

BIG BEAR AREA REGIONAL WASTEWATER AGENCY

Special Board Meeting of

December 4, 2019

At

5:00 p.m.

121 Palomino Drive

Big Bear City, California

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **PRESENTATIONS AND INTRODUCTIONS**
 - 3.A. Bridgette Burton – 1 year pin
 - 3.B. Bear Valley Electric
4. **APPROVAL OF AGENDA**
5. **CONSENT CALENDAR** – All matters listed on the Consent Calendar will be enacted by one motion at the appropriate time. There will be no separate discussion of these items. If a detailed discussion is necessary, any Board Member may request that an item be removed from the Consent Calendar and considered separately.
 - 5.A. Minutes of Regular Meeting on October 23, 2019 – Approve
 - 5.B. Monthly Expenses – Informational
 - 5.C. Governing Board Member Reimbursement – Approve
 - 5.D. Investment Report – Informational
 - 5.E. Operations and Connections Report – Informational
 - 5.F. First Quarter Report, Three Months Ended September 30, 2019 – Informational
 - 5.G. Accept as Complete – Oxidation Ditch Splitter Box Gates and Splitter Box Repair Project – Approve
6. **ITEMS REMOVED FROM CONSENT CALENDAR**
7. **PUBLIC FORUM RESPONSE** – None

8. **PUBLIC FORUM** – The Public Forum portion of the meeting is an opportunity for members of the public to directly address the Governing Board on matters within the jurisdiction of this Agency. Ordinance No. 57 limits individual public testimony to three minutes or less. The cumulative time that an individual may provide public testimony during a meeting is fifteen minutes, and the public testimony shall be limited to thirty minutes for all speakers. Whenever a group of persons wishes to address the Governing Board on the same item, the Chair or the Governing Board by majority vote may request a spokesperson be chosen for the group or limit the number of such persons addressing the Governing Board. Since the discussion of an item not on the posted agenda is not allowed, these concerns may be addressed in a future meeting under “Public Forum Response.”

9. **CLOSED SESSION**

9.A. **Conference with Real Property Negotiation**

(Pursuant to Government Code Section 54956.8)

Property: 122 Palomino Dr., Big Bear City, CA 92314

Agency Negotiator: David Lawrence

Negotiating Parties: Bear Valley Electric

Under Negotiation: Price

10. **OLD BUSINESS**

10.A. Solar Project and Ground Lease – Discussion and Possible Action

11. **NEW BUSINESS**

11.A. Resolution No. R. 12-2019, A Resolution of the Governing Board of the Big Bear Area Regional Wastewater Agency Approving the 2016 Proposition 1 Integrated Regional Water Management Disadvantaged Community Involvement Program Technical Assistance Sub-Grant Agreement, and Finding Approval of the Sub-Grant Agreement Exempt from the California Environmental Quality Act – Discussion and Adoption

11.B. Authorization to Award Contract and Appropriate \$30,000 for the SCADA Project – Discussion and Possible Action

11.C. Schedule Budget Workshop – Discussion and Possible Action

12. **INFORMATION/COMMITTEE REPORTS**

13. **ADJOURNMENT**

In compliance with the Americans with Disabilities Act and Government Code Section 54954.2, if you need special assistance to participate in an Agency meeting or other services offered by the Agency, please contact Kimberly Booth, Administrative Assistant, at (909) 584-4018. Notification at least 48 hours prior to the meeting or time when services are needed will assist the Agency staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

Copies of staff reports or other written documentation relating to each item of business referred to on this agenda are on file in the office of the Big Bear Area Regional Wastewater Agency and are available for public inspection during normal business hours.

Visit www.bbarwa.org to view and/or print the Agenda Package

BIG BEAR AREA REGIONAL WASTEWATER AGENCY
REGULAR BOARD MEETING MINUTES
October 23, 2019

1. CALL TO ORDER

A Regular Meeting of the Governing Board of the Big Bear Area Regional Wastewater Agency was called to order by Chair Caretto at 5:00 p.m. on October 23, 2019, at 121 Palomino Drive, Big Bear City, California 92314.

BOARD MEMBERS PRESENT

David Caretto, Chair
John Green, Vice Chair
Karyn Oxandaboure, Secretary
Jim Miller, Director

BOARD MEMBERS ABSENT

Rick Herrick, Director

STAFF MEMBERS PRESENT

David Lawrence, General Manager
Jennifer McCullar, Finance Manager
Bridgette Burton, Management Analyst
Ryan Connelly, Plant Operator
Kim Booth, Administrative Assistant

OTHERS

Scott Manno; Rogers, Anderson, Malody & Scott, LLP

2. PLEDGE OF ALLEGIANCE

Secretary Oxandaboure

3. PRESENTATIONS AND INTRODUCTIONS

3.A. Audit Report for Fiscal Year Ended June 30, 2019

Ms. McCullar introduced Mr. Manno from the accounting firm of Rogers, Anderson, Malody & Scott, LLP. Mr. Manno presented the Agency with the Independent Audit Report for the year ended June 30, 2019.

4. APPROVAL OF THE AGENDA

Upon motion made by Vice Chair Green, seconded by Director Miller and carried, the Governing Board approved the agenda as presented.

Ayes: Caretto, Green, Oxandaboure, Miller
Noes: None
Absent: Herrick
Abstain: None

5. CONSENT CALENDAR

5.A. Minutes of Regular Meeting on September 25, 2019

5.B. Monthly Expenses

5.C. Governing Board Member Reimbursement

5.D. Investment Report

5.E. Operations and Connections Report

Upon motion by Vice Chair Green, seconded by Director Miller and carried, the Governing Board approved the Consent Calendar as presented.

Ayes: Caretto, Green, Oxandaboure, Miller
Noes: None
Absent: Herrick
Abstain: None

6. ITEMS REMOVED FROM THE CONSENT CALENDAR

None

7. PUBLIC FORUM RESPONSE

None

8. PUBLIC FORUM

No comments

9. OLD BUSINESS

None

10. NEW BUSINESS

10.A. Board Policy Review: Safety Incentive Program

Ms. Burton presented the revised Safety Incentive Program. Discussion ensued between the Governing Board and staff.

Upon motion made by Vice Chair Green, seconded by Secretary Oxandaboure and carried, the Governing Board approved the Safety Incentive Program.

Ayes: Caretto, Green, Oxandaboure, Miller
Noes: None
Absent: Herrick
Abstain: None

10.B. Schedule a Special Meeting and Adjourn the November (27th) and December (25th) 2019 Regular Board Meetings

Mr. Lawrence explained that due to the holidays the Agency would like to adjourn the November and December Regular Board Meetings and schedule a Special Board Meeting. Discussion ensued between the Governing Board and staff.

Upon motion made by Director Miller, seconded by Vice Chair Green and carried, the Governing Board approved to adjourn the November and December Regular Board Meetings and schedule a Special Board Meeting on December 4, 2019, at 5:00 p.m.

Ayes: Caretto, Green, Oxandaboure, Miller
Noes: None
Absent: Herrick
Abstain: None

10.C. Annual Report, Twelve Months Ended June 30, 2019

Ms. McCullar presented the Annual Report. The Agency ended FY 2019 mostly on plan and in a slightly higher cash position due mostly to lower capital expenditures. Discussion ensued between the Governing Board and staff.

10.D. General Manager Employment Agreement Amendment

Ms. McCullar detailed the reportable action from the September 25th Board Meeting closed session which would amend Mr. Lawrence's employment agreement.

Upon motion made by Vice Chair Green, seconded by Director Miller and carried, the Governing Board approved authorizing the Governing Board Chair to execute an Employment Agreement Amendment with the approved changes.

Ayes: Caretto, Green, Oxandaboure, Miller
Noes: None
Absent: Herrick
Abstain: None

11. INFORMATION/COMMITTEE REPORTS

11.A. Plant Manager Update on the Emergency Work for the Oxidation Ditch Splitter Box Gates and Splitter Box Repair Project

Mr. Shimmin advised the Governing Board that the project is complete.

12. ADJOURNMENT

With no further business to come before the Governing Board, Chair Caretto adjourned the meeting at 5:58 p.m.

ATTEST: _____

Karyn Oxandaboure, Secretary of the Governing Board of the Big Bear Area Regional Wastewater Agency

Kim Booth, Administrative Assistant
Big Bear Area Regional Wastewater Agency



Big Bear Area Regional

Wastewater Agency

David Caretto – Chair

John Green – Vice Chair

Karyn Oxandaboure – Secretary

Rick Herrick – Director

Jim Miller – Director

AGENDA ITEM: 5.B.

MEETING DATE: December 4, 2019

TO: Governing Board of the Big Bear Area Regional Wastewater Agency

FROM: David Lawrence, P.E., General Manager *DL*

PREPARED BY: Jennifer McCullar, Finance Manager *JM*

SUBJECT: Monthly Expenses

BACKGROUND:

Attached is the Agency's October check register which reflects accounts paid during the period.

FINANCIAL IMPACT:

There is no financial impact. The funds have previously been appropriated.

RECOMMENDATION:

Informational

Moved: _____ Second: _____ Ayes: _____ Noes: _____ Abstain/Absent: _____

Approved Date: _____ Witness: _____

Secretary of the Governing Board

**Big Bear Area Regional Wastewater Agency
Check Register
For the Period From Oct 1, 2019 to Oct 31, 2019**

Filter Criteria includes: 1) Accounts Payable only. Report order is by Date.

Check #	Date	Payee	Cash Account	Amount
CASH 22097	10/2/19	PAYA	1000-20	19.99
CASH 22098	10/2/19	CALPERS HEALTH	1000-20	25,947.42
CASH 22099	10/2/19	VISION SERVICE PLAN	1000-20	323.40
CASH 22100	10/3/19	LINCOLN NATIONAL LIFE INSURANCE CO.	1000-20	1,233.98
CASH 22101	10/3/19	PRINCIPAL FINANCIAL GROUP	1000-20	2,507.23
CASH 22102	10/4/19	THE LINCOLN NAT'L LIFE INS CO	1000-20	4,096.32
CASH 22103	10/7/19	AMERICAN FIDELITY ASSURANCE CO	1000-20	634.98
CASH 22104	10/7/19	CALPERS RETIREMENT	1000-20	2,578.93
CASH 22105	10/7/19	CA PERS 457 PROGRAM	1000-20	2,600.70
CASH 22106	10/7/19	CALPERS RETIREMENT	1000-20	8,132.13
19822	10/8/19	AG TECH LLC	1000-20	20,806.72
19823	10/8/19	AMAZON CAPITAL SERVICES	1000-20	217.50
19824	10/8/19	A PLUMBING & HEATING, INC.	1000-20	555.00
19825	10/8/19	ARAMARK UNIFORM SERVICES	1000-20	1,048.72
19826	10/8/19	BEST BEST & KRIEGER	1000-20	75.00
19827	10/8/19	BIG BEAR CITY COMMUNITY SERVICES DIST.	1000-20	597.25
19828	10/8/19	ROBIN A. BRADLEY	1000-20	1,200.00
19829	10/8/19	BUTCHER'S BLOCK & BUILDING	1000-20	947.75
19830	10/8/19	BEAR VALLEY ELECTRIC	1000-20	8,313.08
19831	10/8/19	CAR QUEST OF BIG BEAR	1000-20	305.07
19832	10/8/19	CALIF DEPT OF TAX & FEE ADMINISTRATION	1000-20	57.00
19833	10/8/19	DADDY'S PEST CONTROL	1000-20	150.00
19834	10/8/19	UNDERGROUND SERVICE ALERT	1000-20	202.00
19835	10/8/19	DIY HOME CENTER-BIG BEAR	1000-20	95.31
19836	10/8/19	TOM DODSON & ASSOCIATES	1000-20	5,325.00
19837	10/8/19	DIRECT TV	1000-20	31.99
19838	10/8/19	DEPARTMENT OF WATER & POWER	1000-20	63.06
19839	10/8/19	ENVIRONMENTAL OUTSOURCE, INC.	1000-20	950.00
19840	10/8/19	EVANTEC CORPORATION	1000-20	249.19
19841	10/8/19	FERGUSON ENTERPRISES, INC.	1000-20	1,692.21
19842	10/8/19	FLYERS ENERGY	1000-20	1,628.53
19843	10/8/19	FRONTIER COMMUNICATIONS	1000-20	580.65
19844	10/8/19	GEIGER SUPPLY, INC	1000-20	181.37

**Big Bear Area Regional Wastewater Agency
Check Register**

For the Period From Oct 1, 2019 to Oct 31, 2019

Filter Criteria includes: 1) Accounts Payable only. Report order is by Date.

Check #	Date	Payee	Cash Account	Amount
19845	10/8/19	GOVERNMENT FINANCE OFFICERS ASSN	1000-20	160.00
19846	10/8/19	NAVY MEN, LLC	1000-20	270.80
19847	10/8/19	GRAINGER	1000-20	317.82
19848	10/8/19	THE GRIZZLY	1000-20	131.75
19849	10/8/19	HUGHESNET	1000-20	102.33
19850	10/8/19	KAMAN INDUSTRIAL TECHNOLOGIES	1000-20	1,598.70
19851	10/8/19	CASH LEVY	1000-20	500.00
19852	10/8/19	MCMASTER-CARR SUPPLY COMPANY	1000-20	165.54
19853	10/8/19	NAPA AUTO PARTS	1000-20	65.94
19854	10/8/19	NATIVESCAPES INC	1000-20	244.00
19855	10/8/19	CONSTANCE M. ALVARADO	1000-20	55.00
19856	10/8/19	PITNEY BOWES RESERVE ACCOUNT	1000-20	500.00
19857	10/8/19	QUILL	1000-20	465.51
19858	10/8/19	REBEL OIL CO., INC.	1000-20	5,001.76
19859	10/8/19	SPECTRUM BUSINESS	1000-20	1,358.96
19860	10/8/19	NANCY R. BOHL, INC.	1000-20	375.00
19861	10/8/19	TELEDYNE INSTRUMENTS, INC.	1000-20	7,891.61
19862	10/8/19	U.S. POSTAL SERVICE	1000-20	234.00
19863	10/8/19	WATER SYSTEMS CONSULTING, INC.	1000-20	69,885.32
19864	10/8/19	XYLEM DEWATERING SOLUTIONS, INC.	1000-20	3,454.24
19865	10/8/19	NIKKI CRUMPLER	1000-20	52.74
19866	10/8/19	JOHN SHIMMIN	1000-20	170.00
19867	10/8/19	BRIDGETTE BURTON	1000-20	50.00
19868	10/8/19	DAVID LAWRENCE	1000-20	50.00
19869	10/8/19	JENNIFER MCCULLAR	1000-20	50.00
19870	10/8/19	JOHN SHIMMIN	1000-20	50.00
19871	10/8/19	DAVID A. CARETTO	1000-20	150.00
19872	10/8/19	JOHN GREEN	1000-20	150.00
19873	10/8/19	RICHARD T. HERRICK	1000-20	150.00
19874	10/8/19	JAMES J. MILLER	1000-20	150.00
19875	10/8/19	KARYN K. OXANDABOURE	1000-20	150.00
CASH 22107	10/8/19	CALIFORNIA STATE DISBURSEMENT UNIT	1000-20	126.00
CASH 22108	10/8/19	EMPLOYMENT DEVELOPMENT DEPARTMENT	1000-20	2,315.26

**Big Bear Area Regional Wastewater Agency
Check Register**

For the Period From Oct 1, 2019 to Oct 31, 2019

Filter Criteria includes: 1) Accounts Payable only. Report order is by Date.

Check #	Date	Payee	Cash Account	Amount
CASH 22109	10/8/19	INTERNAL REVENUE SERVICE	1000-20	7,647.87
CASH 22110	10/21/19	CALIFORNIA STATE DISBURSEMENT UNIT	1000-20	126.00
CASH 22111	10/21/19	AMERICAN FIDELITY ASSURANCE CO	1000-20	634.98
CASH 22112	10/21/19	CALPERS RETIREMENT	1000-20	2,578.93
CASH 22113	10/21/19	CA PERS 457 PROGRAM	1000-20	2,600.70
CASH 22114	10/21/19	THE LINCOLN NAT'L LIFE INS CO	1000-20	3,671.67
CASH 22115	10/21/19	CALPERS RETIREMENT	1000-20	7,113.20
19876	10/22/19	ABB INC	1000-20	7,285.00
19877	10/22/19	ACCENT COMPUTER SOLUTIONS, INC.	1000-20	2,413.58
19878	10/22/19	NANCY SANTILLAN	1000-20	180.00
19879	10/22/19	AMAZON CAPITAL SERVICES	1000-20	843.99
19880	10/22/19	ARROWHEAD	1000-20	175.56
19881	10/22/19	BEST BEST & KRIEGER	1000-20	5,369.78
19882	10/22/19	BIG BEAR BODYTEK	1000-20	630.00
19883	10/22/19	BUSINESS CARD	1000-20	1,037.50
19884	10/22/19	BRYCE CONSULTING, INC.	1000-20	170.00
19885	10/22/19	BEAR VALLEY PAVING, INC.	1000-20	3,400.00
19886	10/22/19	CALOLYMPIC SAFETY	1000-20	156.44
19887	10/22/19	COMMERCIAL DOOR METAL SYSTEMS, INC.	1000-20	4,862.66
19888	10/22/19	CLINICAL LAB OF SAN BERNARDINO	1000-20	3,660.00
19889	10/22/19	COUNTY OF SAN BERNARDINO SOLID WASTE MN	1000-20	186.25
19890	10/22/19	EVANTEC CORPORATION	1000-20	1,928.11
19891	10/22/19	BRUCE R. FROST	1000-20	119,250.0
19892	10/22/19	GRAINGER	1000-20	39.89
19893	10/22/19	JUST ENERGY SOLUTIONS INC.	1000-20	15,569.52
19894	10/22/19	KENNY H. WASHABAUGH	1000-20	2,400.00
19895	10/22/19	RANDY J. SPITZ	1000-20	139.59
19896	10/22/19	PHENOVA	1000-20	458.89
19897	10/22/19	ROGERS, ANDERSON, MALODY & SCOTT, LLP	1000-20	13,250.00
19898	10/22/19	SOUTHERN CALIFORNIA EDISON	1000-20	34.99
19899	10/22/19	SERVICEMASTER 360 PREMIER CLEANING	1000-20	649.53
19900	10/22/19	SOUTHWEST GAS CORP	1000-20	14,156.26
19901	10/22/19	SOUTHWEST GAS	1000-20	582.70

**Big Bear Area Regional Wastewater Agency
Check Register**

For the Period From Oct 1, 2019 to Oct 31, 2019

Filter Criteria includes: 1) Accounts Payable only. Report order is by Date.

Check #	Date	Payee	Cash Account	Amount
19902	10/22/19	NANCY R. BOHL, INC.	1000-20	150.00
19903	10/22/19	USA BLUEBOOK	1000-20	376.91
19904	10/22/19	VERIZON WIRELESS	1000-20	291.09
19905	10/22/19	WINZER CORP	1000-20	200.97
19906	10/22/19	WATER SYSTEMS CONSULTING, INC.	1000-20	8,516.25
CASH 22116	10/22/19	EMPLOYMENT DEVELOPMENT DEPARTMENT	1000-20	2,061.08
CASH 22117	10/22/19	INTERNAL REVENUE SERVICE	1000-20	6,564.63
CASH 22118	10/29/19	LEGALSHIELD	1000-20	93.70
CASH 22119	10/29/19	TEXAS LIFE INSURANCE COMPANY	1000-20	232.75
CASH 22120	10/29/19	AMERICAN FIDELITY ASSURANCE CO	1000-20	591.14
CASH 22121	10/29/19	CALPERS CERBT	1000-20	5,163.54
CASH 22122	10/29/19	PAYA	1000-20	10,254.59
CASH 22123	10/29/19	PAYA	1000-20	1.50
Total				<u>447,441.5</u>



Big Bear Area Regional

Wastewater Agency

David Caretto – Chair

John Green – Vice Chair

Karyn Oxandaboure – Secretary

Rick Herrick – Director

Jim Miller – Director

AGENDA ITEM: 5.C.

MEETING DATE: December 4, 2019

TO: Governing Board of the Big Bear Area Regional Wastewater Agency

FROM: David Lawrence, P.E., General Manager *DL*

PREPARED BY: Jennifer McCullar, Finance Manager *JM*

SUBJECT: Governing Board Member Reimbursement

BACKGROUND:

Attached are the October meeting records for each Governing Board Member and represent eligible compensation at a rate of \$150 per regular or special meeting pursuant to the Agency's Administrative and Personnel Policy, Board Member Reimbursement.

FINANCIAL IMPACT:

There is no financial impact. The funds have previously been appropriated.

RECOMMENDATION:

Approve

Moved: _____ Second: _____ Ayes: _____ Noes: _____ Abstain/Absent: _____

Approved Date: _____ Witness: _____

Secretary of the Governing Board

BIG BEAR AREA REGIONAL WASTEWATER AGENCY

REPORT OF MEETINGS ATTENDED

Governing Board Member: Jim Miller

Date Submitted: October 23, 2019

Month Covered: October

BBARWA Regular Meeting Attended: _____ Date: 10-23-19 **Compensation** \$ 150

PURPOSE

BBARWA Special Meeting Attended: _____ Date: _____ \$ _____

BBARWA Special Meeting Attended: _____ Date: _____ \$ _____

BBARWA Special Meeting Attended: _____ Date: _____ \$ _____

PURPOSE

BBARWA Committee Meeting Attended: _____ Date: _____ \$ _____

BBARWA Committee Meeting Attended: _____ Date: _____ \$ _____

BBARWA Committee Meeting Attended: _____ Date: _____ \$ _____

PURPOSE

Other Governing Board Approved Meetings:

_____ Date: _____ \$ _____

_____ Date: _____ \$ _____

TOTAL ENTITLED MONTHLY STIPEND (limited to 6 days per calendar month) \$ _____

Other Governing Board Approved Expenses (Governing Board Approved)

Mileage: _____ Date: _____ \$ _____

Lodging: _____ Date: _____ \$ _____

Registration: _____ Date: _____ \$ _____

Tuition: _____ Date: _____ \$ _____

Meals: _____ Date: _____ \$ _____

Note: Other Governing Board approved expenses receipts must be accompanied with the travel expense form "EXHIBIT B" and forwarded to Finance Manager or designee for reimbursement

TOTAL OTHER EXPENSE REIMBURSEMENT: \$ _____

Uncompensated Meetings Attended:

PURPOSE

_____ Date: _____

_____ Date: _____

Total Amount Paid \$ 150

RATES & CALCS	_____	CODING	AMOUNT
OPER. REVIEW	_____		
EXPEN. APP.	_____	_____	_____
FIN. REVIEW	_____	_____	_____

BIG BEAR AREA REGIONAL WASTEWATER AGENCY

REPORT OF MEETINGS ATTENDED

Governing Board Member: Karyn Oxandaboure *Karyn Oxandaboure*

Date Submitted: 10-23-19

Month Covered: October

BBARWA Regular Meeting Attended: Date: 10-23-19 **Compensation** \$ 150⁰⁰

PURPOSE

BBARWA Special Meeting Attended: _____ Date: _____ \$ _____

BBARWA Special Meeting Attended: _____ Date: _____ \$ _____

BBARWA Special Meeting Attended: _____ Date: _____ \$ _____

PURPOSE

BBARWA Committee Meeting Attended: _____ Date: _____ \$ _____

BBARWA Committee Meeting Attended: _____ Date: _____ \$ _____

BBARWA Committee Meeting Attended: _____ Date: _____ \$ _____

PURPOSE

Other Governing Board Approved Meetings:

_____ Date: _____ \$ _____

_____ Date: _____ \$ _____

TOTAL ENTITLED MONTHLY STIPEND (limited to 6 days per calendar month) \$ _____

Other Governing Board Approved Expenses (Governing Board Approved)

Mileage: _____ Date: _____ \$ _____

Lodging: _____ Date: _____ \$ _____

Registration: _____ Date: _____ \$ _____

Tuition: _____ Date: _____ \$ _____

Meals: _____ Date: _____ \$ _____

Note: Other Governing Board approved expenses receipts must be accompanied with the travel expense form "EXHIBIT B" and forwarded to Finance Manager or designee for reimbursement

TOTAL OTHER EXPENSE REIMBURSEMENT: \$ _____

Uncompensated Meetings Attended:

PURPOSE

_____ Date: _____

_____ Date: _____

Total Amount Paid \$ 150⁰⁰

RATES & CALCS		CODING	AMOUNT
OPER. REVIEW	_____		
EXPEN. APP.	_____	_____	_____
FIN. REVIEW	_____	_____	_____

BIG BEAR AREA REGIONAL WASTEWATER AGENCY

REPORT OF MEETINGS ATTENDED

Governing Board Member: David Caretto

Date Submitted: 10/23/19

Month Covered: October 2019

BBARWA Regular Meeting Attended: Date: 10/23/19 **Compensation** \$ 150.00

PURPOSE

BBARWA Special Meeting Attended: _____ Date: _____ \$ _____

BBARWA Special Meeting Attended: _____ Date: _____ \$ _____

BBARWA Special Meeting Attended: _____ Date: _____ \$ _____

PURPOSE

BBARWA Committee Meeting Attended: _____ Date: _____ \$ _____

BBARWA Committee Meeting Attended: _____ Date: _____ \$ _____

BBARWA Committee Meeting Attended: _____ Date: _____ \$ _____

PURPOSE

Other Governing Board Approved Meetings:

_____ Date: _____ \$ _____

_____ Date: _____ \$ _____

TOTAL ENTITLED MONTHLY STIPEND (limited to 6 days per calendar month) \$ _____

Other Governing Board Approved Expenses (Governing Board Approved)

Mileage: _____ Date: _____ \$ _____

Lodging: _____ Date: _____ \$ _____

Registration: _____ Date: _____ \$ _____

Tuition: _____ Date: _____ \$ _____

Meals: _____ Date: _____ \$ _____

Note: Other Governing Board approved expenses receipts must be accompanied with the travel expense form "EXHIBIT B" and forwarded to Finance Manager or designee for reimbursement

TOTAL OTHER EXPENSE REIMBURSEMENT: \$ _____

Uncompensated Meetings Attended:

PURPOSE

_____ Date: _____

_____ Date: _____

Total Amount Paid \$ 150.00

RATES & CALCS		CODING	AMOUNT
OPER. REVIEW	_____		
EXPEN. APP.	_____	_____	_____
FIN. REVIEW	_____	_____	_____

BIG BEAR AREA REGIONAL WASTEWATER AGENCY

REPORT OF MEETINGS ATTENDED

Governing Board Member: John Green

Date Submitted: 10/23/19

Month Covered: ~~SEPTEMBER~~ OCTOBER

BBARWA Regular Meeting Attended: _____ Date: 10/23/19 Compensation \$ 150

PURPOSE

BBARWA Special Meeting Attended: _____ Date: _____ \$ _____

BBARWA Special Meeting Attended: _____ Date: _____ \$ _____

BBARWA Special Meeting Attended: _____ Date: _____ \$ _____

PURPOSE

BBARWA Committee Meeting Attended: _____ Date: _____ \$ _____

BBARWA Committee Meeting Attended: _____ Date: _____ \$ _____

BBARWA Committee Meeting Attended: _____ Date: _____ \$ _____

PURPOSE

Other Governing Board Approved Meetings:

_____ Date: _____ \$ _____

_____ Date: _____ \$ _____

TOTAL ENTITLED MONTHLY STIPEND (limited to 6 days per calendar month) \$ _____

Other Governing Board Approved Expenses (Governing Board Approved)

Mileage: _____ Date: _____ \$ _____

Lodging: _____ Date: _____ \$ _____

Registration: _____ Date: _____ \$ _____

Tuition: _____ Date: _____ \$ _____

Meals: _____ Date: _____ \$ _____

Note: Other Governing Board approved expenses receipts must be accompanied with the travel expense form "EXHIBIT B" and forwarded to Finance Manager or designee for reimbursement

TOTAL OTHER EXPENSE REIMBURSEMENT: \$ _____

Uncompensated Meetings Attended:

PURPOSE

_____ Date: _____

_____ Date: _____

Total Amount Paid \$ 150

RATES & CALCS		CODING	AMOUNT
OPER. REVIEW	_____		
EXPEN. APP.	_____	_____	_____
FIN. REVIEW	_____	_____	_____



**Big Bear Area Regional
Wastewater Agency**

*David Caretto – Chair
John Green – Vice Chair
Karyn Oxandaboure – Secretary
Rick Herrick – Director
Jim Miller – Director*

AGENDA ITEM: 5.D.

