

**AGREEMENT BETWEEN THE BIG BEAR AREA
REGIONAL WASTEWATER AGENCY, CITY OF
BIG BEAR LAKE, BIG BEAR CITY COMMUNITY
SERVICES DISTRICT AND THE COUNTY OF
SAN BERNARDINO ON BEHALF OF
IMPROVEMENT ZONE "B" OF SAN
BERNARDINO COUNTY SERVICE AREA 53
REGARDING PAYMENT AND COLLECTION OF
TOTAL ANNUAL CHARGE AND STANDBY
CHARGES**

1. PARTIES AND EFFECTIVE DATE:

1.1 Parties. This Payment and Collection Agreement ("Agreement") is entered into on this 23rd day of August, 2011 by and between the Big Bear Area Regional Wastewater Agency ("BBARWA"), City of Big Bear Lake ("City"), Big Bear City Community Services District ("District"), and the County of San Bernardino on behalf of Improvement Zone "B" of San Bernardino County Service Area 53 ("County"). City, District and County are referred to herein as "Collecting Agencies." The Collecting Agencies and BBARWA are also sometimes referred to herein individually as "Party" and collectively as the "Parties."

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

2. RECITALS

2.1 On May 3, 1977 BBARWA entered into an agreement entitled "Operating Agreement No. 1" with the Collecting Agencies, or their predecessor entity, which, among other things, governs the design, construction, operation and maintenance of a regional sewerage system, to which the Collecting Agencies' sewage collection systems are connected. The Collecting Agencies each operate and maintain a sewage collection system within the regional sewerage system, through which the Collecting Agencies collect and deliver sewage and wastewater, and collect fees for such services.

2.2 Pursuant to Section 4.01 of Operating Agreement No. 1, the Collecting Agencies currently remit 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 31 (75%) and the second installment due on November 30 (25%).

2.3 Similarly, Section 4.02 governs the collection of the Service Charge and Section 4.03 governs the collection of the Infiltration/Inflow Charge.

2.4 Pursuant to Section 6.06 of Operating Agreement No. 1, the Collecting Agencies remit to BBARWA applicable BBARWA Standby 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, the Collecting Agencies are required to remit the sums collected to BBARWA on or before November 30 of each year.

2.5 The Collecting Agencies and BBARWA have requested and agreed to a new payment schedule for the Total Annual Charge, Service Charge, Infiltration/Inflow Charge, and the Standby Charge, during the term of this Agreement.

3. Terms

3.1 **Term:** The term of this Agreement shall be for a period of five (5) fiscal years, commencing July 1, 2011, and ending June 30, 2016, and shall be renewable for successive terms of one fiscal year each upon the expiration of such period, and upon the mutual written consent of all Parties. Any Party may terminate the Agreement by providing notice to all of the other Parties at least 90 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 unless each and all of the Parties agree to an alternative termination date. Upon the termination or expiration of this Agreement, BBARWA will resume implementation of the terms of Sections 4.01, 4.02, 4.03 and 6.06 of the Operating Agreement No. 1.

3.2 **Total Annual Charge:**

3.2.1 This Section 3.2 shall become operative and shall temporarily replace Sections 4.01, 4.02 and 4.03 of Operating Agreement No. 1 during the term of this Agreement.

3.2.2 The Collecting Agencies shall remit to BBARWA for receiving, transporting, treating and disposing of sewage and wastewater from its sewage collection system during each fiscal year (July 1 through June 30) a single "Total Annual Charge," and such payment shall be in lieu of the Total Annual Charge, Service Charge, and Infiltration/Inflow Charge, as defined in Operating Agreement No. 1, payable to BBARWA by Collecting Agencies.

3.2.3 The Total Annual Charge shall be collected on both a fixed and variable rate basis, based upon the BBARWA budget adopted for the ensuing fiscal year. The variable rate basis shall not exceed thirty-five percent (35%) of the BBARWA budget for the ensuing fiscal year. In the event that the variable rate basis exceeds thirty-five percent (35%) of the BBARWA budget for the ensuing fiscal year, BBARWA and the Collecting Agencies shall first meet and confer in good faith and shall first agree on the respective liability to the parties for any increase in the Total Annual Charge (as measured from the prior fiscal year's Total Annual Charge).

