

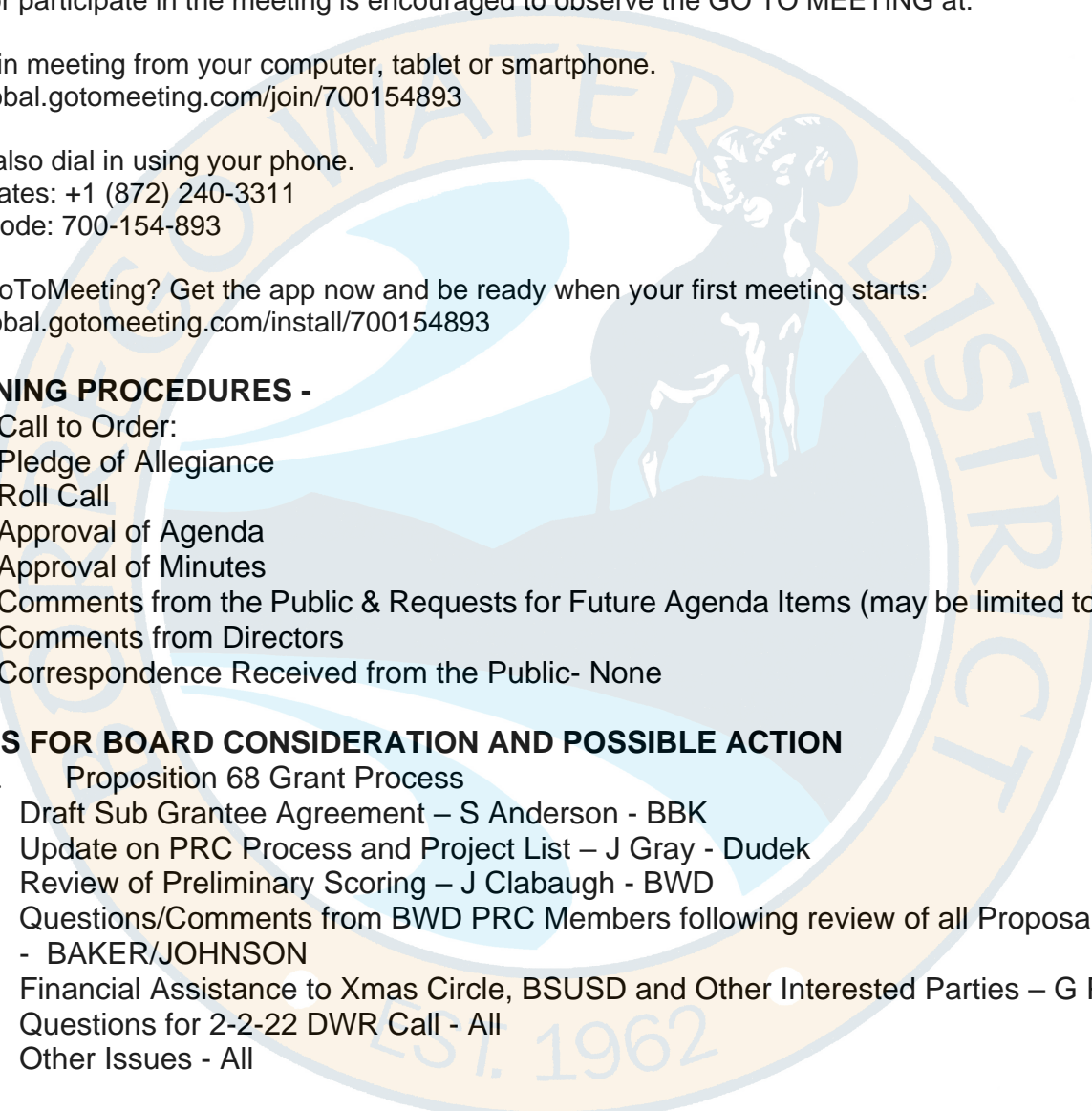
Borrego Water District Board of Directors
Special Meeting
February 1, 2022 @ 9:00 a.m.
806 Palm Canyon Drive
Borrego Springs, CA 92004

COVID-19 UPDATE: The Borrego Water District Board of Directors meeting as scheduled in an electronic format. BWD will be providing public access to the Meeting thru electronic means only to minimize the spread of the COVID-19 virus, based upon direction from the California Department of Public Health, the California Governor's Office and the County Public Health Office. Anyone who wants to listen to or participate in the meeting is encouraged to observe the GO TO MEETING at:

