

3/1/83

OPERATIONS AND MAINTENANCE AGREEMENT FOR  
REACH IV-A FROM METER STRUCTURE TO  
CARBON CANYON ROAD

AGREEMENT made this first day of April, 1983, by and between CHINO BASIN MUNICIPAL WATER DISTRICT, a municipal water district ("CBMWD") and the SANTA ANA WATERSHED PROJECT AUTHORITY, a joint powers agency ("SAWPA").

RECITALS

WHEREAS, SAWPA is responsible for the operation, maintenance, repair, and replacement of the Santa Ana River Interceptor System, consisting, in part, of Reaches I through IV, IV-A and IV-B, including connection facilities and meters (hereinafter the "SARI System"); and

WHEREAS, SAWPA is responsible for monitoring both the quantity and quality of wastewater discharged into the SARI System; and

WHEREAS, SAWPA desires to contract with CBMWD to discharge some of those responsibilities in accordance with the provisions set forth herein, and CBMWD desires to accept such responsibilities, in accordance with the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, based upon the foregoing, and in consideration of the mutual promises of the parties, it is

hereby agreed as follows:

1. Services to be Performed.

A. CBMWD shall furnish all necessary tools, equipment, materials, and personnel to perform the following services on that portion of the SARI System commonly known as Reach IV-A, which Reach is more particularly defined as a pipeline extending from that certain meter and meter structure (but not including the meter and structure) located on the easterly side of El Prado Drive, approximately 300 feet south of the intersection of Mountain Avenue and El Prado Drive, to Carbon Canyon Road in San Bernardino County (hereafter "Reach IV-A<sub>2</sub>"):

(1) Conduct a weekly inspection and patrol to, among other things, change recording charts, check grit chambers, and perform preventative maintenance; provided, however, that any construction, excavation and/or other activity on or immediately adjacent to Reach IV-A<sub>2</sub> which may affect it shall first be reported to the General Manager of SAWPA;

(2) Read all meters on Reach IV-A<sub>2</sub> on the last business day of each month and provide such readings to SAWPA's Director of Finance for billing purposes;

(3) Designate one CBMWD employee equipped with a motor vehicle, which employee shall be continuously "on call" to SAWPA during normal business hours to assist SAWPA's staff as needed;

(4) Accompany SAWPA's staff on annual inspections of Reach IV-A<sub>2</sub>;

(5) Formulate (jointly with SAWPA) and implement a regular program to clean Reach IV-A<sub>2</sub>. A specific cleaning schedule with a cost estimate shall be prepared by CBMWD annually and submitted to SAWPA no later than sixty days prior to the beginning of each fiscal year (July 1 to June 30) in which cleaning is scheduled for SAWPA's approval. SAWPA shall review each such specific schedule and cost estimate and revise if necessary, or at its sole option reject any such schedule and estimate and engage, at its expense, a pipeline maintenance contractor to perform the work proposed by CBMWD. SAWPA shall advise CBMWD of any such revision or rejection within 30 days following SAWPA's receipt of the schedule and estimate. In the event SAWPA engages a pipeline maintenance contractor, CBMWD shall assist the contractor in performing his duties when requested. The parties agree that emergency situations within other CBMWD system operations shall take precedence over any scheduled cleaning;

(6) Perform necessary Reach IV-A<sub>2</sub> right-of-way road maintenance; provided, however, that CBMWD may subcontract for this work, upon prior written approval of SAWPA.

B. Upon further written request of SAWPA and with the concurrence of CBMWD, provide preventative maintenance services on other designated facilities of the SARI System.

2. Compensation.

For and in consideration of the services rendered hereunder by CBMWD, SAWPA agrees to pay to CBMWD a sum equal to:

A. All actual labor costs, to include direct hourly salaries, applicable payroll burden as a percent of direct salaries, department overhead as a percent of direct salaries, and general and administrative costs as a percent of direct salaries; provided, however, that the total cost of these items shall not exceed 2.0 times the actual cost to CBMWD of all necessary labor actually provided;

B. Actual construction costs plus 15%;

C. Actual material costs plus 15%;

D. Actual insurance premium costs associated with this agreement;

E. With regard to equipment owned by CBMWD, and used by CBMWD pursuant to this Agreement, SAWPA shall pay to CBMWD a rental fee calculated in accordance with CBMWD's Rate Resolution No. 82-6-8, (as it may hereafter be amended) which Resolution is attached hereto and incorporated herein in full as Exhibit A; provided, however, if such equipment is also used in connection with work not related to this Agreement, an allocation of the rental cost shall be made in proportion to the time the equipment is used on such other work and the work performed pursuant to this Agreement; and

F. With regard to special equipment not owned but rented by CBMWD for work performed solely pursuant to this agreement, SAWPA shall reimburse CBMWD for the actual rental cost plus 15%.