MEETING DATE: December 4, 2019

TO: Governing Board of the Big Bear Area Regional Wastewater Agency

FROM: David Lawrence, P.E., General Manager *DL*

PREPARED BY: Jennifer McCullar, Finance Manager *JM*

SUBJECT: Investment Report

BACKGROUND:

Attached is the October Monthly Investment Report pursuant to the Agency's Investment Policy.

FINANCIAL IMPACT:

No financial impact.

RECOMMENDATION:

Approve

Moved: _____ Second: _____ Ayes: _____ Noes: _____ Abstain/Absent: _____

Approved Date: _____ Witness: _____

Secretary of the Governing Board

BBARWA
 Monthly Investment Report
 October 2019

<u>INVESTMENT TYPE</u>	<u>COST</u>	<u>FAIR MARKET VALUE (1)</u>	<u>YEAR TO DATE INTEREST(2)</u>	<u>INTEREST RATE</u>	<u>MATURITY DATE</u>
LOCAL AGENCY INVESTMENT FUND	\$ 5,137,407	\$ 5,145,847	82,172	2.190%	DAILY
TOTAL	\$ 5,137,407	\$ 5,145,847	82,172		

The Investment Portfolio of the Big Bear Area Regional Wastewater Agency is in compliance with the investment policy approved in August 2019. The Agency will be able to meet its expenditure requirements for the next six months.

(1) LOCAL AGENCY INVESTMENT FUND (LAIF) IS A STATE-RUN INVESTMENT POOL PROVIDED FOR PUBLIC AGENCIES. THE LAIF MARKET VALUE SHOWN ON THIS TREASURER'S REPORT REPRESENTS BBARWA'S SHARE OF THE LIQUID VALUE OF LAIF'S PORTFOLIO IF IT WAS LIQUIDATED AS OF THE END OF THE REPORTED MONTH. THIS NUMBER SERVES AS AN INDICATOR OF WHETHER OR NOT THE MARKET VALUE OF LAIF'S INVESTMENTS IS ABOVE OR BELOW THE COST OF THOSE INVESTMENTS.

(2) Interest paid quarterly on LAIF investment. Amount reflects interest income received at the reporting date during FY 2020 and excludes accrued interest.

Attachment (s): Monthly LAIF Statement

California State Treasurer
Fiona Ma, CPA



Local Agency Investment Fund
 P.O. Box 942809
 Sacramento, CA 94209-0001
 (916) 653-3001

November 15, 2019

[LAIF Home](#)
[PMIA Average Monthly Yields](#)

BIG BEAR AREA REGIONAL WASTEWATER AGENCY

FINANCE MANAGER
 P.O. BOX 517
 BIG BEAR CITY, CA 92314

[Tran Type Definitions](#)

Account Number:

October 2019 Statement

Effective Date	Transaction Date	Tran Type	Confirm Number	Authorized Caller	Amount
10/15/2019	10/15/2019	QRD	1620477	SYSTEM	38,867.76
10/23/2019	10/23/2019	RW	1622260	JENNIFER MCCULLAR	-500,000.00

Account Summary

Total Deposit:	38,867.76	Beginning Balance:	5,598,539.70
Total Withdrawal:	-500,000.00	Ending Balance:	5,137,407.46



Big Bear Area Regional
Wastewater Agency
David Caretto – Chair
John Green – Vice Chair
Karyn Oxandaboure – Secretary
Rick Herrick – Director
Jim Miller – Director

AGENDA ITEM: 5.E.

MEETING DATE: December 4, 2019

TO: Governing Board of the Big Bear Area Regional Wastewater Agency

FROM: David Lawrence, P.E., General Manager *DL*

PREPARED BY: John Shimmin, Plant Manager; and Jennifer McCullar, Finance Manager *JM*

SUBJECT: Operations and Connections Report

OPERATIONS:

2019 Treatment Plant Data

	August	September	October
Total Influent Flow (MG)	52.869	43.304	40.207
Average Daily Influent Flow (MGD)	1.71	1.44	1.34
City of Big Bear Lake	49.32%	47.83%	49.38%
Big Bear City	46.19%	47.75%	46.11%
County of San Bernardino	4.49%	4.42%	4.51%
Average Influent BOD (mg/L)	357	365	359
Average Effluent BOD (mg/L)	8	7	6
BOD Removal Efficiency (%)	97.8%	98.1%	98.3%
Precipitation (inch)	0.18	0.51	0.00

October 2019 - There were no reportable violations during this period.

Moved: _____ Second: _____ Ayes: _____ Noes: _____ Abstain/Absent: _____

Approved Date: _____ Witness: _____

Secretary of the Governing Board

CONNECTIONS:

MONTH	FYE 6/30/2020									
	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	CITY-BBL	CSD	CSA-53B
July	4	4	8	3	4	3	7	5	2	0
August	4	6	5	12	6	10	2	1	1	0
September	4	5	6	4	6	3	7	3	4	0
October	6	14	10	9	8	3	5	1	4	0
November	13	8	6	5	11	5	0	0	0	0
December	0	23	8	4	2	3	0	0	0	0
January	2	3	1	0	0	1	0	0	0	0
February	2	1	0	1	0	0	0	0	0	0
March	2	2	3	2	0	3	0	0	0	0
April	5	1	10	3	0	3	0	0	0	0
May	2	5	10	4	0	5	0	0	0	0
June	1	12	2	16	0	6	0	0	0	0
TOTAL	45	84	69	63	37	45	21	10	11	0

FINANCIAL IMPACT:

There is no financial impact.

RECOMMENDATION:

Informational



Big Bear Area Regional
Wastewater Agency
David Caretto – Chair
John Green – Vice Chair
Karyn Oxandaboure – Secretary
Rick Herrick – Director
Jim Miller – Director

AGENDA ITEM: 5.F.

MEETING DATE: December 4, 2019
TO: Governing Board of the Big Bear Area Regional Wastewater Agency
FROM: David Lawrence, P.E., General Manager *DL*
PREPARED BY: Jennifer McCullar, Finance Manager *JM*
REVIEWED BY: John Shimmin, Plant Manager
SUBJECT: First Quarter Report, Three Months Ended September 30, 2019

BACKGROUND & DISCUSSION:

Please find attached the First Quarter Report which discusses the most recent quarter's financial performance compared to the budget.

The Agency performed under the budget for the first quarter with operating expenses falling below the budget by approximately \$125,000 or 10%. The variance was mostly due to timing across multiple line items (expenses that were budgeted during the first quarter but not incurred and which are expected to be incurred in subsequent quarters).

FINANCIAL IMPACT:

There is no financial impact.

RECOMMENDATION:

Informational

ATTACHMENT:

First Quarter Report

Moved: _____ Second: _____ Ayes: _____ Noes: _____ Abstain/Absent: _____

Approved Date: _____ Witness: _____

Secretary of the Governing Board

Big Bear Area Regional Wastewater Agency

1st Quarter Report

Three Months ended September 30, 2019



STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

	Q1 9/30/19 <u>Actual</u>	YTD <u>Actual</u>	YTD <u>Budget</u>	YTD Actual vs Budget \$	YTD Actual vs Budget %
Operating revenues:					
Annual charges	0	0	0	0	nm (b)
Waste disposal fees	6,008	6,008	6,546	(538)	-8%
Rental income	8,794	8,794	8,800	(6)	0%
Standby fees	0	0	0	0	nm (b)
Other operating revenue	0	0	0	0	nm (b)
Total operating revenues	14,802	14,802	15,346	(544)	-4%
Operating expenses:					
Salaries and benefits	619,777	619,777	631,975	(12,198)	-2%
Power	111,651	111,651	106,889	4,763	4%
Sludge removal	63,826	63,826	44,723	19,102	43%
Chemicals	11,091	11,091	17,419	(6,328)	-36%
Materials and supplies	43,260	43,260	45,011	(1,751)	-4%
Repairs and replacements	127,961	127,961	179,097	(51,136)	-29%
Equipment rental	284	284	205	79	38%
Utilities expense	2,875	2,875	9,331	(6,457)	-69%
Communications expense	8,053	8,053	10,321	(2,269)	-22%
Contractual services - other	18,751	18,751	32,729	(13,978)	-43%
Contractual services - prof	26,251	26,251	75,078	(48,828)	-65%
Permits and fees	10,631	10,631	12,190	(1,560)	-13%
Property tax expense	0	0	0	0	nm (b)
Insurance expense	111,655	111,655	109,856	1,799	2%
Other operating expense	11,109	11,109	16,896	(5,787)	-34%
Depreciation expense (a)	0	0	0	0	nm (b)
Total operating expenses	1,167,173	1,167,173	1,291,720	(124,548)	-10%
Operating Income	(1,152,370)	(1,152,370)	(1,276,374)	124,003	+ (c)
Nonoperating income (expense):					
Nonoperating income	(12,077)	(12,077)	0	(12,077)	nm
Nonoperating expense	(17,990)	(17,990)	(89,243)	71,253	+ (c)
Total nonoperating income (exp)	(30,067)	(30,067)	(89,243)	59,176	+ (c)
Income before capital contribution	(1,182,437)	(1,182,437)	(1,365,617)	183,179	+ (c)
Capital contrib - conn fees	66,880	66,880	79,420	(12,540)	-16%
Change in Net Position	(1,115,557)	(1,115,557)	(1,286,197)	170,639	+ (c)

(a) Currently, the Agency depreciates its assets at the end of the year. Therefore, depreciation expense is presented as \$0.00 on an interim basis.

(b) nm = not meaningful and is the result when dividing by 0.

(c) Percent change is not provided if either of the comparison periods contains a loss or negative number. If the actual performance is improved when compared to the budget a "+" is given. If the actual performance is worse when compared to the budget, a "-" is given.



STATEMENT OF CASH FLOW

	Q1 <u>9/30/2019</u>
Cash flows from operating activities:	
Cash received from customers and other sources	125,602
Cash payments to suppliers for goods and services	-830,394
Cash payments to employees	<u>-625,331</u>
Net cash provided by operating activities	-1,330,123
Cash flows from capital and related financing activities	
Interagency Expense	-17,990
Purchases of property, plant and equipment	-130,577
Sale, Disposal of property, plant and equipment	0
Capital contributions	79,420
Proceeds from debt issuance	0
Prepayment premiums and issuance costs	0
Principal payments on long-term debt	0
Interest paid on long-term debt	<u>0</u>
Net cash used for capital and related financing activities	-69,147
Cash flows from investing activities:	
Investment income received	<u>31,227</u>
Net cash provided by investing activities	31,227
 Net change in cash equivalents	 <u>-1,368,043</u>
 Cash equivalents, beginning of period	 7,840,507
Cash equivalents, end of period	<u>6,472,464</u> <u>-1,368,043</u>

**CASH AND FUND BALANCES**

	Q1
	<u>9/30/2019</u>
BEGINNING BALANCE:	
Cash Balance	7,840,507
Designated Fund Balances:	
Capital and Replacement Fund	
Current Year	3,055,301
Future Year	<u>833,847</u>
Total C&R	3,889,148
Debt Service Fund	509,077
Liquidity Fund	2,203,386
Contingency Fund:	
Emergency	500,000
Operating	<u>738,896</u>
Total Contingency	<u>1,238,896</u>
Total Beginning Designated Fund Balances	7,840,507
Restricted Funds:	
Connection Fees	0
ACTIVITY DURING PERIOD:	
Designated Fund Balances:	
Capital and Replacement Fund	
Current Year	-130,577
Future Year	0
Debt Service Fund	0
Liquidity Fund	-1,316,886
Contingency Fund:	
Emergency Fund	0
Operating	<u>0</u>
Total	0
Restricted Funds:	
Connection Fees	<u>79,420</u>
Total Activity During the Period	<u>-1,368,043</u>
ENDING BALANCE:	
Cash Balance	6,472,464
Designated Fund Balances:	
Capital and Replacement Fund	
Current Year	2,924,724
Future Year	<u>833,847</u>
Total C&R	3,758,571
Debt Service Fund	509,077
Liquidity Fund	886,501
Contingency Fund:	
Emergency	500,000
Operating	<u>738,896</u>
Total	1,238,896
Restricted Funds:	
Connection Fees	79,420
Total Ending Designated & Restricted Funds	6,472,464



Discussion and Analysis

Operating Revenues

Operating revenues were slightly below the budget by \$544 or 4% due to lower waste disposal fees.

	Q1 9/30/2019 Actual	YTD Actual	YTD Budget	YTD Actual vs Budget \$	YTD Actual vs Budget %
Operating revenues:					
Annual charges	0	0	0	0	nm (a)
Waste disposal fees	6,008	6,008	6,546	-538	-8%
Rental income	8,794	8,794	8,800	-6	0%
Standby fees	0	0	0	0	nm (a)
Other operating revenue	0	0	0	0	nm (a)
Total operating revenues	14,802	14,802	15,346	-544	-4%

(a) nm = not meaningful and is the result when dividing by 0.

Operating Expenses

Operating expenses were below the budget by \$124,548 or 10% largely due to timing related to repairs and replacements and contractual services – professional expense. Variances greater than 5% and \$10,000 are highlighted below and discussed on the next page.

	Q1 9/30/2019 Actual	YTD Actual	YTD Budget	YTD Actual vs Budget \$	YTD Actual vs Budget %
Operating expenses:					
Salaries and benefits	619,777	619,777	631,975	(12,198)	-2%
Power	111,651	111,651	106,889	4,763	4%
Sludge Removal	63,826	63,826	44,723	19,102	43%
Chemicals	11,091	11,091	17,419	(6,328)	-36%
Materials and supplies	43,260	43,260	45,011	(1,751)	-4%
Repairs and Replacements	127,961	127,961	179,097	(51,136)	-29%
Equipment rental	284	284	205	79	38%
Utilities expense	2,875	2,875	9,331	(6,457)	-69%
Communications expense	8,053	8,053	10,321	(2,269)	-22%
Contractual services - other	18,751	18,751	32,729	(13,978)	-43%
Contractual services - prof	26,251	26,251	75,078	(48,828)	-65%
Permits and fees	10,631	10,631	12,190	(1,560)	-13%
Property tax expense	0	0	0	0	nm (a)
Insurance expense	111,655	111,655	109,856	1,799	2%
Other operating expense	11,109	11,109	16,896	(5,787)	-34%
Depreciation expense	0	0	0	0	nm (a)
Total operating expenses	1,167,173	1,167,173	1,291,720	(124,548)	-10%



An explanation of the major variances by line item is as follows.

Sludge removal expense was over the budget by \$19,102 or 43% primarily due to the delay in the operation of the new belt press and to a lesser extent, higher sludge tons than budgeted. The Agency budgeted for the new belt press to be in place beginning in July, but there have been multiple delays related to the delivery of the conveyor and hopper. The belt press is expected to be in operation in December. The operation of the new belt press is expected to result in dryer sludge and thus reduced sludge tons and hauling costs. Higher sludge tons in the first quarter compared to the budget resulted in part from taking an oxidation ditch out of service during the period.

Repairs and Replacements expense was under the budget by \$51,136 or 29% and was largely due to timing associated with multiple repairs including oxidation ditch 3 drain valve, effluent pump rebuild, and treatment plant door replacement and repair. Approximately \$40,000 in repairs were budgeted in the first quarter which are currently "wait and see". These repairs are related floor repair in the OAC storage room to prevent water seepage and road stabilization between the north and south ponds.

Contractual Services – Other expense was under the budget by \$13,978 or 43% and is primarily due to timing associated with generator air source testing.

Contractual Services - Professional expense was under the budget by \$48,828 or 65%. The lower expense is driven by timing associated with a \$30,000 Arc Flash Study and low legal expense (lower by \$19,734) than budgeted.

Non-Operating Income (Expense)

Non-operating income had a negative variance compared to the budget and reflects an accounting adjustment for the Agency's LAIF investment. Non-operating expense was below the budget by \$71,253 due to timing of Replenish Big Bear expenses.

	Q1 9/30/19 Actual	YTD Actual	YTD Budget	YTD Actual vs. Budget \$	YTD Actual vs. Budget %
Nonoperating income (expense):					
Nonoperating income	(12,077)	(12,077)	0	(12,077)	nm (a)
Nonoperating expense	(17,990)	(17,990)	(89,243)	71,253	+ (b)
Total nonoperating income (exp)	(30,067)	(30,067)	(89,243)	25,001	+ (b)

(a) nm = not meaningful and is the result when dividing by 0.

(b) Percent change is not provided if either of the comparison periods contains a loss or negative number. If the actual performance is improved when compared to the budget a "+" is given. If the actual performance is worse when compared to the budget, a "-" is given.



Capital Contributions - Connection Fees

Income before capital contributions was ahead of the budget by \$183,179 for the period primarily due to lower operating expenses than budgeted of \$124,548 and lower non-operating expense of \$71,253. Connection fees were lower than budget due to fewer connections than budgeted. Actual connections were 16 compare to 19 budgeted for the quarter.

	Q1 9/30/2019 Actual	YTD Actual	YTD Budget	YTD Actual vs Budget \$	YTD Actual vs Budget %
Income before capital contributions	(1,182,437)	(1,182,437)	(1,365,617)	183,179	+ (a)
Capital contrib - conn fees	<u>66,880</u>	<u>66,880</u>	<u>79,420</u>	<u>(12,540)</u>	<u>-16%</u>
Net Income, Change in net assets	(1,115,557)	(1,115,557)	(1,286,197)	170,639	+ (a)

(a) Percent change is not provided if either of the comparison periods contains a loss or negative number. If the actual perform is improved when compared to the budget a "+" is given. If the actual performance is worse when compared to the budget, a "-" is given.

Capital Expenditures

Capital expenditures for the period were \$130,577, below the budget by \$881,709. The variance is due to timing associated with the belt press project (approximately \$790,000) and various other smaller projects scheduled for the first quarter but not completed.

Cash and Fund Balances

The Agency had negative cash flow of approximately \$1.4 million in the first quarter. The negative cash flow reflects approximately \$1.3 million in negative cash flow from operations and approximately \$149,000 in capital expenditures and interagency expense offset by approximately \$79,000 in connection fee revenue and \$31,000 of interest income received during the quarter.

	Beginning Balance	Activity During Period	Ending Balance
Cash Balance	7,840,507		6,472,464
Designated Fund Balances:			
Capital and Replacement Fund			
Current Year	3,055,301	-130,577	2,924,724
Future Year	<u>833,847</u>	<u>0</u>	<u>833,847</u>
Total C&R	3,889,148	-130,577	3,758,571
Debt Service Fund	509,077	0	509,077
Liquidity Fund	2,203,386	-1,316,886	886,500
Contingency Fund:			
Emergency	500,000	0	500,000
Operating	<u>738,896</u>	<u>0</u>	<u>738,896</u>
Total	1,238,896	0	1,238,896
Restricted Funds:			
Connection Fees	0	79,420	79,420
Total Designated & Restricted Funds	7,840,507	-1,368,043	6,472,464



Big Bear Area Regional
Wastewater Agency
David Caretto – Chair
John Green – Vice Chair
Karyn Oxandaboure – Secretary
Rick Herrick – Director
Jim Miller – Director

AGENDA ITEM: 5.G.

MEETING DATE: December 4, 2019

TO: Governing Board of the Big Bear Area Regional Wastewater Agency

FROM: David Lawrence, P.E., General Manager *DL*

PREPARED BY: Bridgette Burton, Management Analyst *BB*

REVIEWED BY: John Shimmin, Plant Manager; and Jennifer McCullar, Finance Manager *JM*

SUBJECT: Accept as Complete – Oxidation Ditch Splitter Box Gates and Splitter Box Repair Project

BACKGROUND & DISCUSSION:

At the September 26, 2018 Special Meeting, the Governing Board appropriated \$46,250 for replacement of splitter box gates (\$39,750) and a bypass pumping system required during installation (\$6,500). The project was tentatively scheduled for spring 2019.

In the meantime, the splitter box gates deteriorated further and were unable to seat properly. After further evaluation, the Agency determined it would need to include coating of the splitter box to eliminate corrosion and monitoring of the pumping during installation to the project scope of work.

At the June 26, 2019 Regular Meeting, the Governing Board approved Resolution No. R. 08-2019, A Resolution of the Governing Board of the Big Bear Area Regional Wastewater Agency Making Emergency Findings and Authorizing an Emergency Contract for the Oxidation Ditch Splitter Box Gates and Splitter Box Repair and appropriated \$73,750 for an Emergency Contract, bringing the total appropriation for the updated project to \$120,000. The concern was in the event of heavy wastewater flow, the facility was in a condition that would have caused untreated wastewater to be released to Lucerne Valley. This would have posed a serious hazard to public health, safety and welfare, which would have resulted in a violation of the Agency's discharge permit. This qualified the project as an imminent risk to public health and necessitated the need for emergency repair.

The project was completed on October 11, 2019, by Bruce Frost Company, Inc. The project came in on time, under the budget and within Agency specifications as outlined in the Scope of Work.

FINANCIAL IMPACT:

The project came in \$750 under the budget:

<u>Contractor</u>	<u>Actual</u>	<u>Budget</u>	<u>Variance</u>
Bruce Frost Company, Inc.	\$119,250	\$120,000	\$750
Total Project Cost	\$119,250	\$120,000	\$750

RECOMMENDATION:

1. Accept the Oxidation Ditch Splitter Box Gates and Splitter Box Repair Project as complete;
and
2. Authorize the General Manager to file the Notice of Completion with the County Recorder's Office.

