

**AGREEMENT BETWEEN BIG BEAR AREA REGIONAL
WASTEWATER AGENCY AND CITY OF BIG BEAR LAKE
REGARDING PAYMENT AND COLLECTION OF TOTAL ANNUAL
CHARGE AND STAND-BY CHARGES**

1. PARTIES AND EFFECTIVE DATE.

1.1 Parties. This Agreement (Agreement) is entered into on November __, 2000 between the Big Bear Area Regional Wastewater Agency ("BBARWA"), a joint exercise of powers agency operating under Chapter 5, Division 7, Title 1, of the Government Code, and the City of Big Bear Lake ("City"), a Charter City organized and existing under the provisions of the Government Code. BBARWA and City are also sometimes referred to herein individually as a "Party" and collectively as the "Parties."

1.2 Effective Date. This Agreement shall not become effective until the date (Effective Date) on which it has been approved and executed by the Parties.

2. RECITALS.

2.1 On May 3, 1977 BBARWA entered into an agreement entitled "Operating Agreement No. 1" with City and others which, among other things, governs the design, construction, operation and maintenance of a regional sewerage system, to which City's sewage collection system is connected, and designates City as one of a number of collecting agencies ("Collecting Agency") which operates and maintains a sewage collection system within the regional sewerage system, through which City delivers sewage and wastewater, and collects fees for such services.

2.2 Pursuant to Section 4.01 of Operating Agreement No. 1, City, as a Collecting Agency, pays to BBARWA a Total Annual Charge for receiving, transporting, treating and disposing of sewage and wastewater from its sewage collection system during each fiscal year. Pursuant to that Section, the Total Annual Charge for each fiscal year is payable in two installments, with the first installment due on August 31st (75%) and the second installment due on November 30 (25%).

2.3 Pursuant Section 6.06 of Operating Agreement No. 1, City, as a Collecting Agency, remits to BBARWA applicable BBARWA Stand-by Charges, collected from owners of vacant property within its service area which could be connected to its sewage collection system and all owners of residences or business establishments which are so located but which are not connected to the sewage collection system. Pursuant to that Section, City is required to remit the sums collected to BBARWA on or before November 30 of each year.

2.4 City has requested and BBARWA has agreed to a new payment schedule for the Total Annual Charge and the Stand-by Charges.

3. TERMS.

3.1 **Term.** The term of this Agreement shall be for a period of five (5) fiscal years, commencing July 1, 2001, and ending June 30, 2006, and shall be automatically renewed for terms of one fiscal year upon the expiration of such period. Either Party may terminate the Agreement by providing notice to the other Party at least 30 days prior to the end of a fiscal year. Such termination shall not be effective until the end of the fiscal year in which such notice was given.

3.2 **Total Annual Charge.** City, as a Collecting Agency, shall pay to BBARWA for receiving, transporting, treating and disposing of sewage and wastewater from its sewage collection systems during each fiscal year (July 1 through June 30) a Total Annual Charge, as specified in Operating Agreement No. 1, in two (2) installments. City shall pay to BBARWA the first installment, consisting of 50% of the Total Annual Charge for each fiscal year, on December 30. City shall pay to BBARWA the second installment, consisting of the remaining 50% of the Total Annual Charge for each fiscal year, on April 30. Any payment received after the specified installment payment deadlines described in the previous sentence shall be subject to a late penalty of 1.5%, calculated on a daily basis. If City pays BBARWA 100% of the Total Annual Charge for any fiscal year on or before December 30 of that fiscal year, City shall only be required to pay 95% of the Total Annual Charge due to BBARWA for that fiscal year.

3.3 **Stand-by Charges.** City, as a Collecting Agency, shall remit to BBARWA applicable BBARWA Stand-by Charges, as specified in Operating Agreement No. 1 collected from owners of vacant property within its service area which could be connected to its sewage collection system and all owners of residences or business establishments which are so located but which are not connected to the sewage collection system during each fiscal year (July 1 through June 30) in two (2) installments. City shall pay to BBARWA the first installment, consisting of 50% of the total Stand-by Charges collected in each fiscal year by City, on December 30. City shall pay to BBARWA the second installment, consisting of the remaining 50% of the total Stand-by Charges collected in each fiscal year by City, on April 30. Any payment received after the specified installment payment deadlines described in the previous sentence shall be subject to a late penalty of 1.5%, calculated on a daily basis. If City pays BBARWA 100% of the total Stand-by Charges collected in any fiscal year on or before December 30 of that fiscal year, City shall only be required to pay 95% of the total amount of Stand-by Charges due to BBARWA for that fiscal year.