3.2.3.1 The fixed rate portion of the Total Annual Charge shall be based on BBARWA's fixed costs during the ensuing fiscal year for which the Total Annual Charge is applied. The fixed rate shall be stated on a "per-EDU" (Equivalent Dwelling Unit) basis and shall be calculated as BBARWA's fixed costs divided by the total reported EDUs as of December 31st of the prior fiscal year in which the Annual Charge will be collected.

3.2.3.2 The variable rate portion of the Total Annual Charge shall be based on BBARWA's variable costs during the ensuing fiscal year for which the Total Annual Charge is applied. The variable rate will be stated on a "per 1,000 gallons" basis and shall be calculated as BBARWA's variable costs divided by BBARWA's average dry weather flow. This variable rate shall be applied to each Collecting Agency's three-year average flow to determine the variable rate portion of the Total Annual Charge for the ensuing fiscal year.

3.2.4 During the term of this Agreement, the City of Big Bear Lake shall remit an additional charge ("Additional Charge") to BBARWA as follows:

3.2.4.1 For the 2011-2012 fiscal year, the City of Big Bear Lake shall remit an Additional Charge at the rate of FIVE CENTS (\$0.05) per 1,000 gallons.

3.2.4.2 For the 2012-2013 fiscal year, the City of Big Bear Lake shall remit an Additional Charge at the rate of FOUR CENTS (\$0.04) per 1,000 gallons.

3.2.4.3 For the 2013-2014 fiscal year, the City of Big Bear Lake shall remit an Additional Charge at the rate of THREE CENTS (\$0.03) per 1,000 gallons.

3.2.4.4 For the 2014-2015 fiscal year, the City of Big Bear Lake shall remit an Additional Charge at the rate of TWO CENTS (\$0.02) per 1,000 gallons.

3.2.4.5 For the 2015-2016 fiscal year, the City of Big Bear Lake shall remit an Additional Charge at the rate of ONE CENT (\$0.01) per 1,000 gallons.

3.2.4.6 In the event that this Agreement is extended beyond the 2015-2016 fiscal year, the City of Big Bear Lake shall remit the same variable rate per 1,000 gallons as the other Collecting Agencies thereafter.

3.2.5 The Collecting Agencies shall remit to BBARWA the first installment of Annual Charges, consisting of 50% of the Total Annual Charge for each fiscal year, on December 31 , and shall remit to BBARWA the second installment, consisting of the remaining 50% of the Total Annual Charge for each fiscal year, on April 30.

3.2.6 The City of Big Bear Lake shall remit to BBARWA the first installment of the Additional Charge, consisting of 50% of the Additional Charge for each fiscal year, on December 31 , and shall remit to BBARWA the second installment, consisting of the remaining 50% of the Additional Charge for each fiscal year, on April 30.

3.2.7 Any payment received after the specified installment payment deadlines described in Section 3.2.5 or 3.2.6 may be subject to a late penalty of 1.5%, calculated on a daily basis.

3.3 Standby Charges:

3.3.1 This Section 3.3 shall become operative and shall temporarily replace Section 6.06 of Operating Agreement No. 1 during the term of this Agreement.

3.3.2 The Collecting Agencies shall remit to BBARWA applicable BBARWA Standby Charges, as specified in Operating Agreement No. 1, in two (2) installments during each fiscal year (July 1 through June 30). Such Standby Charges shall be collected by Collecting Agencies 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.

3.3.3 Each Collecting Agency shall remit to BBARWA the first installment, consisting of 50% of the total Standby Charges collected in each fiscal year by each Collecting Agency, on December 31, and shall remit to BBARWA the second installment, consisting of the remaining 50% of the Standby Charges 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 ONE AND ONE HALF PERCENT (1.5%), calculated on a daily basis.

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

To City of Big Bear Lake:

City of Big Bear Lake
39707 Big Bear Boulevard
P.O. Box 10,000
Big Bear Lake, CA 92315
Attn: Jeff Mathieu, City Manager

To Big Bear City CSD:

Big Bear City Community Services District
139 East Big Bear Boulevard
P.O. Box 558
Big Bear City, CA 92314
Attn: Tim Moran, Interim General Manager

To County of San Bernardino:

County of San Bernardino
Special Districts Department]

12402 Industrial Boulevard,
Building D, Suite 6
Victorville, California 92395
Attn: Jeff Rigney, Director

To BBARWA:

Big Bear Area Regional Wastewater Agency
PO Box 517
Big Bear City, CA 92314
Attn: Steven C. Schindler, General Manager

3.5 Operating Agreement No. 1: Except as expressly set forth herein, this Agreement shall not alter the responsibilities of the Collecting Agencies under Operating Agreement No. 1, including without limitation, the Collecting Agencies obligation to collect or remit Total Annual Charges, Service Charges, Infiltration/Inflow Charges and Standby Charges under Operating Agreement No. 1.