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- I. OPENING PROCEDURES -**
- A.** Call to Order:
 - B.** Pledge of Allegiance
 - C.** Roll Call
 - D.** Approval of Agenda
 - E.** Approval of Minutes
 - F.** Comments from the Public & Requests for Future Agenda Items (may be limited to 3 min)
 - G.** Comments from Directors
 - H.** Correspondence Received from the Public- None
- II. ITEMS FOR BOARD CONSIDERATION AND POSSIBLE ACTION**
- A.** Proposition 68 Grant Process
 - 1. Draft Sub Grantee Agreement – S Anderson - BBK
 - 2. Update on PRC Process and Project List – J Gray - Dudek
 - 3. Review of Preliminary Scoring – J Clabaugh - BWD
 - 4. Questions/Comments from BWD PRC Members following review of all Proposals - BAKER/JOHNSON
 - 5. Financial Assistance to Xmas Circle, BSUSD and Other Interested Parties – G Poole
 - 6. Questions for 2-2-22 DWR Call - All
 - 7. Other Issues - All
- III. CLOSING PROCEDURE:** The next Board Meeting is scheduled for February 8, 2022, to be available online. See Board Agenda at BorregoWD.org for details, available at least 72 hours before the meeting.

AGENDA: February 1, 2022

All Documents for public review on file with the District's secretary located at 806 Palm Canyon Drive, Borrego Springs CA 92004. Any public record provided to a majority of the Board of Directors less than 72 hours prior to the meeting, regarding any item on the open session portion of this agenda, is available for public inspection during normal business hours at the Office of the Board Secretary, located at 806 Palm Canyon Drive, Borrego Springs CA 92004.

The Borrego Springs Water District complies with the Americans with Disabilities Act. Persons with special needs should call Geoff Poole – Board Secretary at (760) 767 – 5806 at least 48 hours in advance of the start of this meeting, in order to enable the District to make reasonable arrangements to ensure accessibility.

If you challenge any action of the Board of Directors in court, you may be limited to raising only those issues you or someone else raised at the public hearing, or in written correspondence delivered to the Board of Directors (c/o the Board Secretary) at, or prior to, the public hearing.

BORREGO WATER DISTRICT
BOARD OF DIRECTORS MEETING
FEBRUARY 1, 2022
AGENDA ITEM II.A

January 27, 2022

TO: Board of Directors

FROM: Geoffrey Poole, General Manager

SUBJECT: Proposition 68 Grant Process

1. Draft Sub Grantee Agreement – S Anderson - BBK
2. Update on PRC Process and Project List – J Gray - Dudek
3. Review of Preliminary Scoring – J Clabaugh - BWD
4. Questions/Comments from BWD PRC Members/Board following review of all Proposals - BAKER/JOHNSON
5. Financial Assistance to Xmas Circle, BSUSD and Other Interested Parties – G Poole
6. Questions for 2-2-22 DWR Call - All
7. Other Issues – All

RECOMMENDED ACTION:

Receive updated information and direct staff as deemed appropriate.

ITEM EXPLANATION:

1. Legal Counsel has developed the attached Draft Agreement to be used with any Interested Party receiving Grant funds.
2. Jane Gray from Dudek will update the Board on the PRC activities and schedule
3. Jessica will share the results of the Preliminary Scoring and Ranking of Projects from the PRC. The results are scheduled to be received at 5 PM on January 31.
4. The BWD PRC members and Board/Staff/Dudek will have an opportunity to share its observations, comments and questions on the full list of Projects.
5. At the last Board Meeting, financial assistance for cash flow was tentatively approved for Xmas Circle and the BS School District projects. BWD staff has reached out to both Organizations to determine their specific needs and will have the information soon. One question was asked at the recent PRC meeting that needs Board input. Would BWD consider providing cash flow assistance to other local IPs if the Xmas Circle or School projects were not included in the Spending Plan and not ultimately funded?
6. WM and BWD Staff have been contacted by DWR and a call for 2-2 has been scheduled. At the Meeting, Staff would like to discuss the Boards suggestions for possible DWR questions on the upcoming call.
7. Other?