3.4 Notices. Any notices to be given under this Agreement shall be addressed as follows:

To City: City of Big Bear Lake
P.O. Box 10000
Big Bear Lake, CA 92315

To BBARWA: Big Bear Area Regional Wastewater Agency
P.O. Box 517
Big Bear City, CA 92314

3.5 Operating Agreement No. 1. Except as expressly set forth herein, this Agreement shall not alter the responsibilities of the City under Operating Agreement No. 1, including without limitation, the City's obligation to collect or remit Total Annual Charges and Stand-by Charges under Operating Agreement No. 1.

3.6 Governing Law. This Agreement has been negotiated and entered into in the County of San Bernardino, State of California, and shall be governed by, construed and enforced in accordance with the laws of the State of California, without regard to conflicts of law principles.

3.7 Litigation. If any Party to this Agreement brings any action or proceeding against the other party arising out of or related to this Agreement, the prevailing party in that action or proceeding shall be entitled to recover as an element of its costs of suit, and not as damages, its reasonable attorneys' fees as fixed by the court in such action or proceeding or in a separate action or proceeding brought to recover such attorneys' fees. The prevailing party shall be as determined by the court in accordance with Code of Civil Procedure Section 1032. Costs and expenses recovered pursuant to this section include, without limitation, attorneys' fees and costs incurred during any appeal of an underlying judgment or order or related to the enforcement of any judgment or order entered in the underlying action or proceeding.

3.8 Authorization. Each of the signatories to this Agreement warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign.

3.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the date first herein above written.

**BIG BEAR AREA REGIONAL
WASTEWATER AGENCY**

By: Mary P. Costen
Chair of the Governing Board
Big Bear Area Regional Wastewater
Agency

ATTEST

By: Robert W. Colver
Secretary of the Governing Board
Big Bear Area Regional Wastewater
Agency

APPROVED AS TO LEGAL FORM

Stephen P. Bertsch

Best Best & Krieger LLP
General Counsel

Nal/nal/agreement to change obligations related/090800

CITY OF BIG BEAR LAKE

By: David L. Myer
Mayor
City of Big Bear Lake

ATTEST

By: Katherine E. Hoffman
City Clerk
City of Big Bear Lake

SPECIAL DISTRICTS DEPARTMENT



COUNTY OF SAN BERNARDINO
ECONOMIC DEVELOPMENT
AND PUBLIC SERVICES GROUP

WATER AND SANITATION DIVISION
102 Industrial Boulevard, Building D, Suite 6 • Victorville, CA 92392
Mailing Address: P.O. Box 5004 • Victorville, CA 92393-5004
(760) 955-9885 • (800) 554-0565 • Fax (760) 955-9685

EMIL A. MARZULLO
Director

THOMAS L. SUTTON
Division Chief

November 14, 2000

Ms. Nancy Laughlin
BBARWA
P.O. Box 517
Big Bear city, CA 92314

Subject: Payment and Collection of BBARWA Annual Charges

Dear Ms. Laughlin:

This letter is in response to your letter dated November 3, 2000 and our subsequent telephone conversation.

I do not think that it is necessary to adopt an additional agreement to change BBARWA's billing cycle for County Service Area 53, Improvement Zone B. The proposed billing cycle of 50% on April 30th and December 30th of each year is compatible with the districts cash flow.

Therefore, please accept this letter as the district's authorization and agreement for BBARWA to adopt and implement the above billing cycle.

If you have questions, please call.

Sincerely,

Thomas L. Sutton
Division Chief

TLS:lh

cc: Emil Marzullo, Director
Patti Raynor, Supervisor of Fiscal Services

WILLIAM H. RANDOLPH
County Administrative Officer
JOHN GOSS
Assistant County Administrator
Economic Development and
Public Services Group

KATHY A. DAVIS First District
JON D. MIKELS Second District
JERRY EAVES Fifth District
DENNIS HANSSBERGER Third District
FRED AGUIAR Fourth District

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Board of Supervisors