

## STAFF REPORT



## CITY OF OCEANSIDE

---

DATE: June 5, 2013

TO: Honorable Mayor and City Councilmembers

FROM: Water Utilities Department

SUBJECT: **APPROVE THE LOCAL PROJECT PARTICIPANT AGREEMENT WITH THE OLIVENHAIN MUNICIPAL WATER DISTRICT FOR THE NORTH SAN DIEGO COUNTY REGIONAL RECYCLED WATER PROJECT AND AUTHORIZE THE WATER UTILITIES DEPARTMENT TO ACCEPT GRANT FUNDS REDISTRIBUTED BY OLIVENHAIN MUNICIPAL WATER DISTRICT FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES**

**SYNOPSIS**

Staff recommends that the City Council approve the Local Project Participant Agreement with the Olivenhain Municipal Water District for the North San Diego County Regional Recycled Water Project (NSDCRRWP); to adopt a resolution authorizing the Water Utilities Department to accept grant funds redistributed by Olivenhain Water District from the California Department of Water Resources, and to authorize the City Manager to execute the agreement.

**BACKGROUND**

Integrated Regional Water Management Planning (IRWMP) was originally derived from Proposition 50, which was passed by California voters in 2002 and authorized \$3.4 billion in general obligation bonds to fund a variety of water and wetlands projects. It set aside \$380 million for IRWM-related grants. Proposition 50 stated that IRWM Plans should include a description of the region and participants, regional objectives and priorities, water management strategies, implementation, impacts and benefits, data management, financing, stakeholder involvement, relationship to local planning, and state and federal coordination.

The State of California has since encouraged integrated water resource planning on a regional basis through IRWM plans and by making conditional certain grant funding programs upon activities contained in IRWMPs.

Several such programs were authorized in 2006 by Proposition 84 (The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act). Proposition 84 authorized \$5.388 billion in general obligation bonds to fund safe drinking water, water quality and supply, flood control, waterway and natural resource protection, water pollution and contamination control, state and local park improvements, public access to natural resources, and water conservation efforts.

In 2007, the San Diego Regional Water Management Group (comprised of the San Diego County Water Authority, City of San Diego, and County of San Diego) collaborated with the Regional Advisory Committee (comprised of water management stakeholders throughout the San Diego region) to draft the San Diego Integrated Regional Water Management Plan. Completed in late 2007 and subsequently adopted by members of the Regional Water Management Group, the plan seeks to optimize water supply reliability, protect and enhance water quality, provide stewardship of natural resources, and coordinate and integrate water resource management within the region. Additionally, the plan forms the foundation of long-term IRWM planning in the region, fostering coordination, collaboration, and communication among governmental and non-governmental water management stakeholders.

## **ANALYSIS**

In August 2010, working collaboratively with other agencies, the Olivenhain Municipal Water District (OMWD) submitted a project to the Regional Water Management Group for the San Diego region's Round 1 Proposition 84 IRWM grant application. The project described below was selected for inclusion in the San Diego IRWMP:

- The North San Diego County Regional Recycled Water Project (NSDCRRWP), in partnership with ten North County cities, water and wastewater agencies, including the City of Oceanside. OMWD serves as the lead agency. Total award value is \$1.455 million which will be distributed evenly between agencies. Participating agencies are: Olivenhain Municipal Water District, Carlsbad Municipal Water District, the City of Escondido, Leucadia Wastewater District, the City of Oceanside, Rincon del Diablo Municipal Water District, San Elijo Joint Powers Authority, Santa Fe Irrigation District, Vallecitos Water District and Vista Irrigation District. Camp Pendleton also participates as a partner however, they are not eligible for funding.

The Round 1 Proposition 84 IRWM grant agreement was executed on December 12, 2012, between the Department of Water Resources and the San Diego County Water Authority (SDCWA), officially granting \$7.9 million to the San Diego IRWM plan. Though SDCWA is the grantee, it does not directly administer individual projects contained within the IRWM. Thus, before grant funding may be distributed for each individual project, SDCWA will enter into an agreement with each project's lead agency or "local project sponsor." OMWD entered into such an agreement with SDCWA on April 17, 2013.

To ensure the performance of each project partner, OMWD is required to enter into a Local Project Participant Agreement. The agreement is intended to ensure that the work elements, as proposed by each project partner in the grant application, are completed to an acceptable standard as defined by the granting agency. Grant funding will be on a reimbursement basis, based on grant agreement adherence and acceptability of work. Attachment A is the draft Local Project Participant Agreement, which would be entered into by the City, OMWD and the other project participants.

Since inception of the partnership in 2010, the NSDCRRWP agencies have continued to take a regional approach to the continuing development of recycled water infrastructure.

In 2011, a Regional Recycled Water Facilities Plan was developed for the group by RMC Water and Environment. The partners obtained in early 2012, a proposal from RMC Water and Environment for project management and the development of a Programmatic Environmental Impact Report, a public outreach plan and feasibility study, on which work would begin following the execution of the Round 1 Proposition 84 IRWM grant agreement between San Diego County Water Authority (on behalf of the Regional Water Management Group) and the California Department of Water Resources. The City of Oceanside will receive \$90,000 of Round 1 grant funds.

Likewise, the partners continue to work together to pursue additional funding for the NSDCRRWP. Additionally, staff submitted the construction phase of the NSDCRRWP for consideration in the region's Round 2 Proposition 84 IRWM grant application, and was notified on November 30, 2012 that the project was recommended by the Regional Water Management Group to receive a grant award of \$3,452,000. Funding will be distributed evenly between agencies, consistent with the Round 1 funding. The regional IRWMP in which the Round 2 application is included, was submitted to the Department of Water Resources in March 2013. The City of Oceanside will receive an estimated \$300,000 of Round 2 grant funds.