NEXT STEPS:

1. TBD

ATTACHMENTS:

1. Draft Sub Grantee Agreement

AGREEMENT
for the
SUSTAINABLE GROUNDWATER MANAGEMENT GRANT PROGRAM
BETWEEN
BORREGO WATER DISTRICT
AND
[INSERT ENTITY NAME]
PROJECT NO. [INSERT PROJECT #]

This Agreement between the Borrego Water District, a California Water District (“District”), and [INSERT ENTITY NAME], a [INSERT ENTITY DESCRIPTION] (“Local Project Sponsor”), sets forth the understanding of the District and the Local Project Sponsor (collectively, Parties) for distribution of a grant award from the State of California Department of Water Resources (State).

RECITALS

1. In 2018, California voters approved Proposition 68, the Groundwater Treatment and Remediate Grant Program, which administered \$75 million from Chapter 11.1 for grants for treatment and remediation activities that prevent or reduce the contamination of groundwater that serves as a source of drinking water.
2. In 2020, Proposition 68 was amended to add section 80146 to the Public Resources Code, authorizing the Legislature to appropriate General Obligation Bond funds for competitive grants for projects that address drought and groundwater investments to achieve regional sustainability; for investments in groundwater recharge with surface water, stormwater, recycled water, and other conjunctive use projects; and projects to prevent or clean up contamination of groundwater that serves as source of drinking water..
3. The California Budget Act of 2021 (Stats. 2021, ch. 240, § 80) appropriates funds to the Department of Water Resources (DWR) for grant awards, directed to projects that benefit critically overdrafted, medium priority, and high priority groundwater basins.
4. DWR is administering the Sustainable Groundwater Management (SGM) Grant Program Sustainable Groundwater Management Act (SGMA) Implementation using funds authorized by Proposition 68 and the California Budget Act of 2021 for projects that encourage sustainable management of groundwater resources that support SGMA and/or invest in groundwater recharge projects with surface water, stormwater, recycled water, and other conjunctive use projects.
5. On [INSERT DATE], the District entered into a \$7. [] million dollar grant agreement with DWR for Proposition 68 funding awarded to the District. The Grant Agreement is effective as of [INSERT DATE]. The grant will assist in financing projects associated with the SGM Grant Program on a reimbursable basis.
4. The District now wishes to enter into this agreement to assist in funding the Local Project Sponsor’s project with funds provided on a reimbursement basis to the District by DWR for SGM Grant Program implementation.
5. The work performed under this agreement by Local Project Sponsor is a valuable service to the District. The grant funds provided by DWR and the District to Local Project Sponsor are valuable consideration for the services provided.

TERMS AND CONDITIONS

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

1. Definitions:

The following words and terms, unless otherwise defined, shall mean:

(a) Local Project Sponsor: [INSERT ENTITY NAME], the proponent of the individual project that will be funded as part of the Sustainable Groundwater Management (“SGM”) grant from the State.

(b) Grant Agreement: Grant Agreement [INSERT GRANT NUMBER] between the District and the DWR, dated [INSERT DATE], for the disbursement of [INSERT GRANT AMOUNT] in grant funds.

(c) Project: [INSERT PROJECT NAME] (Project), which is one of the projects listed in the Grant Agreement that is under the responsibility of the Local Project Sponsor signing this Agreement with the District. The Work Plan for the program is provided in attached **Exhibit A**.

2. Term of Agreement: The term of this Agreement shall begin on the date of execution of this agreement. The term of this agreement shall terminate on [INSERT DATE], when all Parties’ obligations under this Agreement have been fully satisfied, or when the when the Agreement is terminated pursuant to the terms provided in this Agreement.

3. Budget Contingency:

(a) The District and the Local Project Sponsor shall have no obligation to perform under this Agreement if DWR does not provide funding through the Grant Agreement. Local Project Sponsor acknowledges that if funding for any fiscal year is reduced or eliminated by the DWR, the DWR at its option may either (1) cancel the Grant Agreement with no liability occurring to DWR or the District, or (2) amend the Grant Agreement to reflect the reduced amount of funding. If DWR amends the Grant Agreement, the District will offer to amend or terminate Local Project Sponsor’s agreement to reflect the reduced funding by DWR.

(b) If funding is eliminated by DWR, the District shall have no obligation to continue to sponsor the projects and this Agreement shall be of no force and effect. In this event, Local Project Sponsor shall not be obligated to perform under the Agreement.

(c) The District shall not have an obligation to perform under this Agreement until the District has received the allotted grant from DWR. The Local Sponsor shall not receive advanced payments from the District for the Project, regardless of whether DWR has allotted the grant to the District.

