

77-264

OPERATING AGREEMENT NO. 3

AGREEMENT BETWEEN
BIG BEAR AREA REGIONAL WASTEWATER AGENCY,
BIG BEAR LAKE SANITATION DISTRICT,
BIG BEAR CITY COMMUNITY SERVICES DISTRICT
AND COUNTY OF SAN BERNARDINO ON BEHALF OF
IMPROVEMENT ZONE "B" OF SAN BERNARDINO COUNTY
SERVICE AREA 53 REGARDING MANAGEMENT AND
OPERATION OF REGIONAL SEWERAGE FACILITIES
AND ADMINISTRATION OF RELATED PROGRAMS

THIS AGREEMENT is entered into as of this 3rd day of May, 1977, by and between the Big Bear Area Regional Wastewater Agency (hereinafter referred to as "BBARWA"), the Big Bear Lake Sanitation District (hereinafter referred to as "BBLSD"), the Big Bear City Community Services District (hereinafter referred to as "BCCSD"), and the County of San Bernardino (hereinafter referred to as "County") on behalf of Improvement Zone "B" of San Bernardino County Service Area 53 (hereinafter referred to as "CSA 53-B").

RECITALS

(1) Status of Parties. BBARWA is a joint exercise of powers agency operating under Chapter 5, Division 7, Title 1 of the Government Code (§6500, et seq.), and was created by agreement dated March 22, 1974, between the other parties to this Agreement. BBLSD is a county sanitation district organized and existing under Chapter 3, Part 3, Division 5 of the Health and Safety Code (§4700, et seq.) County is a

county of the State of California. BBCCSD is a community services district organized and existing under Division 3, Title 6 of the Government Code (§61000, et seq.).

(2) BBARWA's Purpose. BBARWA was created for the purpose of constructing a regional sewerage system for the Big Bear Valley area, obtaining state and federal grants for such construction, financing the local portion of the cost of such construction and operating such regional sewerage system ("Regional System").

(3) Operating Agreements Nos. 1 & 2. The parties to this Agreement have entered into two other agreements designated Operating Agreement No. 1 and Operating Agreement No. 2. Operating Agreement No. 2 provides, inter alia, that BBCCSD and BBLSD shall continue to operate their respective sewage and wastewater treatment plants until July 1, 1978, and that thereafter BBARWA shall assume complete control and operation of said treatment plants and the other facilities which will comprise the Regional System.

(4) Purpose. It is necessary and desirable that the parties enter into an agreement providing for the management and operation of the Regional System from and after July 1, 1978, and for other matters related thereto.

AGREEMENT

In consideration of the foregoing and the mutual covenants and promises hereinafter contained, the parties agree as follows:

Section 1. DEFINITIONS.

The following words where used in this Agreement shall have the meaning hereafter ascribed to them:

1.01 Regional System. "Regional System" means: (1) the Regional Treatment Plant, (2) the outfall pipeline from the Regional Treatment Plant to the disposal site in Lucerne Valley, (3) the regional lift station to be located adjacent to the Regional Treatment Plant for delivering effluent from said treatment plant to said outfall pipeline, (4) the hydroelectric generating facilities, if any, located along said outfall pipeline, (5) turn-outs and other facilities, if any, located along said outfall pipeline for delivery of effluent to parties who may contract with BBARWA for such deliveries, (6) the interceptor sewer line from the CSA 53-B sewage collection system to the existing BBCCSD interceptor at Division Drive and Aeroplane Boulevard (the North Shore Interceptor), and all lift stations located along said interceptor sewer, (7) the BBCCSD Interceptor, (8) the interceptor sewer line from BBLSD sewage collection system to the Regional Treatment Plant (the Lake Interceptor), (9) the lift station for delivering sewage and wastewater from the BBLSD sewage collection system to said interceptor, (10) the disposal facilities, including irrigation facilities, in Lucerne Valley, and (11) the BBLSD Treatment Plant.

1.02 BBCCSD Interceptor. "BBCCSD Interceptor" means the interceptor sewer line extending from a manhole (No. 75) in Division Drive at Aeroplane Boulevard to the

Regional Treatment Plant.

1.03 Lake Interceptor. "Lake Interceptor" means the interceptor sewer line extending from the BBLSD sewage collection system to the headworks of the Regional Treatment Plant.

1.04 North Shore Interceptor. "North Shore Interceptor" means the interceptor sewer line extending from the CSA 53-B sewage collection system to the commencement of the BBCCSD Interceptor at Manhole No. 75 in Division Drive at Aeroplane Boulevard.

1.05 Regional Treatment Plant. "Regional Treatment Plant" means the regional sewage and wastewater treatment plant which will be located at the site of the BBCCSD Treatment Plant, including said treatment plant and all modifications of existing facilities thereof and construction of new facilities at the site of said treatment plant specified in the plans and specifications for the Regional System.

1.06 BBLSD Treatment Plant. "BBLSD Treatment Plant" means the sewage and wastewater treatment plant now owned and operated by BBLSD and located near the shore of Big Bear Lake in Section 21, Township 2 North, Range 1 East, San Bernardino County.

