cost; and Utility shall upon request make available for inspection or audit its books and

records appertaining thereto; provided, that the parties hereto may estimate and agree in advance upon the amount of such reimbursement where not exceeding One Thousand Dollars (\$1,000) and where specified in the notice given by Department to Utility or an amendment thereof.

**Section 7.** (A) It is contemplated that Utility will submit to Department plans and specifications of a rearrangement; and that the parties will endeavor to agree in respect thereto prior to the giving of notice by Department to Utility of a rearrangement required by Department.

(B) The parties hereto may implement this contract in the foregoing or other particulars by procedures to be agreed upon between them.

**Section 8.** Department will give Utility notice in writing (in form identical with or similar to present Right of Way Form 40 or 41 of Department) of each rearrangement of utility facilities of Utility pursuant to agreed plans or, if none, as may reasonably be required by Department. Utility will thereupon undertake, or cause to be undertaken, the rearrangement of its utility facilities pursuant thereto with reasonable dispatch. Further, Utility shall permit Department immediate entry upon, and use of, all right of way of Utility for utility facility purposes whenever necessary for a freeway purpose which occasioned such notice and where not inconsistent in time or manner of exercise with the due discharge by utility of its said undertaking with respect to said rearrangement and with its discharge of its duty as a public utility.

**Section 9.** (A) The cost of each rearrangement under a notice given by Department to Utility shall be divided and borne equally by the parties hereto, except as hereinafter provided.

(B) Where a rearrangement includes the dismantling of, or other work upon, or the discontinuance of use by Utility of, existing utility facilities consisting of a water pipeline of twelve inches outside diameter or more situate on "private right of way of Utility" and within the right of way of a freeway or a service road for an aggregate distance measured along such pipeline of 1320 lineal feet or more, the Department will pay in entirety that portion of the cost of such rearrangement attributable to said existing utility facilities so situated, and to any reinstallations corresponding thereto.

This obligation of Department includes and shall require Department, at its sole expense, to convey, or cause to be conveyed, to Utility new private right of way for such of said reinstallations as will correspond to the private right of way of Utility on which was situate any existing utility facilities which facilities were included in that portion of the cost of such rearrangement which Department is so obligated to pay in entirety under the provisions of the preceding sentence; provided, that in discharge, in whole or in part, of such obligation as to said new private right of way Department may issue, or cause to be issued, to Utility, without charge to Utility or credit to Department,

(i) a joint use agreement (in form identical with or similar to present Right of Way Form 38 of Department) within the right of way of a public road or

(ii) a similar easement on other real property under the jurisdiction of Department or other public authority, and provided further, that Utility shall convey to Department said private right of way of Utility (on which were situate any dismantled existing utility facilities, as aforesaid) corresponding to said new private right of way which Department is so obligated to convey to Utility.

The remainder of the cost of such rearrangement, including any work upon or dismantling of other existing utility facilities situated outside of the right of way of a freeway or a service road, and any reinstallations corresponding thereto, shall be divided and borne equally by the parties hereto.

For the purpose of this subdivision (B), said "private right of way of Utility" must at the time of the notice given by Department to Utility consist of the ownership by Utility of rights for such utility facility purposes in a "defined area" of real property then situate within the right of way of a freeway or service road, which rights

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must then be vested or confirmed in Utility under:

(a) a joint use agreement (in form identical with or similar to present Right of Way Form 38 of Department) heretofore or hereafter executed by Department or other public authority having jurisdiction, at the time of the issuance of said agreement, of the public road or other real property within which said defined area was then situate, or

(b) an easement deed either recorded or recordable in its present form, or a similar instrument issued and delivered by the United States or the State of California (and not the grant or delivery of a privilege, license or permit to Utility), or a final judgment of a court of competent jurisdiction, where

(1) such deed was not acquired, nor the action looking towards such judgment commenced, by Utility in contemplation of any previously publicly announced intention of Department to include the same area within the right of way of a freeway or service road, provided that this exclusion shall have no application where such deed was acquired or such action was commenced by Utility of necessity in the due discharge by Utility of its duty as a public utility after such announcements of Department, and

(2) where in any event such deed was acquired, or such action was commenced, by Utility at a time

(i) when said defined area was not situate within the right of way of any public road, or on other real property under the jurisdiction of Department, and

(ii) prior to the acquisition of any deed, or commencement of an action looking toward a judgment, vesting or confirming the same area in Department as a part of the right of way of a freeway or service road.