4. Schedule: The Local Sponsor shall complete its work for Project within the schedule set forth in **Exhibit B**. If the Local Sponsor does not complete the work according to the schedule, the District, at its sole discretion, has the authority to reduce the grant according to the Local Sponsor’s delay.

5. Grant Amount: The maximum amount payable by the District for this Project shall not exceed [INSERT GRANT AMOUNT]. The District is not liable for any funds expended by the Local Project Sponsor beyond the grant amount stated here.

6. Project Costs: The reasonable total cost of the Project funded through this Agreement is estimated to be [INSERT PROJECT AMOUNT]. The costs are summarized in **Exhibit C**, Budget Table. The Project Costs may be amended by the District by written notice to the Local Project Sponsor. The Project Costs cannot be amended by the Local Project Sponsor.

7. Eligible Costs:

(a) Eligible costs are the reasonable and necessary costs of engineering, design, legal, land and easement acquisition, preparation of environmental documentation, environmental mitigation, and project implementation. Only work performed after [INSERT DATE], shall be eligible for reimbursement. Costs incurred after [INSERT DATE], and before [INSERT DATE], are not eligible for reimbursement. The grant provides that total administrative expenses are limited to _____% of the total Project cost. Of this amount, the parties agree that the District will receive _____% for its administrative work related to the Project. Reasonable administrative expenses of the Local Project Sponsor in an amount not to exceed _____% of the total Project Cost may be included as Project Costs and will depend on the complexity of the Project preparation, planning, coordination, construction, acquisitions, implementation and maintenance. Reimbursable administrative expenses are the necessary costs incidentally but directly related to the Project. Once Local Project Sponsor satisfies the requirements described in 12 (Requirements for Disbursement) and 14 (Disbursement by State and Payment by the District), Local Project Sponsor may apply for reimbursement (see 13, Quarterly Invoices) for up to two percent of its grant funding to pay for direct project administration costs. This amount is specified in line (a) of the project budget (**Exhibit C**). Administrative expenses may include an appropriate pro-rata allocation of overhead only when agreed to by the District and the Local Project Sponsor, and when approved by DWR.

(b) Costs that are not reimbursable with grant funds include, but are not limited to, the following:

- Costs incurred before [INSERT DATE].
- Operation and maintenance costs, including post construction performance and monitoring costs.
- Purchase of equipment not an integral part of a project.
- Establishing a reserve fund.
- Purchase of water supply.
- Replacement of existing funding sources for ongoing programs.
- 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 project, as set forth and detailed by engineering and feasibility studies, or land purchased before [INSERT DATE].
- Payment of principal or interest of existing indebtedness or any interest payments for the Project unless the debt is incurred after [INSERT DATE], and the District 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 Program costs.
- Travel and per diem costs. Travel includes the costs of transportation, subsistence, and other associated costs incurred by personnel.

8. Local Project Sponsor Responsibilities:

(a) The Local Project Sponsor must comply with this agreement in its entirety. If the Local Project Sponsor does not meet this obligation, the District, at its sole discretion, may either reduce funding, withhold funding, or terminate this Agreement.

(b) The Local Project Sponsor warrants that the Project meets all the requirements set forth in the 2021 SGM Grant Program SGMA Implementation Guidelines and 2021 SGM Grant Program SGMA Implementation Proposal Solicitation Package.

(c) The Local Project Sponsor must submit any and all invoices, reports and other documents (collectively, "Project documentation") associated with the Project in a timely manner established at the sole discretion of the District. If the Local Project Sponsor does not turn in this Project documentation or fails to do so in a timely manner, the District, at its sole discretion, may either reduce funding, withhold funding, or terminate this Agreement.

(d) Local Project Sponsor 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. Neither DWR, the State of California, nor the District will mediate disputes between Local Project Sponsor and any other entity regarding performance of work.

(c) Local Project Sponsor shall be responsible for oversight and compliance of the Project. Local Project Sponsor or its representatives shall perform regular inspections of work in progress. Local Project Sponsor must submit a timely **bi-weekly** reports of its oversight, compliance, and inspections to the District. If the Local Project Sponsor does not turn in these reports or fails to do so in a timely manner, the District, at its sole discretion, may either reduce funding, withhold funding, or terminate this Agreement.

(d) Subject to section 8(a), above, Local Project Sponsor is solely responsible for implementation of the Project. Review or approval of plans, specifications, bid documents, or other documents by the District is solely for the purpose of proper administration of grant funds and shall not relieve or limit responsibilities of Local Project Sponsor with regard to its contractual obligations.