1.07 Interceptor System. "Interceptor System" means (1) the Lake Interceptor, (2) the lift station for delivering sewage and wastewater from the BBLSD sewage collection system to said interceptor, (3) the BBLSD Treatment Plant, (4) the North Shore Interceptor, and all lift

stations located along said interceptor.

1.08 Treatment and Disposal System. "Treatment and Disposal System" means (1) the Regional Treatment Plant, (2) the outfall pipeline from the Regional Treatment Plant to the disposal site in Lucerne Valley, (3) the regional lift station to be located adjacent to the Regional Treatment Plant for delivering effluent from said treatment plant to said outfall pipeline, (4) the hydroelectric generating facilities, if any, located along said outfall pipeline, (5) turn-outs and other effluent delivery facilities, if any, located along said outfall pipeline, (6) the disposal facilities, including irrigation facilities, in Lucerne Valley, and (7) the BBCCSD Interceptor.

1.09 Operating Agreement No. 2. "Operating Agreement No. 2" means the agreement between the parties to this Agreement, regarding the sale and transfer of facilities by BBLSD and BBCCSD to BBARWA, the right of BBARWA to purchase surplus real property of BBLSD and BBCCSD, the operation of certain facilities, and capacity and connection rights of BBLSD, BBCCSD and County in and to certain facilities.

Section 2. TERM.

2.01 This Agreement shall become effective at such time as it has been executed on behalf of all the parties hereto, and unless sooner terminated, as hereinafter provided, shall continue in effect until July 1, 1987, and may be extended thereafter by agreement of the parties.

Section 3. FACILITIES TO BE OPERATED AND SERVICES TO BE PROVIDED BY BBCCSD.

3.01 Treatment and Disposal System--Administrative Services. BBCCSD shall be and is hereby designated and employed to provide all services relating to the management and operation of the Treatment and Disposal System, and shall manage, operate, maintain and repair all components of said system. BBCCSD shall also provide general administrative, secretarial, bookkeeping and clerical services for BBARWA and shall administer and conduct all general operations, programs and services of BBARWA.

3.02 Administrative Manager--General Manager. BBCCSD's General Manager shall be the Administrative Manager of all BBARWA's general operations, programs and services and shall also be the General Manager of the Treatment and Disposal System. With respect to such duties, BBCCSD's General Manager shall be responsible to and shall report directly to BBARWA's Governing Board. BBCCSD shall make its said General Manager available to BBARWA to the extent necessary to provide adequate management and supervision of the Treatment and Disposal System as well as administration of BBARWA's general operations, programs and services. In such capacities, BBCCSD's General Manager shall provide all services normally provided by general managers of similar facilities and who administer comparable programs, operations and services, including but not limited to the following:

3.02.1 Provide overall supervision and management of the Treatment and Disposal System and all of its components;

3.02.2 Provide management and supervision of all employees of BBCCSD who perform services on behalf of BBARWA pursuant to this Agreement;

3.02.3 Supervise the administration of Operating Agreements Nos. 1 and 2 on behalf of BBARWA;

3.02.4 Be responsible for and handle public relations on behalf of BBARWA including responding to inquiries and complaints regarding BBARWA's facilities, operations, programs and services;

3.02.5 Receive all mail to BBARWA and respond to all such mail concerning routine business;

3.02.6 Collect, receive and receipt for all BBARWA funds and deposit same with the San Bernardino County Treasurer to BBARWA's account;

3.02.7 Arrange for the payment of all routine demands against BBARWA within the monetary authority delegated by BBARWA's Governing Board;

3.02.8 Arrange for the payment of principal and interest on BBARWA's revenue bonds, and administer all covenants contained in resolutions of BBARWA's Governing Board with respect to such bonds;

3.02.9 Purchase or arrange for the purchase of all necessary equipment, materials and supplies;

3.02.10 Maintain an accurate running inventory of all BBARWA equipment, material and supplies in such detail as may be required by the BBARWA Governing Board;

3.02.11 Prepare BBARWA's annual budgets and submit the same to the BBARWA Governing Board;

3.02.12 Make all necessary arrangements for the regular, special and adjourned regular meetings of BBARWA's Governing Board, including preparation of agendas for all such meetings;

3.02.13 Arrange for the taking and recording of the minutes of all such meetings of said Governing Board;

3.02.14 File, index, properly record and retain all BBARWA records;

3.02.15 Prepare and render reports to the BBARWA Governing Board, at such intervals as said Governing Board may designate regarding BBARWA's operations, programs and services and all receipts and expenditures during the period covered by said reports;

3.02.16 Communicate as necessary with the Chairman and other members of BBARWA's Governing Board between the Governing Board's regular meetings;

3.02.17 Conduct or have conducted all monitoring and sampling and make all necessary reports to the Regional Water Quality Control Boards called for under the National Pollution Discharge Elimination System Permit or the Waste Discharge Requirements for the Regional System and as required by the Monitoring Program prepared by BBARWA's

design engineers;

3.02.18 See that the Treatment and Disposal System and all its components are at all times in proper working order and in a good state of repair, and that said system is at all times operated in accordance with the Operating Manual therefor and such other requirements as the BBARWA Governing Board may from time to time adopt;

3.02.19 See that all facilities and landscaping are maintained so as to present a neat and attractive appearance;

3.02.20 See that all applicable safety rules and regulations are complied with at all times by all treatment plant and field employees;

