

STAFF REPORT*CITY OF OCEANSIDE*

DATE: November 19, 2014

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 (LPPA) with the Olivenhain Municipal Water District for the North San Diego County Regional Recycled Water Project; authorize the Water Utilities Department to accept grant funds in the amount of \$345,200 redistributed by Olivenhain Water District from the California Department of Water Resources, and authorize the City Manager, or designee, to execute all documents related to the LPPA and grant funds.

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.

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 North San Diego County Regional Recycled Water Project (NSDCRRWP), in partnership with ten North County cities, water and wastewater agencies, includes the City of Oceanside. OMWD serves as the lead agency and was awarded a total of \$1.455 million which is currently being distributed 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.

ANALYSIS

The Round 2 Proposition 84 IRWM grant agreement was executed August of 2014, 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 October 16, 2014. The amount of project award under the Round 2 funding is \$3.452 million with each participant receiving \$345,200.

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. Since then, RMC Water and Environment has managed the project management and developed a Programmatic Environmental Impact Report, a public outreach plan and a feasibility study. Monies awarded under Round 2 of Proposition 84 IRWM are intended to go towards recycled water infrastructure construction projects.

The partners continue to work together to pursue additional funding for the NSDCRRWP through the federal process.

FISCAL IMPACT

Acceptance and appropriation of the \$345,200 in grant funds will contribute to the funding of construction of recycled water pipelines and appurtenant facilities for Ocean Hills and the surrounding area. The grant revenues and expenditures will be appropriated and accounted for in business unit 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 October 21, 2014.

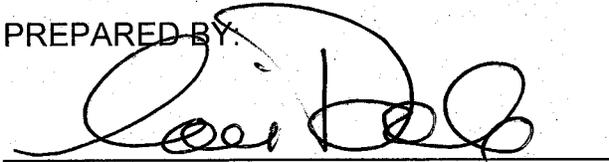
CITY ATTORNEY'S ANALYSIS

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 (LPPA) with the Olivenhain Municipal Water District for the North San Diego County Regional Recycled Water Project; authorize the Water Utilities Department to accept grant funds in the amount of \$345,200 redistributed by Olivenhain Water District from the California Department of Water Resources, and authorize the City Manager, or designee, to execute all documents related to the LPPA and grant funds.

PREPARED BY:



Cari Dale
Water Utilities Director

SUBMITTED BY:



Steve Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant City Manager



James Riley, Financial Services Director



Exhibit A: Local Project Participant Agreement

AGREEMENT for the INTEGRATED REGIONAL WATER MANAGEMENT
PROGRAM BETWEEN OLIVENHAIN MUNICIPAL WATER DISTRICT AND
LOCAL PROJECT PARTICIPANTS
PROJECT NO. 1-80013

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. In 2010, OMWD and LPPs 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 LPPs.

3. In September 2011, SDCWA, the City of San Diego and the County of San Diego entered into a Memorandum of Understanding (MOU) for Fiscal Years 2012-2016 Grant Program 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.

4. Effective December 12, 2012, SDCWA, acting on behalf of the San Diego RWMG, entered into a \$ 7.9 million grant agreement with DWR for Prop 84, Funding Round 1. The San Diego RWMG committed a total of \$1.455 million of this award to the planning phase of the NSDCRRWP.

5. In July 2012, DWR solicited for projects for a second round of grants to be funded by Proposition 84. The implementation phase of the NSDCRRWP was included in the Round 2 San Diego IRWM Plan. In September 2013, the IRWM Plan was adopted by the RWMG.

6. Effective August 2014, SDCWA, acting on behalf of the San Diego RWMG, entered into a grant agreement with DWR in the value of \$10,511,225. The grant will assist in financing projects associated

with the San Diego IRWM Plan. The San Diego RWMG has committed a total of \$3.452 million in funds to the NSDCRRWP provided via the grant agreement. The grant agreement is attached as Exhibit B.

7. On October 16, 2014, OMWD entered into the Grant Agreement for the Integrated Regional Water Management Program Related to Proposition 84, Implementation Grants Between San Diego County Water Authority and Olivenhain Municipal Water District, Project Number 1-80013 (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 4600010589 between SDCWA and DWR, effective August 6, 2014, for the disbursement of \$10,511,225 in grant funds.

c. Local Project Sponsor agreement: the Grant Agreement for the Integrated Regional Water Management Program Related to Proposition 84, Implementation Grants Between San Diego County Water Authority and Olivenhain Municipal Water District, Project Number 1-80013, executed by OMWD October 16, 2014, 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 October 16, 2014 and terminates June 30, 2019 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 \$3,452,000. 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 \$16,201,662. 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 \$12,749,662. 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.

Additional Cost Share is the amount necessary to fund the project above the Grant Amount and the Funding Match. Additional Cost Share for the project is estimated to be \$6,717,662. Additional Cost Share will not be reviewed by DWR or SDCWA for invoicing purposes; however, LPPs are required to submit all financial records associated with the project to OMWD in accordance with the invoicing procedures described in paragraph 10, "Invoices."

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 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.

b. Accept and agree to comply with all terms, provisions, conditions, and written commitments of this LPP agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by LPP in the grant application, documents, amendments, and communications filed in support of the request for Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 financing.

c. Comply with all applicable California laws and regulations.

d. Implement the subproject(s) in accordance with applicable provisions of the law.

e. Fulfill its obligations under the LPP, LPS, and Grant Agreements, and be responsible for the performance of its subproject.

f. 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.

g. 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.

h. 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.

i. 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.

j. 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. 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 November 2012.

c. 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. OMWD and each LPP are entitled to an equivalent portion of the grant funds 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 portions of the minimum local match required by the grant agreement and shown in Exhibit B of the LPS agreement.

b. Eligible costs include the reasonable and necessary costs of engineering, design, land and easement acquisition, preparation of environmental documentation, environmental mitigation, and construction.

c. Only work performed after February 4, 2014 shall be eligible for reimbursement. Costs incurred after June 30, 2019 and before February 4, 2014 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.