CBMWD shall bill SAWPA quarterly (January, April, July and October) for work performed during the previous three months. Within forty-five (45) days after receipt of each quarterly billing, SAWPA shall pay CBMWD the amount due. CBMWD shall keep accurate records of all equipment and material provided and labor and services performed for SAWPA, and if and when requested by SAWPA, CBMWD shall forthwith provide a detailed billing statement in support of CBMWD's billing.

3. Term.

The respective duties and obligations of the parties hereto shall commence on the date first above written, and shall continue for a period of five (5) years unless sooner terminated by CBMWD upon ninety-days prior written notice to SAWPA, or by SAWPA in accordance with the provisions of Paragraph 4 below. This Agreement may be renewed on a year-to-year basis on the same terms and conditions set forth herein, subject to the prior written approval of the parties hereto. Such approval shall not be unreasonably withheld.

4. Assumption by SAWPA.

The parties acknowledge and agree that SAWPA, at its option and at any time during the term of this Agreement, may elect to assume the duties and obligations imposed on CBMWD herein and to terminate this Agreement upon ninety-days advance written notice to CBMWD, provided that SAWPA pay to CBMWD a sum of money that, at the termination date hereof, reimburses CBMWD for the cost of tools, equipment, and materials (less rental

payments made by SAWPA to CEMND), used exclusively by CBMWD to perform the duties required herein, which expenditures would not have been incurred but for this Agreement. To the extent that any such tools, equipment, and/or materials are also used in connection with work not related to this Agreement, an allocation of costs incurred shall be made in proportion to the time the tools or equipment were used or materials consumed on such other work and the work performed pursuant to this Agreement. To the extent such payments are made by SAWPA to fully reimburse CBMWD for the cost of any tools, equipment or materials, used exclusively (or allocated) to this project, such items shall hereafter belong to SAWPA and CBMWD agrees to execute such documents as necessary to transfer title to the tools, equipment or materials purchased; provided, however, that SAWPA has the exclusive option to elect not to take title to or pay additional amounts to CBMWD for tools, equipment and materials used both for this project and other uses as determined by any allocation formula. The amount to be paid shall be determined as follows:

1. First, by mutual agreement of the parties;
2. Second, if the parties do not mutually agree within thirty days after the above-described notice is received, then by the independent certified public accountant or accountants regularly retained by each;
3. Third, if the said accountant or accountants do not resolve the matter within sixty days after the above-described notice is received, then by arbitration as follows:

Each party shall name an arbitrator.

If the two arbitrators cannot agree, then they shall appoint a third arbitrator and the decision of the majority shall be binding on all parties. Arbitration shall be in accordance with the rules of the American Arbitration Association in effect at the time of arbitration.

During the ninety-day period, CBMWD shall continue to perform the services required herein, but prior to incurring any costs or expense in connection therewith, CBMWD shall obtain the prior approval of SAWPA.

5. Compliance with Law.

In performing the services required hereunder, CBMWD shall comply with all applicable federal, state, county and city statutes, ordinances, and regulations. If such compliance is impossible for reasons beyond its control, CBMWD shall immediately notify SAWPA of that fact and the reasons therefor.

6. Indemnification.

In performing the above-described services for SAWPA, CBMWD shall perform such services in a safe and non-negligent manner, and keep the work areas safe. CBMWD shall not, at any time, maintain a nuisance, and shall take whatever reasonable steps that are necessary to prevent accidents, damage or injury to real or personal property and to its elected officials, agents, officers and/or employees, and to third parties, including pedestrians, passers-by and motorists. In the event of

personal injury or property damage arising out of CBMWD's performance of its duties hereunder, CBMWD hereby acknowledges and agrees to waive any and all claims against SAWPA or any elected official, employee, officer or agent thereof, and further acknowledges and agrees to indemnify SAWPA, its elected officials, officers, agents or employees, against any claims of personal injury or property damage made by any third person, including elected officials, agents, officers and/or employees of CBMWD, except for the negligent acts of SAWPA, or any elected official, employee, officer or agent thereof. SAWPA agrees to and shall hold CBMWD, its elected officials, officers, agents and employees harmless from any liability for damages or claims for personal injury, as well as claims for property damage which may arise from SAWPA's performance under this Agreement except for negligent acts of CBMWD, its elected officials, officers, agents or employees.

7. Assignment.

Neither this Agreement nor any duties or obligations hereunder shall be assigned by CBMWD without the prior written consent of SAWPA. In the event of an assignment by CBMWD to which SAWPA has consented, the assignee or his legal representative shall agree in writing with SAWPA to personally assume, perform and be bound by the covenants, obligations, and agreements contained herein.