ATTACHMENT: Notice of Completion

RECORDING REQUESTED BY:

WHEN RECORDED, PLEASE MAIL TO:

Big Bear Area Regional Wastewater Agency
PO Box 517
Big Bear City, CA 92314

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is OWNER or agent of the OWNER of the interest or estate state below in the property hereinafter described.
2. The FULL NAME of the OWNER is Big Bear Area Regional Wastewater Agency
3. The FULL ADDRESS OF THE owner is 121 Palomino Drive, Big Bear City, CA 92314
4. The NATURE of the INTEREST or ESTATE of the undersigned is:
Agent and owner that constructed the improvements

5. The FULL NAMES and FULL ADDRESSES of ALL PERSONS, if any, WHO HOLD SUCH INTEREST or ESTATE with the undersigned as JOINT TENANTS or as TENANTS IN COMMON are:

NAMES

ADDRESSES

6. The full name and full addresses of the predecessors in interest of the undersigned if the property was transferred subsequent to the commencement of the work of improvement herein referred to:

NAMES

ADDRESSES

7. A work of improvement on the property hereinafter described was completed on 10-11-2019.
8. The work of improvement completed is described as follows: Oxidation Ditch Splitter Box Gates and Splitter Box Repair Project.
9. The NAME OF THE ORIGINAL CONTRACTORS, if any, for such work of improvement is Bruce Frost Company, Inc.
10. The street address of said property is APN 0314-571-69
11. The property on which said work of improvement was completed is in the County of San Bernardino, State of California.

Date: _____ Signature of Owner or agent of owner _____

Verification for INDIVIDUAL owner _____, I, the undersigned, declare under penalty of perjury under the laws of the State of California that I am the owner of the aforesaid interest or estate in the property described in the above notice that I have read said notice, that I know and understand the contents thereof, and that the facts stated there in are true and correct.

Date and Place

(Signature of owner named in paragraph 2)

Verification for NON-INDIVIDUAL owner I, the undersigned, declare under penalty of perjury under the laws of the State of California that I am the _____ of the aforesaid interest or estate in the property described in the above notice that I have read said notice, that I know and understand the contents thereof, and that the facts stated there in are true and correct.

Date and Place

(Signature of person signing on behalf of owner)



Big Bear Area Regional
Wastewater Agency
David Caretto – Chair
John Green – Vice Chair
Karyn Oxandaboure – Secretary
Rick Herrick – Director
Jim Miller – Director

AGENDA ITEM: 10.A.

MEETING DATE: December 4, 2019

TO: Governing Board of the Big Bear Area Regional Wastewater Agency

FROM: David Lawrence, P.E., General Manager

REVIEWED BY: Jennifer McCullar, Finance Manager 

SUBJECT: Solar Project and Ground Lease

BACKGROUND:

The Agency currently produces power by operating three generators which supply power to the Agency's treatment plant and administration building. Natural gas to feed the generators is purchased under multi-year contracts with Just Energy and is transported under agreement with Southwest Gas. Power generation is a critical component of the Agency's operations and has resulted in cost savings to the Agency. Over time the cost savings have narrowed due to increased maintenance costs. The Governing Board's directive, as identified during the 2016 strategic planning process, has been to evaluate new power-producing technology for opportunities to improve efficiencies, lower costs, and increase sustainability.

In 2018, an opportunity arose to partner with Bear Valley Electric Service (BVES) to structure a solar project that would meet the Agency's need for sustainable, low-cost power and result in lower electric rates for BVES customers. In addition, BBARWA requested a reduced power rate as part of the agreement for use of its land for the Bear Valley Solar Energy Project (BVSEP).

At the May 23, 2018 Regular Meeting, the Governing Board authorized the General Manager to negotiate and execute a nonbinding Memorandum of Understanding (the Original MOU) with BVES for the BVSEP. The Original MOU's purpose was to allow BVES to continue the development process with their selected project developer and approval process with the California Public Utilities Commission (CPUC). Agency Counsel reviewed and provided input on the development of the Original MOU with the intention of having a substantive agreement later.

DISCUSSION:

During the past year, BVES has been negotiating with the California Public Advocates Office (CalPA), an independent organization of the CPUC that advocates solely on the behalf of utility

ratepayers, regarding the BVSEP and BBARWA's reduced power rate. CalPA expressed concern over 1) the general public potentially subsidizing BBARWA as a result of the power rate reduction and 2) the ground lease, which had not been negotiated or executed with BBARWA. A solution to CalPA's concerns noted above is to 1) separate the original project into two separate projects: BVSEP which will still benefit BVES ratepayers and a BBARWA Solar Project that will provide sustainable, low-cost power to BBARWA and 2) execute the ground lease.

Project Separation and a New MOU

The separation of the projects 1) creates the need for BBARWA to develop a solar project and negotiate a net energy metering agreement (the NEM Tariff) with BVES that produces a satisfactory economic benefit and 2) results in the BVSEP ground lease being executed prior to the submission and approval of the NEM Tariff by the CPUC. Since there is no assurance that the NEM Tariff will be approved by the CPUC, the Agency will, in essence, be executing the ground lease as a stand-alone transaction and will execute a New MOU that outlines the intent of the Agency and BVES. The New MOU outlines the respective rights and obligations of both the Agency and BVES regarding the approval of the NEM Tariff, the Agency Solar Project, the BVSEP, and the ground lease. BVES and the Agency will collaboratively develop the NEM Tariff and BVES will diligently seek CPUC approval. The NEM Tariff will be structured to provide BVES water and wastewater customers with solar or other distributed generation facilities to generate energy credits when the amount of energy generated from the facility exceeds the customer's energy load. These credits may then be used to offset received energy and may be carried over on a monthly basis with an annual reconciliation (true-up). Excess generation on an annual basis will be compensated at an agreed upon rate.

The Ground Lease

The ground lease provides for the installation of a 7.798 MW solar facility on approximately 60 acres of land owned by BBARWA. The land used will be primarily in the dry lakebed of Baldwin Lake and will allow for conduit and controls to be installed alongside the BBARWA ponds to the existing BVES Palomino Substation. The ground lease agreement is for a term of 30 years. The lease payment has been set based on fee schedules published by the Bureau of Land Management. This method is standard and customary. Based on the 2020 fee schedule, the annual payment would be \$68,273.84 payable in monthly installments in advance and would be subject to a minimum annual increase of 1.75%. Revenue over the 30-year term is estimated to be \$2,118,364 assuming the 1.75% annual increase.

BBARWA Solar Project

The Agency received two bids for the installation of its Solar Project, with a third potential bidder willing to provide a bid once a CPUC-approved NEM was in place. The Agency has begun working with the lowest-cost bidder, DS Energy Solutions (DS Energy) under a purchase power structure wherein the Agency takes no ownership interest in the solar assets and simply purchases power from the owner (as currently structured Distributed Solar Development, LLC).

The BBARWA Solar Project will include a 1.676 MW DC ground-mounted and carport photovoltaic solar power generation system provided by DS Energy. The equipment is sized to cover 100% of the Agency's demand during an average dry weather year and has been determined based on historical experience. The equipment will be placed in multiple locations totaling 1.7 acres of BBARWA property. Solar panels will be installed in the treatment plant including the Pond 5 location, on the east side of Palomino Drive and as a carport array in the Administration Parking Lot. Pond 5 is used occasionally as a drying pond and will need to be filled and compacted prior to the solar panel installation.

Staff has discussed the BBARWA Solar Project with the neighboring property. They are supportive of the project and do not have any objections.

An Initial Study and a Negative Declaration will be prepared to comply with the California Environmental Quality Act.

Once BVES submits the NEM Tariff (as early as January 2020 and potentially as late as April 2020 or thereafter) to the CPUC for approval, the Agency will request authorization from the Governing Board to begin the environmental studies and Pond 5 grading work in preparation for moving the project forward. The time estimate for CPUC approval is 12-18 months from the date of submittal.

FINANCIAL IMPACT:

The financial impact of the ground lease has been noted above and is expected to be \$2,118,364 over the life of the 30-year lease term (average annual revenue of approximately \$85,000) assuming a 1.75% annual increase (the minimum annual increase provided in the agreement). The financial impact of the Agency's Solar Project is uncertain. While the cost to purchase solar power has been determined, the terms of the NEM Tariff have not been fully negotiated. The terms of the NEM Tariff are critical in determining the financial impact and it is uncertain whether the Agency will reach agreeable terms. In general, the switch from generator power to solar power is estimated to yield annual savings of approximately \$150,000 - \$200,000 but are contingent on the terms of the NEM Tariff.

RECOMMENDATION:

1. Authorize the General Manager to execute the Ground Lease Agreement;
2. Authorize the General Manager to negotiate and execute the New MOU with BVES; and
3. Authorize the General Manager to negotiate and execute a purchase power and lease agreement with Distributed Solar Development, LLC.

ATTACHMENTS:

BVSEP

- Ground Lease Agreement (Draft)
- New Memorandum of Understanding (Draft)

BBARWA Solar Project

- DS Energy Solutions Proposal, Section 4. Price Proposal

GROUND LEASE

by and between

BIG BEAR AREA REGIONAL WASTEWATER AGENCY
a California joint powers agency

“Lessor”

and

_____ , LLC
a _____ limited liability company

“Lessee”

GROUND LEASE

THIS GROUND LEASE (this "Lease") is made as of _____, 2019 (the "Commencement Date"), by and between the BIG BEAR AREA REGIONAL WASTEWATER AGENCY, a California joint powers agency, as lessor ("Lessor") and _____, LLC, a _____ limited liability company, as lessee ("Lessee").

RECITALS

A. WHEREAS, Lessor is the owner of record of that certain real property located in County of San Bernardino, State of California, a legal description of which is set forth on Exhibit "A" attached hereto and incorporated by reference herein (the "Property");

B. WHEREAS, the Property is the site of the Lessor's wastewater treatment facility;

C. WHEREAS, Lessor selected BEAR VALLEY ELECTRIC SERVICE, a division of Golden State Water Company, a California corporation and a public utility subject to regulation by the California Public Utilities Commission ("BVES") to evaluate and explore the development of a solar electric energy generation project at the Property ("Project");

D. WHEREAS, BVES has entered into a Purchase and Sale Agreement (the "PSA") with Distributed Solar Development, LLC, an affiliate of General Electric International, Inc (collectively, "GE") pursuant to which GE, as agent for Lessee, and Lessee will develop, procure, construct, commission, test and timely achieve commercial operation of the Project, including obtaining all real property interests, permits and other authorizations and approval required for construction and operation;

E. WHEREAS, Lessor is willing to permit Lessee to lease a portion of the Property for the Project in accordance with the terms, conditions and covenants of this Lease; and

F. WHEREAS, Lessor finds, determines and declares that entering into this Lease on the terms and conditions contained in the Lease will promote the public peace, health, safety and welfare of the Lessor, Lessee, BVES and their respective customers.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. PREMISES AND ADDITIONAL RIGHTS.

1.1 **Lease of Premises.** Lessor, in consideration of covenants, commitments, conditions and obligations herein set forth, hereby leases the Premises to Lessee and Lessee leases the Premises from Lessor. The "Premises" comprise an approximately 60 acre portion of the Property, a legal description of which is set forth on Exhibit "B", attached hereto and incorporated by reference herein. The Premises are leased subject to all easements, reservations, restrictions, rights and rights-of-way of record as of the Effective Date as reflected in the title commitment obtained by Lessee, a copy of which has been delivered to Lessor.

1.2 **Grant of Additional Rights.** Lessor further grants to Lessee during the Term all easements, right-of-ways and interests in real property at all times during the Term hereof (i) for access and egress in, on, under, over and/or across the Property to or from the Premises for due diligence, surveying, testing, construction, completion and operation, replacement and/or removal of the Improvements (as later defined), (ii) for locating, constructing, installing, maintaining, repairing and/or replacing other physical components of the Improvements in, on, under, over and/or across the Property (not located on the Premises), including, without limitation, interconnection facilities, on, above, or below ground level, and (iii) as necessary for Lessee to carry out the Permitted Use (collectively, the "Additional Rights", and the portion of the Property at which the Additional Rights are located, the "Additional Rights Areas"). A legal description of the Additional Rights is set forth on Exhibit "C", attached hereto and incorporated by reference herein. Lessee shall exercise the Additional Rights in a manner that does not unreasonably interfere with Lessor's use of the remainder of the Property that is not included within the Premises. In addition, Lessor hereby grants to Lessee an exclusive, irrevocable, fully paid-up easement (the "Solar Easement") and right in the airspace above, adjacent and within a 100 foot radius around the perimeter of the Premises, to convert all of the solar energy associated with or that may reach the Premises (including sunlight of any wavelength) into electrical energy. In furtherance of the foregoing, Lessor shall not construct or permit to exist within the areas adjacent to the Premises that are owned or controlled by Lessor any structure, tree, vegetation or other obstruction (each, an "Obstruction") that blocks, shades or obstructs the direct line of sight from the Improvements to the sun on any day of the year at any time of day from sunrise through sunset. Lessee shall have the right to trim or remove any Obstruction.

1.3 **Improvements.** The Premises shall be used by Lessee to construct, install, repair, replace, inspect, operate, maintain, and remove a solar electric energy generation facility, all equipment and materials required to interconnect the improvements to the BVES electric distribution system, and any uses related thereto, including a solar photovoltaic array and related cables, wires, conduits, and equipment for the generation, transmission, and sale of solar generated electric energy (all of the foregoing, the "Improvements"), all in a manner consistent with all applicable regulatory and legal requirements, including for the decommissioning and removal of the Improvements ("Permitted Use"). Preliminary plans for the Improvements are shown on Exhibit "D", attached hereto and incorporated by reference herein.

1.4 **Nondisturbance.** Lessee's subordination and attornment agreements with respect to any existing or future mortgage or other encumbrance are expressly conditioned on Lessee's receipt of a subordination, non-disturbance and attornment agreement (an "SNDA") in form and substance mutually agreed by the parties, each of which shall provide that, during the Term (as later defined) and so long as Lessee is not in default of the Lease, Lessee's rights to peaceful and exclusive occupation and possession of the Premises and peaceful occupation and possession of the Additional Rights in accordance with the provisions of this Lease, and all of Lessee's rights and privileges in this Lease, shall not be disturbed during the Term. Lessor represents and warrants that as of the Commencement Date (i) Lessor owns good and marketable fee simple title to the Property, and (ii) there are no mortgages, liens or other encumbrances affecting the Property.

2. **TERM.**

2.1 **Term.** The term of this Lease shall commence on the Commencement Date and shall expire thirty (30) years after the Construction Start Date (as later defined) (the "Term"), provided, however that if the Construction Start Date is not on the first day of the month, then the expiration of the Term shall occur on the last day of the calendar month in which the 30th anniversary of the Construction Start Date occurs.

2.2 **BVES Purchase.** Notwithstanding anything in this Lease to the contrary, if BVES does not acquire all of the membership interests in the Lessee pursuant to the PSA, Lessee shall have the right, upon ninety (90) days written notice to Lessor, to terminate this Lease, in which event this Lease shall terminate and Lessee shall remove all of its equipment, improvements and material from the Premises and the Additional Rights Areas in accordance with Section 5.2 and restore the Premises to its condition as of the Commencement Date, normal wear and tear excepted.

3. RENT.

3.1 **Rent.** Lessee shall pay to Lessor as Rent for the use and occupancy of the Premises in advance on the first day of each month of the Term, without deduction, offset, prior notice or demand, in lawful money of the United States, the following sums of money ("Rent"):

3.1.1 during the period from the Commencement Date through the day immediately prior to the Construction Start Date (as hereinafter defined), the Rent shall be a total of One Hundred Dollars (\$100), to be paid within three (3) business days of the mutual execution of this Lease, which amount shall be deemed fully earned by Lessor upon payment and be non-refundable to Lessee.

3.1.2 during the period from the Construction Start Date through the end of the Term Rent shall be paid monthly in advance in twelve (12) equal payments based on the then effective Bureau of Land Management's ("BLM") Solar Energy Acreage Rent and MW Capacity Fee Schedules using the "Zone 9" Per Acre Rent for a 60 acre parcel, the Megawatt (MW) Rate for a 7.798 MW Photovoltaic (PV) project, with a ten year MW Rate Phase-in (the "Applicable Zone 9 and PV MW Schedule", the current version of which is attached as Exhibit "E-1"). Assuming a 2020 Construction Start Date for exemplar purposes only, the annual rent would be equal to 60 acres x \$951.85 + (7.798MW x \$2863 x 50%), or \$57,111.00 + \$11,162.84, for a total annual rent of \$68,273.84. Beginning in 2021 through the end of the Term, the Rent shall be increased to correspond to any increase in the BLM's then Applicable Zone 9 and PV MW Schedule issued from time to time, provided that in no event shall the annual increase for the total annual rent be less than 1.75%. If the Applicable Zone 9 and PV MW Schedule is not timely issued by the BLM, the prior year's annual rent shall be increased by the minimum increase of 1.75% until such time as the as the Applicable Zone 9 and PV MW Schedule is issued, at which time the parties shall adjust the rent accordingly. For the avoidance of doubt, the 50% MW rate phase-in shall end on the 10th anniversary of the Construction Start Date, following which the MW rate shall be 100% of the then published BLM MW rate for PV. If the BLM shall cease to publish the Applicable Zone 9 and PV MW Schedule, the parties shall use a replacement schedule that most nearly approximates the Applicable Zone 9 and PV MW Schedule. As used herein the "Construction Start Date" shall mean the first day of the month following the earlier to occur of (A) Lessee's commencement of physical construction of the Improvements on the Premises,

excluding surveying or other site preparatory work; or (B) the date twelve (12) months following the Commencement Date. If the Commencement Date or Construction Start Date is not the first day of the month, the first monthly installments of the Rent shall be prorated as necessary. Thereafter, the Rent shall be due on the first day of each subsequent month of the Term.

3.2 Late Payment Fees and Interest. Lessee acknowledges that late payment by Lessee to Lessor of Rent will cause Lessor to incur costs not contemplated by this Lease and that the exact amount of such costs is extremely difficult and impracticable to fix. Such costs include, without limitation, administrative, processing, accounting, late charges and interest charges that may be imposed on Lessor. Therefore, if Lessor does not receive any installment of Rent due from Lessee within fifteen (15) days after the date such Rent is due, Lessee shall pay to Lessor an additional sum of five percent (5%) of the overdue Rent as a late charge. The parties agree this late charge represents a fair and reasonable estimate of the costs the Lessor will incur by reason of late payment by Lessee. Acceptance of any late charge shall not constitute a waiver of Lessee's default with respect to the overdue amount, nor prevent Lessor from exercising any of the other rights and remedies available to Lessor. Rent which is not paid when due shall bear simple interest from the due date until paid in full at the rate of 10% per annum. **All late payments shall be credited in the following order: 1) to past due late charges, 2) to interest, 3) to the balance of the accrued Rent, and 4) current Rent.**

3.3 Place and Method of Payment. All checks shall be made payable to: Lessor and shall be submitted to: Big Bear Area Regional Wastewater Agency, PO Box 517, Big Bear City, CA 92314. The Rent and all other monetary obligations of Lessee pursuant to this Lease shall be paid in lawful money of the United States.

4. USE.

4.1 Permitted Use. Lessee shall use and occupy the Premises only for the Permitted Use and for no other purpose whatsoever. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates waste or a nuisance, causes damage to the Premises or neighboring properties, or is inconsistent with the Permitted Use. Lessee shall comply with all laws, ordinances and regulations applicable to Lessee's use of the Premises. Lessee shall promptly comply with all governmental orders and directions for the correction, prevention and abatement of any Lessee violations in or upon, or in connection with Premises, at Lessee's sole expense (without limitation of Lessor's rights herein). Failure of Lessee to use the Premises only in accordance with its Permitted Use, subject to notice and cure, constitutes a material breach of this Lease. The installation of the Improvements shall be subject to the reviews, approvals and requirements set forth in Section 4.3. Lessee shall be solely responsible for any and all costs associated with the Permitted Use.

4.2 Approval by the Lessor and Other Agencies. Lessee, at its sole cost and expense, may construct and install the Improvements, subject to the Lessee first obtaining all required permits, licenses and approvals from any and all applicable Federal, State, and local governmental and regulatory authorities having jurisdiction over the Permitted Use, including, but not limited to, pursuant to the California Environmental Quality Act, if applicable. Lessee shall cause to be maintained all such permits, licenses, approvals, and conditions in force throughout the Term. Lessee shall provide Lessor with copies of all approvals required pursuant to this Article

4 prior to the Construction Start Date, to the extent such approvals are required to be in effect prior to the commencement of construction of the Improvements. Should Lessee wish to materially modify the Improvements after their installation, Lessee shall not do so without the prior written notice to Lessor and the effectiveness of all required permits, licenses and approvals. Should Lessee modify the Improvements in a manner that is outside the scope of the Permitted Use, without the prior approval of Lessor and obtaining all required government permits, Lessor may, subject to notice and cure provisions, require that Lessee remove said modifications at Lessee's sole cost and expense. Lessee shall be responsible for any and all fees, charges or other governmental agencies' fees or expenses that may be imposed on the Lessee in connection with Lessee's use or enjoyment of the Premises at any time during the Term of the Lease, including any

4.3 Compliance with Laws. Lessee shall not do or permit anything to be done in, on or about the Premises, or bring or keep anything in, on or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated by any public authority. Lessee shall not cause or permit any hazardous material (as hereinafter defined in Section 6.1) to be brought upon, kept or used in on or about the Premises or the Property by Lessee, its affiliates or employees, agents, contractors, invitees, sublessees, assignees, designees, principals, officers, consultants, vendors, suppliers, subcontractors, or representatives or anyone either directly or indirectly within Lessee's control, except for those hazardous materials regularly used in the construction and/or operation of the Improvements and then in compliance with applicable law ("Permitted Materials").

4.4 Condition; Use of Premises. Other than as expressly provided in this Lease, Lessor makes no warranty or representation of any kind concerning the condition of the Premises, or the fitness of the Premises for the use intended by Lessee, and hereby disclaims any personal knowledge with respect thereto. Notwithstanding the foregoing, Lessor hereby represents and warrants that (a) neither Lessor nor any of its affiliate or its or their employees, agents, contractors, invitees, lessees, assignees, designees, principals, officers, consultants, vendors, suppliers, subcontractors, or representatives or anyone either directly or indirectly within Lessee's control has brought to or used on the Property or has caused or permitted any other person to bring to or use on the Property any hazardous materials. Lessee may at any time during the Term conduct investigations of the Premises as it deems necessary or appropriate in order to determine the physical conditions of the Premises and the suitability of the Premises for the Permitted Use or for any other reason.

4.5 Termination of Lease for Hazardous Materials.

4.5.1 Without relieving Lessee for any liability for hazardous materials as set forth in this Lease, Lessor shall have the right to terminate the Lease in Lessor's sole and absolute discretion in the event that (i) any use of the Premises by Lessee involves the generation or storage, use, treatment, disposal or release of hazardous material (other than Permitted Materials) in a manner or for a purpose prohibited or regulated by any governmental agency, authority or hazardous materials laws, and Lessee does not promptly remediate same; (ii) Lessee has been required by any lender or governmental authority to take remedial action in connection with hazardous material contaminating the Premises caused by Lessee's use thereof, and Lessee does not promptly commence such cure; or (iii) Lessee is subject to an outstanding enforcement

order issued by any governmental authority in connection with the generation or storage, use, treatment, disposal or release of a hazardous material on the Premises in connection with Lessee's use thereof, and Lessee does not promptly commence to comply with such order

4.5.2 Without relieving Lessor for any liability for hazardous materials as set forth in this Lease, Lessee shall have the right to terminate the Lease in Lessee's sole and absolute discretion in the event that (i) any use of the Property by Lessor involves the generation or storage, use, treatment, disposal or release of hazardous material, and Lessor does not promptly remediate same; (ii) Lessor has been required by any lender or governmental authority to take remedial action in connection with hazardous material contaminating the Property caused by Lessor's use thereof, and Lessor does not promptly commence such cure; or (iii) Lessor is subject to an outstanding enforcement order issued by any governmental authority in connection with the generation or storage, use, treatment, disposal or release of a hazardous material on the Property in connection with Lessor's use thereof, and Lessor does not promptly commence to comply with such order.

4.6 **Lessor's Right to Perform Tests.** At any time prior to the expiration of the Term, upon not less than three business days prior notice to Lessee, Lessor shall have the right to enter upon the Premises in order to conduct tests of water and soil and to determine the presence of any hazardous materials. Lessor shall deliver to Lessee the results of such tests. Solely to the extent that hazardous materials were brought to the Premises by Lessee or any person under Lessee's control, Lessee shall be solely responsible for and shall indemnify, protect, defend and hold Lessor harmless from and against all claims, costs and liabilities including actual reasonable attorney's fees and costs to the extent arising out of or in connection with any removal, remediation, clean up, restoration and materials required hereunder to return such portion of the Premises and Additional Rights Areas to their condition existing prior to the appearance of the hazardous materials. The testing shall be at Lessee's expense if the presence of hazardous materials found in the soil or surface or groundwater in, on, under, or about the Premises or the Property has been brought to the Premises or the Property in connection with the activities of Lessee or its affiliates or their employees, agents, contractors, invitees (other than Lessor or its affiliates, consultants, vendors or any person under Lessor's direct or indirect control), sublessees, assignees, designees, principals, officers, consultants, vendors, suppliers, subcontractors, or representatives or anyone either directly or indirectly within Lessee's control other than in accordance with this Lease.