3.02.21 Provide and perform such other services as may be designated from time to time by BBARWA's Governing Board.

3.03 Treatment Plant Operators. BBCCSD shall employ and provide such number of qualified treatment plant operators as may be designated by BBARWA's Governing Board to supervise and operate the Regional Treatment Plant. Said treatment plant operators shall work under the direct supervision of BBCCSD's General Manager and shall be employees of BBCCSD. One of said operators shall have the qualifications necessary for and shall be the supervising operator of the Regional Treatment Plant, it being understood that the present operator of the BBCCSD Treatment Plant has such qualifications. Said supervising operator shall be employed

full-time at the Regional Treatment Plant; however, the other treatment plant operators may with the prior approval of BBARWA's Governing Board divide their time between the performance of services related to the operation of the Regional Treatment Plant and services solely for the benefit of BBCCSD.

3.04 Other Employees. BBCCSD shall also employ such secretarial, bookkeeping, clerical and other employees as may be necessary for the proper operation of the Treatment and Disposal System, and the proper administration of BBARWA's operations, programs and services. All such employees shall work under the direct supervision of BBCCSD's General Manager and shall be employees of BBCCSD. Such employees may divide their time between the performance of services related to this Agreement and services solely for the benefit of BBCCSD. The BBARWA Governing Board may designate the number of employees to be employed by BBCCSD in the performance of services hereunder and may from time to time revise such number, and BBCCSD shall employ the number of employees so designated by said Governing Board.

3.05 Compensation of Employees. BBCCSD shall be responsible for and shall promptly pay the salaries and wages of its General Manager, the treatment plant operators, and all other employees who are employed in providing services on behalf of BBARWA pursuant to this Agreement. BBCCSD shall also be responsible for and shall provide appropriate employee benefits for all such employees, including health

and accident insurance and a pension plan under the California Public Employees Retirement System or equivalent. The salaries and wages of all such employees shall be comparable to compensation generally paid for the performance of duties and services similar to those performed by such employees.

3.06 Vehicles and Equipment. BBCCSD shall arrange for and provide all motor vehicles, equipment and tools necessary to the proper operation, maintenance and repair of the Treatment and Disposal System. All such vehicles shall be owned by BBCCSD and shall be leased by BBCCSD to BBARWA at a fair rental to be agreed upon by and between BBARWA and BBCCSD as hereinafter provided in Subpart 3.09.2. BBCCSD may elect to use one or more of said vehicles in connection with BBCCSD's operations, in which event the rental to be paid by BBARWA shall be determined based upon the proportionate amount of time said vehicles are actually used in connection with the performance of services under this Agreement. All equipment and tools used solely in the operation, maintenance and repair of the Treatment and Disposal System shall be purchased with BBARWA funds and shall be BBARWA's property. Small tools and equipment which will not be used solely in the operation, maintenance and repair of the Treatment and Disposal System shall be furnished by BBCCSD without cost to BBARWA.

3.07 Construction Coordinator. BBCCSD shall during the design and construction of the Treatment and Disposal System be BBARWA's representative in all dealings

with the design and construction engineers and with the contractors who perform work on the Treatment and Disposal System or any components thereof. BBCCSD, as such representative, shall make its General Manager available to BBARWA to the extent necessary to provide the services hereinafter enumerated. In performing such services, said General Manager shall be responsible to and shall report directly to BBARWA's Governing Board. In such capacity, said General Manager shall:

3.07.1 Act as BBARWA's representative under the agreement with the design and construction engineers entitled "Amended Agreement for Professional Services Regarding Wastewater Interceptors, Treatment and Disposal Facilities for the Big Bear Area Regional Wastewater Agency" and dated October 14, 1976, and administer said agreement on behalf of BBARWA insofar as it relates to the Treatment and Disposal System;

3.07.2 Coordinate and consult with the design and construction engineers and the responsible resident engineers designated by said engineers to supervise and inspect the construction of the Treatment and Disposal System;

3.07.3 Conduct, in the company of such resident engineers, periodic review of all sites where construction is in progress, and report to the BBARWA Governing Board with respect thereto;

3.07.4 Review and approve on behalf of BBARWA all change orders to contract documents that do not alter contract amounts by more than \$1,000; provided, however, that at such time as said General Manager has approved change orders which cumulatively alter contract amounts by \$10,000, all future change orders, regardless of amount, shall be approved by the BBARWA Governing Board;

3.07.5 Attend all BBARWA Governing Board meetings during the period of construction and report to the Board regarding the progress of construction and related pertinent matters;

3.07.6 Review with the said resident engineers and approve all requests for payment by contractors;

3.07.7 Call when necessary and attend all construction conferences as the representative of BBARWA;

3.07.8 Be responsible for community relations with respect to the construction of the Treatment and Disposal System, and receive and respond to all complaints and inquiries from members of the public with respect to such construction;

3.07.9 Coordinate with the manager of BBLSD as necessary and in any event not less than once each week regarding the overall scheduling and coordination of the construction of the Treatment and Disposal System and the Interceptor System to insure that construction of the Regional System as a whole is completed at the earliest practicable date and in accordance with the plans and specifications;

3.07.10 Promptly report to the BBARWA Governing Board and to the resident engineers any misperformance or nonperformance on the part of the contractors which may be observed by or brought to the attention of BBCCSD's General Manager;

3.07.11 Provide such other related services as may be specified, from time to time, by the BBARWA Governing Board.

Neither BBCCSD nor its General Manager shall have or assume any responsibility for the supervision and inspection of the work of the contractor or contractors, for the interpretation or application of contract documents or for any other services to be performed by the design and construction engineers under the agreement referred to in Subpart 3.07.1.