### **FISCAL IMPACT**

Approval of the Local Project Participant agreement will garner the NSDCRRWP \$1.455 million in Round 1 Proposition 84 IRWM grant funds. The award will be applied as follows:

- Project management as well as a Programmatic Environmental Impact Report, public outreach plan, and feasibility study will be completed for the project.
- Funds that remain will be distributed evenly among project partners to be applied to individual subprojects. Estimates suggest that each agency, including Oceanside, will receive \$90,000. Oceanside will use these funds as reimbursement for work performed since September 2011 by:
  - Carollo Engineering, on a feasibility study, pipeline, reservoir and pressure facility design for the Morro Hills/Arrowood and surrounding area.
  - Atkins Engineering, on a feasibility study and pipeline design to supply the Ocean Hills and surrounding area.
  - RMC Engineering, on a feasibility study, pipeline, treatment facilities, reservoir and pressure facility design for El Corazon and surrounding area.

Reimbursements will be made to account 836132100272.4376 (State & Local Grant).

### **INSURANCE REQUIREMENTS**

Does not apply.

**COMMISSION OR COMMITTEE REPORT**

A presentation of this project was provided to the Utilities Commission at its regularly scheduled meeting on January 8, 2013.

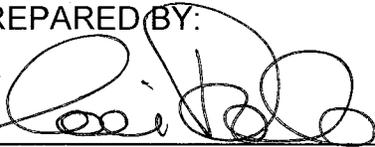
**CITY ATTORNEY'S ANALYSIS**

The referenced documents have been reviewed by the City Attorney and approved as to form.

**RECOMMENDATION**

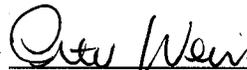
Staff recommends that the City Council approve the Local Project Participant Agreement with the Olivenhain Municipal Water District for the North San Diego County Regional Recycled Water Project (NSDCRRWP); to adopt a resolution authorizing the Water Utilities Department to accept grant funds redistributed by Olivenhain Water District from the California Department of Water Resources, and to authorize the City Manager to execute the agreement.

PREPARED BY:



Cari Dale  
Water Utilities Director

SUBMITTED BY:



Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Teri Ferro, Financial Services Director



Exhibit A: Local Project Participant Agreement  
Exhibit B: Resolution

## EXHIBIT A

AGREEMENT for the INTEGRATED REGIONAL WATER MANAGEMENT  
PROGRAM BETWEEN OLIVENHAIN MUNICIPAL WATER DISTRICT AND  
LOCAL PROJECT PARTICIPANTS  
PROJECT NO. 84-2-80003

This Agreement between Olivenhain Municipal Water District, a Municipal Water District organized and operating pursuant to Water Code Sections 71000 et seq. and Local Project Sponsor (hereinafter OMWD); and Carlsbad Municipal Water District (Carlsbad), the City of Escondido (Escondido), Leucadia Wastewater District (Leucadia), the City of Oceanside (Oceanside), Rincon del Diablo Municipal Water District (Rincon), San Elijo Joint Powers Authority (SEJPA), Santa Fe Irrigation District (Santa Fe), Vallecitos Water District (Vallecitos), and Vista Irrigation District (Vista) (collectively Local Project Participants, or LPP), sets forth the understanding of OMWD and the Local Project Participants for partnership and uses of a grant award from the State of California Department of Water Resources (DWR) via local grant administrator, the San Diego County Water Authority (SDCWA).

### RECITALS

1. In November 2006, California voters approved the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84), which authorized \$5.388 billion in general obligation bonds to fund safe drinking water, water quality and supply, flood control, waterway and natural resource protection, water pollution and contamination control, state and local park improvements, public access to natural resources, and water conservation efforts.

2. On March 25, 2009, SDCWA, the City of San Diego and the County of San Diego entered into a Memorandum of Understanding (MOU) that established the San Diego Regional Water Management Group (RWMG), and the parties' roles with regard to the San Diego Integrated Regional Water Management (IRWM) Plan and the division of responsibilities for administration of IRWM grant monies. This MOU was amended on November 10, 2009. This MOU replaced the June 13, 2005 MOU as amended, among City of San Diego, County of San Diego, and SDCWA, for Fiscal Years 2005-2009 for the IRWM Grant Program.

3. In 2010, OMWD and the Local Project Participants came together in order to encourage the beneficial reuse of wastewater across jurisdictional boundaries. The North San Diego County Regional Recycled Water Project (NSDCRRWP) is a project included in the San Diego IRWM Plan. Participants in the project are OMWD and the Local Project Participants.

4. In June of 2010, LPPs retained the services of RMC Water and Environment (RMC) in order to analyze all of the individual facilities and subprojects of each agency and create a Regional Recycled Water Facilities Plan. Additionally, LPPs (excluding Santa Fe and Escondido) entered into an agreement with The Furman Group in order to support legislator outreach efforts for the pursuit of up to \$50 million in federal funding.

5. Effective December 12, 2012, SDCWA, acting on behalf of the San Diego RWMG, entered into a \$7.9 million grant agreement with DWR. The grant will assist in financing projects associated with the

San Diego IRWM Plan. The San Diego RWMG has committed a total of \$1.455 million in funds to the NSDCRRWP provided via the grant agreement. The grant agreement is attached as Exhibit B.

6. On April 17, 2013, OMWD entered into the Agreement for the Integrated Regional Water Management Program between San Diego County Water Authority and Olivenhain Municipal Water District, Project Number 84-2-80003 (Local Project Sponsor agreement)(attached hereto as Exhibit A). In the capacity of Local Project Sponsor, OMWD is required to act on SDCWA's behalf for matters pertaining to the NSDCRRWP for the purposes of project management, oversight, compliance, operations, and maintenance. OMWD is also required to act on SDCWA's behalf in the fulfillment of SDCWA's responsibilities as specifically identified in SDCWA's agreement with DWR.