5. MAINTENANCE, REPAIRS AND IMPROVEMENTS.

5.1 **General.** Lessee shall, at its sole cost, promptly and diligently keep in good order, condition and repair the Premises, including but not limited to (a) repair of the access roads due to any damage beyond normal wear and tear caused by Lessee's use of said roads during the construction period for the Improvements; and (b) keep the Premises clean, tidy, and free of debris by mowing any ground cover and providing weed abatement and litter control on a routine basis. Lessee shall further, at its sole cost, promptly and diligently keep in good order, condition, and repair the Improvements, any subsequent approved Lessee improvements, and Lessee's personal property placed on the Premises by Lessee and every part thereof, but subject to normal wear and tear, casualty and condemnation. Except as set forth herein as Lessee's maintenance obligations, Lessor shall, at its sole cost, maintain all access roads to, from and on the Premises, Lessor's

wastewater treatment facility, the surface drainage and erosion control system, stormwater system, ground cover, and all monitoring facilities and groundwater monitoring facilities located at the Property, provided that, for avoidance of doubt, if the need for such maintenance is due to the Improvements or caused by Lessee or its affiliates or their employees, agents, contractors, invitees, sublessees, assignees, designees, principals, officers, consultants, vendors, suppliers, subcontractors, or representatives or anyone either directly or indirectly within Lessee's control, such maintenance shall be Lessee's responsibility, at Lessee's sole cost.

5.2 Surrender. Within one hundred eighty (180) days of the last day of the Term, or upon any prior termination of this Lease, Lessee shall remove the Improvements and any of Lessee's personal property located above ground, but not below, ground level that Lessee placed upon the Premises, repair any damage caused by Lessee or the Improvements, and surrender the Premises to Lessor restored to a substantially similar condition as when received from Lessor, clean and free of debris, subject to normal wear and tear. Lessee's removal, restoration, and surrender obligations shall further include any environmental remediation required for the Premises or Property to the extent that Lessee's breach of its obligations hereunder caused environmental damage to the Premises or Property. Lessor shall provide reasonably sufficient access to the Property and the Premises for Lessee to effect such removal and restoration.

5.3 Security Measures. Lessee acknowledges that use of the Additional Rights Areas is non-exclusive and Lessor and other third parties will have access to thereto; provided that no such access shall interfere in any material respect with Lessee's use of the Additional Rights Areas as provided herein. Lessor shall have no obligation or responsibility to provide security for the Premises, the Improvements, or any of Lessee's personnel or personal property at the Premises or the Property nor shall Lessor be liable for any loss, damage, or injury to the Improvements or Lessee's personnel or personal property thereon unless caused by Lessor, any of its affiliates or any other person directly or indirectly under Lessor's control or acting at its direction. In the event Lessee desires to provide security at the Premises, Lessee may do so at Lessee's sole cost, provided that Lessee shall notify Lessor of type and appearance of such security and provide Lessor an opportunity to require reasonable modifications thereto if Lessor reasonably determines that the proposed security would interfere with or adversely affect Lessor's use of the Property or would adversely affect any adjacent property under Lessor's control. Lessor's approval of any such security system, device, operation or plan is for Lessor's operational and administrative purposes and shall not be deemed an approval of the adequacy of such system, device, operation or plan.

5.4 Improvements.

5.4.1 Lessee may construct improvements upon the Premises consistent with the Permitted Use; provided that Lessee shall deliver a copy of the site plan for the Improvements to Lessor prior to the Construction Start Date and shall provide Lessor with copies of any material updates to the site plan.

5.4.2 Utilities and Utility Installations.

5.4.2.1 Utility Plans. Upon Lessee's request, the Lessor will provide Lessee or Lessee's architect with a plan showing the approximate location of known utility lines, pipes, and the like on, under or about the Premises and the Additional Rights Areas ("Utility

Plans”). Lessee understands that Utility Plans show only the approximate location of the utility lines at the Premises and that the Utility Plans are furnished to Lessee without any warranty or representation as to completeness or accuracy other than as to any such utility equipment or materials installed by Lessor. Lessor’s delivery of the Utility Plans to Lessee shall not relieve Lessee of Lessee’s affirmative obligation to locate all utilities and Lessee agrees that Lessee shall be responsible for determining the actual location of all utility lines.

5.4.2.2 Utility Installations. After obtaining Lessor’s written consent, which consent shall not be unreasonably withheld, Lessee may extend any utility lines serving the Property to the Lessor approved points on the Premises. Lessee may also install such distribution panels and equipment, meters and other facilities and equipment as may be reasonably required to connect to the utilities to serve the Premises (“Utility Installations” which Utility Installation are part of the “Improvements”). Lessee agrees that all Utility Installations shall be constructed in accordance with provisions of this section and that Lessee shall pay all costs associated with such Utility Installations, including but not limited to the extension and connection of said utilities. Lessee shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any taxes thereon. Lessor shall not be required to reimburse Lessee for the cost of any of the foregoing work.

5.4.3 Plans and Specifications. Prior to the commencement of any construction at the Premises, Lessee shall provide Lessor with a complete set of Lessee’s plans for the Improvements and a proposed schedule for the construction of said Improvements. Lessor’s review of Lessee’s plans and specifications shall not constitute a representation of the adequacy of the plans or specifications or expose Lessor to any liability. Lessee shall use commercially reasonable efforts to construct the Improvements within the time set forth on the construction schedule provided to the Lessor and in no event more than twelve (12) months following the scheduled completion of construction. Upon the completion of the construction of the Improvements, Lessee, at its sole cost, shall prepare as-built plans for the Improvements and shall give three (3) copies of each as-built plan to Lessor.

5.4.4 Protection of Adjacent Property, Indemnity of the Lessor. Lessee shall protect to properties adjacent to the Premises from damages resulting from the performance of any work undertaken in connection with the Premises or the Improvements by Lessee or by Lessee’s affiliates or their employees, agents, contractors, invitees, sublessees, assignees, designees, principals, officers, consultants, vendors, suppliers, subcontractors, or representatives or anyone either directly or indirectly within Lessee’s control, excluding any damage caused by Lessor, its affiliates or their employees, agents, contractors, invitees, sublessees, assignees, designees, principals, officers, consultants, vendors, suppliers, subcontractors, or representatives or anyone either directly or indirectly within Lessor’s control.

5.4.5 Cost of Construction. All costs of construction of the Improvements shall be the sole responsibility of Lessee and shall be paid by Lessee when due. Lessee shall conduct any construction program in such a manner so that no mechanic’s liens or materialmen’s liens shall be asserted against the Property or any improvements thereon. If any such lien shall be asserted, Lessee shall indemnify, defend and hold harmless Lessor and the Property in accordance with Sections 6.1.1 and 6.2 of this Lease.

5.4.6 Construction Financing. As part of the construction of any improvements at the Premises, Lessee may encumber its leasehold interest in the Premises and the Additional Rights and may collaterally assign this Lease to a lender furnishing construction financing to Lessee or permanent financing to reimburse Lessee for the costs of construction (each an "Approved Encumbrance"). The term "Lender" shall mean the owner and holder of an Approved Encumbrance.

5.4.6.1 Lender may exercise any rights it may have from time to time with respect to the Premises and/or the Improvements. If at any time under the terms of an Approved Encumbrance a Lender has the right to foreclose upon or otherwise take possession of Lessee's assets, Lender shall give to Lessor notice of the same character and duration as is required to be given to Lessee by the terms of an Approved Encumbrance or the laws of the State of California.

5.4.6.2 If a sale or foreclosure under an Approved Encumbrance occurs or if the Lender acquires the property by assignment in lieu of foreclosure, said purchaser or assignee, as a successor in interest to Lessee, will be bound by all the terms of this Lease and will assume all the obligations of Lessee hereunder. If the acquisition of the leasehold interest is by a party other than Lender (whether by purchase at judicial foreclosure proceedings, trustee's sale, or upon assignment from Lender) the proposed transferee shall have (a) an overall financial position substantially as strong as Lessee's financial position as of the Commencement Date, and (b) experience and expertise with solar electric energy generation facilities equal to or greater than that of Lessee or shall have contracted for the operation and maintenance of the Improvements with a third party that has experience and expertise with solar electric energy generation facilities that is equal to or greater than that of Lessee.

5.5 Lender Protections. Provided that the Lender delivers to Lessor notice of its name and address, for so long as the Approved Encumbrance is in effect, the Lender shall be entitled to the following protections which shall be in addition to those granted elsewhere in this Lease:

5.5.1 Direct Agreement. Lessor shall enter into a direct agreement with Lender at Lender's request, acknowledging Lender's rights under the Approved Encumbrance and any other matters reasonably requested by the Lender.

5.5.2 Right to Cure Defaults/Notice of Defaults. To prevent termination of this Lease or any partial interest in this Lease, the Lender shall have the right, but not the obligation, at any time prior to termination of this Lease, to perform any act necessary to cure any default by Lessee and to prevent the termination of this Lease or any interest in this Lease. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, Lessor shall give a written notice of default to the Lender, specifying in detail the alleged default and the required remedy. Lender shall have the same amount of time to cure any such default as is given to Lessee, provided, however, that the cure period for Lender shall begin to run at the end of the cure period given to Lessee in this Lease.

5.5.3 Liability. Lender shall have no obligation or liability under this Lease prior to the time the Lender directly holds the lessee's interest in the Lease and the

Improvements. Lender shall be liable to perform Lessee's obligations under this Lease only for and during the period it directly holds such interest. If Lender elects to (i) perform Lessee's obligations under this Lease, (ii) continue operations on the Premises, (iii) acquire any portion of Lessee's right, title or interest in all or any of the Improvements or (iv) enter into a new Lease as provided in Section 5.5.5, then Lender shall not have any personal liability to Lessor, and Lessor's sole recourse against Lender shall be to execute against the Lender's interest in the Improvements.

5.5.4 Termination. Neither the bankruptcy nor the insolvency of Lessee shall be grounds for terminating this Lease so long as all payments and all other monetary charges payable by Lessee under this Lease are paid in accordance with the terms of this Lease.

5.5.5 Replacement Lease. If this Lease terminates for any reason, including, without limitation, because of Lessee's uncured default or because it is rejected or disaffirmed under bankruptcy law or any other law affecting creditors' rights, then, so long as Lender has cured any payment default prior to expiration of the Lender's cure period and is making commercially reasonable efforts to cure any non-monetary default, Lessor will, immediately upon written request from Lender received within ninety (90) days after the termination, rejection, or disaffirmance, without demanding additional consideration therefor, enter into a new Lease in favor of Lender or its designee, which new Lease shall (i) contain the same covenants, agreements, terms, provisions and limitations as this Lease (except for any requirements that have been fulfilled by Lessee prior to the termination, rejection, or disaffirmance), (ii) be for a term commencing on the date of the termination, rejection, or disaffirmance and continuing for the remaining Term before giving effect to the termination, rejection, or disaffirmance, and (iii) enjoy the same priority as this Lease has over any lien, encumbrance or other interest created by Lessor or otherwise, and, until such time as the new Lease is executed and delivered, the Lender may enter, use and enjoy the Premises and conduct operations on the Premises as if this Lease were still in effect.

5.5.6 Amendments. Lessor shall amend this Lease from time to time to include any provision that may reasonably be requested by any Lender for the purpose of preserving the Lender's interest in the Premises and the Improvements, provided that neither Lessor's rights nor Lessee's obligations under this Lease are diminished thereby.

5.6 **Ownership of Improvements and Alterations.** Notwithstanding anything to the contrary contained in this Lease, title to the Improvements shall be held by Lessee and all of the Improvements shall remain the personal property of Lessee and are not fixtures, and Lessor shall have no rights therein. The Lessor acknowledges that Lessee may enter into financing arrangements including promissory notes and financial and security agreements for the financing of the Improvements with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, whereby the Improvements may be collateral ("Collateral") for such financing arrangements, Lessor (i) consents to the installation of the Collateral to the extent that the Collateral is part of the Improvements; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

5.7 **Lessor Access.** The Lessor or its duly authorized representatives or agents, may enter into or upon the Premises with a Lessee escort at any and all prearranged times during the Term for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof or for any other reasonable purpose incidental to rights and obligations of the Lessor as owner of the Premises and Property. Lessor shall conduct Lessor's activities on the Premises pursuant to this section in a time and manner that will minimize inconvenience, annoyance, or disturbance to Lessee or the operation of the Improvements.

6. INDEMNITY AND INSURANCE.

6.1 Indemnity.

6.1.1 **Of Lessor.** To the fullest extent permitted by law, Lessee shall indemnify, defend (at Lessee's sole cost and expense and with legal counsel reasonably approved by Lessor), protect and hold harmless Lessor, and all of its authorized representatives, officers, consultants, employees, agents, contractors, successors and assigns, (collectively, the "Lessor Indemnified Parties"), from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, administrative actions, administrative orders, investigations, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements and court costs, and all other reasonable professional, expert or consultants' fees and costs and Lessor's general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") brought, made or claimed by third party against Lessor Indemnified Party, to the extent arising from or in any manner relating (directly or indirectly) to (a) any work performed or services provided by Lessee or its affiliates or their employees, agents, contractors, invitees, sublessees, assignees, designees, principals, officers, consultants, vendors, suppliers, subcontractors, or representatives or anyone either directly or indirectly within Lessee's control (collectively, "Lessee's Representatives"), (b) a release or threatened release of any hazardous materials brought to the Premises by Lessee or Lessee's Representatives and the remediation of such hazardous materials, (c) Lessee's ownership and operation of the Improvements, or (d) Lessee's presence, use, or activities conducted on the Premises and the Property other than in accordance with this Lease. As used in this Lease, the term "hazardous material(s)" shall mean the broadest definition of hazardous materials, hazardous substances or hazardous waste contained in any present or future federal or state laws relating to same, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601 *et seq.*, as amended or superseded, and the regulations promulgated thereunder; (ii) the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901 *et seq.*, as amended and superseded, and the regulations contained in 40 CFR Parts 260-281; (iii) the Toxic Substances Control Act (15 U.S.C. Sections 2601 *et seq.*) and the regulations contained in 40 CFR Parts 761-766; (iv) the California Health and Safety Code, Section 25117 (West 1992 & Supp. 1996); (v) the California Public Resources Code, Section 40141 (West 1996); (vi) the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code Section 25300 *et seq.*); (vi) Titles 22 and 26 of the California Code of Regulations and other regulations promulgated thereunder; and (vii) radioactive materials which are source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 *et seq.*) and the regulations contained in 10 CFR Part 40). This provision shall survive the termination of this Lease or any other agreement between the Lessee

and the Lessor. Subject to the limitations herein, the foregoing indemnity shall not have any dollar limitation. The foregoing indemnity is for the exclusive benefit of the Lessor Indemnified Parties and in no event shall such indemnity inure to the benefit of any third party or, for the avoidance of doubt, apply to any Claim to the extent of the gross negligence or intentionally wrongful acts or omissions of any Lessor Indemnified Parties.

6.1.2 Of Lessee. To the fullest extent permitted by law, Lessor shall indemnify, defend (at Lessor's sole cost and expense and with legal counsel reasonably approved by Lessee), protect and hold harmless Lessee, and all of its authorized representatives, members, shareholders, officers, consultants, employees, agents, contractors, successors and assigns, (collectively, the "Lessee Indemnified Parties"), from and against any and all Claims brought, made or claimed by any third party against any Lessee Indemnified Party, to the extent arising from or in any manner relating (directly or indirectly) to (a) any operations, work performed or services provided by or for Lessor, or its affiliates or their employees, agents, contractors, invitees, sublessees, assignees, designees, principals, officers, consultants, vendors, suppliers, subcontractors, or representatives or anyone either directly or indirectly within Lessee's control (collectively, "Lessor's Representatives") on, or its ownership of, the Property, or (b) the presence of hazardous materials existing on, above, below or adjacent to the Property, or to a release or threatened release of any hazardous materials to the extent caused directly or indirectly by Lessor or Lessor's Representatives, and the remediation of such hazardous materials, or (c) Lessor's ownership and operation of its wastewater treatment facilities or any facilities or improvements related thereto, or (d) Lessor's presence, use, or activities conducted on the Premises and the Property other than in accordance with this Lease. This provision shall survive the termination of this Lease or any other agreement between the Lessee and the Lessor. Subject to the limitations herein, the foregoing indemnity shall not have any dollar limitation. The foregoing indemnity is for the exclusive benefit of the Lessee Indemnified Parties and in no event shall such indemnity inure to the benefit of any third party or, for the avoidance of doubt, apply to any Claim to the extent of the gross negligence or intentionally wrongful acts or omissions of Lessee.

6.2 Duty to Defend. The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of the indemnifying party. Such defense obligation shall arise immediately upon presentation of a Claim by any third party and written notice of such Claim being provided to the indemnifying party. Payment to Lessee by any Lessor Indemnified Party, or Payment to Lessor by any Lessee Indemnified Party or the payment or advance of defense costs by any Indemnified Party (meaning Lessor Indemnified Party or Lessee Indemnified Party, as the case may be) shall not be a condition precedent to enforcing such Indemnified Party's rights to indemnification hereunder. The indemnification obligation and duty to defend hereunder shall survive the expiration or earlier termination of this Lease until such time as action against the Indemnified Parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations or statute of repose. Each party's liability for indemnification hereunder is in addition to any liability such party may have to the other for a breach of any of the provisions of this Lease. Under no circumstances shall the insurance requirements and limits set forth in this Lease be construed to limit the indemnification obligation or other liability hereunder. The terms of this Lease are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section

1654) that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Lease.

6.3 Basic Insurance Requirements. Without in any way affecting Lessee's or Lessor's obligations to defend and indemnify pursuant to Section 6.1, Lessee shall secure and maintain in effect throughout the Term the following types of insurance, with the following minimum limits:

6.3.1 Property Insurance. Lessor and Lessee shall each maintain comprehensive "all risk" or "special form" insurance for all of their respective improvements in each case in an amount equal to one hundred percent (100%) of the full replacement costs with coverage to include, without limitation, loss or damage by fire, lightning, windstorm, hail, vandalism, or malicious mischief.

6.3.2 Automobile Liability Insurance. Automobile primary insurance coverage shall be written on ISO Business Auto coverage from for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) for bodily injury and property damage, per occurrence.

6.3.3 Workers' Compensation Insurance. A program of Workers' Compensation insurance or a state-approved self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability Insurance with a limit of Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00), covering all persons providing services on behalf of the Lessee and all risks to such persons under this Lease.

6.3.4 Commercial/General Liability Insurance. General Liability Insurance covering all operations performed by or on behalf of the Lessee providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- (a) Premises operations and mobile equipment.
- (b) Products and completed operations.
- (c) Broad form property damage (including completed operations).
- (d) Explosion, collapse, and underground hazards
- (e) Personal injury
- (f) Contractual liability.
- (g) \$2,000,000 general aggregate limit.

6.3.5 Umbrella Liability Insurance. An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

6.3.6 Exclusions. In no event will the insurance coverage maintained by Lessor as set forth in this Section 6 provide any coverage for the improvements which are placed

on the Property by Lessee with respect to any event of force majeure (as defined below), including without limitation, any natural hazard or occurrence such as flood, fire or earthquake. .

6.4 Required Policy Provisions. Each of the insurance policies which Lessor and Lessee are required to procure and maintain as part of this Lease shall include the following provisions:

6.4.1 Additional Named Insured. All policies, except for the Workers' Compensation Insurance, shall contain additional insured endorsements naming the other party as an additional insured as its interests may appear with respect to claims arising out of or related to this Lease. The additional insured endorsements shall not limit the scope of coverage to vicarious liability but shall allow coverage to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85. The additional insured party shall have no liability for any premiums charged for such additional insured coverage and the inclusion of an additional insured as an additional insured is not intended to and shall not make any such person a partner or joint venturer with the other operations at the Premises.

6.4.2 Waiver of Subrogation Rights. Each party shall require the insurance carriers on each of the foregoing policies to waive all rights of subrogation against the other party, its officers, employees, agents, volunteers, contractors and subcontractors. Each party waives subrogation rights against the other party and releases the other party from liability for any loss or damage covered by said insurance.

6.4.3 Policies Primary and Non-Contributory. All required policies are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the other party.

6.4.4 Severability of Interests. The parties shall ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Lessee and the Lessor or between either party and any other insured or additional insured under the policy.

6.5 Insurance Policies and Proof of Coverage. All insurance required pursuant to this Lease shall be with carriers duly licensed to transact business in the State of California and maintaining during the applicable policy term a "General Policyholder's Rating" of at least A, VII, in the most current issue of "Best's Insurance Guide." Each party shall furnish certificates of insurance to the other party, evidencing all of the required insurance coverage, including endorsements, which certificates, to the extent reasonably obtainable, shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the other party. Each party shall maintain all of the required insurance from the Commencement Date until the completion of Lessee's occupancy of the Premises.

6.6 Right to Review and Alter Insurance Requirements. The foregoing insurance requirements applicable to the Lessee are subject to periodic review by the Lessor. The Lessor's insurance broker or risk manager is authorized, but not required, to reduce or waive any of the above insurance requirements whenever they reasonably determine that the above insurance

is not available, is unreasonably priced, or is not needed to protect the interests of the Lessor. Any change in insurance requirements must be reasonable in light of Lessee's current use of the Premises, past claims against the Lessor, inflation, or any other item reasonably related to the Lessor's risk. Any reduction or waiver of the required insurance must be memorialized by a written amendment to this agreement. Lessee and Lessor shall execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of either party to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights of such party in respect thereof.

6.7 Adequacy of Insurance Coverage. Neither party makes any representation that the limits of liability specified in this Article 6 are adequate to protect the other party's interests. In the event a party believes that such insurance coverage is insufficient, it may provide, at its sole cost and expense, such additional insurance as it deems adequate. In no event shall the limits of any coverage maintained by pursuant to this Lease limit liability under this Lease.

6.8 Failure to Procure or Maintain Insurance. All insurance required as part of this Lease must be maintained in force at all times. Failure to maintain said insurance, due to expiration, cancellation, or for any other reason shall be a material breach by the applicable party. Failure to reinstate said insurance within ten (10) days of the breaching party's receipt of notice from the other party shall be cause for termination of this Lease as provided in Article 12. The remedies set forth in this section are in addition to, but without duplication of, and do not in any manner limit other remedies set forth in particular sections of this Lease.

7. ASSIGNMENT AND SUBLETTING.

7.1 Lessor's Consent Required. Other than (a) the collateral assignment and/or mortgage of this Lease and the rights granted hereunder to the holder of an Approved Encumbrance, or (b) an assignment to BVES, Lessee shall not voluntarily or by operation of law, assign Lessee's interest in this Lease, in the Premises or in any options contained in this Lease, or sublease all or any part of the Premises, nor allow any other person or entity (except Lessee's authorized representatives) to occupy or use all or any part of the Premises, without first obtaining Lessor's written consent. Except as provided in Section 5.4.6, Construction Financing, Lessee shall not encumber Lessee's interest in this Lease or the Premises. Any other assignment or continuing encumbrance without Lessor's consent shall be voidable and, at Lessor's election, shall constitute a default under this Lease. Lessor's consent to any assignment or encumbrance shall not constitute a waiver of Lessor's right to require consent to any subsequent assignment. Lessor's consent shall be at its reasonable discretion. Following any assignment of this Lease or of Lessee's rights hereunder made in accordance with this Article 7, the assigning Lessee shall have no further obligation to Lessor hereunder.

7.2 Terms and Conditions Applicable To Assignment and Subletting. The following provisions shall apply to any assignment pursuant to this Lease:

7.2.1 Irrespective of Lessor's consent, any assignment or sublease shall not be effective without the express written assumption by such assignee or sublessee of all of Lessee's obligations under this Lease.

7.2.2 Each request for consent to an assignment or sublease shall be in writing, and shall be accompanied by the following: (i) the current financial statements of the proposed assignee or sublessee or other evidence of its financial condition, which shall be substantially as strong as Lessee; (ii) information related to the experience, and expertise of the proposed assignee or sublessee to operate and maintain a solar electric energy generation facility at the Premises, which shall be equal to or greater than that of Lessee; and (iii) any other information reasonably requested by Lessor.

7.2.3 Lessee shall be required to pay to Lessor a fee for each request for consent to an assignment or sublease in an amount equal to ONE THOUSAND FIVE HUNDRED (\$1,500.00), which fee shall be payable at the time the consent for assignment or sublease is requested.

7.3 **Lessor Assignment or Transfer.** Lessor may sell, assign, transfer, encumber or hypothecate Lessor's interest in the Property together with all, but not part, of its interest in this Lease at Lessor's sole and absolute discretion, provided that Lessor gives prior written notice to Lessee, and provided further for the avoidance of doubt that Lessor shall assign this Lease to any such purchaser, assignee or transferee. Lessor shall obtain and deliver to Lessee an assumption of this Lease in writing from such purchaser, assignee or transferee, provided that any failure of Lessor to obtain such assumption in writing shall not be deemed to limit any rights of Lessee under this Lease and this Lease shall continue to run with the land.

8. **DAMAGE, DESTRUCTION AND TERMINATION.**

8.1 **Non-termination and Non-abatement.** Except as provided herein, no destruction or damage to the Premises caused by any casualty, whether insured or uninsured, shall entitle Lessee to terminate this Lease.