3.08 Office and Meeting Space--Records--Office Equipment--Telephone--Sign. BBARWA's administrative office shall be the BBCCSD office, and BBCCSD shall provide adequate space at its office for BBARWA's operations and records, and shall provide a counter where members of the public may come to obtain information regarding BBARWA's operations, facilities, services and charges. BBARWA's records shall at all times be kept separate from those of BBCCSD. BBCCSD shall also provide all office machines and equipment necessary to properly conduct BBARWA's business and operations. BBCCSD shall arrange for and provide a separately in the performance of services hereunder, the said monthly rental shall be based upon the proportionate amount of time which said

to answer said telephone at all times during regular business hours. BBCCSD shall make available to BBARWA's Governing Board, BBCCSD's Board room for all meetings of said Governing Board. If BBARWA's Governing Board so desires, BBCCSD shall obtain and display in a prominent location outside BBCCSD's office a sign indicating that said office is also the office of BBARWA.

3.09 Payment for Services, Facilities and Equipment.

BBCCSD shall be paid or reimbursed by BBARWA for all services to be rendered by BBCCSD hereunder and for providing facilities, equipment and supplies hereunder as follows:

3.09.1 BBARWA shall pay BBCCSD for providing office space, business equipment and machines and for utilization of BBCCSD's Board room a monthly rental to be agreed upon by the parties prior to the commencement of each fiscal year (July 1-June 30). The monthly rental to be paid by BBARWA to BBCCSD from the effective date of this Agreement until June 30, 1978, shall be \$150 per month.

3.09.2 BBARWA shall pay to BBCCSD a monthly rental for vehicles which are utilized by BBCCSD in the performance of services hereunder. The amount of such monthly rental and the method of determining same shall be agreed upon by BBARWA and BBCCSD at the time each such vehicle is placed into service. For vehicles which are utilized only part-time in the performance of services hereunder, the said monthly rental shall be based upon the proportionate amount of time which said

vehicles are used in the performance of services hereunder. In addition to such monthly rental, BBARWA shall pay or reimburse BBCCSD for the actual cost of operating, maintaining and repairing all such vehicles, including costs associated with licensing, insurance, gasoline, oil, servicing, repairs and replacement of tires, batteries and other parts. For vehicles which are utilized only part-time in the performance of services hereunder, BBARWA shall pay or reimburse BBCCSD a proportionate part of such costs of operating, repairing and maintaining such vehicles based on the proportionate amount of time such vehicles are used in the performance of services hereunder.

3.09.3 BBARWA shall reimburse BBCCSD for a proportionate share of the salary and employee benefits of BBCCSD's General Manager, based upon the proportionate amount of time which such General Manager spends in the performance of his duties and responsibilities hereunder, as well as the nature and complexity of such duties and responsibilities. Said proportionate amount of time shall be agreed upon by BBARWA and BBCCSD at the commencement of each fiscal year. Said General Manager's salary, including the portion thereof related to the performance of services hereunder, and employee benefits shall be determined by BBCCSD's Board of Directors; however, said Board of Directors shall obtain the approval of BBARWA's Governing Board of the portion of said General Manager's salary which is attributable to said General Manager's performance of services hereunder.

3.09.4 BBARWA shall reimburse BBCCSD for the entire amount of the salaries or wages and employee benefits of the supervising treatment plant operator and such other treatment plant operators who are employed full-time in the operation of the Regional Treatment Plant.

3.09.5 BBARWA shall pay or reimburse BBCCSD for a proportionate amount of the salaries or wages and employee benefits of all secretarial, bookkeeping, clerical, administrative and field employees and part-time treatment plant operators who perform services on behalf of BBARWA under this Agreement based on the time such employees spend in the performance of such services as determined from time records to be submitted by BBCCSD to BBARWA for all such employees.

3.09.6 BBARWA shall, as provided in Part 3.10, pay directly the costs of all equipment, chemicals, materials, and supplies utilized in the operation and maintenance of the Treatment and Disposal System and all other materials and supplies purchased by BBCCSD in connection with the performance of services hereunder. BBARWA shall also pay directly the costs of all utilities supplied for and used in the operation and maintenance of the Treatment and Disposal System, including electricity, water, gas and telephone.

BBCCSD shall bill BBARWA for the rent, costs, wages and employee benefits and other amounts specified in

Subparts 3.09.1 through 3.09.5 on a monthly basis on or before the 15th day of the month succeeding the month of incurrence, and BBARWA shall pay each such billing on or before the 1st day of the next succeeding month.

3.10 Costs of Operating Treatment and Disposal System. From and after July 1, 1978, all costs directly associated with the operation of the Treatment and Disposal System and in particular the Regional Treatment Plant, including costs of utilities, lab fees, chemicals, supplies, and materials, and costs associated with the maintenance, repair and upkeep of buildings, machinery, equipment and facilities shall be paid directly by BBARWA.