The Recitals are incorporated herein and, the Parties do agree as follows:

#### COVENANTS

1. **Intent.** Parties agree that the intent of this Agreement and the terms established herein are to facilitate the compliance of OMWD, in its role as Local Project Sponsor, with all terms and conditions established in the Local Project Sponsor agreement. Additionally, it is the intent of this Agreement that grant funds received via the grant agreement less permissible project administration fees to be allocated to OMWD and SDCWA will be divided equally among OMWD and LPPs, and that costs associated with compliance with the Local Project Sponsor agreement incurred prior or subsequent to the execution of this Agreement shall be borne equally by OMWD and LPPs.

2. **Definitions.** The following words and terms, unless otherwise defined, shall mean:

a. **Local Project Participant (LPP):** Sponsor of subprojects funded as part of the IRWM grant from DWR that are not serving as Local Project Sponsor. For purposes of this Agreement, LPPs are Carlsbad, Escondido, Leucadia, Oceanside, Rincon, SEJPA, Santa Fe, Vallecitos, and Vista.

i. **Marine Corps Base Camp Pendleton (Camp Pendleton)** is not an LPP. Camp Pendleton, as a federal military installation, is governed by different legal and fiscal authorities than the LPPs. However, it is the intention of OMWD and the LPPs to cooperatively share information and resources to facilitate the integration of Camp Pendleton's recycled water infrastructure and tertiary treated effluent into the regional recycled water treatment and distribution systems of northern San Diego County. Camp Pendleton will serve as a non-voting member of the partnership which will not seek or accept non-federal funds through this Agreement, but will instead coordinate, and support—where appropriate—the efforts of the LPPs to obtain funding and develop recycled water infrastructure and capabilities in northern San Diego County.

b. **Grant agreement:** Grant agreement 4600009707 between SDCWA and DWR, effective December 12, 2012, for the disbursement of \$7.9 million in grant funds.

c. **Local Project Sponsor agreement:** Agreement for the Integrated Regional Water Management Program between San Diego County Water Authority and Olivenhain Municipal Water District, Project Number 84-2-80003, dated April 17, 2013, requiring OMWD to fulfill certain responsibilities and duties pertaining to the NSDCRRWP in order to ensure SDCWA's performance with the terms of the grant agreement.

d. **Project or NSDCRRWP:** The North San Diego County Regional Recycled Water Project, a project listed in the grant agreement for which OMWD serves as the Local Project Sponsor. Subprojects are individual elements of the NSDCRRWP on which work will typically be carried out by one individual LPP.

**3. Term of Agreement.** The term of this Agreement begins on April 17, 2013 and terminates May 31, 2017 or when all parties' obligations under this Agreement have been fully satisfied.

**4. Grant amount.** The maximum amount payable by DWR to SDCWA for the NSDCRRWP shall not exceed \$1,455,000. As LPS, OMWD will facilitate the distribution of grant funds to LPPs according to the terms of this Agreement.

**5. Project costs.** The reasonable total cost of all subprojects of the NSDCRRWP is estimated to be \$2,970,000. LPPs shall fund the difference, if any, between the estimates of their respective subproject's cost and the portion of the grant amount to which each LPP is entitled specified in paragraph 9. Each LPP is only responsible for funding the difference for its subproject. Total cost share for the NSDCRRWP is estimated to be \$1,515,000. LPP funding match is at least 25 percent of the total project costs, unless a disadvantaged community project waiver is granted. Costs eligible to be considered part of a funding match may include cost share performed after September 30, 2008. Costs paid for by another state funding source cannot be considered as a funding match.

**6. Budget contingency.**

a. OMWD and LPPs shall have no obligation to perform under this Agreement if DWR does not provide funding for the IRWM program. LPPs acknowledge that if funding for any fiscal year is reduced or deleted by DWR, DWR at its option may either (1) cancel the grant agreement with no liability occurring to DWR, SDCWA, and OMWD, or (2) amend the grant agreement to reflect the reduced amount of funding. If DWR amends the grant agreement, SDCWA would offer to amend or terminate the Local Project Sponsor agreement to reflect the reduced funding by DWR. Following amendment or termination of the Local Project Sponsor agreement, OMWD would offer to amend or terminate this Agreement to reflect termination or amendment of the Local Project Sponsor agreement.

b. If funding is deleted by DWR, OMWD shall have no obligation to continue to serve as Local Project Sponsor and this Agreement shall be of no force and effect. In this event, LPPs shall not be obligated to perform under the Agreement.

**7. Local Project Participant responsibilities.**

a. LPP shall be solely responsible for work and for persons or entities engaged in work, including, but not limited to, subcontractors, suppliers, and all providers of services under this Agreement. LPP shall fulfill its obligations in a manner that is consistent with the grant agreement and the IRWM program.

b. LPP shall be responsible for all disputes arising out of its contracts for work including, but not limited to, bid disputes and payment disputes with its contractors and consultants or other entities. DWR, SDCWA, or OMWD will not mediate disputes between LPP and any other entity regarding performance of work.

c. LPP shall be responsible for oversight, compliance, operations, and maintenance of NSDCRRWP subprojects. LPP or its representatives shall perform regular inspections of any construction work in progress. LPP shall promptly perform, or cause to be performed, all IRWM program work as described in the final plans and specifications for the subprojects identified in Exhibit A.

d. LPP is solely responsible for design, construction, and operation and maintenance of subprojects identified in Exhibit A. Review or approval of plans, specifications, bid documents, or other construction documents by DWR, SDCWA, or OMWD is solely for the purpose of proper administration of grant funds and shall not relieve or limit responsibilities of LPP with regard to its contractual obligations.

e. LPP shall faithfully and expeditiously perform or cause to be performed all project work as described in and in accordance with this Agreement, the grant agreement, and the IRWM program. LPP shall comply with all of the terms and conditions of this Agreement and applicable California Public Resources Code (PRC) requirements.

f. LPP shall be responsible for funding an equivalent portion of any post-award administrative costs, not directly related to subprojects, that are incurred in order to maintain compliance with the Local Project Sponsor agreement, including but not limited to post-completion audits conducted at the discretion of SDCWA and/or DWR.