8.1.1 If a material portion of the Improvements are partially or totally damaged or destroyed due to acts of God, acts of war or terror, hostile governmental actions, civil commotion, fire, flood, windstorm, earthquake or other casualty, then Lessee shall determine in its absolute discretion whether or not to rebuild or restore the Improvements within one hundred eighty (180) days after the occurrence of the casualty or such later time as is reasonably practicable. If Lessee elects to terminate this Lease, neither party will have any liability by reason of such termination, but shall perform all of its obligations arising prior to such termination, include payment of Rent. If Lessee elects to rebuild or restore the Improvements, Lessee shall provide Lessor with notice of the estimated time, as certified by Lessee's third-party architect and engineer, each in its professional opinion, to rebuild the Improvements. If Lessee notifies Lessor that it intends to rebuild the Improvements and diligently pursues such rebuilding, this Lease shall remain in full force and effect. Lessee may elect not to rebuild if the time or costs of such rebuilding is not reasonably practical, and in such case shall give Lessor written notice of such election.

8.2 **Force Majeure.** Prevention, delay or stoppage in the performance of its obligations hereunder due to acts of God, inability to obtain labor, materials or reasonable substitutes, governmental restrictions, governmental regulation, governmental controls, judicial orders, acts of war or terror, hostile governmental actions, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Lessee, shall excuse the performance by Lessee

for a period equal to the prevention, delay or stoppage, except the obligations imposed with regard to Rent to be paid by Lessee pursuant to this Lease. Lessee understands and agrees that the Premises is subject to seasonal flooding and such flooding shall not excuse performance by Lessee. Moreover, force majeure shall not include fires caused by the negligence of the Lessee or negligent operation or maintenance of its Improvements.

8.3 **Waiver.** Lessor and Lessee waive the provisions of any statutes which relate to termination of leases when leased property is destroyed and agree that such event shall be governed by the terms of this Lease.

9. **TAXES.** Personal Property. Lessee shall pay prior to delinquency all taxes, license fees and public charges assessed or levied against Lessee or Lessee's estate in this Lease or Lessee's Improvements, trade fixtures, furnishings, equipment and other personal property. Notwithstanding the Lessor is a public agency that is not subject to property tax, the County of San Bernardino may assess Lessee, as a private entity, the equivalent of property tax in the form of possessory interest tax and Lessee will be solely responsible for any such tax.

10. **LIENS.**

10.1 Lessee shall pay for all labor done or materials furnished in the construction, installation, repair, inspection, operation, maintenance, removal, or any other activity related to the Improvements at the Premises by Lessee and shall keep the Improvements and Premises and Lessee's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Lessee's act or omission, other than an Approved Encumbrance.

10.2 Lessee shall pay, when due, all claims for labor or materials furnished to or for Lessee at or for use on the Premises, and shall not permit any mechanic's or materialman's lien to be filed against the Premises or any interest therein. Lessee shall give Lessor not less than ten (10) days written notice prior to the commencement of any work on the Premises, and Lessor shall have the right to post notices of non-responsibility in or on the Premises in the form provided by law.

10.3 If Lessee, in good faith, contests the validity of any such lien, claim or demand set forth in Section 10.2, then Lessee shall, at its sole expense, defend itself and Lessor against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against the Lessor or the Premises.

10.4 If Lessor shall require, Lessee shall obtain a surety bond in respect of any lien, claim or demand set forth in Section 10.2 sufficient to protect Lessor and the Premises from liability or encumbrance in respect of such lien and holding the Premises free from the effect of such lien or claim.

10.5 During the Term, Lessor shall not cause or allow any liens or other encumbrances to be placed, or permit its contractors, agents, licensees, other tenants, employees, representatives or any other third party under Lessor's control to place any liens or other encumbrances against the Improvements. If Lessor, in good faith, contests the validity of any such lien, claim or demand, then Lessor shall, at its sole expense, defend itself and Lessee against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the

enforcement thereof against the Lessee or the Improvements. If Lessee shall require, Lessor shall obtain a surety bond in respect of any such lien sufficient to protect Lessee from liability or encumbrance in respect of such lien and holding the Improvements free from the effect of such lien or claim.

11. **SIGNS.** Except as provided herein or as shown on the plans submitted by Lessee to Lessor, Lessee shall not place any signs upon the Premises without prior written consent of Lessor, which shall not be unreasonably withheld. Lessee shall, prior to the Construction Start Date, install adequate signage on the Premises identifying Lessee as the operator of the construction site and the Improvements to manage site operations and traffic flow, which sign shall also provide a Lessee contact (with phone number) to call in case of emergency. The foregoing signage must be reasonably and timely approved by Lessor prior to installation.

12. **DEFAULTS; REMEDIES; TERMINATION.**

12.1 **Lessee Defaults.** The occurrence of anyone or more of the following events shall constitute a material default or breach of this Lease by Lessee:

12.1.1 The abandonment of the Premises by Lessee as defined by California Civil Code §1951.3;

12.1.2 The failure by Lessee to make any payment of Rent or any other payment required to be made by Lessee hereunder, as and when due, where such failure shall continue for a period of thirty (30) days following written notice thereof by Lessor;

12.1.3 Except in connection with an Approved Encumbrance including without limitation those provisions of Section 5.5, the making by Lessee of any general arrangement or assignment for the benefit of creditors; Lessee becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within one hundred eighty (180) days); the appointment of a bankruptcy trustee or receiver to take possession of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of all or substantially all of Lessee's assets located at or on the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within sixty (60) days.

12.1.4 The assignment of the Lease or the sublet of the Premises in violation of Article 7 of the Lease.

12.1.5 The failure of Lessee to comply in any material respect with any provision in Section 4 of this Lease, including but not limited to loss or failure to satisfy any material condition of any site development, use permit, and construction, or other authorization required by the State, County or other governmental agency having jurisdiction, necessary for construction of the Improvements and/or the operation of the Premises as a solar electric energy generation facility, following notice and a reasonable opportunity to cure.

12.1.6 The failure by Lessee to continuously operate the Improvements as a solar electric energy generation facility except in the event of a Force Majeure or as necessary to repair, maintain or rebuild same.

12.1.7 The failure by Lessee to observe or perform any other covenants, conditions or provisions of this Lease (except as set forth in Sections 12.1.1 through and including 12.1.6) in any material respect to be observed or performed by Lessee where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of the Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default, if Lessee commenced such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

12.1.8 The discovery by Lessor that any financial statement of Lessee or of any assignee given to Lessor by Lessee or any assignee was intentionally and materially false.

12.2 Remedies for Lessee Default.

12.2.1 In the event of the continuance of any material default or breach by Lessee specified in Section 12.1 which is not cured pursuant to this Article 12, Lessor may at any time thereafter, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such default or breach:

12.2.1.1 Subject to the rights of Lenders as set forth in Article 5, terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event, Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default including, but not limited to, the reasonable cost of (a) recovering possession of the Premises, (b) marketing expenses of reletting, (c) any necessary restoration of the Premises to the condition existing prior to the Construction Start Date, excepting normal wear and tear, and (d) reasonable attorney's fees.

12.2.1.2 Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the Premises. In such event, Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover Rent as it becomes due hereunder; provided that from and after such time Lessee vacates the Premises in accordance with the provisions of this Lease, Lessee shall not have any liability or obligation hereunder except for the continued payment of Rent; provided further that Lessor shall use commercially reasonable efforts to mitigate its losses and damages.

12.2.1.3 Without duplication, pursue any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the State of California.

12.3 Limitation of Liability. *Notwithstanding anything to the contrary in this Lease, neither Party shall be liable hereunder for any special, incidental, consequential (other than actual or direct) or punitive damages based on breach of contract, breach of warranty, negligence, tort or any other legal theory.*

13. OTHER TERMINATION OF LEASE.

13.1 **Termination by Lessee.** Without limitation of Lessee's rights and remedies in respect of any breach or default by Lessor in connection with this Lease, Lessee may terminate this Lease only as to the entire Premises (and not as to any part or parts thereof) for cause as follows:

13.1.1 Upon the giving of not less than thirty (30) day written notice to Lessor in the event of the failure by Lessor to observe or perform any of the covenants, conditions or provisions of this Lease in any material respect to be observed or performed by Lessor, where such failure shall continue for a period of sixty (60) days after written notice thereof from Lessee to Lessor; provided, however, that if the nature of the Lessor's default is such that more than sixty (60) days are reasonably required for its cure, then Lessor shall not be deemed to be in default, if Lessor commenced such cure within said sixty (60) day period and thereafter diligently prosecutes such cure to completion; provided further, that Lessor acknowledges that for purposes of this Lease, if, as a result of such failure Lessee is unable to construct, install, interconnect or operation any portion of the Improvements, Lessee's actual damages for such failure shall include, without limitation, Lessee's lost revenues arising from such failure, as reasonably determined by Lessee.

13.1.2 Termination of the Interconnection Agreements. If at any time during the Term prior to the date BVES acquires all of the membership interests in the Lessee, Lessee is no longer able to sell solar generated electric energy from the Improvements due to the termination or impracticability of applicable interconnection arrangements (other than by reason of Lessee's default thereunder), Lessee may terminate this Lease for the entire Premises by providing written notice to Lessor at any time within one hundred eighty (180) days after the occurrence of such termination of any interconnection agreement in respect of the Premises or the Improvements. Following such termination of any such interconnection agreements, Lessee shall, at Lessee's sole cost, remain liable for any obligations under the Lease which accrued prior to such termination, and shall remove the Improvements in accordance with Section 5.2 and restore the Premises to their condition at the commencement of the Lease, subject to normal wear and tear, within six (6) months after the date of Lessee's termination notice.

13.2 **Condemnation of Premises.** Should all or part of the leased Premises be taken by any public or quasi-public agency or entity under the power of eminent domain under the term of this Lease:

13.2.1 Lessee may terminate this lease as to the entire Premises if continued use of the Premises for its intended purposes is no longer commercially practicable, by giving the Lessor thirty (30) days written notice of termination; and

13.2.2 Any and all damages and compensation awarded or paid because of the taking shall belong to the Lessor, except for amounts paid or allocated to Lessee for relocation expenses or for damage to or inability to operate all or any portion of the Improvements and the value of the unexpired term of this Lease.

14. **HOLDING OVER.** If Lessee remains in possession of the Premises or any part thereof after the expiration of the Term hereof, such occupancy shall be a tenancy from month to

month, subject to termination by either party on thirty (30) days' notice, with all the obligations of this Lease applicable to Lessee as of the expiration of the Lease, except that the Rent payable during such holdover tenancy shall be one hundred and fifty percent (150%) of the Rent in effect at the time of expiration.

15. **QUIET POSSESSION.** Provided that Lessee observes and performs in all material respects all of the covenants, conditions and provisions on Lessee's part to be observed and performed hereunder, Lessee shall have quiet and peaceful possession of the Premises for the entire Term.

16. **GENERAL PROVISIONS.**

16.1 **Recitals.** The recitals first set forth above are true and correct and incorporated herein by this reference.

16.2 **Severability.** The invalidity of any provision of this Lease as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

16.3 **Time of Essence.** Except as otherwise specifically provided, time is of the essence for each provision of this Lease which specifies a time within which performance is to occur. In the absence of any specified time for performance, performance may be made within a reasonable time.

16.4 **Additional Rent.** Any monetary obligations of Lessee to Lessor under the terms of this Lease shall be deemed to be Rent and all references herein to "Rent" shall be deemed to include the Rent and all other sums paid or payable by Lessee to Lessor hereunder.

16.5 **Entire Agreement, Modification.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

16.6 **No Warranty.** Except as otherwise stated in this Lease, Lessee hereby acknowledges that neither the Lessor nor any employees, contractors, or agents of the Lessor has made any oral or written warranties or representations to Lessee relative to the condition or use by Lessee of said Premises and Lessee acknowledges that Lessee assumes all responsibility regarding the Occupational Safety and Health Act, the legal use and adaptability of the Premises and compliance with all applicable laws and regulations in effect during the term of this Lease. Upon use of Premises by Lessee, the same shall conclusively be deemed to be fit and proper for the purposes for which Lessee shall use the Premises.

16.7 **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party, including, but not limited to notices required under the California unlawful detainer statutes, or any other person shall be in writing and either served personally or sent by commercial overnight. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party shall be addressed to the other party at the address set forth below. Either party may

change its address by notifying the other party of the change of address. Notices shall be deemed delivered upon the earlier of: (i) actual receipt; or (ii) the date of delivery or refusal of the addressee to accept delivery, if such notice is sent as stipulated above.

Lessee: _____

With copy to: _____

Lessor: Big Bear Area Regional Wastewater Agency
PO Box 517
Big Bear City, CA 92314

With copy to: Best Best & Krieger LLP
Ward Simmons
3390 University Avenue
Riverside, California 92501

Either party may by notice to the other specify a different address or contact person for notice purposes. A copy of all notices required or permitted to be given to Lessor hereunder shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate by notice to Lessee. Notice given under this section shall be deemed in compliance with applicable statutory notice requirements, including Code of Civil Procedure §1162 and Civil Code §1953.

16.8 Waivers. No waiver by Lessor or Lessee of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessor or Lessee of the same or any other provision. Lessor's or Lessee's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of their respective consent to or approval of any subsequent act. The acceptance of Rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of a provision hereof, other than the failure of Lessee to pay the particular Rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such Rent.

16.9 Cumulative Remedies. No remedy or election under this Lease shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

16.10 Binding Effect; Choice of Law. Subject to any provisions hereof-restricting assignment or subletting by Lessee and subject to the provisions of Article 7, this Lease shall bind the parties, their personal representatives, successors and assigns. The laws of the State of California shall govern this Lease. The language of all parts of this Lease shall be construed with its fair meaning and not strictly for or against the Lessor or Lessee.

16.11 Venue. The parties acknowledge and agree that this Lease was entered into and intended to be performed in San Bernardino County, California. The parties agree that the court and venue for any action or claim brought by any party to this Lease will be the Federal District Court for the Central District of California, provided that if said court lacks jurisdiction,

the Superior Court of California, San Bernardino County shall be the court and venue. Each party hereby waives any law or rule of court which would allow it to request or demand a change of venue. If any action or claim concerning this Lease is brought by any third party, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County.

16.12 Jury Trial Waiver. To the extent allowed by law, Lessee and County hereby waive their respective right to trial by jury and agree to accept trial by judge alone of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding and/or hearing brought by either Lessee against County or County against Lessee on any matter whatsoever arising out of, or in any way connected with, this Lease, the relationship of Lessee and County, Lessee's use or occupancy of the Premises, or any claim of injury or damage, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect.

16.13 Attorneys' Fees And Costs. The prevailing party shall be entitled to its costs and attorneys' fees in any action related to or arising out of this Lease.

16.14 Condition to Effectiveness of Lease. The approval of the Lessor's Governing Board constitutes an express condition precedent to the effectiveness of this Lease. Each person executing this Lease on behalf of Lessor represents that the Governing Board has approved this Lease and that Lessor has full right and authority to enter into this Lease.

16.15 Authority. If Lessee is a corporation, each of the persons executing this Lease on behalf of Lessee represents or warrants that Lessee has been and is qualified to do business in the State of California, that the corporation has full right and authority to enter into this Lease, and that all persons signing on behalf of the corporation were authorized to do so by the appropriate corporate actions. If Lessee is a partnership, limited liability company, trust or other legal entity, each of the persons executing this Lease on behalf of Lessee represents or warrants that Lessee has complied with all applicable laws, rules and governmental regulations relative to its right to do business in the State of California and that all persons signing on behalf of such entity were authorized to do so by any and all appropriate actions. Lessee agrees to furnish upon Lessor's request a corporate resolution, or other appropriate documentation evidencing the authorization of Lessee to enter into this Lease.

16.16 Captions. The captions used herein are for convenience only and are not a part of this Lease and do not in any way amplify the terms or provisions hereof.

16.17 Non-Liability of Officials and Employees. No official or employee of Lessor or Lessee shall be personally liable for any default or liability under this Lease.

16.18 Non-Discrimination. Lessee covenants it shall not discriminate based upon race, color, creed, religion, sex, marital status, age, handicap, national origin or ancestry in any activity pursuant to this Lease.

16.19 Independent Contractor. It is agreed that Lessee shall act and be an independent contractor and not an agent nor employee of Lessor.

16.20 **Including.** As used in this Lease, the term “including” or variations thereof are meant to be followed by the words “without limitation” or variations thereof.

16.21 **Memorandum of Lease.** Following execution of this Lease, each party shall promptly execute a short form memorandum of Lease in the form attached hereto as Exhibit “F” which Lessee shall record in the official records of the County where the Premises are located. Upon termination or expiration of this Lease, Lessee shall, within ten (10) days of such termination or expiration, execute and record a quitclaim deed (or any other document reasonably required by Lessor to terminate Lessee’s interest in this Lease) as to its leasehold interest.

16.22 **Estoppel Certificate.** Lessee and Lessor shall, from time to time, upon at least ten (10) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (a) certifying this Lease is unmodified and in full force and effect, or, if modified, stating the nature of the modification and certifying that the Lease, as modified, is in full force and effect, and the date to which the rental and other charges, if any, have been paid; (b) acknowledging that there are not to the certifying party’s knowledge, any defaults, or stating if any defaults are claimed, and (c) such other statements as may be reasonably requested by the requesting party; any statements may be relied upon by any prospective purchaser or encumbrancer of the Property the Premises or this Lease.

16.23 **Provisions Are Covenants And Conditions.** All provisions, whether covenants or conditions, on the part of either party, shall be deemed to be both covenants and conditions.

16.24 **Consent.** Except as otherwise specifically provided, whenever consent or approval of either party is required, that party shall not unreasonably withhold condition or delay such consent or approval.

16.25 **Exhibits.** All exhibits referred to in this Lease or attached to this Lease are incorporated herein by reference. This Lease includes the foregoing Exhibits all of which are made a part of this Lease:

<i>Exhibit</i>	<i>First Reference</i>	<i>Item</i>
“A”	Recital A	Description of the Property
“B”	Section 1.1	Description of the Premises
“C”	Section 1.2	Description of the Additional Rights
“D”	Section 1.3	Preliminary Plans for Improvements
“E”	Section 3.1.2	BLM Rental Schedule
“F”	Section 16.21	Memorandum of Lease

16.26 **Survival.** The obligations of the parties, which by their nature continue beyond the term of this Lease, will survive the termination of this Lease.

16.27 **Public Records Disclosure.** All materials received by the Lessor in connection with this Lease are intended for the exclusive use of the Lessor and shall be held by the Lessor as “CONFIDENTIAL REAL ESTATE NEGOTIATION DOCUMENTS.” Notwithstanding the forgoing, such materials are potentially subject to disclosure under the

provisions of the California Public Records Act, Government Code Sections 6250 *et seq.* (the "Public Records Act"). If a request for disclosure of any part or all of any such materials is made to the Lessor, the Lessor shall notify the Lessee of the request and shall thereafter disclose the requested information unless the Lessee, within three (3) days of receiving notice of the disclosure request, requests nondisclosure, provides Lessor a legally sound basis for the nondisclosure, and agrees to indemnify, defend, and hold the Lessor harmless in any/all actions brought to require disclosure, in which case Lessor shall not disclose the information until the final adjudication of such request.

16.28 Brokers. Lessor represents and warrants to Lessee, and Lessee represents and warrants to Lessor, that no broker or finder has been engaged by it, respectively, in connection with this Lease or any of the transactions contemplated by this Lease. In the event of any claim for consulting, brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Lease, then Lessee shall indemnify, hold harmless and defend Lessor from and against such claims if they shall be based upon any act, statement, or representation or agreement by Lessee, and Lessor shall indemnify, hold harmless, and defend Lessee from and against such claims if such claims shall be based upon any act, statement, representation or agreement made by Lessor.

16.29 Each party represents and warrants to the other that:

16.29.1 The execution and delivery of this Lease and the performance of its obligations under this Lease will not result in a breach of, or default under, any contract, agreement, commitment or other document or instrument to which the representing party is a party or by which they or the Property or Premises are bound, or a violation of any law, ordinance, regulation or rule of any governmental authority or any judgment, order or decree of any court or governmental authority.

16.29.2 There is no action, suit, proceeding, inquiry or investigation (including any eminent domain proceedings) pending, or to the actual knowledge of the representing party, threatened by or before any court or governmental authority against or affecting the representing party or the Property or Premises.

Signature Page Follows

IN WITNESS THEREOF, the parties executed this agreement as of the date set forth below their respective signature blocks and each party acknowledges that the effective date of this Lease is the Commencement Date.

<p>Lessor:</p> <p>BIG BEAR AREA REGIONAL WASTEWATER AGENCY a California joint powers agency</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>Lessee:</p> <p>_____</p> <p>a _____ limited liability company</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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SIGNED AND CERTIFIED THAT THIS LEASE
HAS BEEN APPROVED BY THE GOVERNING BOARD

By _____
Clerk of the Governing Board

Date _____

APPROVED AS TO LEGAL FORM:

By _____
Glen W. Price
Best Best & Krieger LLP

Date _____

EXHIBIT A

Description of the Property

DRAFT

EXHIBIT B

Description of the Property

DRAFT

EXHIBIT C

Description of the Additional Rights

DRAFT

EXHIBIT D

Preliminary Plans for Improvements

DRAFT

EXHIBIT E

BLM Rental Schedule

DRAFT

EXHIBIT F

Memorandum of Lease

DRAFT

Solar Energy Rent and Fee Schedules

Solar Energy Development 2016-2020 Per Acre Rent Schedule

Megawatt (MW) Rate Schedule

(Based on 100% Encumbrance Factor)

Zone Number Value & Per Acre Zone Value	2016* Per Acre Rent 2.1% IPD- GDP – Annual Adjustment 2004 - 2013	2017* Per Acre Rent 2.1% IPD- GDP – Annual Adjustment 2004 - 2013	2018* Per Acre Rent 2.1% IPD- GDP – Annual Adjustment 2004 - 2013	2019* Per Acre Rent 2.1% IPD- GDP – Annual Adjustment 2004 - 2013	2020* Per Acre Rent 2.1% IPD- GDP – Annual Adjustment 2004 - 2013
Zone 1 \$299	\$16.09	\$16.43	\$16.77	\$17.12	\$17.48
Zone 2 \$579	\$31.15	\$31.81	\$32.48	\$33.16	\$33.85
Zone 3 \$1,132	\$60.91	\$62.19	\$63.49	\$64.83	\$66.19
Zone 4 \$1,706	\$91.79	\$93.72	\$95.69	\$97.70	\$99.75
Zone 5 \$2,350	\$126.45	\$129.10	\$131.81	\$134.58	\$137.41
Zone 6 \$3,394	\$182.62	\$186.45	\$190.37	\$194.37	\$198.45
Zone 7 \$4,746	\$255.37	\$260.73	\$266.20	\$271.79	\$277.50
Zone 8 \$6,583	\$354.21	\$361.65	\$369.24	\$377.00	\$384.91
Zone 9 \$16,279	\$875.92	\$894.31	\$913.09	\$932.27	\$951.85
Zone 10 \$50,000	\$2,690.34	\$2,746.83	\$2,804.52	\$2,863.41	\$2,923.54
Zone 11 \$100,000	\$5,380.67	\$5,493.66	\$5,609.03	\$5,726.82	\$5,847.08
Zone 12 \$250,000	\$13,451.68	\$13,734.16	\$14,022.58	\$14,317.05	\$14,617.71
Zone 13 \$500,000	\$26,903.35	\$27,468.32	\$28,045.16	\$28,634.10	\$29,235.42
Zone 14 \$750,000	\$40,355.03	\$41,202.48	\$42,067.73	\$42,951.16	\$43,853.13
Zone 15 \$1,000,000	\$53,806.70	\$54,936.64	\$56,090.31	\$57,268.21	\$58,470.84

*Counties are re-assigned to appropriate zones for calendar years 2016-2020 based on 2012 NASS Census
A re-evaluation of County Land and Building values will occur in 2019 based on the 2017 NASS Census.

Solar Energy MW rate*	MW Rate
Solar – Photovoltaic (PV)	\$2,863
Solar – Concentrated Photovoltaic (CPV)	\$3,578
Solar – Concentrated Solar Power (CSP)	\$3,578
Solar – CSP with storage capacity of 3 hours or more	\$4,294

*The BLM may determine a different MW rate for projects on a case-by-case basis.

MW Rate Phase-in

(used after method selection made)

Standard Rate Adjustment Method Phase-in

Grant	Lease
1 st Year – 25%	Years 1-10 – 50%
2 nd Year – 50%	Years 11-20 – 100%
3 rd year – 100%	
All subsequent years charged at 100%	All subsequent years charged at 100%

Scheduled Rate Adjustment Method Phase-in

Grant	Lease
No Phase-in applied	Years 1-5 – 50%
	Years 6-30 – 100%
All subsequent years charged at 100%	All subsequent years charged at 100%

Testing Rate Schedule

Site Testing	\$100
Project Area testing	\$2,000 minimum - \$2 per acre

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is made as of the ____ day of _____, 2019 (the "Commencement Date"), by and between the BIG BEAR AREA REGIONAL WASTEWATER AGENCY, a California joint powers agency ("BBARWA") and BEAR VALLEY ELECTRIC SERVICE, a division of Golden State Water Company, a California corporation and a public utility subject to regulation by the California Public Utilities Commission ("BVES"). BBARWA and BVES may be collectively referred to as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, BBARWA is the owner of record of that certain real property located in County of San Bernardino, State of California, a legal description of which is set forth in Exhibit "A" to Attachment 1, attached hereto and incorporated by reference herein (the "Property");

WHEREAS, BVES through its agent, Distributed Solar Development, LLC, an affiliate of General Electric International, Inc. ("GE") wishes to develop a solar electric energy generation project at the Property ("BVES Project");

WHEREAS, BBARWA, BVES and GE have negotiated that draft lease authorizing GE to lease the Property and develop the BVES Project as set forth in Attachment 1 ("Ground Lease");

WHEREAS, BBARWA is willing to execute the Ground Lease subject to BVES' commitment to diligently develop and seek regulatory approval for a net energy metering-like tariff ("NEM Tariff") applicable to development of a separate solar electric energy generation project at the Property by BBARWA ("Agency Project"); and

WHEREAS, BBARWA and BVES wish to execute this MOU to outline their respective rights and obligations regarding the approval of the NEM Tariff, Agency Project, BVES Project and Ground Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, BBARWA and BVES hereby agree as follows:

A. Recitals

The above recitals are true and correct and are incorporated into this MOU by reference.