3.6 Entire Agreement. This Agreement and the documents referenced herein contain the entire agreement between the Parties to this Agreement and shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors in interest.

3.7 Severability. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected.

3.8 Waivers. A waiver or breach of covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act.

3.9 Construction. The Section headings and captions of this Agreement are, and the arrangement of this instrument is, for the sole convenience of the Parties to this Agreement. The Section headings, captions, and arrangement of this instrument do not in any way affect, limit, amplify, or modify the terms and provisions of this Agreement. The singular form shall include plural, and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it. Unless otherwise

indicated, all references to Sections are to this Agreement. All exhibits referred to in this Agreement are attached to it and incorporated in it by this reference.

3.10 No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the Parties hereto, to any person or entity other than the Parties hereto.

3.11 Amendment to this Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

3.12 Time of the Essence. The Parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof. Unless the context otherwise requires, all periods terminating on a given day, period of days, or date shall terminate at 5:00 p.m. (Pacific time) on such date or dates, and references to "days" shall refer to calendar days except if such references are to "business days" which shall refer to days which are not Saturday, Sunday or a legal holiday. Notwithstanding the foregoing, if any period terminates on a Saturday, Sunday or a legal holiday, under the laws of the State of California, the termination of such period shall be on the next succeeding business day.

3.13 Successors. This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, successors, and assigns.

3.14 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.

3.15 Attorney's Fees: 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 any underlying judgment or order or related to the enforcement of any judgment or order entered in the underlying action or proceeding.

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

3.17 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.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have executed this AGREEMENT REGARDING PAYMENT AND COLLECTION OF TOTAL ANNUAL CHARGE AND STANDBY CHARGES on the date first herein above written.

BIG BEAR AREA REGIONAL WASTEWATER AGENCY

By: [Signature]
Chairman of the Governing Board

CITY OF BIG BEAR LAKE

By: [Signature]
Mayor
City Manager

ATTEST

By: [Signature]
Secretary of the Governing Board

ATTEST

By: [Signature]
Deputy City Clerk

APPROVED AS TO LEGAL FORM

By: [Signature]
General Counsel

APPROVED AS TO LEGAL FORM

By: [Signature]
City Attorney

BIG BEAR CITY COMMUNITY SERVICES DISTRICT

By: [Signature]
Chairman of the Board of Directors

COUNTY OF SAN BERNARDINO ON BEHALF OF COUNTY SERVICE AREA 53, ZONE B

By: [Signature]
Chairman of the Board of Supervisors

AUG 23 2011

ATTEST

By: [Signature]
Secretary of the Governing Board

ATTEST

By: [Signature]
County Clerk

APPROVED AS TO LEGAL FORM

[Signature]
General Counsel

APPROVED AS TO LEGAL FORM

[Signature]
County Counsel



**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE BOARD GOVERNED COUNTY SERVICE AREAS
AND RECORD OF ACTION**

August 23, 2011

**FROM: JEFFREY O. RIGNEY, Director
Special Districts Department**

**SUBJECT: AGREEMENT BETWEEN COUNTY SERVICE AREA 53, ZONE B AND THE BIG
BEAR AREA REGIONAL WASTEWATER AGENCY FOR PAYMENT OF
WASTEWATER TREATMENT AND DISPOSAL SERVICES**

RECOMMENDATION(S)

Acting as the governing body of County Service Area 53, Zone B (CSA 53 B), approve a five year payment and collection **Agreement No. 11-610** with the Big Bear Area Regional Wastewater Agency (BBARWA), modifying the contractual payment schedule for wastewater treatment and disposal services beginning July 1, 2011 and ending June 30, 2016.

(Affected Districts: Third)

(Presenter: Jeffrey O. Rigney, Director, 387-5967)

BOARD OF SUPERVISORS COUNTY GOALS AND OBJECTIVES

Operate in a Fiscally-Responsible and Business-Like Manner.

Pursue County Goals and Objectives by Working with Other Governmental Agencies.

Provide for the Health and Social Services Needs of County Residents.