**8. Basic Conditions.** OMWD shall have no obligation to disburse money for a project under this Agreement unless LPP has satisfied the following conditions in accordance with the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006.

a. If requested, LPP shall demonstrate the availability of sufficient funds to complete the project by submitting the most recent 3 years of audited financial statements.

b. LPP shall comply with PRC §75102 to notify the California Native American tribe (which is on the contact list maintained by the Native American Heritage Commission) of subproject construction if that tribe has traditional lands located within the area of the subproject, as applicable.

c. For groundwater management and recharge projects and for projects with potential groundwater impacts, the LPS shall demonstrate compliance with the groundwater compliance options set forth on page 15 of the IRWM Program Guidelines, dated August 2010.

d. For the term of this Agreement, LPP must submit timely Quarterly Progress Reports as required by Section 24 of this Agreement.

**9. Eligible costs.**

a. Grant funds will be applied to address 100% of the costs of a Programmatic Environmental Impact Report for the NSDCRRWP, a feasibility study for the NSDCRRWP, and a Public Outreach Plan specific to the NSDCRRWP.

i. OMWD will contract with RMC to perform work in paragraph 9(a) on behalf of LPPs. OMWD will seek grant reimbursement from DWR via SDCWA for costs associated with the RMC contract. RMC scope of work is attached as Exhibit C.

b. OMWD and each LPP are entitled to an equivalent portion of the grant funds less costs due RMC for the Programmatic Environmental Impact Report, feasibility study, and Public Outreach Plan, and less permissible project administration fees to be allocated to OMWD and SDCWA. These entitlements are contingent upon the fulfillment by OMWD and each LPP of equivalent portions of the minimum local match required by the grant agreement.

c. Eligible costs include the reasonable and necessary costs of engineering, design, land and easement acquisition, preparation of environmental documentation, and environmental mitigation. Each LPP had the opportunity to designate their portion of the remaining grant funds to costs associated with engineering/design/environmental or construction/implementation. Only Carlsbad, Rincon, and SEJPA, by having indicated their intentions to apply grant funds to construction costs, may apply their funds to project implementation.

d. Only work performed after August 16, 2011 shall be eligible for reimbursement. Costs incurred after May 31, 2017 and before August 16, 2011 are not eligible for reimbursement. However, such costs may be considered, at DWR's discretion, as part of LPP's funding match, if such costs were otherwise reimbursable.

e. Costs that are not reimbursable with grant funds include, but are not limited to, the following:

- Costs incurred before August 16, 2011.
- Operation and maintenance costs, including post construction performance and monitoring costs.
- Purchase of equipment not an integral part of a subproject.
- Establishing a reserve fund.
- Purchase of water supply.

- Monitoring and assessment costs for efforts required after project construction is complete.
- Replacement of existing funding sources for ongoing programs.
- Travel and per diem costs.
- Support of existing agency requirements and mandates.
- Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of a subproject, as set forth and detailed by engineering and feasibility studies, or land purchased before August 16, 2011.
- Payment of principal or interest of existing indebtedness or any interest payments for the subproject unless the debt is incurred after August 16, 2011, and DWR agrees in writing to the eligibility of the costs for reimbursement before the debt is incurred, and the purposes for which the debt is incurred are otherwise eligible costs.
- Overhead not directly related to project costs.

10. **Invoices.** LPP shall submit invoices to OMWD as eligible costs are incurred, which shall in turn send the invoices to SDCWA. Invoices submitted by LPP to OMWD shall include the following information:

a. Costs incurred for work performed in implementing the IRWM program or subproject contracts during the period identified in the particular invoice.

b. Costs incurred for any interests in real property (land or easements) that have been necessarily acquired for a subproject during the period identified in the particular invoice for the construction, operation, or maintenance of a subproject.

c. Any appropriate receipts and reports for costs incurred.

d. Invoices shall be submitted on forms provided by OMWD and shall meet the following format requirements:

i. Must contain the submission date of the invoice, the time period covered by the invoice, and the total amount due.

ii. Must be **itemized and organized** based on the categories specified in Exhibit A. The amount claimed for salaries/wages/consultant fees must include a calculation formula (i.e., hours or days worked times the hourly or daily rate equals the total amount claimed).

iii. Sufficient evidence (i.e., receipts, copies of checks, time sheets, or financial system reports) must be provided for all costs included in the invoice.

iv. Shall **clearly delineate** those costs claimed for reimbursement from DWR's grant amount, paragraph 4 above, and those costs that represent LPP's costs, as applicable, paragraph 5 above.

- v. Original signature and date of LPP's Project Manager.
  - vi. Must include the grant agreement number.
- e. Submit the original and 3 copies of the invoice to the following address:

Cathy Collier, Project Accountant  
Olivenhain Municipal Water District  
1966 Olivenhain Road  
Encinitas, CA 92024

Failure to use the address exactly as provided in this paragraph may result in return of the invoice to LPP.