3.11 Fidelity Bond. BBCCSD shall obtain at BBARWA's expense and furnish to BBARWA a fidelity bond in the amount of \$50,000 conditioned upon the faithful performance of the duties and responsibilities of BBCCSD's General Manager and all other employees who will have responsibility with respect to BBARWA's funds.

3.12 Replacement of Employees for Cause. Should the BBARWA Governing Board determine that any person employed by BBCCSD to perform duties or services on behalf of BBARWA under this Agreement, including its General Manager, is not performing such duties or services in a proper manner, BBCCSD shall, upon being requested in writing to do so by the BBARWA Governing Board, replace such person, insofar as the performance of duties and services on behalf of BBARWA is concerned, with a person who has the qualifications and

ability to perform such duties or services. In the event the BBARWA Governing Board requests that BBCCSD's General Manager be replaced as the General Manager of the Treatment and Disposal System and as BBARWA's Administrative Manager, the provisions of Section 10 shall apply; however, the person appointed by BBCCSD to replace its General Manager in such capacities need not also be BBCCSD's General Manager.

3.13 Commencement of Performance of Services.

BBCCSD shall commence managing and operating the Treatment and Disposal System on July 1, 1978. However, BBCCSD shall commence the performance of all other duties and services hereunder, to the extent they are required, immediately upon the effective date of this Agreement.

Section 4. FACILITIES TO BE OPERATED AND SERVICES TO BE PROVIDED BY BBLSD.

4.01 Interceptor System. BBLSD shall be and is hereby designated and employed to provide all services relating to the management and operation of the Interceptor System, and shall manage, operate, maintain and repair all components of said system.

4.02 General Manager. BBLSD's Manager shall be the General Manager of the Interceptor System. With respect to such duties, BBLSD's Manager shall be responsible to and shall report directly to BBARWA's Governing Board. BBLSD shall make its said Manager available to BBARWA to the extent necessary to provide adequate management and supervision

of the Interceptor System. In such capacity, BBLSD's Manager shall provide all services normally provided by general managers of similar facilities, including but not limited to the following:

4.02.1 Provide overall supervision and management of the Interceptor System and all of its components;

4.02.2 Provide management and supervision of all employees of BBLSD who perform services on behalf of BBARWA pursuant to this Agreement;

4.02.3 Be responsible for and handle public relations concerning the Interceptor System including responding to inquiries and complaints regarding same;

4.02.4 Purchase or arrange for the purchase of all equipment, materials and supplies necessary to the operation, maintenance and repair of the Interceptor System;

4.02.5 See that the Interceptor System and all its components are at all times in proper working order and in a good state of repair, and that said system is at all times operated in accordance with the Operating Manual therefor and such other requirements as the BBARWA Governing Board may from time to time adopt;

4.02.6 See that all facilities and landscaping are maintained so as to present a neat and attractive appearance;

4.02.7 See that all applicable safety rules and regulations are complied with at all times by all employees;

4.02.8 Maintain an accurate running inventory of all BBARWA equipment, materials and supplies utilized or to be utilized in the operation, maintenance and repair of the Interceptor System in such detail as may be required by the BBARWA Governing Board;

4.02.9 Provide and perform such other services as may be designated from time to time by BBARWA's Governing Board.

4.03 Other Employees. BBLSD shall also employ such other employees as may be necessary for the proper operation of the Interceptor System. All such employees shall work under the direct supervision of BBLSD's Manager and shall be employees of BBLSD. Such employees may divide their time between the performance of services related to this Agreement and services solely for the benefit of BBLSD. The BBARWA Governing Board may designate the number of employees to be employed by BBLSD in the performance of services hereunder and may from time to time revise such number, and BBLSD shall employ the number of employees so designated by said Governing Board.

4.04 Compensation of Employees. BBLSD shall be responsible for and shall promptly pay the salaries and wages of its Manager and all other employees who are employed in providing services on behalf of BBARWA pursuant to this Agreement. BBLSD shall also be responsible for and shall provide appropriate employee benefits for all such employees, including health and accident insurance and a pension plan

under the California Public Employees Retirement System or equivalent. The salaries and wages of all such employees shall be comparable to compensation generally paid for the performance of duties and services similar to those performed by such employees.

4.05 Vehicles and Equipment. BBLSD shall arrange for and provide all motor vehicles, equipment and tools necessary to the proper operation, maintenance and repair of the Interceptor System. All such vehicles shall be owned by BBLSD and shall be leased by BBLSD to BBARWA at a fair rental to be agreed upon by and between BBARWA and BBLSD as hereinafter provided in Subpart 4.07.1. BBLSD may elect to use one or more of said vehicles in connection with BBLSD's operations, in which event the rental to be paid by BBARWA shall be determined based upon the proportionate amount of time said vehicles are actually used in the performance of services under this Agreement. All equipment and tools used solely in the operation, maintenance and repair of the Interceptor System shall be purchased with BBARWA funds and shall be BBARWA's property. Small tools and equipment which will not be used solely in the operation, maintenance and repair of the Interceptor System shall be furnished by BBLSD without cost to BBARWA.