(e) The Local Project Sponsor shall maintain and operate the facility and structures constructed or improved as part of the project throughout the useful life of the project, consistent with the purposes for which this grant was made. The Local Project Sponsor assumes all operations and maintenance costs of the facilities and structures. Neither the District nor DWR shall be liable for any cost of such maintenance, management, or operation during any point of the Project's life. 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 to prolong the life of capital assets and basic structures, and the expenditure of funds necessary to replace or reconstruct capital assets or basic structures.

9. Independent Capacity: In the performance of this Agreement, Local Project Sponsor, its officers, agents, contractors, volunteers, and employees shall act in an independent capacity and not as officers, employees, or agents of the District.

10. Compliance with Terms: Local Project Sponsor shall comply with all terms, and conditions of the Grant Agreement attached as **Exhibit D**. If the Local Project Sponsor does not timely comply with these terms, the District, at its sole discretion, may either reduce funding, withhold funding, or terminate this Agreement.

11. Acknowledgement of Sponsorship: Local Project Sponsor shall include appropriate acknowledgement to the District, DWR, and all cost-sharing partners for their support when promoting the SGM Grant Program or associated grant funded projects, or using any data and/or information developed under this Agreement. During implementation of the Project on each watershed, Local Project Sponsor shall, if applicable, install a sign at a prominent location which shall include a statement that the project has received funds from the District. Local Project Sponsor shall notify the District as each sign has been erected by providing it with a site map with the sign location noted and a photograph of each sign. Local Project Sponsor also shall include appropriate acknowledgement in its public outreach information, including, if applicable, its project website.

12. Requirements for Disbursement:

(a) By **[INSERT DATE]**, Local Project Sponsor shall meet all conditions precedent to the disbursement of funds as listed below. Failure by Local Project Sponsor to comply by this date may, at the option of the District, result in termination of this Agreement. For disbursements of funds for each project, Local Project Sponsor shall

continue to meet the conditions for disbursement, paragraph 14, Disbursement by DWR and Payment by the District.

i. Local Project Sponsor shall ensure the availability of sufficient funds/cash flow/liquidity to complete the projects identified in this Agreement (Exhibit A).

ii. Local Projects Sponsor shall comply with all applicable requirements of the California Environmental Quality Act. Any Local Project Sponsor that is a public agency shall complete its own CEQA compliance. With the assistance of the Local Project Sponsor, including the submission of draft CEQA compliance documents to the District, the District shall conduct CEQA compliance. Costs associated with the District's CEQA compliance shall be reimbursed to the District either by way of the grant, if available, or the Local Project Sponsor. Before construction or implementation begins on a project, Local Project Sponsor shall submit to the District copies of environmental documents, including environmental impact reports, environmental impact statements, negative declarations, mitigation agreements, and environmental permits that are required. Any work that is subject to CEQA and funded under this Agreement shall not proceed until documents that satisfy the CEQA process are received and approved (if legally required as a responsible agency or otherwise) by the District. Alternatively, the Local Project Sponsor shall notify the District if they believe their activities qualify for a CEQA exemption. If CEQA compliance by the Local Project Sponsor has been completed at the time this Agreement is executed, once the District has considered the environmental documents, it may decide to require changes, alterations, or other mitigation to the project; or to not fund the project. Should the District decide to not provide reimbursement for the Project due to failure to comply with CEQA or otherwise, this Agreement will be terminated. Any work subject to CEQA that proceeds prior to the District's review and approval process being completed, will not be reimbursed and the amount will be reduced from the award amount.

iii. For the term of the Agreement, Local Project Sponsor shall submit timely periodic progress reports as required by paragraph 21, Submission of Reports. If the Local Project Sponsor does not turn in these reports or fails to do so in a timely manner, the District, at its sole discretion, may either reduce funding, withhold funding, or terminate this Agreement.

(b) Before disbursement of funds by DWR or the District, Local Project Sponsor shall submit to the District, 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 26, Permits, Licenses, Approvals, and Compliance with Laws, have been obtained.

13. Quarterly Invoices: Local Project Sponsor shall timely submit invoices to the District, which shall in turn send the invoices to DWR. If the Local Project Sponsor fails to timely submit its invoices, the District, at its sole discretion, may reduce funding, withhold funding, or terminate this agreement in its entirety. Invoices submitted by Local Project Sponsor to the District shall include the following information:

(a) Costs incurred for work performed in implementing this Agreement.