8. Further Acts.

Each party to this Agreement agrees to execute and



deliver all documents and perform all further acts that may be reasonably necessary to carry out the provisions of this Agreement.

9. Successors and Assigns.

Subject to the provision regarding assignment, this Agreement shall be binding on the successors and/or assigns of the respective parties.

10. Notices.

All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States Certified Mail, return receipt requested, postage prepaid and addressed as follows:

CBMWD:

Chino Basin Municipal Water District  
Post Office Box 697  
Rancho Cucamonga, California 91730

SAWPA:

Santa Ana Watershed Project Authority  
2060 Chicago Avenue, Suite C-3  
Riverside, California 92507

Either party may, in writing, specify a different place or receipt of notices.

11. Amendments.

This writing constitutes the entire Agreement between the parties. No modification of this Agreement shall be valid, unless in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto, by and through their duly authorized respective officers, have executed this Agreement on the day and year first above written.

CHINO BASIN MUNICIPAL WATER DISTRICT

By \_\_\_\_\_, President

ATTEST:

\_\_\_\_\_  
Secretary

SANTA ANA WATERSHED PROJECT AUTHORITY

By \_\_\_\_\_  
ROBERT L. CLARK, President

MANAGER  
J. ANDREW SCHLANGE

LETTER OF TRANSMITTAL

RECEIVED

MAR 7 1983

CHINO BASIN MUNICIPAL  
WATER DISTRICT

RCU:IL TL
<i>H. Ed to prepare AO</i>
<i>See if letter just accepted</i>
<i>If not, please advise</i>
<i>JH</i>

DATE: MARCH 3, 1983

TO: MR. ED CAMERON  
CBMWD

P. O. BOX 697

RANCHO CUCAMONGA, CALIFORNIA 91730

SUBJECT: OPERATIONS AND MAINTENANCE AGREEMENT FOR  
REACH IV-A FROM METER STRUCTURE TO CARBON  
CANYON ROAD


Transmitted herewith for your information and review are  
the following:

PER YOUR CONVERSATION WITH MR. SCHLANGE  
THIS DATE, ENCLOSED IS THE ABOVE CAPTIONED  
AGREEMENT FOR RATIFICATION BY YOUR BOARD  
ON OR BEFORE APRIL 1, 1983.

If we can be of further assistance, please contact us.  
Very truly yours,

SANTA ANA WATERSHED PROJECT AUTHORITY

*J. Andrew Schlange*  
J. Andrew Schlange, Manager



JAS:csc

Enclosure

5/23/83  
BRO Rec?

MOVED, that the Board 1) authorize staff to prepare and mail the "Statement of Just Compensation" to each property owner as an offer to purchase right-of-way required for the construction of the Cucamonga Trunk Relief Sewer, the amount of compensation offered being the appraised value of the permanent and temporary easements, and 2) authorize staff to negotiate with the property owners should the first offer of compensation be rejected, and return to the Board with staff's recommendation.

M83-3-1  
Cuca.  
Trunk  
Relief  
Sewer  
Right-  
of-Way

Motion carried by unanimous vote.

A letter dated March 23, 1983 from the General Manager was read which indicated that 1) the Santa Ana Watershed Project Authority is responsible for the operation and maintenance of the Santa Ana River Interceptor and desires to contract with this district to perform specific tasks associated with Reach IV-A-2 (from the meter structure to Carbon Canyon road) and 2) an agreement has been prepared, which sets the terms and conditions for this district to perform those tasks, for the Board's consideration. After review of the agreement and discussion, the following motion was made by Director French, seconded by Director Girard:

MOVED, that the Board approve and authorize execution of the Operations and Maintenance Agreement for Reach IV-A from Meter Structure to Carbon Canyon Road.

M83-3-1  
SARI,  
Reach  
IV-A-2  
IV-A-2

Motion carried by unanimous vote.

A letter dated March 23, 1983 from the General Manager was read which indicated that April 15 is the deadline to pay the supplemental dues assessed by ACWA for permanent office space. After discussion the following motion was made by Director Girard, seconded by Director Gilday:

MOVED, that the Board authorize under protest the payment of the ACWA Supplemental dues assessment of \$6,218.

M83-3-1  
ACWA Su-  
plemental

Roll Call Vote: Ayes: Directors Anderson, French  
and Girard  
Noes: Directors Borba and Gilday  
Absent: None

A letter dated March 23, 1983 from the General Manager was read which indicated that at the Board's request, staff made a survey of ten local agencies to determine what fees are charged to those agencies to perform the annual independent audit of their records as required under State law. After a review of that survey and discussion, the following motion was made by Director Borba, seconded by Director Girard: