

AGREEMENT FOR OPERATION OF GAGE
CANAL FACILITIES.

1 THIS AGREEMENT made and entered into this 9th day of
2 June, 1965, between the CITY OF RIVERSIDE, a municipal
3 corporation, and THE GAGE CANAL COMPANY, a corporation.

4 Section 1: The following definitions shall apply to
5 this agreement unless the context obviously calls or provides
6 for a different meaning:

7 a. "City" shall mean City of Riverside.

8 b. "Company" shall mean The Gage Canal Company.

9 c. "Judgment" shall mean that certain Judgment in
10 Eminent Domain and Final Order of Condemnation entered in that
11 certain action No. 70785 in the Superior Court of the State of
12 California, in and for the County of Riverside, entitled: "City
13 of Riverside, a municipal corporation, Plaintiff, vs. The Gage
14 Canal Company, a corporation, et al., Defendants", including all
15 exhibits made a part thereof.

16 d. "Shareholder" shall mean persons or entities owning
17 shares issued by The Gage Canal Company and the attendant right
18 to receive water pursuant thereto, but shall not mean the City
19 of Riverside unless specified.

20 e. "Contractual obligees" shall mean persons and
21 entities specifically recognized in Exhibit "B" of the Stipulation
22 for Judgment in Eminent Domain and Final Order of Condemnation
23 and Judgment in Eminent Domain and Final Order of Condemnation
24 and shareholders and former shareholders or their qualified
25 successors in interest having rights to receive water pursuant
26 to agreement with the City of Riverside.

27 f. "Service Area" shall mean the service area of The
28 Gage Canal Company as specified and described in Exhibit "D"
29 of the Stipulation for Judgment in Eminent Domain and Final
30 Order of Condemnation.

31 g. "Miners Inch" shall mean a rate of flow of 1/50th
32 of one cubic foot of water per second.

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1 h. "By Laws" shall mean the By Laws and Articles of
2 Incorporation of The Gage Canal Company as set forth in
3 Exhibit "E" of the Stipulation for Judgment in Eminent Domain
4 and Final Order of Condemnation.

5 i. "Canal" shall mean The Gage Canal Company canal
6 facility and canal rights of way as they exist on the date of
7 this agreement and as conveyed to the City of Riverside pursuant
8 to the Judgment.

9 Section 2: No provision, undertaking, condition or
10 obligation recited in this Agreement shall be construed to limit
11 or alter the duty of the City to deliver water through the con-
12 demned facilities to the persons or entities entitled to receive
13 the same in the manner and way and under the conditions specified
14 in the Judgment and as required by law.

15 Section 3: It is the purpose of this agreement to make
16 available to the City of Riverside the knowledgeable irrigation
17 water production and distribution supervision, management,
18 operation and maintenance personnel and facilities and experience
19 of the Company for the purpose of carrying out the duties and
20 obligations of the City assumed and imposed by law as a result
21 of the Judgment, for the benefit of the citizens of the City and
22 in particular for the benefit of the shareholders and contractual
23 obligees who possess water delivery and other contractual rights
24 which the City has assumed and which it recognizes. Subject to
25 the terms of the Judgment, it is the purpose of this agreement
26 to assure that all persons lawfully entitled to receive water
27 pursuant to the ownership of shares in The Gage Canal Company
28 on the date of the Judgment will be protected in their respective
29 rights to have and receive for use upon their lands irrigation
30 water delivered in the manner to which they have become accustomed,
31 for so long as the water is put to beneficial use on lands within
32 the Service Area.

1 Section 4: In accordance with the terms of this agree-
2 ment the Company shall, as an independent contractor, supervise,
3 operate and maintain the real property, facilities and
4 fixtures condemned to the use of the City by the Judgment. In
5 addition, the Company agrees to utilize and employ that property
6 retained by the Company pursuant to the Judgment which is neces-
7 sary to the efficient operation, maintenance and administration
8 of the entire water production and distribution facility and the
9 fulfillment of the terms of this agreement. Unless otherwise
10 specified by this agreement, the operation, maintenance and
11 administration of the above specified properties, for the purpose
12 specified in Section 3, shall be conducted in the same manner
13 and in accordance with the practices employed at the time of
14 the execution of this agreement; the same manner and practices
15 shall include but not be limited to accounting procedures, cost
16 computations and allocations, record keeping and filing, billing
17 and collecting, delivery of water, and payment of appropriate
18 taxes and expenses. The transfer of the right to receive water
19 from one parcel to another shall be only in accordance with City
20 approval.

21 Section 5: The Company acknowledges and agrees that
22 the performance of this agreement requires primary utilization
23 of the personnel and facilities of the Company and the Company
24 shall not engage in any new business enterprise without notice
25 to the City. The City shall have the option of cancelling this
26 agreement if the Company, after notice, engages in any activity
27 or enterprise detrimental or contrary or in conflict with the
28 performance of this agreement.