**11. Requirements for disbursement.**

a. By May 31, 2017, LPP shall meet all conditions precedent to the disbursement of money as listed below. Failure by LPP to comply by this date may, at the option of OMWD, result in termination of this Agreement. For disbursements of funds for each subproject, LPP shall continue to meet the conditions for disbursement, paragraph 13, "Disbursement by OMWD."

i. LPP shall ensure the availability of sufficient funds to complete the subprojects identified in Exhibit A.

ii. LPP shall comply with all applicable requirements of the California Environmental Quality Act and the National Environmental Policy Act, where applicable. If applicable, before construction or implementation begins on a subproject, LPP shall submit to OMWD copies of environmental documents, including environmental impact reports, environmental impact statements, negative declarations, mitigation agreements, and environmental permits that are required.

iii. For the term of the Agreement, LPP shall submit timely periodic progress reports as required by paragraph 24, "Submission of reports."

b. Before disbursement of funds for each subproject, LPP shall submit the following to OMWD, if applicable:

i. Final plans and specifications certified by a California Registered Civil Engineer.

ii. Documents required by the LPP's subproject under the California Environmental Quality Act (CEQA).

iii. Documents demonstrating subproject's compliance with all applicable requirements of the National Environmental Policy Act, where applicable (e.g., copies of any environmental documents, including environmental impact statements, Finding of

No Significant Impact, mitigation monitoring programs, and environmental permits as may be required prior to beginning construction/implementation).

ii. A written statement that all necessary permits, easements, rights-of-way, and approvals as may be required by other state, federal, and/or local agencies as specified in paragraph 23, "Permits, licenses, approvals, and compliance with laws," have been obtained.

**12. Payment to OMWD.** OMWD and each LPP will be responsible for an equivalent portion of the costs pertaining to the Programmatic Environmental Impact Report, feasibility study, and Public Outreach Plan. Upon incurring costs specific to these studies, OMWD will submit invoices to each LPP for its share of eligible costs. Each LPP shall remit payment within 30 days. OMWD will submit invoices to SDCWA for total eligible costs incurred on a quarterly basis pursuant to the Local Project Sponsor agreement.

**13. Disbursement by OMWD.** Upon receipt of reimbursement from SDCWA for costs incurred as described in paragraph 12, "Payment to OMWD," OMWD will distribute grant funds to each agency equal to the amounts invoiced by each LPP less permissible project administration fees. OMWD and each LPP are entitled to an equivalent portion of the grant funds less costs due RMC and less permissible project administration fees to OMWD and SDCWA. These grant funds are subject to the conditions described in the grant agreement and the Local Project Sponsor agreement and must meet all conditions in this Agreement.

**14. Compliance with terms.** LPP shall comply with all terms and conditions of the grant agreement and Local Project Sponsor agreement, as applicable. LPP shall comply with all requirements imposed upon OMWD under the Local Project Sponsor agreement, as applicable, unless otherwise specified in this Agreement. OMWD shall possess all rights afforded SDCWA and/or DWR by the Local Project Sponsor agreement, as applicable, unless otherwise specified in this Agreement.

**15. Amendment.** All amendments or modification of this Agreement shall be in writing and signed by the parties. No oral understanding or agreement not incorporated in the Agreement is binding on the parties.

**16. Audits.** OMWD reserves the right to conduct an audit of LPP at any time between the execution of this Agreement and the completion of the grant agreement program, with the costs of such audit to be borne by SDCWA or DWR. Following completion of the project, SDCWA and/or DWR may require OMWD to conduct a final audit or may perform the audit at OMWD's expense. Costs incurred by OMWD for audits performed up to three years after project completion will be divided evenly among OMWD and LPPs. For post completion audits initiated by SDCWA, costs of an independent auditor firm will be borne by SDCWA provided that no misappropriation of funds is discovered as a result of such audit. Failure or refusal by LPP to comply with this provision shall be considered a breach of this Agreement, and OMWD, SDCWA, and DWR may take any action to protect their interests.

LPPs shall be subject to the examination and audit of the California State Auditor and/or SDCWA for a period of three years after completion of the grant agreement. All records of LPPs and their subcontractors shall be preserved for at least three years after completion of the grant agreement or through May 31, 2020, whichever is later.

**17. Disposition of equipment.** LPP shall consult with OMWD on the scope of the inventory not less than 60 days before the submission of the final subproject invoice. Not less than 30 days before submission of its final invoice, LPP shall provide to OMWD a final inventory of equipment purchased with grant funds. The inventory shall include all items with a current estimated fair market value of more than \$5000 per item. Within 60 days of receipt of the inventory, DWR will provide SDCWA with a list of the items on the inventory to which DWR will take title. All other items shall become the property of LPP. DWR will arrange for delivery from LPP of items to which it takes title. Cost of transportation, if any, will be borne by DWR.

**18. Independent capacity.** In the performance of this Agreement, LPP, its officers, agents, contractors, volunteers, and employees, shall act in an independent capacity and not as officers, employees, or agents of DWR, SDCWA, or OWMD.

**19. No third party rights.** The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or of any duty, covenant, obligation or undertaking established herein.

**20. Severability of unenforceable provision.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, all other provisions of this Agreement shall be construed to remain fully valid, enforceable, and binding on the parties.

**21. Successors and Assigns.** This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Agreement or any part thereof, rights hereunder, or interest herein by LPPs shall be valid unless and until it is approved in writing by DWR and made subject to such reasonable terms and conditions as DWR may impose.

**22. Timeliness.** Time is of the essence in this Agreement.

**23. Default provisions.**

a. LPP will be in default under this Agreement if any of the following occur:

- Failure to perform any material term of this Agreement;
- Making any false representation or statement;
- Failure to construct, operate, or maintain subprojects in accordance with this Agreement; or
- Failure to remit unexpended funds.

b. If an event of default occurs, OMWD may do the following:

- Declare that the grant amounts be repaid immediately, with interest, which shall be equal to State of California general obligation bond interest rate in effect at the time of the default;
- Terminate any obligation to make future payments to LPP;
- Terminate this Agreement; and
- Take any other action that it deems necessary to protect its interests.