B. NEM Tariff and Agency Project

To permit BBARWA to develop the Agency Project, BVES shall develop the NEM Tariff and apply for approval from the California Public Utilities Commission ("CPUC") and any other applicable regulatory body of the NEM Tariff. The Parties shall meet and confer and collaboratively develop the proposed NEM Tariff. At a minimum, the NEM Tariff for which BVES shall diligently seek CPUC approval would entitle customers with solar or other distributed generation facilities (each a "Facility") to generate energy credits when the amount of energy generated from the Facility exceeds the customer's energy load at the property where the Facility is located. Energy credits may then be

used to offset received energy at the property where the Facility is located. Energy credits may be carried over on a monthly basis with an annual true-up. Excess generation on an annual basis will be compensated at an agreed upon rate. The NEM Tariff shall be similar in form and substance to the draft set forth in Exhibit 1.

C. BVES Project

Subject to the terms and conditions of this MOU, BBARWA is willing to execute the Ground Lease and permit BVES to develop the BVES Project.

D. Miscellaneous Provisions

1. Severability. If any term, provision, covenant, or condition of this MOU is ruled invalid, void, or unenforceable by a court of competent jurisdiction, this MOU shall nonetheless remain in full force and effect as to all remaining terms, provisions, covenants, and conditions, to the extent allowable under the California law.

2. Interpretation and Governing Law. This MOU and any related dispute shall be governed and interpreted in accordance with the laws of the State of California. This MOU shall be construed according to its plain language and fair and common meaning to achieve the objectives and purposes of the Parties. The rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be employed in interpreting this MOU because all Parties have been adequately represented by counsel.

3. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this MOU.

4. Waiver. The failure of a Party to insist upon the strict performance of any of the provisions of this MOU by the other Party, or the failure of a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of that Party's right to demand and require, at any time, the other Party's strict compliance with the terms of this MOU.

5. Third-Party Beneficiaries. This MOU is made and entered into for the sole protection and benefit for the Parties and their successors and assigns. No other person shall have any right of action based upon any provision of this MOU.

6. Successors in Interest. The burdens of this MOU shall be binding upon, and the benefits of this MOU shall inure to, all successors in interest to the Parties to this MOU.

7. Counterparts. This MOU may be executed by the parties in counterparts, which counterparts shall be construed together and shall have the same effect as if all of the parties had executed the same instrument.

8. Jurisdiction and Venue. Any action at law or in equity arising under this MOU or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this MOU shall be filed and tried in the Superior Court of the State of California, County of San Bernardino. The Parties waive all provisions of law providing for the filing, removal or change or venue to any other court.

9. Attorneys' Fees. In the event of a dispute between BBARWA and BVES concerning claims arising out of this MOU, or in any action or proceeding brought to enforce or interpret any provision of this MOU, or where any provision hereof is validly asserted as a defense, the prevailing Party shall be entitled to recover its attorneys' fees, costs and expenses from the other Party.

10. Notice. All notices, demands, requests or approvals to be given under this MOU shall be given in writing and shall be deemed served when delivered personally or on the third business day after deposit in the United States mail, postage prepaid, first class mail, addressed as follows:

BBARWA:

With copy to:

BVES: Paul Marconi
Director, BVES
42020 Garstin Drive
P.O. Box 1547
Big Bear Lake, CA 92315
Paul.Marconi@bves.com

11. With Authority to Execute. Any person or persons executing this MOU on behalf of BBARWA or BVES warrants and represents that he/she has the authority to execute this MOU on behalf of his/her entity and to bind that entity to the performance of its obligations pursuant to this MOU. Each of the persons executing this MOU on behalf of BVES represents or warrants that BVES has been and is qualified to do business in the State of California, that the corporation has full right and authority to enter into this MOU, and that all persons signing on behalf of the corporation were authorized to do so by the appropriate corporate actions. BVES agrees to furnish upon BBARWA's request a corporate resolution, or other appropriate documentation evidencing the authorization of BVES to enter into this MOU.

[SIGNATURE PAGES FOLLOW.]

BBARWA:

BIG BEAR AREA REGIONAL
WASTEWATER AGENCY
a California joint powers agency

By: _____

Title: _____

Date: _____

BVES:

GOLDEN STATE WATER COMPANY
a California corporation

By: _____

Title: _____

Date: _____

DRAFT

EXHIBIT 1 - DRAFT TARIFF LANGUAGE

Schedule No. DGS NEM-L DISTRIBUTED GENERATION SERVICE NET ENERGY METERING-LARGE

APPLICABILITY

Applicable to local water and wastewater agencies with a generating capacity of 200 kW or greater. Availability of Schedule No. DGS NEM-L will be on a first come, first serve basis until such time as the total system capacity reaches a minimum peak load of 2 MW.

TERRITORY

Big Bear Lake and vicinity, San Bernardino County.

RATES

In each billing period, it will be determined whether a DGS NEM-L is a net consumer of energy or a net producer of energy by quantifying the difference between the electricity supplied and/or delivered by BVES, and the electricity produced by the DGS NEM-L and delivered into BVES electric system each billing period.

Thus, where "ES" is "energy supplied" and/or delivered by BVES, and "EP" is "energy produced" by the DGS NEM-L and delivered into BVES system: Net Energy = ES minus EP

- When Net Energy is positive, the DGS NEM-L is a "net energy consumer".
- When Net Energy is negative, the DGS NEM-L is a "net energy producer".

As determined in each billing period, when the DGS NEM-L is a net energy consumer the charge for energy consumption will be based on all applicable energy charges, calculated by multiplying the customer's net consumed kilowatt-hours (kWh) by the applicable energy rate components of the customer's Otherwise Applicable Tariff (OAT).

As determined in each billing period, when a DGS NEM-L is a net energy producer, the resulting Net Energy produced will be used to calculate energy credits, calculated by multiplying the customer's net produced kWh by the applicable energy rate components of the customer's OAT in each billing period.

Net Surplus Compensation (NSC) is equal to the BVES DG Tariff Compensation Rate multiplied by the Net Surplus Energy. NSC is designed to compensate DGS NEM-L customers for Net Surplus Energy they produced in excess of their on-site load over their Relevant Period.

SPECIAL CONDITIONS

1. **Required Application Contract:** An **Application for Interconnection and Net Energy Metering** and an executed **Interconnection and Net Energy Metering Agreement** are required for service under this schedule.

Compensation will be in the form of credit rollover. Eligible customers must provide BVES all required forms.

2. Metering:

a. Net energy shall be measured (metered) using a single meter capable of registering the flow of electricity in two directions. If the customer's existing meter is not capable of measuring the flow of electricity in two directions, an appropriate standard meter shall be provided at BVES expense. Any upgraded net meter, if requested by the customer in writing, will be installed at the customer's expense. BVES may elect to install an additional meter or meters, at its expense, with the customer's consent. Such additional metering shall be used only to provide the information necessary to accurately bill or credit the customer.

b. For all customers served under this Schedule, when BVES determines that dual metering is required and such customer refuses consent for installation of dual metering, BVES shall have the right to refuse interconnection.

3. Billing:

a. For all customers served under this Schedule all applicable Service Charges as defined in Special Condition and/or other non-energy related charges, as defined in the customer's OAT, shall apply, regardless of the DGS NEM-L's monthly net production. Customer may apply their DGS credit towards offsetting their demand charges.

b. BVES will provide the DGS NEM-L with net energy consumption information every billing period, upon the customer's inquiry, that will include the current accrued balance owed to BVES for positive net energy charges, if any.

c. It is mandatory under this schedule to pay all applicable charges, energy and non-energy related, every billing period, in accordance with the customer's OAT.

EXHIBIT 1 - DRAFT TARIFF LANGUAGE

- d. For all customers served under this Schedule energy credits will be used to offset the energy-related charges on the final bill when they cease service under this Schedule. However, at no time will energy credits be applied towards any non-energy related charges.
- e. If a customer terminates service under this Schedule prior to the end of the Relevant Period, BVES shall reconcile the customer's consumption and production of electricity and bill the customer for positive Net Energy charges (if any).

4. Annual Energy Reconciliation: All DGS NEM-L's will receive an annual reconciliation of all energy charges and payments made for the energy component of service provided by BVES. This reconciliation will occur at the end of each Relevant Period. At this reconciliation all energy charges, energy credits and energy payments made, if any, will be tallied and reconciled in the final bill of the Relevant Period:

- a. Should the sum of energy payments received by BVES for energy use billed during the Relevant Period plus energy credits from net production exceed the charges for energy use at the Annual Energy Reconciliation, such excess payment up to the total amount paid by the DGS NEM-L for energy use during the Relevant Period shall be carried forward as a one-time credit to the next billing period.
- b. However, to the extent that energy credits exceed energy use, BVES shall neither pay the customer for any unused energy credit nor carry forward any unused energy credit. The unused energy credit shall be zeroed out and a new Relevant Period shall commence.
- c. Net Surplus Generators will receive a credit on their bill.
- i. The Customer may establish a new Relevant Period, commencing with the next regularly scheduled meter read date. BVES will perform the bill reconciliation and any unused energy credits and/or generation energy credits remaining shall be zeroed out prior to the commencement of the new Relevant period.
- d. The customer is eligible to receive the NSC if at the conclusion of the Relevant Period the true-up process indicates that the customer is a Net Surplus Generator. If no Net Surplus Energy is produced, the customer is not eligible to receive NSC. Eligible customers from whom BVES has not obtained all required forms at the time of the processing of the final bill of the Relevant Period will not receive NSC.
- e. To calculate the NSC, the kilowatt hours of Net Surplus Energy are multiplied by the rate defined in tariff schedule DGS. The NSC will be applied to future charges (customer's bill account) in the next Relevant Period. Net Surplus Energy is set to zero at the start of the next Relevant Period.
- f. If any customer terminates service under this schedule prior to the end of a Relevant Period, BVES shall reconcile the customer's consumption and production of electricity and bill the customer for positive net energy charges, if any.

5. Definitions: The following definitions are applicable to service provided under this Schedule.

- a. **Distributed Generation Service Eligible Large Customer-Generator (DGS NEM-L) under Schedule DGS NEM-L:** Includes local water and wastewater agencies. The DGS NEM-L Facility qualifying for service under NEM-L must: be located on the eligible Customer's Premises; be interconnected and operated in parallel with BVES electric system; be intended primarily to offset part or all of the customer's own electrical requirements; and meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the California Public Utilities Commission regarding safety and reliability.
- b. **CAISO:** California Independent System Operator
- c. **Customer's Premises:** The owned commercial establishment to which the solar is connected.
- d. **Demand Charges:** One component of an electric customer's bill, (along with the customer charge and the energy charge). This charge recovers some of the costs BVES incurs in providing sufficient operating capacity to meet that customer's maximum demand. The demand charge is based on the highest level of kW required by the customer during a billing period.
- e. **Facility:** A solar generating facility with a total capacity of more than 200 kW.
- f. **Service Charges:** Includes all customer related charges such as the meter charge, and the minimum charge, as defined in the customer's applicable rate.
- g. **Relevant Period:** A twelve-month period, or portion thereof, if the agreement is terminated before the period ends, and commencing on the effective date of the executed Interconnection and Net Energy Metering Agreement.
- h. **Utility Energy Supply:** The energy supply components and costs in the customer's applicable rate are indicated by asterisks in each schedule.
- i. **Net Surplus Energy:** All electricity generated by an eligible customer-generator measured in kilowatt-hours over a 12-month period that exceeds the amount of electricity consumed by that eligible customer-generator.
- j. **Net Surplus Generator:** An eligible customer-generator that generates more electricity during a 12-month period than is supplied by the electric utility to the eligible customer-generator during the same 12-month period.



4. Price Proposal



System Size (kWdc)	System Size (CEC AC)	Configuration	Racking Tilt	Module Count	Module Spec	Inverter Spec
1,676	1,410	Fixed Tilt	Mixed	4,190	Jinko JKM400M	SMA

Year 1 Energy	3,343,099
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Starting PPA	\$0.073
Escalation	2.5%
Term	25 Years

DS Energy Solutions' project development and design team worked to optimize the design, develop a industry leading year one energy yield, and put together competitive pricing from subcontractors and suppliers. The site will require a review from geotechnical engineers to verify soil conditions. We have worked with the assumptions provided from multiple site visits and industry experts to develop the proposed price.



Big Bear Area Regional
Wastewater Agency
David Caretto – Chair
John Green – Vice Chair
Karyn Oxandaboure – Secretary
Rick Herrick – Director
Jim Miller – Director

AGENDA ITEM: 11.A.

MEETING DATE: December 4, 2019

TO: Governing Board of the Big Bear Area Regional Wastewater Agency

FROM: David Lawrence, P.E., General Manager

PREPARED BY: Bridgette Burton, Management Analyst *tb*

REVIEWED BY: Jennifer McCullar, Finance Manager *jm*

SUBJECT: Resolution No. R. 12-2019, A Resolution of the Governing Board of the Big Bear Area Regional Wastewater Agency Approving the 2016 Proposition 1 Integrated Regional Water Management Disadvantaged Community Involvement Program Technical Assistance Sub-Grant Agreement, and Finding Approval of the Sub-Grant Agreement Exempt from the California Environmental Quality Act

BACKGROUND & DISCUSSION:

In June 2017, the California Department of Water Resources (DWR) and the Santa Ana Watershed Project Authority (SAWPA) entered into a Proposition 1 Integrated Regional Water Management Program (IRWMP) Disadvantaged Communities Involvement (DCI) Program Grant Agreement (Grant Agreement) providing that SAWPA would serve as the program manager for \$6.3 million in IRWMP grant funds to be disbursed within the Santa Ana River Watershed for the DCI Program and ensuring that the maximum benefit of such funds are realized in the Santa Ana River Watershed. Of the \$6.3 million awarded to the DCI program, \$2.9 million has been set aside for the provision of Technical Assistance. SAWPA seeks to disburse up to \$500,000 of this technical assistance funding to BBARWA through the Sub-Grant Agreement.

The Sub-Grant Agreement provides BBARWA with funding to cover costs that the Replenish Big Bear Team has incurred and will incur in connection with permitting for the Replenish Big Bear Project between January 24, 2019 to December 31, 2020 (costs incurred to date are \$205,828). The regulatory effort for Replenish Big Bear is complex due to the number of discharge points, stringent regulations applicable to discharge locations, and the uniqueness of the project. Tasks under the agreement include coordination and negotiation with regulatory agencies, such as the

Moved: _____ Second: _____ Ayes: _____ Noes: _____ Abstain/Absent: _____

Approved Date: _____ Witness: _____

Secretary of the Governing Board

State Water Resource Control Board Division of Drinking Water, California Department of Fish and Wildlife, United States Fish and Wildlife, United States Environmental Protection Agency, and the Santa Ana and Colorado Regional Water Quality Control Boards to obtain the necessary permits to implement Replenish Big Bear.

ENVIRONMENTAL IMPACT:

The Sub-Grant Agreement is not subject to the California Environmental Quality Act (CEQA). It constitutes a government funding mechanism or other government fiscal activity which does not involve any commitment to any specific project. The Sub-Grant Agreement merely constitutes an agreement by which BBARWA may obtain funds from DCI to cover the costs it has incurred or will incur in connection with permitting for the Replenish Big Bear Project. BBARWA's approval of the Sub-Grant Agreement in no way commits BBARWA to the Replenish Big Bear Project. The Sub-Grant Agreement is thus not subject to CEQA. (State CEQA Guidelines, §§ 15060, subd. (c)(3), 15378, subd. (b)(4).)

FINANCIAL IMPACT:

The Agency, and the three other project team members, anticipate being reimbursed for permit-related costs that have been incurred to date, which are currently estimated at \$206,000 (\$51,500 each) with the remainder of the grant funds reimbursed as incurred. Total reimbursement to BBARWA is expected to be \$125,000, or 25% of the \$500,000 appropriated by the Board to date for the Replenish Big Bear Project.

RECOMMENDATION:

1. Approve Resolution No. R. 12-2019 and find that the Sub-Grant Agreement is Exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines sections 15060, subd. (c)(3) & 15378, subd. (b)(4), and direct staff to file a CEQA Notice of Exemption, as set forth in the attached Resolution; and
2. Authorize the General Manager to execute the Sub-Grant Agreement with the Santa Ana Watershed Project Authority.

ATTACHMENTS:

- Resolution No. R. 12-2019
- Notice of Exemption

RESOLUTION NO. R. 12-2019

A RESOLUTION OF THE GOVERNING BOARD OF THE BIG BEAR AREA REGIONAL WASTEWATER AGENCY APPROVING THE 2016 PROPOSITION 1 INTEGRATED REGIONAL WATER MANAGEMENT DISADVANTAGED COMMUNITY INVOLVEMENT PROGRAM TECHNICAL ASSISTANCE SUB-GRANT AGREEMENT, AND FINDING APPROVAL OF THE SUB-GRANT AGREEMENT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

WHEREAS, the Big Bear Area Regional Wastewater Agency (“BBARWA”) is a public agency formed to transport, treat, and dispose of wastewater for Big Bear Valley area residents and businesses; and

WHEREAS, Section 79740 *et seq.* of the Water Code provides that the Department of Water Resources (“DWR”) shall provide at least \$6.3 million in grants or other funding for projects that are included in an adopted integrated regional water management plan, respond to climate change, and contribute to regional water security of disadvantaged communities, economically distressed areas, or underrepresented communities within the Santa Ana River Watershed; and

WHEREAS, in June 2017, DWR and the Santa Ana Watershed Project Authority (“SAWPA”) entered into a 2016 Proposition 1 Integrated Regional Water Management (“IRWM”) Disadvantaged Communities Involvement (“DCI”) Grant Agreement (“Grant Agreement”) pursuant to Water Code section 79740 *et seq.*; and

WHEREAS, the Grant Agreement provides that SAWPA would serve as the program manager for the \$6.3 million in IRWM grant funds to be disbursed within the Santa Ana River Watershed for the DCI Program; and

WHEREAS, pursuant to the Grant Agreement, SAWPA intends to disburse \$500,000 in IRWM grant funds to BBARWA by way of a proposed 2016 Proposition 1 IRWM DCI Program Technical Assistance Sub-Grant Agreement (“Sub-Grant Agreement”) between SAWPA and BBARWA; and

WHEREAS, under the proposed Sub-Grant Agreement, a copy of which is attached hereto as Exhibit “A,” SAWPA would provide BBARWA with \$500,000, and BBARWA would use these funds to further the permitting process for the Replenish Big Bear Project, which is a recycled water project in Big Bear Valley, California; and

WHEREAS, the Replenish Big Bear Project would provide resiliency to potable water supplies, vulnerable habitats, and recreational activities that support a community that qualifies as a Disadvantaged or Severely Disadvantaged Community; and

WHEREAS, approval of the proposed Sub-Grant Agreement would not in any way constitute an approval of the Replenish Big Bear Project, would not commit BBARWA to the Replenish Big Bear Project, and would not authorize any construction or development of any project; and

WHEREAS, approval of the proposed Sub-Grant Agreement would constitute approval of a government funding mechanism or other government fiscal activity that does not involve any commitment to any project; and

WHEREAS, approval of the proposed Sub-Grant Agreement would provide BBARWA with funding relating to certain costs that BBARWA has incurred or will incur from January 24, 2019 to December 31, 2020 relating to the permitting of the Replenish Big Bear Project (e.g., seeking National Pollutant Discharge Elimination System (“NPDES”) permits, coordinating with regulatory agencies, developing technical analyses in response to feedback from regulatory agencies, etc.); and

WHEREAS, at an agendized public meeting on December 4, 2019, the Governing Board of BBARWA reviewed and considered the proposed Sub-Grant Agreement, related documents, and any comments thereon; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred,

NOW, THEREFORE, THE GOVERNING BOARD OF THE BIG BEAR AREA REGIONAL WASTEWATER AGENCY DOES HEREBY FIND, RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated herein.

Section 2. The California Environmental Quality Act (“CEQA”). Based on all evidence presented in the administrative record, the Governing Board of the Big Bear Area Regional Wastewater Agency (“Governing Board”) hereby finds and determines that the proposed Sub-Grant Agreement is not subject to CEQA because it does not qualify as a “project” under CEQA. (State CEQA Guidelines, § 15060, subd. (c)(3) [“[a]n activity is not subject to CEQA if ... [t]he activity is not a project as defined in [State CEQA Guidelines] Section 15378”].) Notably, the State CEQA Guidelines expressly provide that “the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment” does not qualify as a project subject to CEQA. (State CEQA Guidelines, § 15378, subd. (b)(4).) Here, the Governing Board finds and determines that the proposed Sub-Grant Agreement (1) constitutes the creation of a government funding mechanism or other government fiscal activity, as it provides BBARWA with funding relating to permitting; and (2) does not involve any commitment to any specific project, including the Replenish Big Bear Project. Notably, the proposed Sub-Grant Agreement would not constitute an approval of the Replenish Big Bear Project, would not commit BBARWA to the Replenish Big Bear Project, and would not authorize any construction or development. For these same reasons, the Governing Board alternatively finds and determines that the proposed Sub-Grant Agreement is exempt from CEQA under the “common sense” exemption set forth in State CEQA Guidelines section 15061.

(State CEQA Guidelines, § 15061, subd. (b)(3) [an “activity is not subject to CEQA” where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment”].)

Section 3. Approval of the Sub-Grant Agreement. The Governing Board hereby approves the Sub-Grant Agreement, attached hereto as Exhibit “A” and incorporated herein by this reference. The Governing Board further directs that the Sub-Grant Agreement be executed by an individual with authority to enter binding agreements on behalf of BBARWA.

Section 4. Notice of Exemption. Pursuant to CEQA, the Governing Board directs staff to file a Notice of Exemption with the San Bernardino County Clerk within five (5) working days of adoption of this Resolution.

Section 5. Custodian of Records. The documents and materials that constitute the record of proceedings on which this Resolution and the above findings have been based are located at BBARWA’s office located at 121 Palomino Drive, Big Bear, CA 92314. The custodian for these records is the General Manager of BBARWA.

Section 6. Execution of Resolution. The Chairperson of the Board shall sign this Resolution and the Secretary of the Board shall certify that this Resolution was duly and properly adopted by the Board.

PASSED, APPROVED AND ADOPTED this 4th day of December, 2019.

David A. Caretto, Chairman of the Governing
Board of the Big Bear Area Regional Wastewater
Agency

ATTEST:

Karyn Oxandaboure, Secretary of the Governing Board
of the Big Bear Area Regional Wastewater Agency

I, Karyn Oxandaboure, Secretary of the Governing Board of the Big Bear Area Regional Wastewater Agency, DO HEREBY CERTIFY that the foregoing Resolution of the Governing Board of the Big Bear Area Regional Wastewater Agency, being Resolution No. R. 12-2019, was adopted at a regular meeting on December 4, 2019 of said Agency by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

EXHIBIT “A”

**2016 PROPOSITION 1 INTEGRATED REGIONAL WATER MANAGEMENT
DISADVANTAGED COMMUNITY INVOLVEMENT PROGRAM
TECHNICAL ASSISTANCE SUB-GRANT AGREEMENT**

**2016 PROPOSITION 1 INTEGRATED REGIONAL WATER MANAGEMENT
DISADVANTAGED COMMUNITY INVOLVEMENT PROGRAM
TECHNICAL ASSISTANCE SUB-GRANT
AGREEMENT BETWEEN THE**

SANTA ANA WATERSHED PROJECT AUTHORITY

AND

BIG BEAR AREA REGIONAL WASTEWATER AGENCY (BBARWA)

This Proposition 1 Integrated Regional Water Management Program (“IRWMP”) Disadvantaged Communities Involvement (“DCI”) Program Grant Funding Contract (“Contract”) is made between Santa Ana Watershed Project Authority (“SAWPA”) and Big Bear Area Regional Wastewater Agency (“BBARWA”) (the “Sub-Grantee”). SAWPA and the Sub-Grantee may be individually referred to as “Party”, and collectively referred to as the “Parties”.