Further, said "defined area" to constitute a private right of way of Utility must have:

(i) all outer boundaries defined, or  
(ii) a defined longitudinal line with a specified width in reference thereto, or  
(iii) in any other case, been delineated by the installation of utility facilities at the location as existing at the time of notice given by Department to Utility; but in such case set forth in the preceding clause (iii),

(A) the time of the acquisition of the

instrument by Utility for the above purposes shall be the date of such instrument or the time of the installation of said utility facilities at said location, whichever is later, and

(B) the width of right of way for such utility facilities so installed shall be deemed to be ten (10) feet on either side of the center line of such utility facilities and at such points as any of such utility facilities extend beyond such width, such defined area shall encompass such utility facilities.

The parties hereto agree that Utility, under and by virtue of the terms of that certain Indenture dated February 17, 1953, executed by and between Southern Pacific Company, a Delaware corporation, and Utility, is the owner of a private right of way of Utility within the meaning of this Section 9 (B) over those certain parcels of land situate in the County of Santa Clara, State of California, more particularly described in said Indenture.

(C) If Department, by amended, revised or new notice given to Utility, changes a rearrangement under a prior notice given by Department to Utility before the completion of such rearrangement or of the work on that portion of the freeway or service road which occasioned such prior notice, Department will pay in entirety that portion of the cost of the rearrangement expended by Utility before such change to the extent such expenditures are rendered useless or wasted by reason of such change; and the remainder of the cost of the rearrangement shall be borne by the parties hereto pursuant to the foregoing subdivisions of this section.

(D) If Department shall require the rearrangement of any utility facility by Utility more than once within a period of five (5) years, Department shall pay in entirety the cost of such second rearrangement and of any subsequent rearrangement within such five (5) year period in those cases where the notice given by Department to Utility of such second rearrangement or of any subsequent rearrangement is given by Department to Utility on or subsequent to April 1, 1967.

**Section 10.** Upon completion of each rearrangement of utility facilities hereunder, and the discharge by Department of its obligations to Utility hereunder in respect thereto, Utility shall quitclaim to Department or its nominee upon demand all of its right, title and interest within the right of way of a freeway or any other public road, or in any other real property on which was situate any utility facilities entirely dismantled or abandoned under a rearrangement of utility facilities hereunder.

**Section 11.** Whenever a rearrangement includes the dismantling of existing utility facilities located on a private right of way of Utility and any reinstallations corresponding thereto are located within the right of way of a public road, there shall automatically vest in Utility upon the termination of this agreement like rights in real property, if any, in and to such corresponding new location of such reinstallations as Utility may have had, if any, in its corresponding old location on which was situate such utility facilities entirely dismantled under a rearrangement of utility facilities hereunder. Upon such termination of this agreement, if so requested in writing by Utility and upon preparation by Utility and submission to Department of appropriate legal descriptions of such rights in real property, Department shall execute as to such rights Joint Use Agreements with Utility in form identical with or similar to present Right of Way Form 38 of Department or to said Form as the same may, from time to time, be revised or amended by Department.

**Section 12.** Notwithstanding this contract, the State of California hereby reserves all its sovereign powers and any exercise thereof shall be superior and alternative to this contract.

**Section 13.** To the extent the provisions of this agreement may be inconsistent with the provisions of that certain Procedural Agreement dated December 7, 1948, between the parties hereto, the

provisions hereof shall prevail.

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

**STATE OF CALIFORNIA  
DEPARTMENT OF PUBLIC WORKS**

**SAN JOSE WATER WORKS, A  
CORPORATION**