4.06 Construction Coordinator. BBLSD shall during the design and construction of the Interceptor System be BBARWA's representative in all dealings with the design and construction engineers and with the contractors who

perform work on the Interceptor System or any components thereof. BBLSD, as such representative, shall make its Manager available to BBARWA to the extent necessary to provide the services hereinafter enumerated. In performing such services, said Manager shall be responsible to and shall report directly to BBARWA's Governing Board. In such capacity said Manager shall:

4.06.1 Act as BBARWA's representative under the agreement with the design and construction engineers entitled "Amended Agreement for Professional Services Regarding Wastewater Interceptors, Treatment and Disposal Facilities for the Big Bear Area Regional Wastewater Agency" and dated October 14, 1976, and administer said agreement on behalf of BBARWA insofar as it relates to the Interceptor System;

4.06.2 Coordinate and consult with the design and construction engineers and the responsible resident engineers designated by said engineers to supervise and inspect the construction of the Interceptor System;

4.06.3 Conduct, in the company of such resident engineers, periodic review of all sites where construction is in progress, and report to the BBARWA Governing Board with respect thereto;

4.06.4 Review and approve on behalf of BBARWA all change orders to contract documents that do not alter contract amounts by more than \$1,000; provided, however, that at such time as said Manager has approved change orders which cumulatively alter contract amounts by \$10,000, all

future change orders, regardless of amount, shall be approved by the BBARWA Governing Board;

4.06.5 Attend all BBARWA Governing Board meetings during the period of construction and report to the Board regarding the progress of construction and related pertinent matters;

4.06.6 Review with the said resident engineers and approve all requests for payment by contractors;

4.06.7 Call when necessary and attend all construction conferences as the representative of BBARWA;

4.06.8 Be responsible for community relations with respect to the construction of the Interceptor System, and receive and respond to all complaints and inquiries from members of the public with respect to such construction;

4.06.9 Coordinate with the Manager of BBCCSD as necessary and in any event not less than once each week regarding the overall scheduling and coordination of the construction of the Treatment and Disposal System and the Interceptor System to insure that construction of the Regional System as a whole is completed at the earliest practicable date and in accordance with the plans and specifications;

4.06.10 Promptly report to the BBARWA Governing Board and to the resident engineers any misperformance or nonperformance on the part of the contractors which may be observed by or brought to the attention of BBLSD's Manager;

4.06.11 Provide such other related services as may be specified, from time to time, by the BBARWA Governing Board.

Neither BBLSD nor its Manager shall have or assume any responsibility for the supervision and inspection of the work of the contractor or contractors, for the interpretation or application of contract documents or for any other services to be performed by the design and construction engineers under the agreement referred to in Subpart 4.06.1.

4.07 Payment for Services, Facilities and Equipment.

BBLSD shall be paid or reimbursed by BBARWA for all services to be rendered by BBLSD hereunder and for providing facilities, equipment and supplies hereunder as follows:

4.07.1 BBARWA shall pay to BBLSD a monthly rental for vehicles which are utilized by BBLSD in the performance of services hereunder. The amount of such monthly rental and the method of determining same shall be agreed upon by BBARWA and BBLSD at the time each such vehicle is placed into service. For vehicles which are utilized only part-time in the performance of services hereunder, the said monthly rental shall be based upon the proportionate amount of time which said vehicles are used in the performance of services hereunder. In addition to such monthly rental, BBARWA shall pay or reimburse BBLSD for the actual cost of operating, maintaining and repairing all such vehicles, including costs associated with licensing, insurance, gasoline, oil, servicing, repairs and replacement of tires, batteries and other parts. For vehicles which are utilized only part-time in the per-

formance of services hereunder, BBARWA shall pay or reimburse BBLSD a proportionate part of such costs of operating, repairing and maintaining such vehicles based on the proportionate amount of time such vehicles are used in the performance of services hereunder.

4.07.2 BBARWA shall reimburse BBLSD for a proportionate share of the salary and employee benefits of BBLSD's Manager, based upon the proportionate amount of time which such Manager spends in the performance of his duties and responsibilities hereunder, as well as the nature and complexity of such duties and responsibilities. Said proportionate amount of time shall be agreed upon by BBARWA and BBLSD at the commencement of each fiscal year. Said Manager's salary, including the portion thereof related to the performance of services hereunder, and employee benefits shall be determined by BBLSD's Governing Board; however, said Governing Board shall obtain the approval of BBARWA's Governing Board of the portion of said Manager's salary which is attributable to said Manager's performance of services hereunder.

4.07.3 BBARWA shall pay or reimburse BBLSD for a proportionate amount of the salaries or wages and employee benefits of all employees who perform services on behalf of BBARWA under this Agreement based on the time such employees spend in the performance of such services as determined from time records to be submitted by BBLSD to BBARWA for all such employees.

4.07.4 BBARWA shall, as provided in Part 4.08, pay directly the costs of all equipment, materials and supplies purchased by BBLSD in connection with the operation, maintenance and repair of the Interceptor System. BBARWA shall also pay directly the costs of all utilities supplied for and used in the operation and maintenance of the Interceptor System, including electricity, water, gas and telephone.