WHEREAS Section 79745 of the Water Code provides \$6.3 million to the Santa Ana River Watershed for the purposes of ensuring involvement of disadvantaged communities, economically distressed areas, or underrepresented communities within integrated regional water management efforts;

WHEREAS in June, 2017, the California Department of Water Resources (“DWR”) and SAWPA entered into a Proposition 1 IRWMP DCI Program Grant Agreement (“Grant Agreement”) providing that SAWPA would serve as the program manager for the \$6,300,000 in IRWMP grant funds to be disbursed within the Santa Ana River Watershed for the DCI Program, consistent with IRWMP and California Environmental Quality Act (“CEQA”) requirements, and ensuring that the maximum benefit of such funds are realized in the Santa Ana River Watershed;

WHEREAS Exhibit A of the Grant Agreement, the Work Plan for SAWPA’s DCI Program, includes technical assistance for the development of projects, plans and programs to address community needs; and

WHEREAS consistent with the Grant Agreement between DWR and SAWPA, SAWPA intends to disburse to the Sub-Grantee a portion of the \$6,300,000 in IRWMP grant funds for the DCI Program by way of this Contract with the Sub-Grantee.

THEREFORE, based on the foregoing incorporated recitals and in consideration of the mutual covenants and conditions set forth in this Contract, the Parties hereby agree to the following:

SECTION 1. PROJECT DESCRIPTION

The Big Bear Area Regional Wastewater Agency (BBARWA) along with project partners (Big Bear City Community Services District, Big Bear Lake Department of Water and Power, and Big Bear Municipal Water District) are advancing a recycled water project in Big Bear Valley, CA. This project is referred as Replenish Big Bear and includes planning, design, and construction of advanced treatment facility upgrades at the BBARWA wastewater treatment plant, more than 7 miles of pipeline for product water and brine, three pump stations, a groundwater recharge facility, and monitoring wells.

Replenish Big Bear provides resiliency to potable water supplies, vulnerable habitats, and recreation activities that support a community that is considered 100% a Disadvantaged or Severely Disadvantaged Community (DAC/SDAC). The Replenish Big Bear’s One Water approach will revitalize and renew the

Big Bear Valley environment, community, and habitat as well as aid in restoring the function of this critical headwater of the Santa Ana River.

The regulatory effort for Replenish Big Bear is complex due to the number of discharge points, stringent regulations applicable to discharge locations, and uniqueness of the project. The project includes a new discharge to Big Bear Lake, which is subject to a nutrient Total Maximum Daily Load (TMDL) and has stringent water quality objectives. The permitting process for Replenish Big Bear is particularly complex and has been the focus of the Project to date because it is on the critical path.

BBARWA is seeking funds from the Disadvantaged Community Involvement (DCI) Technical Assistance Project to cover the costs incurred from January 24, 2019, to December 31, 2020, to advance the permitting process as described in [Attachment "A"](#) (hereinafter the "project Work Plan").

SECTION 2. SUB-GRANTEE SCOPE OF WORK, DELIVERABLES

Sub-Grantee is responsible for the following activities ("the Work") during the work period:

Task 4: Permitting

DESCRIPTION:

This task involves coordinating with regulatory agencies, such as the State Water Resource Control Board Division of Drinking Water (DDW), California Department of Fish and Wildlife (CDFW), United States Fish and Wildlife (USFW), United States Environmental Protection Agency (USEPA) and the Santa Ana and Colorado Regional Water Quality Control Boards (Regional Boards) to obtain the necessary permits to implement Replenish Big Bear. Under this task, the Sub-Grantee will:

Plan and facilitate internal meetings to discuss regulatory strategies and identify next steps to guide discussions with regulatory agencies

Coordinate, prepare for and attend meetings with regulators to discuss and establish the regulatory process

Develop technical analyses (e.g., studies, technical memorandums, response letters) in response to regulator feedback to support the permitting process

The priority permits that require coordination and work between January 24, 2019, and end of the term for the Grant Agreement, including any future extensions to the term of the Grant Agreement, are shown in Table 1. In general, technical analyses will be developed as feedback is obtained from regulators.

ASSUMPTIONS:

Internal discussions will be used to develop meeting materials.

Meeting agendas, presentations, and meeting summaries will be provided three weeks after each meeting.

Draft or Final reports will be submitted in electronic form along with the meeting materials.

DELIVERABLES:

Meeting agendas, presentations, and meeting summaries for each regulatory meeting.

Draft or Final reports for each technical analysis performed.

SECTION 3. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE; SUB-GRANTEE GENERAL COMMITMENT

This Contract incorporates and includes as part of its terms and conditions the Grant Agreement between DWR and SAWPA, Agreement No. 4600011889, attached hereto as **Attachment "B"** (hereinafter the "Grant Agreement"), including Exhibit D thereto, "Standard Conditions."

In the event of any inconsistency between this Contract and the Grant Agreement, except as otherwise specifically provided, the inconsistency shall be resolved by giving precedence to the Grant Agreement.

The Sub-Grantee shall comply with all terms, provisions, conditions, and commitments of this Contract and the Grant Agreement. Such compliance shall include providing SAWPA with all deliverables, budget detail, reports and all other documents required by the Grant Agreement.

On behalf of and for the benefit of SAWPA, Sub-Grantee shall comply with all of the obligations and requirements of the Grant Agreement as if the Sub-Grantee were the "Grantee" under the terms of the Grant Agreement. Such compliance shall be to the fullest extent necessary and as may be required by SAWPA in order to enable SAWPA to comply with the Grant Agreement as "Grantee."

SECTION 4. SUB-GRANTEE ESTIMATED ELIGIBLE PROJECT COSTS; GRANT AMOUNT

The estimated reasonable cost of the Work is \$500,000. To support project development, subject to all of the terms, provisions, and conditions of this Contract, and subject to the availability of the grant funds, SAWPA shall disburse such grant funds in a sum not to exceed **five hundred thousand dollars** (\$500,000) for the Work defined in this Contract.

To be reimbursed, activity costs must meet eligibility requirements described in the Grant Agreement, Section 7, page 2, and must be Work performed by Sub-Grantee after **January 24, 2019**.

SECTION 5. DISBURSEMENT

Grant funds will be disbursed in accordance with the disbursement provisions of the Grant Agreement. Retention is stipulated in **Exhibit D** of the Grant Agreement. SAWPA's actual grant disbursements to the Sub-Grantee under this Contract shall not exceed payments received from DWR. If actual costs exceed the estimated reasonable cost of the Work, SAWPA shall have no obligation to provide grant funds for such exceedance.

SECTION 6. FISCAL MANAGEMENT SYSTEMS AND ACCOUNTING STANDARDS

The Sub-Grantee agrees that, at a minimum, its fiscal control and accounting procedures shall be sufficient to permit tracking of grant funds to a level of expenditure adequate to establish that such funds have not been used in violation of State law or this Contract. The Sub-Grantee shall maintain accounts in accordance with generally accepted government accounting standards and the conditions outlined in Exhibit D of the Grant Agreement.

SECTION 7. TERM

The Term of this Contract shall be from December 1, 2019 to December 31, 2020, unless sooner terminated pursuant to the provisions of this Contract or the Grant Agreement.

SECTION 8. ASSIGNMENT

Neither this Contract, nor any duties or obligations under this Contract shall be assigned by any Party without the prior written consent of the other Party.

Should an assignment or transfer occur, whenever SAWPA or the Sub-Grantee are named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in SAWPA and the Sub-Grantee, and all Contract and covenants required hereby to be performed by or on behalf of SAWPA and/or the Sub-Grantee shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

SECTION 9. COMPLIANCE WITH LAWS AND REGULATIONS

The Sub-Grantee agrees that it shall, at all times, comply with and require its contractors and subcontractors to comply with all applicable federal and state laws, rules, regulations and guidelines.

SECTION 10. ACKNOWLEDGEMENT OF CREDIT/SIGNAGE REQUIREMENTS

The Sub-Grantee shall comply with Exhibit D, Section D.2, of the Grant Agreement by including in any written materials made available to the public during project development an acknowledgment of support from SAWPA and the State under the Water Quality, Supply and Infrastructure Improvement Act of 2014.

SECTION 11. WORK ACTIVITIES AND NOTIFICATION

The Sub-Grantee shall immediately notify SAWPA in writing of:

- (1) Any substantial change in the scope, budget, or Work to be performed under this Contract. The Sub-Grantee agrees that no substantial change in the scope of the Contract may be undertaken until written notice of the proposed change has been provided to SAWPA, and SAWPA has given written approval for such a change.
- (2) Any public or media event publicizing the accomplishments and/or results of this Grant Agreement and provide the opportunity for attendance and participation. Sub-Grantee must notify SAWPA at least 20 calendar days prior to the event.
- (3) Unscheduled cessation of all Work per the Contract scope where such cessation of Work is expected to or does continue for a period of 30 calendar days or more.
- (4) Any circumstance, combination of circumstances, or condition which is expected to delay completion of the Work per this Contract for a period of 90 calendar days or more beyond the estimated date of completion previously provided to SAWPA.

SECTION 12. PAYMENT OF COSTS FOR THE WORK

The Sub-Grantee shall provide for and make payment for all Work costs promptly and in compliance with all applicable laws. All grant disbursements will be reimbursements.

SECTION 13. WITHHOLDING OF GRANT DISBURSEMENTS

SAWPA may withhold all or any portion of the grant funds provided for by this Contract in the event that:

- (1) The Sub-Grantee has violated, or threatens to violate, any term, provision, condition, or commitment of this Contract;
- (2) The Sub-Grantee fails to maintain reasonable progress toward completion of the scope of work for this Contract; or
- (3) DWR directs SAWPA to withhold any such grant funds.

SECTION 14. INVOICING

(A) Invoices shall be completed on a State-provided invoice form and shall meet the following format requirements:

- (1) Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.
- (2) Invoices must be itemized. 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 = the total amount claimed).

(B) Invoices also shall include the following information:

- (1) Costs incurred for Work performed per this Contract during the period identified in the particular invoice.
- (2) Appropriate receipts and documentation that show the total outlays for the Grant Amount.

SECTION 15. QUARTERLY PROGRESS REPORTS

Quarterly progress reports shall be completed using the templates provided by SAWPA. Quarterly progress reports shall provide a brief description of the Work performed, activities, milestones achieved, any accomplishments as well as any problems encountered in the performance of the Work. Each quarterly progress report shall be delivered to SAWPA within **ten (10) business days** after the close of the reporting period (Jul-Sep, Oct-Dec, Jan-Mar, Apr-Jun). The final quarterly progress report will be due January 22, 2020.

SECTION 16. RECORDS AND REPORTS

(A) Without limitation on the requirement that project accounts be maintained in accordance with generally accepted government accounting standards, the Sub-Grantee shall comply with the records and reporting requirements imposed by the Grant Agreement, and shall also:

- (1) Establish an official project file that documents all significant actions relative to the Work;
- (2) Establish separate accounts that adequately and accurately itemize and describe all funding or income received and expended on the Work, including but not limited to all grant funds received under this Contract;

- (3) Establish an accounting system that adequately and accurately itemizes and describes final total costs of the Work, including both direct and indirect costs; and
 - (4) Establish such accounts and maintain such records as may be necessary for the State, DWR and SAWPA to fulfill federal reporting requirements, including any and all reporting requirements under federal tax statutes or regulations.
- (B) The Sub-Grantee shall require all contractors and subcontractors for the Work to maintain books, records, and other material relative to the Work in accordance with generally accepted accounting standards, and to require that such contractors and subcontractors retain such books, records, and other material for a minimum of ten (10) years after completion of the Work. The Sub-Grantee shall require that such books, records, and other material shall be subject, at all reasonable times, to inspection, copying, and audit by SAWPA, DWR or its authorized representatives.
 - (C) All documents required or requested to be provided to SAWPA shall be submitted electronically in both the native format (e.g. Microsoft Word, Microsoft Excel, etc) and PDF. All documents shall be public domain or the property of SAWPA once submitted.
 - (D) The Sub-Grantee agrees to expeditiously provide, during the Work and for three years after completion, such reports, data, information and certifications as may be reasonably required by SAWPA or DWR. Such documents and information shall be provided in electronic format.

SECTION 17. REVIEW AND EVALUATION; FINAL REPORTS AND AUDIT

- (A) SAWPA may perform a review or otherwise evaluate the Work to determine compliance with the Contract at any time or if questions about the proper use or management of the funds arise. SAWPA may review or evaluate Sub-Grantee's contractor or vendor for compliance with the terms and conditions of the Contract. The review and evaluation may be performed by SAWPA or may be contracted to a responsible third party. Any findings and recommendations of the review and evaluation shall be addressed by the Sub-Grantee within **sixty (60) calendar days** of the date such findings and recommendations are provided to the Sub-Grantee and before the next invoice is paid by SAWPA.
- (B) At least **fifteen (15) calendar days** prior to submission of the final invoice for the Work, Sub-Grantee shall provide SAWPA the Disposition of Equipment per **Exhibit D** of the Grant Agreement.
- (C) In addition to the documents and deliverables required to be provided by the Grant Agreement, with the final quarterly progress report Sub-Grantee will provide a Work Completion Report containing at minimum, the applicable information listed in the Grant Agreement Section 15(b), page 6.

The final Work Completion Report shall be accompanied by such other financial information as may be required by SAWPA or DWR to verify Sub-Grantee entitlement to grant funds, to assure program integrity, and to comply with any federal or state requirements. A duly authorized representative of the Sub-Grantee shall certify the Work Completion Report as correct.

- (D) SAWPA may call for an audit of financial information relative to the Work, where SAWPA determines that an audit is desirable to assure program integrity or where such an audit becomes necessary because of federal or state requirements. Where such an audit is called for, the audit

shall be performed by a Certified Public Accountant independent of the Sub-Grantee and at the cost of the Sub-Grantee. The audit shall be in the form required by SAWPA.

SECTION 18. CLOSEOUT DOCUMENTATION

To ensure that that the Work is closed out in a manner that provides an auditable file for SAWPA, Sub-Grantee shall follow a close-out procedure that includes payment of all contracts, subcontracts, or obligations, and any other requirements for the completion of the scope of work. Such close-out procedures shall include those procedures contained in the Grant Agreement or otherwise required by SAWPA and DWR.

SECTION 19. TERMINATION; IMMEDIATE REPAYMENT; INTEREST

- (A) If SAWPA determines the Sub-Grantee is not implementing in accordance with the provisions of this Agreement or the Grant Agreement, or that the Sub-Grantee has failed in any other respect to comply with the provisions of this Agreement or the Grant Agreement, and if the Sub-Grantee does not remedy any such failure to SAWPA's satisfaction within ten (10) days following notification of the determination, SAWPA may withhold from the Sub-Grantee all or any portion of the grant funding and take any other action that it deems necessary to protect its interests. Where a portion of the grant funding has been disbursed to the Sub-Grantee for Work that has not yet yielded a required deliverable, the portion that has been disbursed for that activity shall thereafter be repaid immediately with interest from the date of disbursement at the California general obligation bond interest rate at the time SAWPA notifies the Sub-Grantee, as directed by SAWPA.
- (B) SAWPA may terminate this Contract should DWR terminate SAWPA as program manager, or terminate funding for this Contract or the Project or should DWR terminate its standard agreement with SAWPA on this Project. Upon such DWR-caused termination, SAWPA shall not be liable to Sub-Grantee for any damages, costs or expenses resulting from such termination.

SECTION 20. DAMAGES FOR BREACH AFFECTING TAX EXEMPT STATUS

In the event that any breach of any of the provisions of this Contract or other action by the Sub-Grantee shall result in the loss of tax exempt status for any bonds, or if such breach shall result in an obligation on the part of the SAWPA to reimburse the federal government by reason of any arbitrage profits, the Sub-Grantee shall immediately reimburse SAWPA and/or DWR in an amount equal to any damages paid by or loss incurred by the State due to such breach.

SECTION 21. APPLICABLE LAW

All disputes may first be submitted to non-binding mediation. The validity and interpretation of this Agreement and legal relations of the parties to it shall be governed by the laws of the State of California, applicable to the agreements entered into, and to be fully performed in, the State of California, without regard to its conflicts of the laws provisions.

SECTION 22. COSTS AND ATTORNEY FEES

In the event of arbitration or litigation between the parties hereto arising from this Contract, it is agreed that the prevailing party shall be entitled to recover reasonable costs and attorney fees.

SECTION 23. WAIVER

Any waiver of any rights or obligations under this Contract or the Grant Agreement shall be in writing and signed by the Party making such waiver, and approved by SAWPA and the DWR.

SECTION 24. AMENDMENT

This Agreement may be amended at any time by mutual written agreement of the Parties.

SECTION 25. INDEMNIFICATION

- (A) Sub-Grantee shall defend, indemnify, and hold harmless SAWPA, DWR, and their respective directors, commissioners, officers, employees, agents, and assigns (collectively "the Indemnified Parties") from and against any and all liability, loss, expense, attorneys' fees, or claims for injury or damages arising out of the performance of this Agreement except for such liabilities resulting from the sole and exclusive active negligence or willful misconduct of the Indemnified Parties.
- (B) Per Section D.23 of Exhibit D of the Grant Agreement, to the extent Sub-Grantee relies on insurance coverage for, or requires its contractors or consultants to carry insurance for, the Work, Sub-Grantee will require that SAWPA and the State be named as additional insureds on the applicable liability policies for activities funded in whole or in part per this Contract.

SECTION 26. OPINIONS AND DETERMINATIONS

Where the terms of this contract provide for action to be based upon the opinion, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary and capricious.

IN WITNESS THEREOF, the parties have executed this Contract on the later date set forth below.

SANTA ANA WATERSHED PROJECT AUTHORITY

Dated: 11/19/19 By: [Signature]
Richard E. Haller, P.E., General Manager

**BIG BEAR AREA REGIONAL WASTEWATER
AGENCY
Sub-Grantee**

Dated: _____ By: _____

(Typed or Printed Name/Title)

REPLENISH BIG BEAR DCI WORK PLAN

The Big Bear Area Regional Wastewater Agency (BBARWA) along with project partners (Big Bear City Community Services District, Big Bear Lake Department of Water and Power, and Big Bear Municipal Water District) are advancing a recycled water project in Big Bear Valley, CA. This project is referred to as Replenish Big Bear and includes planning, design, and construction of advanced treatment facility upgrades at the BBARWA wastewater treatment plant, more than 7 miles of pipeline for product water and brine, three pump stations, a groundwater recharge facility, and monitoring wells.

Replenish Big Bear provides resiliency to potable water supplies, vulnerable habitats, and recreation activities that support a community that is considered 100% a Disadvantaged or Severely Disadvantaged Community (DAC/SDAC). The Replenish Big Bear's One Water approach will revitalize and renew the Big Bear Valley environment, community, and habitat as well as aid in restoring the function of this critical headwater of the Santa Ana River.

The regulatory effort for Replenish Big Bear is complex due to the number of discharge points, stringent regulations applicable to discharge locations, and uniqueness of the project. The project includes a new discharge to Big Bear Lake, which is subject to a nutrient Total Maximum Daily Load (TMDL) and has stringent water quality objectives. The permitting process for Replenish Big Bear is particularly complex and has been the focus of the Project to date because it is on the critical path.

BBARWA is seeking funds from the Disadvantaged Community Involvement (DCI) Technical Assistance Project to cover the costs incurred from January 24, 2019, to December 31, 2020, to advance the permitting process.

Task 4: Permitting

DESCRIPTION: This task involves coordinating with regulatory agencies, such as the State Water Resource Control Board Division of Drinking Water (DDW), California Department of Fish and Wildlife (CDFW), United States Fish and Wildlife (USFW), United States Environmental Protection Agency (USEPA) and the Santa Ana and Colorado Regional Water Quality Control Boards (Regional Boards) to obtain the necessary permits to implement Replenish Big Bear. Under this task, the Project Team will:

- Plan and facilitate internal meetings to discuss regulatory strategies and identify next steps to guide discussions with regulatory agencies
- Coordinate, prepare for and attend meetings with regulators to discuss and establish the regulatory process
- Develop technical analyses (e.g., studies, technical memorandums, response letters) in response to regulator feedback to support the permitting process

The priority permits that require coordination and work between January 24, 2019, and December 31, 2020, are shown in **Table 1**. In general, technical analyses will be developed as feedback is obtained from regulators.

ASSUMPTIONS:

- Internal discussions will be used to develop meeting materials.
- Meeting agendas, presentations, and meeting summaries will be provided three weeks after each meeting.
- Draft or Final reports will be submitted in electronic form along with the meeting materials.

DELIVERABLES:

- Draft or Final reports for each technical analysis performed.

Budget

The budget is based on the regulatory effort needed to obtain the NPDES permit for the Big Bear Lake Discharge.

Task No.	Task Description	Total Phase 1/Phase 2 Budget	Spent Since February 1, 2019	Remaining Budget to be spent by December 31, 2020
4	Permitting	\$ 710,000	\$ 190,510	\$ 434,281

Schedule

These permits will be obtained before the new treatment facility goes online.

Table 1: List of Priority Permits

No.	Type of Permit	Permitting Agency	Date Anticipated	Status
1.	NPDES (discharge to Stanfield Marsh/Big Bear Lake)	Santa Ana Regional Water Quality Control Board/DDW/EPA	6/30/2021	The Project Team initiated the regulatory process on January 11, 2019 and has conducted 6 regulatory meetings to date. Future meetings will be conducted approximately quarterly throughout the permitting process to maintain open communication and keep the process on track.
2.	Waste Discharge Requirement (modification for changes in operation to the current Lucerne Valley discharge location)	Colorado River Basin Regional Board	9/30/2022	The Project Team will initiate a meeting with the Colorado Board in Spring 2020. Meetings will be scheduled as needed.

Attachment "B"

**GRANT AGREEMENT BETWEEN THE STATE OF CALIFORNIA
(DEPARTMENT OF WATER RESOURCES) AND
SANTA ANA WATERSHED PROJECT AUTHORITY
AGREEMENT NUMBER 4600011889
2016 PROPOSITION 1 INTEGRATED REGIONAL WATER MANAGEMENT (IRWM) DISADVANTAGED
COMMUNITY INVOLVEMENT GRANT
CALIFORNIA WATER CODE § 79740 ET SEQ.**

THIS GRANT AGREEMENT is entered into by and between the Department of Water Resources of the State of California, herein referred to as the "State" or "DWR" and Santa Ana Watershed Project Authority, a public agency, in the Counties of Los Angeles, Orange, Riverside, and San Bernardino in the State of California, duly organized, existing, and acting pursuant to the laws thereof, herein referred to as the "Grantee", which parties do hereby agree as follows:

1. PURPOSE. State shall provide funding from the Water Quality, Supply and Infrastructure Improvement Act of 2014 (Proposition 1) to Grantee to assist in financing project associated with the Santa Ana pursuant to Chapter 7 (commencing with §79740) of Division 26.7 of the California Water Code, hereinafter collectively referred to as "IRWM Program." A "project" is defined as a group of activities as set forth in Exhibit A (Work Plan).
2. TERM OF GRANT AGREEMENT. The term of this Grant Agreement begins on the date this Grant Agreement is executed by State, and terminates on April 30, 2020, or when all of the Parties' obligations under this Grant Agreement are fully satisfied, whichever occurs earlier. Execution date is the date the State signs this Grant Agreement.
3. GRANT AMOUNT. The maximum amount payable by the State under this Grant Agreement shall not exceed \$6,300,000.
4. GRANTEE'S RESPONSIBILITY. Grantee and its representatives shall:
 - a) Faithfully and expeditiously perform or cause to be performed all project work as described in Exhibit A (Work Plan) and in accordance with Exhibit B (Budget) and Exhibit C (Schedule).
 - b) Accept and agree to comply with all terms, provisions, conditions, and written commitments of this Grant Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by Grantee in the application, documents, amendments, and communications filed in support of its request for Water Quality, Supply and Infrastructure Improvement, Act of 2014 financing.
 - c) Comply with all applicable California laws and regulations.
 - d) Implement the project in accordance with applicable provisions of the law.
 - e) Fulfill its obligations under the Grant Agreement, and be responsible for the performance of the project.
5. BASIC CONDITIONS. State shall have no obligation to disburse money for project under this Grant Agreement until Grantee has satisfied the following conditions (if applicable):
 - a) Grantee must demonstrate the groundwater compliance options set forth on pages 11 and 12 of the IRWM Program Guidelines, dated July 2016 are met.
 - b) Grantee submits deliverables as specified in Paragraph 15 of this Grant Agreement and in Exhibit A.
 - c) Prior to the commencement of construction or implementation activities, Grantee shall submit the following to the State for each project:
 - 1) Final plans and specifications certified by a California Registered Professional (Civil Engineer or Geologist, as appropriate) for the approved project as listed in Exhibit A of this Grant Agreement.

2) Environmental Documentation:

- i) Grantee submits to the State all applicable environmental permits,
- ii) Documents that satisfy the CEQA process are received by the State,
- iii) State has completed its CEQA compliance review as a Responsible Agency, and
- iv) Grantee receives written concurrence from the State of Lead Agency's CEQA documents and State notice of verification of environmental permit submittal.

State's concurrence of Lead Agency's CEQA documents is fully discretionary and shall constitute a condition precedent to any work (i.e., construction or implementation activities) for which it is required. Once CEQA documentation has been completed, State will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation. Grantee must also demonstrate that it has complied with all applicable requirements of the National Environmental Policy Act by submitting copies of any environmental documents, including environmental impact statements, Finding of No Significant Impact, and mitigation monitoring programs as may be required prior to beginning construction/implementation.