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

- Costs incurred before February 4, 2014.
- 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 (per diem includes subsistence and other related costs).
- Support of existing agency requirements and mandates (e.g., punitive regulatory agency requirement).
- 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 February 4, 2014.
- Payment of principal or interest of existing indebtedness or any interest payments for the subproject unless the debt is incurred after February 4, 2014, and SDCWA 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 a subproject 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. Invoices shall be submitted on forms provided by OMWD and shall meet the following format requirements:
 - i. Must contain the date of the invoice, the time period covered by the invoice, and the total amount due.
 - ii. Must be itemized based on categories (i.e., tasks) as shown in the project budget in Exhibit A. The amount claimed for salaries/wages/consultant fees must list the a classification or title of each staff/consultant claiming labor costs and include a

calculation formula (i.e., hours or days worked times the hourly or daily rate equals the total amount claimed).

iii. Sufficient evidence (e.g., receipts, copies of checks, time sheets) as determined by OMWD, SDCWA, and DWR must be provided for all costs included in the invoice. Additional Cost Share shall be accounted for separately in the progress reports.

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

v. OMWD will notify LPP in a timely manner when, upon review of an invoice, OMWD, SDCWA, or DWR determine that any portion or portions of the costs claimed are not eligible costs or are not supported by documentation or receipts acceptable to OMWD, SDCWA, or DWR. LPP may, within eight calendar days of such notice, submit additional documentation to SDCWA to cure such deficiency(ies). If LPP fails to submit adequate documentation curing the deficiency(ies), OMWD or SDCWA will adjust the pending invoice by the amount of ineligible or unapproved costs.

11. Requirements for disbursement.

a. By June 30, 2019, 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 12, "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).

iv. 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. Disbursement by OMWD. Upon receipt of reimbursement from SDCWA for costs incurred by OMWD and LPPs, 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 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.

13. 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.

14. 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.

15. 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 the 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 June 30, 2022, whichever is later.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. Timeliness. Time is of the essence in this Agreement.

22. 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;
- Failure to submit in a timely manner information on subprojects to be included in progress reports to SDCWA;
- Failure to submit in a timely manner cost information to be included in invoices to SDCWA; 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.

23. 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, including those necessary to perform, design, construct, or operate and maintain subproject. LPPs shall comply with all applicable federal, state, and local laws, rules, and regulations, guidelines, specifically including, but not limited to, environmental, procurement, and safety laws, rules, regulations, and ordinances, and also specifically 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.

24. Submission of reports. All reports shall be submitted to OMWD or its designee. The submittal and approval of all reports is a requirement for the successful completion of this Agreement. Reports shall be submitted in electronic form, 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 seven calendar days after the end of the previous quarter. OMWD will notify LPPs of the quarter period cycle once the determination is made by SDCWA.
- **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 Performance Reports:** LPP shall submit a Project Completion Report for its respective subproject to OMWD within 45 calendar days after the first operational year of the project has elapsed, 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.

25. 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.

26. Labor compliance. LPP agrees to comply with all applicable California Labor Code requirements. LPP must, independently or through a third party, adopt and enforce a Department of Industrial Relations-certified Labor Compliance Program (LCP) meeting the requirements of Labor Code section 1771.5 for projects funded by Proposition 84 (Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006; PRC sections 75075 *et seq.*). Proof of compliance with this section must be furnished to OMWD upon request.

27. 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.

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.

28. 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). Where applicable, 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.

29. 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 28 calendar days before the event.

c. Completion of work on a subproject.

d. Final inspection of a subproject by a California Registered Professional (Civil Engineer or Geologist, as appropriate). LPP shall notify DWR, SDCWA, and OMWD at least 28 calendar days before the inspection and provide DWR, SDCWA, and OMWD the opportunity to participate in the inspection.

30. 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.

31. 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
General Manager
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

Greg Thomas
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

32. 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.

33. Indemnification.

a. To the fullest extent permitted by law, LPP shall (1) immediately defend, and (2) indemnify and hold harmless OMWD, SDCWA, and DWR and their directors, officers, and employees from and against all liabilities including inverse condemnation 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.

d. LPP shall require its contractors or subcontractors to name OMWD, SDCWA, and DWR, its officers, agents, and employees as additional insured on their liability insurance for activities undertaken pursuant to this Agreement.

34. Insurance.

a. The LPP shall procure and maintain during the period of performance of this Agreement 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. An approved combination of pooled and self-insurance coverage is an acceptable alternative for general liability, automobile coverage, or workers compensation. 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: \$2,000,000

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 (i) 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.

35. 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.

36. 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.

37. 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.

38. 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

39. 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, General Manager

DATED: _____

CITY OF ESCONDIDO

By: _____
Chris McKinney, Director of Utilities

DATED: _____

LEUCADIA WASTEWATER DISTRICT

By: _____
Paul Bushee, General Manager

DATED: _____

CITY OF OCEANSIDE

By: _____
Cari Dale, Water Utilities Director

DATED: _____

RINCON DEL DIABLO MUNICIPAL WATER DISTRICT

By: _____
Greg Thomas, 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