**24. Permits, licenses, approvals, and compliance with laws.** LPP shall ensure all permits, licenses, and approvals required for performing their obligations under this Agreement are obtained, and shall comply with all applicable federal, state, and local laws, rules, and regulations, guidelines, including the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C., 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA and requirements for each project described in Exhibit A.

**25. Submission of reports.** All reports shall be submitted to OMWD. The submittal and approval of all reports is a requirement for the successful completion of this Agreement. Reports shall be submitted in both electronic and hard copy forms, shall meet generally accepted professional standards for technical reporting, and shall be proofread for content and accuracy before submission. LPP shall promptly provide any additional information requested by OMWD, SDCWA, or DWR for approval of reports. Reports shall be presented in the formats described in Exhibit A. The submittal and approval of reports is a requirement for initial and continued disbursement of DWR funds. Submittal of a Project Completion Report is a requirement for the release of any retention.

- Quarterly Reports: Beginning in the first quarter after signing this Agreement and for the duration of the grant agreement, LPP shall submit to OMWD a quarterly report that explains the status of each subproject described in Exhibit A. Reports shall be submitted by the seventh day of March, June, September, and December for the preceding quarter.
- Project Completion Reports: Within 45 calendar days of completion of all project tasks, LPP shall submit to OMWD a Project Completion Report for each subproject as described included in Exhibit A.
- Project Completion Reports: LPP shall submit a Project Completion Report for its respective subproject to OMWD within 45 calendar days after the first operational year of a subproject has elapsed.
- Project Performance Report: LPP must submit an annual project performance report to OMWD within 20 calendar day of request by OMWD, in accordance with Exhibit A. This record-keeping and reporting process shall be repeated for each project annually for a total of 10 years after the completed project begins operation.

**26. IRWM Program Performance and Assurances.** LPP agrees to promptly perform or cause to be performed all IRWM Program work as described in the final plans and specifications for its subproject and implement the subproject in accordance with applicable provisions of the law. If OMWD and/or SDCWA must enforce this provision by legal action, LPP shall pay all costs incurred by OMWD and/or

SDCWA including, but not limited to, reasonable attorneys' fees, legal expenses, expert fees, and other costs.

**27. Labor compliance.** LPP will be required to keep informed of and take all measures necessary to ensure compliance with applicable California Labor Code requirements, including, but not limited to, Section 1720 et seq. of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor Code Section 1720.4), labor compliance programs (California Labor Code Section 1771.5), and payment of prevailing wages for work done and funded pursuant to these guidelines, including any payments to the Department of Industrial Relations under California Labor Code Section 1771.3. Proof of compliance with this section must be furnished to OMWD upon request.

**28. Operation and maintenance of projects.**

a. For the useful life of the projects and in consideration of the grant made by DWR, LPP shall ensure the commencement and continued operation of the subproject(s), and shall ensure the subprojects are operated in an efficient and economical manner; shall ensure all repairs, renewals, and replacements necessary for the efficient operation of the same are provided; and shall ensure or cause the same to be maintained in as good and efficient condition as upon its construction, ordinary and reasonable wear and depreciation excepted. All operations and maintenance costs of the facilities and structures shall be the responsibility of LPP for its subproject(s). DWR, SDCWA, or OMWD shall not be liable for any cost of maintenance, management, or operation. LPP may be excused from operations and maintenance only upon the written approval of DWR's Project Manager.

b. For purposes of this Agreement, "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses. "Maintenance costs" include ordinary repairs and replacements of a recurring nature necessary for capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures. Refusal of LPP to ensure operation and maintenance of the subprojects in accordance with this provision may, at the option of OMWD, be considered a breach of this Agreement and may be treated as default under paragraph 22.

**29. Monitoring requirements.** LPP shall ensure that all groundwater subprojects and subprojects that include groundwater monitoring requirements are consistent with the Groundwater Quality Monitoring Act of 2001 (Part 2.76, commencing with Section 10780) of Division 6 of the Water Code). Subprojects that affect water quality shall include a monitoring component that allows the integration of data into statewide monitoring efforts, including where applicable, the Surface Water Ambient Monitoring Program carried out by State Water Resources Control Board. Exhibit A provides guidance on such monitoring requirements.

**30. Notification of OMWD.** For each subproject, LPP shall promptly notify OMWD in writing of the following occurrences:

a. Events or proposed changes that could affect the scope, budget, or work performed under this Agreement. LPP agrees that no substantial change in the scope of a subproject will be undertaken until written notice of the proposed change has been provided to OMWD and OMWD has given written approval of such change.

b. Any public or media event publicizing the accomplishments or results of this Agreement that provides the opportunity for OMWD, SDCWA, or DWR representatives to attend and participate. LPP shall notify OMWD at least 21 calendar days before the event.

c. Completion of work on a subproject.

d. Final inspection of a subproject by a Registered Civil Engineer. LPP shall notify DWR, SDCWA, and OMWD at least 16 calendar days before the inspection and provide DWR, SDCWA, and OMWD the opportunity to participate in the inspection.

**31. Project managers.** Any party may change its Project Manager upon written notice to the other parties.

- DWR's Project Manager shall be the Chief, Division of Integrated Regional Water Management, Department of Water Resources. DWR's Project Manager shall be DWR's representative and shall have the authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment for work performed under DWR grant agreement.
- SDCWA's Project Manager shall be Mark Stadler, Principal Water Resources Specialist. SDCWA's Project Manager shall be its representative for the administration of this Agreement and shall have full authority to act on behalf of SDCWA, including authority to execute all payment requests.
- OMWD's Project Manager, Kimberly Thorner, shall be its representative for the administration of this Agreement and shall have full authority to act on behalf of OMWD including authority to execute all payment requests.