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

(c) Any appropriate receipts and reports for costs incurred.

(d) Invoices shall be submitted on forms provided by the District 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 the categories specified in the Budget, Exhibit C. 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. Shall clearly delineate those costs claimed for reimbursement from the State's grant amount, paragraph 5 above, and those costs that represent Local Project Sponsor's costs, as applicable, paragraph 6 above.
- iv. Original signature and date of Local Project Sponsor's Project Manager.
- v. Must include the Grant Agreement number.

(e) Submit the original and three (3) copies of the invoice to the following address:

[INSERT BORREGO REPRESENTATIVE]

Borrego Water District

806 Palm Canyon Drive

Borrego Springs, CA 92004

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

14. Disbursement by State and Payment by the District: Following the review of each invoice, the District will disburse the approved amount subject to the availability of funds through normal DWR processes, after receipt of such funds from DWR. The District shall forward these funds to the Local Project Sponsor. All money disbursed by DWR under this Agreement and all interest earned by the District shall be used solely to pay eligible costs. Within **sixty (60)** days of receipt of funds from DWR, the District shall disburse the funds to the Local Project Sponsor. Neither the District nor the DWR will provide advanced payments to the Local Project Sponsor, **except as specifically agreed to in writing by formal action of the District Board of Directors.**

15. RESERVED.

16. Accounting and Deposit of Grant Disbursement:

(a) Separate Accounting of Grant Disbursement and Interest Records: Local Project Sponsor shall:

- i. Account for the money and in-kind services disbursed pursuant to this Agreement separately from all other funds.
- ii. Maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices.
- iii. Keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of funds.
- iv. Require its contractors, consultants, and subcontractors, or others employed in the work to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by the District or DWR at all reasonable times.

(b) Fiscal Management Systems and Accounting Standards: Local Project Sponsor's fiscal control and accounting procedures will be sufficient to permit tracing of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of state law, this Agreement or the Grant Agreement.

(c) Remittance of Unexpended Funds: Within forty-five (45) calendar days of the final disbursement from the District, Local Project Sponsor shall remit to the District any unexpended funds that were disbursed to Local Project Sponsor and were not needed to pay Eligible Project Costs.

18. Default Provisions:

- (a) Local Project Sponsor will be in default under this Agreement if any of the following occur:
 - i. Failure to perform any material term of this Agreement;
 - ii. Making any false representation or statement;
 - iii. Failure to remit unexpended funds.
- (b) If an event of default occurs, the District may do the following:
 - i. 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;
 - ii. Terminate any obligation to make future payments to Local Project Sponsor;
 - iii. Terminate this Agreement; and
 - iv. Proceed with legal action that it deems necessary to protect its interests.

19. Disputes:

(a) If the District disputes an invoice, the District may withhold payment in good faith until the dispute is resolved or a corrected invoice is submitted.

(b) A claim by Local Project Sponsor regarding the performance of this Agreement shall be submitted to the District Project Manager within thirty (30) calendar days of Local Project Sponsor's knowledge of the claim. The Local Project Sponsor and the District shall then attempt to negotiate a resolution of such claim.

20. Submission of Reports: All reports shall be submitted to the District's **Project Manager [OR INSERT APPLICABLE PERSONNEL]**. 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. Local Project Sponsor shall promptly provide any additional information requested by the District for approval of reports. Reports shall be presented in the formats described in Exhibit D, Report Format. The submittal and approval of reports is a requirement for initial and continued disbursement of State funds. Submittal of a Project Completion Report for each project listed in Exhibit A is a requirement for the release of any retention.

(a) **Quarterly Reports:** Beginning in the first quarter after signing this agreement and for the duration of the Grant Agreement, Local Project Sponsor shall submit to the District a quarterly report that explains the status of each project described in Exhibit A. Reports shall be submitted by the fifteenth (15th) day of January, April, July, and October for the preceding quarter. Quarterly reports shall summarize the work completed for each project during the reporting period. The report for each project shall include a statement of progress compared to the schedule contained in Exhibit B and a comparison of actual costs to date to the budget contained in Exhibit C.

(b) **Project Completion Report:** Within 60 calendar days of completion of all project tasks included in Exhibit A, Local Project Sponsor shall submit to the District a Project Completion Report. The Project Completion Report shall include a description of actual work done, a final schedule showing actual progress versus planned progress, and copies of all final documents or reports generated or utilized during the Project.