29 Section 6: The Company agrees that no additional shares
30 of the Company will be issued or requested; in that regard the
31 Company represents and warrants that on the date of the
32 execution of this agreement there are 14,055 shares of the

1 Company outstanding. In addition, the Company will not enter
2 into any agreements that will disrupt or impair the relation-
3 ship between the City, the Company, shareholders and contrac-
4 tual obligees, as established by the Judgment and this agreement.

5 Section 7: Unless otherwise specified in this agreement,
6 the City will exercise full rights of ownership and control over
7 the properties condemned to its use in accordance with estab-
8 lished law pursuant to the Judgment; provided, however, there
9 shall be no City utilization or disposition of the condemned
10 properties, improvements or replacements which prevents or
11 obstructs the Company's performance of this agreement or interferes
12 with the rights of the shareholders or contractual obligees to
13 receive and flow water as recognized by the Judgment and this
14 agreement.

15 Section 8: The City agrees that any canal alteration
16 or covering done at City's instigation shall be done at no
17 expense to the shareholders and accomplished in a manner that
18 will not interfere with or interrupt water delivery schedules.

19 Section 9: The Company shall supervise and patrol the
20 condemned properties for the purpose of preventing trespass,
21 encroachment, damage or adverse possession and use by unauthor-
22 ized persons. The Company shall report any damage or adverse
23 possession to the City immediately upon knowledge thereof, and
24 the Company shall take all steps within its powers to stop or
25 correct such damage or adverse possession.

26 Section 10: Public liability and property damage
27 liability for acts or omissions of the Company incident to the
28 operation and maintenance of the property of the Company and
29 the property condemned to the use of the City is the responsi-
30 bility of the Company and the Company shall indemnify and hold
31 the City harmless from any claim or demand against the City
32 resulting proximately from the operation and maintenance by the
Company. The Company shall obtain and keep in force and effect

1 public liability and property damage insurance indemnifying
2 the Company in minimum amounts of \$500,000 each person,
3 \$1,000,000 each accident and \$200,000 property damage.

4 Section 11: Any secured or unsecured taxes lawfully
5 assessed against the properties condemned to the use of the
6 City, together with any and all water rights, pump or replenish-
7 ment taxes lawfully imposed which are attributable to the water
8 rights or facilities utilized for carrying out the water pro-
9 duction and delivery obligations of the City as established by
10 this agreement and the Judgment will be paid by the City in
11 full, when due; an itemized billing for such taxes paid will
12 be submitted to the Company and the Company shall reimburse the
13 City within thirty days after receipt of billing.

14 Section 12: The City shall have the right to utilize
15 any excess Canal flowage capacity that is not required to meet
16 delivery obligations to shareholders and contractual obligees
17 and in accordance with existing carrying rights agreements. The
18 City shall reimburse the Company for any reduction of payments
19 from holders of carrying rights in the Canal resulting from an
20 increase in the total flowage in the Canal caused by such City
21 use of excess Canal capacity.

22 Section 13: The water entitlement of the 450 shares of
23 East Riverside Water Company stock transferred to the City
24 shall be used to meet water delivery obligations represented by
25 the 600 shares of Company stock owned by the City and represented
26 by Certificate No. A-1997. The City will pay promptly all
27 assessments levied on the 450 shares by the East Riverside
28 Water Company and the Company shall reimburse the City for the
29 assessment payments within thirty days of billing.

30 Section 14: The City shall deliver or cause to be
31 delivered water upon request of the Company in accordance with
32 and responsive to that certain written agreement entered into

1 by and between the Company and the Riverside Water Company
2 dated November 14, 1949. The Company shall pay the City all
3 charges as specified and in accordance with said agreement.

4 Section 15: All capital improvements, additions and
5 replacements necessary to fully exercise the water rights
6 condemned to the use of the City and necessary to the
7 Company's performance of this agreement shall be paid for by
8 the Company, installed only on former Gage properties condemned
9 to the City and shall be the property of the City. The
10 Company shall submit an annual capital expenditures budget for
11 approval by the City; costs of such improvements necessary to
12 efficient performance of this agreement shall be borne by all
13 shareholders, including the City, and/or contractual obligees
14 as operating expenses in accordance with previous practices
15 and existing agreements; except the City shall assume the
16 shareholders' allocation of expense for canal covering
17 instigated by the City.

18 Section 16: The fixed works, equipment and improvements
19 condemned to the use of the City or constructed as provided in
20 Section 15 above, shall not be removed, abandoned, destroyed
21 or substantially altered without the City's consent.