FINANCIAL IMPACT

CSA 53 B and BBARWA have an existing agreement which provides for the payment of a Total Annual Charge for receiving, transporting, treating and disposing of sewage and wastewater from CSA 53 B's collection system. The Total Charge, payable in two installments (due on December 30 and on April 30 of each year), includes Annual Charges, Standby Charges and Connection Fees. Annual charges are currently based on a fixed rate amount per equivalent dwelling unit (EDU). BBARWA has requested that the Total Charge include both fixed and variable rate components, based upon BBARWA's adopted budget for the fiscal year. The variable rate will not exceed 35% of the BBARWA budget for the fiscal year. The fixed rate will be based on BBARWA's fixed costs during the fiscal year. BBARWA will also be collecting all applicable Standby Charges and Connection Fees as specified in the original agreement. Costs associated with the treatment and disposal of sewage and wastewater services are included in CSA 53 B's FY 2011-12 Budget. Approval of this item will result in no Net County Cost (Discretionary General Funding). This action does not involve a federal program or the use of any federal funds.

cc: Special Districts-Rigney w/agreement
& Watkins w/agreement
Contractor c/o Special Districts
w/agreement
Auditor-Accounts Payable Manager
w/agreement
EBIX-BPO c/o Risk Management
CAO-Brown
File - w/agreement
ml 08/26/11

ITEM 80

Record of Action of the Board of Supervisors
APPROVED (CONSENT CALENDAR)
COUNTY OF SAN BERNARDINO
Board Governed County Service Areas

MOTION AYE SECOND AYE MOVE AYE
 3 4 5

LAURA H. WELCH, CLERK OF THE BOARD

BY _____

DATED: August 23, 2011

FOR OFFICIAL USE ONLY

COUNTY SERVICE AREA 53
 ZONE B
 F A S
 CONTRACT TRANSMITTAL

<input checked="" type="checkbox"/> New <input type="checkbox"/> Change <input type="checkbox"/> Cancel	Vendor Code	SC	Dept. SPD	A	Contract Number 11-610	
Special Districts Department			Dept. 105	Orgn. 200	Contractor's License No.	
Contract Representative Jeffrey O. Rigney			Telephone (909) 387 - 5967		Total Contract Amount NA	
<input type="checkbox"/> Revenue <input type="checkbox"/> Encumbered <input type="checkbox"/> Unencumbered <input checked="" type="checkbox"/> Other:						
If not encumbered or revenue contract type, provide reason:						
Commodity Code		Contract Start Date	Contract End Date	Original Amount	Amendment Amount	
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
EBA	365	365				\$
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
						\$
Fund	Dept.	Organization	Appr.	Obj/Rev Source	GRC/PROJ/JOB No.	Amount
						\$
Project Name			Estimated Payment Total by Fiscal Year			
			FY	Amount	I/D	
				\$		
				\$		
				\$		

CONTRACTOR Big Bear Area Regional Wastewater Agency

Federal ID No. or Social Security No. _____

Contractor's Representative Steven C. Schindler, General Manager

Address P.O. Box 517, Big Bear City, CA 92314

Phone (909) 584 - 4018

Nature of Contract:

County Service Area 53 Zone B (CSA 53B) and the Big Bear Area Regional Wastewater Agency (BBARWA) have an existing agreement which provides for the payment of a Total Annual Charge for receiving, transporting, treating and disposing of sewage and wastewater from CSA 53B's sewer collection system. Annual charges are currently based on a fixed rate amount per equivalent dwelling unit (EDU). A new agreement for payment and collection of Total Annual Charges and Standby Charges has been developed so that the Total Annual Charge includes both fixed and variable rate components, based upon BBARWA's adopted budget for the fiscal year. The variable rate will not exceed 35% of the BBARWA budget for the fiscal year and the fixed rate will be based on BBARWA's fixed costs during the fiscal year. BBARWA will also be collecting all applicable Standby Charges and Connection Fees as specified in the original agreement. The term of this agreement will be for a period of five fiscal years, commencing July 1, 2011 and ending June 30, 2016, with an option for successive one-year renewals upon written consent from all the parties.

(Attach this transmittal to all contracts not prepared on the "Standard Contract" form.)

Approved as to Legal Form (sign in blue ink)

Counsel [Signature]
 Date 8/11/11

Reviewed as to Contract Compliance

Date _____

Presented to Board for Signature

Date 8/10/11

Director/Controller-Recorder Use Only

<input type="checkbox"/> Contract Database	<input type="checkbox"/> FAS
Input Date	Keyed By