(c) **Post Performance Reports:** Local Project Sponsor shall submit a Post-Performance Report to the District within 60 calendar days after the first year following the completion of the Project has elapsed. In subsequent years, all Post Performance Reports shall be submitted, no later than May 1 of each year. This record-keeping and reporting process shall be repeated for each project annually for a total of 10 years after the Project is completed.

21. Audits: The District reserves the right to conduct an audit 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 the Local Project Sponsor. After completion of the Program, the District may either conduct a final audit at the Local Project Sponsor's expense, require that Local Project Sponsor complete a final audit, or require a copy of the Local Project Sponsor's general annual audits as they pertain to the Project. The audit will be conducted with a report prepared by an independent Certified Public Accountant.

22. Inspection of Books, Records and Reports: During regular business hours, the District and its authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Agreement. Local Project Sponsor shall maintain and make available at all times for such inspection, accurate records of all its costs, disbursements, and receipts with respect to its activities under this Agreement. Failure or refusal by Local Project Sponsor to comply with this provision shall be considered a breach of this Agreement, and the District may withhold disbursements to Local Project Sponsor, terminate this Agreement, or take any action or enforce any remedy to protect its interests.

23. Rights in Data: Local Project Sponsor agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement shall be in the public domain. Local Project Sponsor may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Agreement, subject to appropriate acknowledgement of credit to State for financial support. Local Project Sponsors shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so.

24. Monitoring Requirements: Local Project Sponsor shall ensure that all groundwater projects and projects 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). Projects 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 the State Water Resources Control Board. **Exhibit E**, Statewide Monitoring, provides guidance on such monitoring requirements.

25. Permits, Licenses, Approvals, and Compliance with Laws: Local Project Sponsor 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.

26. Drug-Free Workplace Requirements: Local Project Sponsor, its contractors and subcontractors will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code 8350 et seq.) and will provide a drug-free workplace.

27. Prevailing Wages : Local Project Sponsor shall comply with provisions of the California Labor Code (Section 1720 et seq.) regarding payment of prevailing wages for public works projects.

28. Notification of the District: For each project, Local Project Sponsor shall promptly notify the District in writing of the following occurrences:

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

b. Any public or media event publicizing the accomplishments or results of this Agreement that provide the opportunity for the District representatives to attend and participate. Local Project Sponsor shall notify the District at least sixteen (16) calendar days before the event.

c. Completion of work on the Project.

29. Disposition of Equipment: Not less than forty-five (45) days before submission of its final invoice, Local Project Sponsor shall provide to the District a final inventory of equipment purchased with grant funds provided by State. Local Project Sponsor shall consult with the District on the scope of the inventory not less than seventy-five (75) days before the submission of the final project invoice. The inventory shall include all items with a current estimated fair market value of more than \$500 per item. Within sixty (60) days of receipt of the inventory, DWR will provide Water Authority with a list of the items on the inventory to which DWR will take title. All other items shall become the property of Local Project Sponsor. State will arrange for delivery from Local Project Sponsor of items to which it takes title. Cost of transportation, if any, will be borne by DWR.

30. Operation and Maintenance of Projects:

(a) For the useful life of the projects and in consideration of the Grant made by DWR, Local Project Sponsor shall ensure the commencement and continued operation of the project(s), and shall ensure the projects 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 Local Project Sponsor for its project(s) for the entirety of the project's life. DWR or District shall not be liable for any cost of maintenance, management, or operation of the project for the project's entire life.

(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 Local Project Sponsor to ensure operation and maintenance of the projects in accordance with this provision may, at the option of the District, be considered a breach of this Agreement and may be treated as default under paragraph 18.

31. Retention of Records: Local Project Sponsor shall retain all records that are relevant to this Agreement for a period of 10 years after submission of the Post-Performance Report.

32. Project Managers: Any party may change its Project Manager upon written notice to the other parties.

(a) The District's Project Manager shall be [INSERT NAME AND TITLE]. The District's Project Manager shall be its representative for the administration of this Agreement and shall have full authority to act on behalf of the District, including authority to execute all payment requests.

(b) Local Project Sponsor's Project Manager, [INSERT NAME AND TITLE], shall be its representative for the administration of this Agreement and shall have full authority to act on behalf of Local Project Sponsor, including authority to execute all payment requests.