**32. Notices.** All notice, demand, request, consent, or approval that any party desires or is requested to give to one or more of the other parties shall be in writing. Notices may be sent by mail, courier, electronic mail or any other means of delivery. Any party may, by written notice to the others, designate a different address that shall be substituted for the one below.

State of California  
Department of Water Resources  
Division of Integrated Regional Water Management  
Attention: Chief, Division, of Integrated Regional Water Management Financial  
Assistance Branch  
P.O. Box 942836  
Sacramento, CA 94236-0001

Mark Stadler  
Principal Water Resources Specialist  
San Diego County Water Authority  
4677 Overland Avenue  
San Diego, CA 92123

Kimberly Thorner  
General Manager  
Olivenhain Municipal Water District  
1966 Olivenhain Road  
Encinitas, CA 92024

Wendy Chambers  
Utilities Director  
Carlsbad Municipal Water District  
5950 El Camino Real  
Carlsbad, CA 92008

Chris McKinney  
Director of Utilities  
City of Escondido  
201 North Broadway  
Escondido, CA 92025

Paul Bushee  
General Manager  
Leucadia Wastewater District  
1960 La Costa Avenue  
Carlsbad, CA 92009

Cari Dale  
Water Utilities Director  
City of Oceanside  
300 North Coast Highway  
Oceanside, CA 92054

Bob Gumerman  
Interim General Manager  
Rincon del Diablo Municipal Water District  
1920 North Iris Lane  
Escondido, CA 92026

Michael Thornton  
General Manager

San Elijo Joint Powers Authority  
2695 Manchester Avenue  
Cardiff, CA 92007

Michael Bardin  
General Manager  
Santa Fe Irrigation District  
5920 Linea del Cielo  
PO Box 409  
Rancho Santa Fe, CA 92067-0409

Dennis Lamb  
General Manager  
Vallecitos Water District  
201 Vallecitos de Oro  
San Marcos, CA 92069

Roy Coox  
General Manager  
Vista Irrigation District  
1391 Engineer Street  
Vista, CA 92081

**33. Termination, immediate repayment, interest.** The Agreement may be terminated by written notice at any time before completion of the IRWM Program at the option of OMWD, SDCWA, or DWR if LPP breaches the Agreement, and has been asked to cure the breach within a reasonable time and fails to do so. If the Agreement is terminated, LPP shall, upon demand, immediately repay to DWR an amount equal to the amount of grant funds disbursed to LPP. Interest shall accrue on all amounts due at the State of California's general obligation bond interest rate from the date that notice of termination is mailed to LPP to the date of full repayment.

**34. Indemnity — hold harmless.**

a. To the fullest extent permitted by law, LPP shall (1) immediately defend, and (2) indemnify OMWD, SDCWA, and DWR and their directors, officers, and employees from and against all liabilities regardless of nature or type arising out of or resulting from LPP's performance of services under this contract, or any negligent or wrongful act or omission of the LPP or LPP's officers, employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The LPP's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole negligence or willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of

an indemnified party, the LPP indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

b. The duty to defend is a separate and distinct obligation from the LPP's duty to indemnify. The LPP shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by OMWD, SDCWA, and DWR, and their directors, officers, and employees, immediately upon tender to the LPP of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the LPP from its separate and distinct obligation to defend OMWD, SDCWA, and DWR. The obligation to defend extends through final judgment, including exhaustion of any appeals.

c. The review, acceptance or approval of LPP's work or work product by any indemnified party shall not affect, relieve or reduce the LPP's indemnification or defense obligations. This section survives completion of the services or the termination of this contract. The provisions of this section are not limited by and do not affect the provisions of this contract relating to insurance.

**35. Insurance.**

a. The LPP shall procure and maintain during the period of performance of this contract insurance from insurance companies admitted to do business in the State of California, as set forth in this section or as additionally required by supplemental condition. The requirements of this paragraph can also be met by providing the equivalent types and amounts of self-insurance. These policies shall be primary insurance as to OMWD so that any other coverage held by OMWD shall not contribute to any loss under LPP's insurance. Coverage may be provided by a combination of primary and excess insurance policies, provided all insurers meet the requirements of this section.

b. All insurance shall cover occurrences during the coverage period.

c. The coverage amount of each policy of insurance shall be as required by OMWD.

i. The following insurance and limits are required for the contract:

Commercial General Liability: Coverage at least as broad as ISO form GC  
00 01 10 01

Limit per occurrence: \$1,000,000

d. The insurance policies shall be endorsed as follows:

i. For the general commercial liability as well as excess or umbrella insurance covering risks within the scope of that type insurance, OMWD, its directors, officers, employees and agents are included as additional insureds with regard to liability and

defense of suits or claims arising from the operations, products and activities performed by or on behalf of the named insured. The LPP's insurance applies separately to each insured, including insureds added pursuant to this paragraph, against whom claim is made or suit is brought except with respect to the policy limits of liability. The inclusion of any person or entity as an insured shall not affect any right which the person or entity would have as a claimant if not so included. Any failure of the named insured to comply with reporting provisions of the policy or breaches or violations of warranties shall not affect coverage provided to the insureds added pursuant to this paragraph. The additional insured endorsement shall provide coverage at least as broad as ISO form CG 20 10 10 93.

ii. The LPP's insurance shall be primary. Any other insurance or self-insurance available to OMWD or persons stated in paragraph (1) shall be in excess of and shall not contribute to the contractor's insurance.