22 Section 17: The Company shall not cause or permit
23 water to be delivered or flow except to the lands and facilities
24 of persons and entities lawfully entitled pursuant to the Judg-
25 ment or this agreement and who are not in default of any pay-
26 ment of any water rate, water tax, share assessment, or flowage
27 charge, except as may be authorized or directed by the City.
28 For the purpose of defining and limiting the responsibilities
29 of the Company in performance of this agreement, the parties
30 agree that the shareholders' right to receive water, including
31 extra water, in the service area shall be the same as specified
32 in the Company's by-laws or shareholder agreements and Company

1 practices as such rights existed and prevailed on July 1,
2 1964; provided, however, the Company agrees that the total
3 rate of flow and annual quantity of water, including extra
4 water, produced at the sources of supply for delivery to share-
5 holders shall not exceed a flow or amount in excess of the
6 shareholders' proportional entitlement to the flowage and
7 water rights condemned to the City as such rights are presently
8 restricted and burdened or additionally restricted or burdened
9 by pending or future litigation. In the case of a dispute or
10 claim by the persons or entities specified in the Judgment or
11 this agreement, or in the case of dispute or claim of right to
12 receipt of water by persons or entities not specified in the
13 Judgment or this agreement, the City shall be solely responsible
14 for determining, resisting or compromising such dispute or claim.
15 If the quantity of water or rate of flow which the Company agrees
16 to produce for delivery to shareholders proves insufficient to
17 meet seasonal or peak demand requirements of the irrigation
18 shareholders in the service area, the City will make additional
19 water available at the cost of replacement and treatment from
20 alternate sources as available; or the Company at its election
21 and at its expense may contract for delivery of such make-up
22 water from the Western Municipal Water District of Riverside
23 County; the Company agrees that such additional water shall
24 not be made available to serve lands from which water stock or
25 rights to receive water have been severed or conveyed for use
26 or benefit outside the service area.

27 Section 18: Subject only to the limitations of water
28 and flowage rights condemned to the City, the Company shall
29 deliver to the City upon demand all water not lawfully
30 committed to third persons or entities; in addition, the Company
31 shall deliver to the City at no cost all of the water entitle-
32 ment of the East Riverside Water Company not demanded by that

1 company, together with all water salvaged from seepage and
2 evaporation as a result of canal covering. For the amount of
3 water delivered to the City equivalent to the total basic
4 water entitlement of all Gage Canal Company shares owned by
5 the City, the City shall reimburse the Company at the prevailing
6 water tax per share. For all other water delivered to the
7 City, the City shall reimburse the Company only the cost of
8 production, which payment shall be based on the average
9 unit cost of production for the previous fiscal period; the
10 cost of production shall include power, fuel, lubricating oil,
11 supplies, maintenance, repairs, labor, equipment, and
12 depreciation entirely attributable to the operation of the
13 water production equipment, but shall not include capital
14 expenditures. No pumping charge shall be paid by the City for
15 water delivered to the City pursuant to the City's ownership
16 of shares of the East Riverside Water Company. All water
17 demanded by the City shall be delivered at points along the
18 Canal system as designated by the City.

19 Section 19: The parties shall have free and immediate
20 access to the respective books and records of each other during
21 regular business hours and the Company and the City personnel
22 shall cooperate in providing the information requested. In the
23 course of fulfilling and carrying out the rights, duties and
24 obligations of the City as provided in the Judgment, shareholder
25 agreements, City ordinances and this agreement, the City will
26 from time to time appear as pledgee or encumbrancer on company
27 shares owned by other persons and entities; the Company agrees
28 to honor such procedure and to notify the City of any sale,
29 transfer or assignment of shares or water entitlement, and
30 the Company shall take no steps in furtherance of a transfer
31 of shares or change in delivery of water without the knowledge
32 and consent of the City, where consent is required by the

1 Judgment, this or other agreement. In addition, the Company shall
2 not permit the transfer or relocation of water entitlement or plac
3 of water delivery from one parcel of land to another without the
4 knowledge and consent of the City, regardless of whether or not
5 the City appears as pledgee or encumbrancer.

6 Section 20: This agreement supercedes and cancels any
7 previous oral or written agreement between the City and Company
8 relating to operation and maintenance of the property, cost
9 allocations or terms of delivery of and payment for water delivered
10 to the City by the Company.

11 Section 21: This agreement shall not constitute an agency
12 or employment relationship and no Company personnel shall be con-
13 strued to be employees of the City of Riverside nor shall they be
14 entitled to any employee or retirement benefits of the City. The
15 Company shall maintain workman's compensation coverage as required
16 by law.

17 Section 22: In the event of the Company's failure to
18 perform any term or condition, the City shall serve notice of
19 breach upon the Company and the Company shall have ten days
20 within which to correct or perform. Failure to correct or perform
21 within the ten day period shall be cause for termination; the
22 City reserving the right to all legal remedies.

23 Section 23: The Company acknowledges that, in addition to
24 other considerations, the payment of One Dollar (\$1.00) per year
25 to the Company by City constitutes full and adequate consideration.

26 CITY OF RIVERSIDE, a municipal corporation

27 By [Signature] Mayor

28 Attest [Signature] City Clerk

29 THE GAGE CANAL COMPANY, a corporation

30 By [Signature] President

31 By [Signature] Secretary

32 APPROVED AS TO
FORM:

[Signature]
City Attorney