BBLSD shall bill BBARWA for the rent, costs, wages and employee benefits and other amounts specified in Subparts 4.07.1 through 4.07.3 on a monthly basis on or before the 15th day of the month succeeding the month of incurrence, and BBARWA shall pay each such billing on or before the 1st day of the next succeeding month.

4.08 Costs of Operating Interceptor System. From and after July 1, 1978, all costs directly associated with the operation of the Interceptor System, including costs of utilities, supplies and materials, and costs associated with the maintenance, repair and upkeep of buildings, machinery, equipment and facilities shall be paid directly by BBARWA.

4.09 Replacement of Employees for Cause. Should the BBARWA Governing Board determine that any person employed by BBLSD to perform duties or services on behalf of BBARWA under this Agreement, including its Manager, is not performing such duties or services in a proper manner, BBLSD shall,

upon being requested in writing to do so by the BBARWA Governing Board, replace such person, insofar as the performance of duties and services on behalf of BBARWA is concerned, with a person who has the qualifications and ability to perform such duties or services. In the event the BBARWA Governing Board requests that BBLSD's Manager be replaced as the General Manager of the Interceptor System, the provisions of Section 10 shall apply; however, the person appointed by BBLSD to replace its Manager in such capacity need not also be BBLSD's Manager.

4.10 Commencement of Performance of Services.

BBLSD shall commence managing and operating the Interceptor System on July 1, 1978. However, BBLSD shall commence the performance of all other duties and services hereunder, to the extent they are required, immediately upon the effective date of this Agreement.

4.11 BBLSD Treatment Plant. Pursuant to Section 7 of Operating Agreement No. 2, the BBLSD Treatment Plant shall continue to be operated until all "Modifications to the BBCCSD Treatment Plant" specified in Part 1.09 of said Agreement are completed and in operation, and all sewage and wastewater from the BBLSD sewage collection system shall be treated at the BBLSD Treatment Plant and pumped through the Lake Interceptor to the evaporation lake near the BBCCSD sewage and wastewater treatment plant for disposal. So long as the BBLSD Treatment Plant is operated in this manner, BBLSD shall manage, operate, maintain and repair said plant

and said interceptor. Prior to July 1, 1978, BBLSD shall operate such facilities as provided in Operating Agreement No. 2; however, thereafter BBLSD's operation of such facilities shall be pursuant to this Agreement. At such time as said treatment plant is no longer operated in such manner, it shall be maintained by BBLSD as part of the Interceptor System.

Section 5. COORDINATION BETWEEN MANAGERS.

5.01 BBLSD's General Manager and BBLSD's Manager shall coordinate with and assist each other in the performance of their respective duties and responsibilities under this Agreement, and to insure that the Interceptor System and the Treatment and Disposal System are operated in a compatible and efficient manner. Such Managers shall also provide each other with all information and data necessary to the proper performance of their said respective duties and responsibilities. Disputes, if any, between said Managers with regard to the performance of their said respective duties and responsibilities shall be brought to and decided by the BBARWA Governing Board.

Section 6. INDEPENDENT CONTRACTORS.

6.01 BBCCSD and BBLSD in the performance of services hereunder are independent contractors, and all employees of BBCCSD and BBLSD are solely the employees of BBCCSD and BBLSD, respectively, and are not the agents or employees of BBARWA.

Section 7. INDEMNIFICATION.

7.01 BBCCSD and BBLSD shall indemnify and hold harmless BBARWA from any and all liability or damage as a result of the actions or inactions of their respective employees in connection with the performance of services hereunder.

Section 8. INSURANCE.

8.01 General. BBCCSD and BBLSD shall furnish and maintain throughout the term of this Agreement, comprehensive general liability insurance coverage and automobile liability insurance coverage having limits as to injury, sickness or death in the amount of \$500,000 for injury, sickness or death to a single person and \$1,000,000 for injury, sickness or death to two or more persons arising out of a single occurrence, and property damage limits of \$500,000. BBARWA, its officers and agents shall be additional named insureds under the policy or policies for such insurance, and BBCCSD and BBLSD shall furnish BBARWA with certificates of insurance evidencing such insurance coverage.

8.02 Worker's Compensation. BBCCSD and BBLSD shall furnish and maintain throughout the term of this Agreement, worker's compensation insurance for their respective employees who will perform services under this Agreement, with coverage and limits as provided by the applicable provisions of the Labor Code. BBCCSD and BBLSD shall furnish BBARWA with certificates of insurance evidencing such insurance coverage.

Section 9. TERMINATION.

9.01 For Cause. This Agreement may be terminated as of June 30 of any year by BBARWA's Governing Board as to either BBCCSD or BBLSD if in the opinion of said Governing Board either of said agencies has failed to properly perform services hereunder or it is not in the best interest of BBARWA to have either of said agencies continue to perform such services. This Agreement may also be terminated as of said date by either BBCCSD or BBLSD, as to its part of the Agreement, if it determines that it is not in its best interests to continue to perform services hereunder. Any party wishing to terminate this Agreement as in this Part provided shall give the other parties written notice on or before March 31 of its intent to terminate the Agreement effective on June 30 following the date of such notice.