34. 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. Notices delivered by mail shall be deemed delivered 2 days after deposit in the mail, by next-day courier shall be deemed delivered 1 day after deposit with the courier, and by electronic means shall be deemed delivered upon electronic delivery if within regular business hours of the recipient party. Any party may, by written notice to the others, designate a different address that shall be substituted for the one below.

[INSERT NAME]

[INSERT TITLE]

806 Palm Canyon Drive

Borrego Springs, CA 92004

[INSERT LOCAL PROJECT SPONSOR INFO]

35. 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.

36. 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.

37. Indemnity — Hold Harmless:

(a) To the fullest extent permitted by law, the Local Project Sponsor shall (1) immediately defend, and (2) indemnify the District, and DWR and their directors, officers, and employees (collectively “Indemnified Parties”) from and against all liabilities regardless of nature or type arising out of or resulting from Local Project Sponsor’s performance of services under this contract, or any negligent or wrongful act or omission of the Local Project Sponsor or Local Project Sponsor’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 Local Project Sponsor’s obligation to indemnify applies unless it is adjudicated that its liability was caused by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative negligence or willful misconduct of an indemnified party, the Local Project Sponsor’s 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 Local Project Sponsor’s duty to indemnify. The Local Project Sponsor shall be obligated to defend, in all legal, equitable, administrative, or special proceedings arising out of or resulting from Local Project Sponsor’s performance of services under this contract, or any negligent or wrongful act or omission of the Local Project Sponsor or Local Project Sponsor’s officers, employees, agents, or subcontractors, with counsel approved by the District and DWR, the Indemnified Parties, immediately upon tender to the Local Project Sponsor of the claim in any form or at any stage of an action or proceeding, whether or not liability is established, unless caused by the negligence or willful misconduct of an Indemnified Party or any third-party not under the control or supervision of the Local Project Sponsor. Local Project Sponsor shall have no duty to defend the Indemnified Parties if the claim is related to an allegation or determination of comparative negligence or willful misconduct by an Indemnified Party. The obligation to defend extends through final judgment, including exhaustion of any appeals.

(c) The review, acceptance or approval of the Local Project Sponsor’s work or work product by any Indemnified Party shall not affect, relieve or reduce the Local Project Sponsor’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.

38. Insurance:

(a) The Local Project Sponsor 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. These policies shall be primary insurance as to the District so that any other coverage held by the District shall not contribute to any loss under the Local Project Sponsor’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 the Water Authority.

(1) 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:

(1) For the general commercial liability as well as excess or umbrella insurance covering risks within the scope of that type insurance, the District, 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 Local Project Sponsor'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.

(2) The Local Project Sponsor's insurance shall be primary. Any other insurance or self-insurance available to the District or persons stated in paragraph (1) shall be in excess of and shall not contribute to the Contractor's insurance.

(3) The insurance shall not be canceled or materially reduced in coverage except after 30 days prior written notice received delivery has been given to the District, 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 the District, which satisfies the following minimum requirements: An insurance carrier admitted to do business in California and maintaining an agent for process within the state. 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 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 Local Project Sponsor and approved by the District before execution of the Contract. Endorsements may be provided on forms provided by the District, or substantially equivalent forms provided by the insurer.

(g) Additional Insured: All Consultants/Contractors performing the scope of work on behalf of the Local Project Sponsor shall name the District and State (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.

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 — Work Plan

Exhibit B — Schedule

Exhibit C — Budget

Exhibit D — Grant Agreement

Exhibit E — Statewide Monitoring

40. 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.

41. Assignment: A Party shall not assign, sublet, or transfer this Agreement or any rights or interest in this Agreement without the written consent of the District, which may be withheld for any reason.

42. 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.

43. Forced Delay: Performance by any Party to this Agreement shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; government restrictions or priorities; litigation; unusually severe weather; inability to secure any necessary labor, materials or tools; delays of any contractor or supplier; acts of the other parties; or any other causes beyond the reasonable control of the party claiming an extension of time to perform. Any extension of time for any such cause shall be for the period of the forced delay and shall commence to run from the time of the commencement of the cause.

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:

BORREGO WATER DISTRICT

Approved as to form:

By: _____

By: _____

Steven M. Anderson

Best Best & Krieger LLP

[INSERT LOCAL PROJECT SPONSOR]

Approved as to form:

By: _____

By: _____

Exhibit A

Work Plan

Exhibit B

Schedule

Exhibit C

Project Costs

Exhibit D

Grant Agreement

Exhibit E

Monitoring Requirements