iii. The insurance shall not be canceled or materially reduced in coverage except after 30 days prior written notice receipted delivery has been given to OMWD, except 10 days notice shall be allowed for non-payment of premium.

e. Unless otherwise specified, the insurance shall be provided by an acceptable insurance provider, as determined by OMWD, which satisfies the following minimum requirements: An insurance carrier admitted to do business in California and maintaining an agent for process within the State of California. Such insurance carrier shall maintain a current A.M. Best rating classification of "A-" (A minus) or better and a financial size of \$10 million to \$24 million (Class V) or better, or a Lloyds of London program provided by syndicates of Lloyds of London and other London insurance carriers, providing all participants are qualified to do business in California and the policy provides for an agent for process in the State of California and the program assures a financial capability at least equal to the required classification and size for admitted insurers.

f. Certificates of insurance and endorsements shall be provided by the LPP and approved by OMWD before execution of the contract. Endorsements may be provided on forms provided by OMWD, or substantially equivalent forms provided by the insurer. All consultants/contractors performing the scope of work on behalf of the LPP shall name OMWD, SDCWA, and DWR (including their directors, officers, employees, and agents) as an additional insured on their Commercial General Liability policy and the policy shall be endorsed with use of an ISO form CG 20 10 10 93 or equivalent.

**36. Laws and venue.** This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court in San Diego County.

37. **Assignment.** A party shall not assign, sublet, or transfer this Agreement or any rights or interest in this Agreement without the written consent of OMWD, which may be withheld for any reason.

38. **Integration.** This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding should be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the parties.

39. **Incorporation of standard conditions and grantee commitments.** The following exhibits are attached and made a part of this Agreement by this reference:

Exhibit A – Local Project Sponsor Agreement

Exhibit B – Grant Agreement

Exhibit C – RMC Scope of Work

40. **Signatures.** The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date below:

DATED: \_\_\_\_\_

OLIVENHAIN MUNICIPAL WATER DISTRICT

By: \_\_\_\_\_  
Kimberly Thorner, General Manager

DATED: \_\_\_\_\_

CARLSBAD MUNICIPAL WATER DISTRICT

By: \_\_\_\_\_  
Wendy Chambers, Utilities Director

DATED: \_\_\_\_\_

CITY OF ESCONDIDO

By: \_\_\_\_\_  
Chris McKinney, Director of Utilities

DATED: \_\_\_\_\_

LEUCADIA WASTEWATER DISTRICT

By: \_\_\_\_\_  
Paul Bushee, General Manager

DATED: \_\_\_\_\_

CITY OF OCEANSIDE

APPROVED AS TO FORM  
OCEANSIDE CITY ATTORNEY  
*Barbara L. Hamilton*  
BARBARA L. HAMILTON  
Assistant City Attorney

By: \_\_\_\_\_  
Cari Dale, Water Utilities Director

DATED: \_\_\_\_\_

RINCON DEL DIABLO MUNICIPAL WATER DISTRICT

By: \_\_\_\_\_  
Bob Gumerman, Interim General Manager

DATED: \_\_\_\_\_

SAN ELIJO JOINT POWERS AUTHORITY

By: \_\_\_\_\_  
Michael Thornton, General Manager

DATED: \_\_\_\_\_

SANTA FE IRRIGATION DISTRICT

By: \_\_\_\_\_  
Michael Bardin, General Manager

DATED: \_\_\_\_\_

VALLECITOS WATER DISTRICT

By: \_\_\_\_\_  
Dennis Lamb, General Manager

DATED: \_\_\_\_\_

VISTA IRRIGATION DISTRICT

By: \_\_\_\_\_  
Roy Coox, General Manager

EXHIBIT B

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AUTHORIZING THE WATER UTILITIES DEPARTMENT TO ACCEPT GRANT FUNDS FROM OLIVENHAIN MUNICIPAL WATER DISTRICT AS REDISTRIBUTED FUNDS TO PROGRAM PARTICIPANTS FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES FOR THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006

WHEREAS, grant funds will be received by Olivenhain Municipal Water District for the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006;

WHEREAS, the Olivenhain Municipal Water District is identified as facilitator of grant funding through the Local Project Participant Agreement; and

WHEREAS, the City of Oceanside is an eligible local project participant for grant funds from the California Department of Water Resources being redistributed by Olivenhain Municipal Water District;

NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

SECTION 1. The Water Utilities Department is authorized to accept grant funds from the Olivenhain Municipal Water District for the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 as redistributed by Olivenhain Municipal Water District;

SECTION 2. The City Manager or his designee is authorized and directed to act on behalf of the City of Oceanside as signatory to accept grant funds from the California Olivenhain Municipal Water District for the project.

\\\

\\\

\\\

\\\

1 PASSED AND ADOPTED by the City Council of the City of Oceanside, California,  
2 this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote

- 3 AYES:
- 4 NAYES:
- 5 ABSENT:
- 6 ABSTAIN:

7  
8 MAYOR OF THE CITY OF OCEANSIDE

9  
10 ATTEST:

APPROVED AS TO FORM:

11  
12 \_\_\_\_\_  
13 City Clerk

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
*Brenton J. Hamilton, ASST.*  
City Attorney

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AUTHORIZING THE WATER UTILITIES DEPARTMENT TO ACCEPT GRANT FUNDS FROM OLIVENHAIN MUNICIPAL WATER DISTRICT AS RE-DISTRIBUTED FUNDS TO PROGRAM PARTICIPANTS FROM THE CALIFORNIA DEPARTMENT OF WATER RESOURCES FOR THE SAFE DRINKING WATER, WATER QUALITY AND SUPPLY, FLOOD CONTROL, RIVER AND COASTAL PROTECTION BOND ACT OF 2006