9.02 Payment for Services--Assumption of Obligations.

Upon termination of this Agreement as provided in Part 9.01 as to either BBCCSD or BBLSD, BBARWA shall compensate BBCCSD or BBLSD, as the case may be, for all services performed up to and including the date of termination and for all other costs incurred by it up to and through said termination. Upon such termination of this Agreement, all vehicles and equipment purchased by BBCCSD or BBLSD to provide services hereunder shall be and remain the property of BBCCSD or BBLSD. If either BBCCSD or BBLSD has entered into any long-term lease of equipment that is utilized solely in connection with the performance of services hereunder, upon the termination of

this Agreement as to either of said parties, BBARWA shall take possession of such equipment and assume and be responsible for such leases.

9.03 By Agreement. This Agreement may also be terminated by written agreement executed by all parties hereto.

Section 10. SELECTION OF REPLACEMENT MANAGER.

In the event that either BBCCSD's General Manager or BBLSD's Manager is to be replaced for any reason, BBCCSD or BBLSD (said agencies are hereinafter referred to as "Selecting Agency") shall consult with BBARWA's Governing Board regarding the qualifications and experience of the person to fill said position and shall not select a person for said position who does not have the requisite qualifications and experience. BBARWA's Governing Board shall also be permitted to interview the candidates for said position and the Selecting Agency shall consider the recommendations of BBARWA's Governing Board in selecting the person to fill said position; however, the final decision shall rest with the Governing Board of the Selecting Agency.

Section 11. BONDHOLDERS AS THIRD PARTY BENEFICIARIES.

11.01 It is understood and agreed by the parties hereto that BBARWA has conducted an election and has otherwise taken proceedings for the authorization, issuance and sale of \$3,000,000 of revenue bonds under and pursuant to the Revenue Bond Law of 1941 (Government Code §54300 et seq.) and intends to issue said revenue bonds so authorized

at the special election of March 2, 1976, to pay the local portion of the cost of the design and construction of the Regional System, which was described in the election proceedings as "the acquisition, construction, improving and financing of an enterprise, to wit, a revenue producing improvement, building, system, plant, works, facilities and undertaking used for and useful for the collection, treatment and disposal of sewage and wastewater," and certain legally permissible associated incidental expenses. This Agreement is entered into, in addition to any other purpose herein stated, with the understanding that said bonds shall be issued and sold for such purpose, and the provisions herein are for the protection and benefit of the holders of said bonds, and the parties hereto agree, for the protection and benefit of the holders of said bonds, that they will carry out and perform all covenants, conditions and agreements contained in this Agreement and in the proceedings authorizing said revenue bonds, and that said bondholders are entitled to enforce the same, or to cause BBARWA to enforce the same on their behalf, as third party beneficiaries of this Agreement.

Section 12. GENERAL PROVISIONS.

12.01 Notices. Any notice to be given hereunder by any party to another party may be effected by personal delivery in writing or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of mailing. Mailed notices shall be addressed to the parties at their respective principal

offices. Each party may change its address by written notice in accordance with this Part.

12.02 Entire Agreement. This instrument contains the entire agreement between the parties relating to the matters covered hereby. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing, signed on behalf of all parties hereto.

12.03 Captions. The captions of sections and parts of this Agreement are for reference only and are not to be construed in any way as a part of this Agreement.

12.04 Partial Invalidity. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

12.05 Successors. This Agreement shall be binding upon and inure to the benefit of the successors in interest of the parties.

12.06 Attorney's Fees. If any action, at law or in equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to a reasonable attorney's fee in addition to any other relief to which it may be entitled.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and attested by their proper officers

thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

BIG BEAR AREA REGIONAL
WASTEWATER AGENCY

By: James L. Ward
JAMES L. WARD, Chairman of
the Governing Board of the
Big Bear Area Regional
Wastewater Agency

ATTEST:

By: W. L. Peery
W. L. PEERY, Secretary of
the Governing Board of the
Big Bear Area Regional
Wastewater Agency

BIG BEAR CITY COMMUNITY
SERVICES DISTRICT

By: W. L. Peery
W. L. PEERY, President of
the Board of Directors of
Big Bear City Community
Services District

ATTEST:

By: Earl L. Black
EARL L. BLACK, Secretary
of the Board of Directors
of Big Bear City Community
Services District

BIG BEAR LAKE SANITATION DISTRICT
and the COUNTY OF SAN BERNARDINO
on behalf of Improvement Zone "B"
of San Bernardino County Service
Area 53

By:

Robert O. Townsend

ROBERT O. TOWNSEND, Chairman
of San Bernardino County
Board of Supervisors, Govern-
ing Board of Big Bear Lake
Sanitation District and
Improvement Zone "B" of San
Bernardino County Service
Area 53

MAY 9 1977

ATTEST:

LEONA RAPOPORT
Clerk of said Board

By:

Leona Rapoport
Deputy Clerk

APPROVED AS TO FORM this 9th day of May, 1977.

M. CRANE KITCHELL, County Counsel

By:

Ernest L. Holder
Deputy County Counsel

APPROVED AS TO FORM this 3rd day of May, 1977.

BEST, BEST & KRIEGER

By:

R. T. Anderson
RICHARD T. ANDERSON
Attorneys for Big Bear Area
Regional Wastewater Agency