6. DISBURSEMENT OF FUNDS. State will disburse to Grantee the amount approved, subject to the availability of funds through normal State processes. Notwithstanding any other provision of this Grant Agreement, no disbursement shall be required at any time or in any manner which is in violation of, or in conflict with, federal or state laws, rules, or regulations, or which may require any rebates to the federal government, or any loss of tax-free status on state bonds, pursuant to any federal statute or regulation.
7. ELIGIBLE PROJECT COST. Grantee shall apply State funds only to Eligible Project Costs in accordance with applicable provisions of the law. Work performed on the project after January 22, 2016, shall be eligible for reimbursement.

Costs that are not eligible for reimbursement include, but are not limited to the following items:

- a) Operation and maintenance costs, Purchase of equipment that is not an integral part of a project.
- b) Establishing a reserve fund.
- c) Purchase of water supply.
- d) Replacement of existing funding sources for ongoing programs.
- e) Support of existing agency requirements and mandates (e.g., punitive regulatory agency requirement).
- f) 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.
- g) Payment of principal or interest of existing indebtedness or any interest payments unless the debt is incurred after execution of this Grant Agreement, the State 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. However, this will only be allowed as Grantee Cost Share (i.e., Funding Match).
- h) Payment of stipends
- i) Application preparation costs for other funding opportunities not consistent with IRWM.
- j) Meals not directly related to travel.
- k) Acquisition of real property (land or easements).

l) Overhead not directly related to the project.

8. METHOD OF PAYMENT.

- a) Reimbursement – Submit a copy of invoice for costs incurred and supporting documentation to the DWR Project Manager via Grant Review and Tracking System (GRanTS). Additionally, the original invoice form with signature and date (in ink) of Grantee's Project Representative, as indicated on page 8 of this Grant Agreement, must be sent to the DWR Project Manager for approval. Invoices submitted via GRanTS shall include the following information:
- 1) Costs incurred for work performed during the period identified in the particular invoice.
 - 2) Invoices shall be submitted on forms provided by State and shall meet the following format requirements:
 - i) Invoices must contain the date of the invoice, the time period covered by the invoice, and the total amount due.
 - ii) Invoices must be itemized based on the categories (i.e., tasks) specified in Exhibit B. 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 = the total amount claimed).
 - iii) Sufficient evidence (e.g., receipts, copies of checks, time sheets) as determined by the State must be provided for all costs included in the invoice.
 - iv) DWR Project Manager will notify Grantee, in a timely manner, when, upon review of an invoice, the State determines that any portion or portions of the costs claimed are not eligible costs or are not supported by documentation or receipts acceptable to State. Grantee may, within thirty (30) calendar days of the date of receipt of such notice, submit additional documentation to State to cure such deficiency(ies). After the disbursement requirements in Paragraph 5 "Basic Conditions" are met, State will disburse the whole or portions of State funding to Grantee, following receipt from Grantee via U.S. mail or Express mail delivery of a "wet signature" invoice for costs incurred, and timely Quarterly Progress Reports as required by Paragraph 15 "Submission of Reports." Payment will be made no more frequently than monthly, in arrears, upon receipt of an invoice bearing the Grant Agreement number.

9. WITHHOLDING OF DISBURSEMENTS BY STATE. If State determines that a project is not being implemented in accordance with the provisions of this Grant Agreement, or that Grantee has failed in any other respect to comply with the provisions of this Grant Agreement, and if Grantee does not remedy any such failure to State's satisfaction, State may withhold from Grantee all or any portion of the State funding and take any other action that it deems necessary to protect its interests. Where a portion of the State funding has been disbursed to the Grantee and State notifies Grantee of its decision not to release funds that have been withheld pursuant to Paragraph 10, the portion that has been disbursed shall thereafter be repaid immediately with interest at the California general obligation bond interest rate at the time the State notifies the Grantee, as directed by State. State may consider Grantee's refusal to repay the requested disbursed amount a contract breach subject to the default provisions in Paragraph 10, "Default Provisions." If State notifies Grantee of its decision to withhold the entire funding amount from Grantee pursuant to this paragraph, this Grant Agreement shall terminate upon receipt of such notice by Grantee and the State shall no longer be required to provide funds under this Grant Agreement and the Grant Agreement shall no longer be binding on either party.

10. DEFAULT PROVISIONS. Grantee and any Local Project Sponsor receiving grant funding through this Grant Agreement will be in default under this Grant Agreement if any of the following occur:

- a) Substantial breaches of this Grant Agreement, or any supplement or amendment to it, or any other agreement between Grantee and State evidencing or securing Grantee's obligations.
- b) Making any false warranty, representation, or statement with respect to this Grant Agreement or the application filed to obtain this Grant Agreement.
- c) Failure to operate or maintain project(s) in accordance with this Grant Agreement (Paragraph 16).
- d) Failure to make any remittance required by this Grant Agreement.
- e) Failure to comply with Labor Compliance Program requirements (Paragraph 14).
- f) Failure to submit timely progress reports.
- g) Failure to routinely invoice State.
- h) Failure to meet any of the requirements set forth in Paragraph 11, "Continuing Eligibility."

Should an event of default occur, State shall provide a notice of default to the Grantee and shall give Grantee at least ten (10) calendar days to cure the default from the date the notice is sent via first-class mail to the Grantee. If the Grantee fails to cure the default within the time prescribed by the State, State may do any of the following:

- 1) Declare the funding be immediately repaid, with interest, at the California general obligation bond interest rate at the time the State notifies the Grantee of the default.
- 2) Terminate any obligation to make future payments to Grantee.
- 3) Terminate the Grant Agreement.
- 4) Take any other action that it deems necessary to protect its interests.

In the event State finds it necessary to enforce this provision of this Grant Agreement in the manner provided by law, Grantee agrees to pay all costs incurred by State including, but not limited to, reasonable attorneys' fees, legal expenses, and costs.

11. CONTINUING ELIGIBILITY. Grantee must meet the following ongoing requirement(s) to remain eligible to receive State funds:

- a) An urban water supplier that receives grant funds governed by this Grant Agreement shall maintain compliance with the Urban Water Management Planning (UWMP) Act (Water Code §10610 et seq.) and Sustainable Water Use and Demand Reduction, Part 2.55 of Division 6 (Water Code §10608 et seq.) by doing the following:
 - 1) Have submitted their 2015 UWMP and had it deemed consistent by DWR. For more information, visit the following website:
<http://www.water.ca.gov/urbanwatermanagement>.
 - 2) By July 1, 2016, all urban water suppliers must have submitted documentation that demonstrates they are meeting the 2015 interim GPCD target. If not meeting the interim target, also include a schedule, financing plan, and budget for achieving the gallons per capita per day (GPCD) target, as required pursuant to Water Code §10608.24. Starting June 30, 2017, those urban water suppliers that did not meet their 2015 GPCD target must also submit, by June 30, annual reports that include a schedule, financing plan, and budget for achieving the GPCD target (Water Code §10608.24).
- b) An agricultural water supplier receiving grant funding must:

- 1) Comply with Sustainable Water Use and Demand Reduction requirements outlined in Part 2.55 (commencing with §10608) of Division 6 of the Water Code.
 - 2) Have their Agricultural Water Management Plan (AWMP) deemed consistent by DWR. For more information, visit the following website:
<http://www.water.ca.gov/wateruseefficiency/agricultural/agmgmt.cfm>.
 - c) Grantees diverting surface water must maintain compliance with diversion reporting requirements as outlined in Part 5.1 of Division 2 of the Water Code.
 - d) Grantee and Local Project Sponsors must demonstrate compliance with the groundwater compliance options set forth on pages 11 and 12 of the 2016 IRWM Program Guidelines, dated July 2016.
 - e) Grantee and Local Project Sponsors that have been designated as monitoring entities under the California Statewide Groundwater Elevation Monitoring (CASGEM) Program must maintain reporting compliance, as required by Water Code §10920 and the CASGEM Program.
12. PERMITS, LICENSES, APPROVALS, AND LEGAL OBLIGATIONS. Grantee shall be responsible for obtaining any and all permits, licenses, and approvals required for performing any work under this Grant Agreement, including those necessary to perform design, construction, or operation and maintenance of the Project. Grantee shall be responsible for observing and complying with any applicable federal, state, and local laws, rules or regulations affecting any such work, specifically those including, but not limited to, environmental, procurement, and safety laws, rules, regulations, and ordinances. Grantee shall provide copies of permits and approvals to State.
13. RELATIONSHIP OF PARTIES. Grantee is solely responsible for design, construction, and operation and maintenance of project within the work plan. Review or approval of plans, specifications, bid documents, or other construction documents by State is solely for the purpose of proper administration of funds by State and shall not be deemed to relieve or restrict responsibilities of Grantee under this Grant Agreement.
14. LABOR COMPLIANCE. The Grantee agrees to be bound by all the provisions of the Labor Code regarding prevailing wages and shall monitor all contracts subject to reimbursement from this Agreement to assure that the prevailing wage provisions of the Labor Code are being met. Current Department of Industrial Relations (DIR) requirements may be found at: <http://www.dir.ca.gov/lcp.asp>. For more information, please refer to DIR's Public Works Manual at: <http://www.dir.ca.gov/dlse/PWManualCombined.pdf>.
15. SUBMISSION OF REPORTS. The submittal and approval of all reports is a requirement for the successful completion of this Grant Agreement. Reports shall meet generally accepted professional standards for technical reporting and shall be proofread for content, numerical accuracy, spelling, and grammar prior to submittal to State. If requested, Grantee shall promptly provide any additional information deemed necessary by State for the approval of reports. Reports shall be presented in the formats described in the applicable portion of Exhibit F. The timely submittal of reports is a requirement for initial and continued disbursement of State funds. Submittal and subsequent approval by the State of a Final Report is a requirement for the release of any funds retained for such project.
- a) Progress Reports: Grantee shall submit progress reports quarterly to meet the State's requirement for disbursement of funds. The progress reports shall be sent via e-mail to the State's Project Manager and shall be uploaded into GRanTS. The progress reports shall provide a brief description of the work performed during the reporting period including: Grantee's

activities, milestones achieved, any accomplishments, and any problems encountered in the performance of the work under this Agreement.

- b) Final Report: Upon completion of the project included in Exhibit A, Grantee shall submit to State a Final Report. The Final Report shall be submitted within ninety (90) calendar days of completion of the project. The Final Report shall include a stakeholder summary; description of involvement activities and the projects developed from those activities; discussion of findings from the needs assessment, identification of ongoing barriers, and recommendations for future activities; and a list of references. Retention will not be disbursed until the Final Report is submitted to and approved by the State.
- c) Post-Performance Reports: Grantee shall submit Post-Performance Reports, if applicable. Post-Performance Reports shall be submitted to State within ninety (90) calendar days after the first operational year of a project has elapsed. This record keeping and reporting process shall be repeated annually for a total of 10 years after the completed project(s) begins operation.

16. OPERATION AND MAINTENANCE OF PROJECT. For the useful life of construction and implementation projects and in consideration of the funding made by State, Grantee agrees to ensure or cause to be performed the commencement and continued operation of the project, and shall ensure or cause the project to be operated in an efficient and economical manner; shall ensure all repairs, renewals, and replacements necessary to 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. The State shall not be liable for any cost of such maintenance, management, or operation. Grantee or their successors may, with the written approval of State, transfer this responsibility to use, manage, and maintain the property. For purposes of this Grant Agreement, "useful life" means period during which an asset, property, or activity is expected to be usable for the purpose it was acquired or implemented; "operation costs" include direct costs incurred for material and labor needed for operations, utilities, insurance, and similar expenses, and "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 Grantee to ensure operation and maintenance of the project in accordance with this provision may, at the option of State, be considered a breach of this Grant Agreement and may be treated as default under Paragraph 10, "Default Provisions."

17. STATEWIDE MONITORING REQUIREMENTS. Grantee 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 § 10780) of Division 6 of California Water Code) and, where applicable, that 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. See Exhibit H (Requirements for Statewide Monitoring and Data Submittal), for web links and information regarding other State monitoring and data reporting requirements.

18. NOTIFICATION OF STATE. Grantee shall promptly notify State, in writing, of the following items:

- a) Events or proposed changes that could affect the scope, budget, or work performed under this Grant Agreement. Grantee 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 State and State has given written approval for such change. Substantial changes generally include changes to the work plan, schedule or term, and budget.

- b) Any public or media event publicizing the accomplishments and/or results of this Grant Agreement and provide the opportunity for attendance and participation by State's representatives. Grantee shall make such notification at least 14 calendar days prior to the event.
- c) Final inspection of the completed work on a project by a California Registered Professional (Civil Engineer or Geologist, as appropriate), in accordance with Standard Condition D.19 in Exhibit D. Grantee shall notify the State's Project Manager of the inspection date at least 14 calendar days prior to the inspection in order to provide State the opportunity to participate in the inspection.

19. NOTICES. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Grant Agreement shall be in writing. Notices may be transmitted by any of the following means:

- a) By delivery in person.
- b) By certified U.S. mail, return receipt requested, postage prepaid.
- c) By "overnight" delivery service; provided that next-business-day delivery is requested by the sender.
- d) By electronic means.

Notices delivered in person will be deemed effective immediately on receipt (or refusal of delivery or receipt). Notices sent by certified mail will be deemed effective given ten (10) calendar days after the date deposited with the U. S. Postal Service. Notices sent by overnight delivery service will be deemed effective one business day after the date deposited with the delivery service. Notices sent electronically will be effective on the date of transmission, which is documented in writing. Notices shall be sent to the addresses set forth in Paragraph 21. Either party may, by written notice to the other, designate a different address that shall be substituted for the one below.

20. PERFORMANCE EVALUATION. Upon completion of this Grant Agreement, Grantee's performance will be evaluated by the State and a copy of the evaluation will be placed in the State file and a copy sent to the Grantee.

21. PROJECT REPRESENTATIVES. The Project Representatives during the term of this Grant Agreement are as follows:

Department of Water Resources
Arthur Hinojosa
Chief, Division of IRWM
P.O. Box 942836
Sacramento CA 94236-0001
Phone: (916) 653-4736
e-mail: Arthur.Hinojosa@water.ca.gov

Santa Ana Watershed Project Authority
Richard Haller
Executive Manager, Engineering & Operations
11615 Sterling Avenue
Riverside, CA 92503
Phone: (951) 354-4220
e-mail: rhaller@sawpa.org

Direct all inquiries to the Project Manager:

Department of Water Resources
Mehdi Mizani
Division of Integrated Regional Water
Management
901 P Street, Room 213-A
P.O. Box 942836
Sacramento, CA 94236-0001
Phone: (916) 651-9250
e-mail: Mehdi.Mizani@water.ca.gov

Santa Ana Watershed Project Authority
Mike Antos
Watershed Manager
11615 Sterling Avenue
Riverside, CA 92503
Phone: (951) 354-4238
e-mail: MAntos@sawpa.org

Either party may change its Project Representative or Project Manager upon written notice to the other party.

22. STANDARD PROVISIONS. The following Exhibits are attached and made a part of this Grant Agreement by this reference:

- Exhibit A – Work Plan
- Exhibit B – Budget
- Exhibit C – Schedule
- Exhibit D – Standard Conditions
- Exhibit E – Authorizing Resolution
- Exhibit F – Report Formats and Requirements
- Exhibit G – Requirements for Statewide Monitoring and Data Submittal
- Exhibit H – State Audit Document Requirements for Grantees

IN WITNESS WHEREOF, the parties hereto have executed this Grant Agreement.

STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES



Arthur Hinojosa, P.E., Chief
Division of Integrated Regional Water
Management

Date 6/22/17

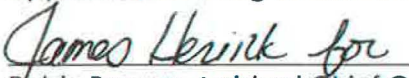
SANTA ANA PROJECT WATER AUTHORITY



Richard Haller
Executive Manager, Engineering & Operations

Date 6/5/17

Approved as to Legal Form and Sufficiency



Robin Brewer, Assistant Chief Counsel
Office of Chief Counsel

Date 6-21-17

EXHIBIT A WORK PLAN

The objective of this Agreement is to determine the strengths and needs of disadvantaged, economically distressed or underrepresented communities in the watershed through engagement and education, uncover and share the needs and capacities within the water agencies and communities, and assure integrated water management projects that are supported by communities are made ready for implementation and prioritized in the OWOW Plan Update 2018.

PROGRAM ELEMENT 1: Strengths & Needs Assessment

The combined activities of this program element will produce several outcomes. First, it will build upon earlier work, participants in the OWOW process and the OWOW Plan Update 2018 will achieve a better understanding of the water management needs of overburdened and underrepresented communities so that resources and funding can be more effectively directed to meet those needs. Second, this program element will acknowledge and document the strengths of overburdened and underrepresented communities so that as programs are developed to meet their needs the communities will have agency and be appropriately engaged in those efforts. Lastly, this program element will, through its assessment process, create new networks of familiarity between local elected or community leaders and water management leaders.

Activity 1 DCI Program Technical Advisory Committee (TAC)

The TAC will include a representative from each of the program partners and will recruit other members from disadvantaged communities in the watershed. The TAC will meet at least quarterly to advise the DCI Program efforts, and will assist with developing community connections.

Deliverables:

- Roster of TAC members
- Notice of Meetings

Activity 2 Disadvantaged and Tribal Communities Pillar

SAWPA will assist the Disadvantaged and Tribal Communities (DTC) Pillar workgroup to convene for workshops approximately five times per year, through at least the completion of the OWOW Plan Update 2018. The Pillar workgroup will develop the OWOW Plan Update 2018 chapter about overburdened and underrepresented communities.

Deliverables:

- Notice of Meetings
- Roster of DTC Pillar participants
- OWOW Plan Update 2018 Chapter

Activity 3 Engage Local Elected Leaders

The Local Government Commission will interview and/or survey local elected leaders who serve overburdened communities. Introduce leaders to IRWM and OWOW, and gather a baseline idea of the water management needs and civic strengths of the communities they serve.

Deliverables:

- Summary report that compiles survey/interview results from at least 20 elected leaders

Activity 4 Engage Mutual Water Companies

The California Rural Water Association will engage with mutual water companies throughout the watershed to learn about the strengths and needs of these organizations.

Deliverables:

- Report about each mutual water company water issues and needs
- Summary report of regional trends

Activity 5 Engage Water Agencies

SAWPA staff will engage with water agencies throughout the watershed to gather and summarize the understanding of strengths and needs of disadvantaged and underrepresented communities within their water service areas.

Deliverables:

- Summary report of responses

Activity 6 Community Listening Workshops

The California State University Disadvantaged Community Center (CSU DACC) will conduct or participate in at least nine community workshops throughout the watershed, to gather information related from community members about their understanding of the water-related strengths and needs of their community.

Deliverables:

- Workshop notices and materials
- Community input information in Community Water Ethnography of the Santa Ana River Watershed

Activity 7 Community Water Ethnography of the Santa Ana River Watershed

CSU DACC will lead the writing of the Community Water Ethnography of the Santa Ana River Watershed, a report about social, cultural and water-related strengths and needs of the overburdened and underrepresented communities in the watershed. This report will reveal all that was learned in the Strengths & Needs Assessment Program Element, and become the foundation for the Engagement & Education Program Element.

Deliverables:

- Community Water Ethnography of the Santa Ana River Watershed (Funding Area-wide Needs Assessment Report) to include: spatial description of "communities" (beyond Census Tracts), community water management provider roster (who serves each community), demographic data and trends, required data needs as described by "Needs Assessment Template" in the DACI Program Guidelines. This report will meet and exceed the grant requirements of a Final Assessment Report.

Activity 8 Homelessness & Water Convening

SAWPA staff and program partners will convene a one-day event to reveal synergies and develop new partnerships between those seeking to manage homelessness in the watershed and those engaged with water management.

Deliverables:

- Notice of meeting
- Pictures of event
- Summary Report of conclusions and next steps

PROGRAM ELEMENT 2: Engagement / Education

This program element contains activities that will accomplish multiple long-term outcomes for the region. It will provide community members a better understanding of water management and water managers enriched understanding of community strengths and needs. By facilitating engagement of students, and by hosting events that convene broad groups of stakeholders and community members, participation with the OWOW process will be strengthened. Lastly, by engaging and educating elected representatives from overburdened or underrepresented communities, this effort will create lasting relationships that ensure equitable representation in watershed decision making.

Activity 9 Tribal Consultation

SAWPA staff, Cal Rural Water Association (CRWA) staff and CSU DACC personnel will confer with the sovereign tribal communities within the Santa Ana Watershed and the adjacent areas not served by a Regional Water Management Group. Invitations to participate will be made to tribal groups not currently recognized by federal and state governments.

Deliverables:

- Sign-in sheets or similar documentation from consultation between OWOW/DCI Program and Tribal government representatives
- Tribal water management needs incorporated into OWOW Plan Update 2018

Activity 10 Value of Water / Tap Water Trust

This task will share the value and safety of tap water within the communities of the watershed. In the vast majority of the communities tap water is clean and affordable, yet many new immigrant communities, for many reasons, do not trust the tap water is safe to drink. There are negative economic and health outcomes from reliance on bottled water that for the Santa Ana watershed can be overcome with a respectful, multi-lingual and compassionate outreach campaign. SAWPA will expand existing information campaign programs or initiate new ones through an RFP process.

Deliverables:

- RFP and scoping documents
- Copies of Outreach campaign materials
- Roster of participating agencies
- Map of watershed regions where campaign is carried out

Activity 11 Translation Services

SAWPA will issue an RFQ for translation services to produce an on-call list of in-person meeting and written material translation consultants. SAWPA will issue an RFP for local entities to access the on-call consultants for translation services on activities related to community engagement for water management.

Deliverables:

- RFQ/RFP documents
- Copies of translated written material
- Notice and list of translated public events
- Pictures from translated public events

Activity 12 Engagement Best Practices Publications

The Water Education Foundation (WEF) will research and produce a printed publication that will take a broad look at the engagement of disadvantaged communities with water management, with case studies from around the state, including

the SAWPA region. This publication will be distributed throughout the State in support of stronger engagement between communities and integrated water resources management.

The Water Education Foundation will research and produce an online publication that will summarize some of the specific findings and outcomes from the region discovered through the work completed in the three-year grant period.

Deliverables:

- Engagement Best-Practices publication (printed)

Activity 13 State of the Santa Ana Watershed Conferences

The WEF, in partnership with SAWPA, will develop and execute two conferences. Both events will model previously successful OWOW conference events in the Santa Ana River Watershed, and will in-part focus on the water management needs of communities, and the transition to implementation phases, respectively. The DACI grant will support multiple cost-free registrations at each conference for community members or their trusted representatives. It will also support the cost of several exhibitor slots for nonprofits with community engagement missions so they can participate in the conversation. Other costs associated with the conferences will be separately funded.

Deliverables:

- Notice of conferences
- Copies of conference materials related to the DCI Program
- Roster of grant-supported registrants and exhibitors

Activity 14 Community Water Education

The CSU DACC will design and host nine community water education events, distributed appropriately to serve local communities throughout the watershed. These events will provide learning opportunities for community members on how to engage with the water management process in the watershed.

Deliverables:

- Notice of events
- Event pictures
- Copies of event specific materials

Activity 15 Water Agency Community Engagement Training

The CSU DACC will partner with SAWPA to provide up to nine trainings using the information garnered during the Strengths & Needs Assessment program element to water agencies staff in the watershed. The training will include engagement skills and specific knowledge about communities served by the participating water agencies.

Deliverables:

- Notice of events
- Roster of participating agencies
- Copies of event-specific materials

Activity 16 Local Elected Leader Training

The Local Government Commission will develop and execute up to nine trainings for local elected leaders and their staff in the watershed. These training sessions will relay the findings of the Strengths & Needs Assessment program element, basic information on water management topics, and best practices for helping the communities they serve interact with water planning.

Deliverables:

- Notice of training events
- Roster of participants
- Copies of event-specific materials

Activity 17 Community Engagement Interns Program

This program will support water-related overburdened community engagement internships for students from the CSU, UC and community college campuses of the watershed. The program, administered by the CSU DACC, will seek applications from public agencies and environmental or social justice nongovernmental organizations for the services of pairs of interns to assist with community engagement or public affairs work related to disadvantaged communities; approximately 20 interns per year.

The application process will include a detailed description from each applicant about the specific tasks they will assign to the interns. Each organization will request the services of two interns from CSU to assist with community engagement, public affairs or community education activities. Public affairs may include marketing of community programs and events. Community education activities may include preparing community members to participate effectively in water planning to the benefit of their communities.

The intern program will model an existing program and capacity of CSU, funded by the US Department of Agriculture. Interns will be selected from the CSU campuses (San Bernardino and Fullerton), the UC campuses (Riverside and Irvine), and the many community colleges in the Santa Ana River watershed. Efforts will be made to recruit interns who are themselves from the watershed overburdened communities.

Upon selection and completion of an intern orientation, the internship provides for 300 graduate student internship hours or 350 undergraduate student internship hours to support grant activities. Interns will be mentored by CivicSpark Water Fellows, and supervised in their internship duties by their home institution. The intern human resources, payroll and other administrative supervision are housed at the CSU. In addition to their paid hours, interns will each have a \$500 supply/travel budget.

Half-way through the internships, the intern will produce an interim activity report. Upon completion of the paid internship, the student will develop a final activity report. The final reports are posted on-line as a part of the CSU Library special collection. The cohort of interns will be mentored by CivicSpark Water Fellows, housed at SAWPA, for trainings and networking meetings, related to IRWM community engagement efforts.

This activity provides multiple types of capacity building in the watershed: by supporting students, supporting organizations, and by creating new sustainable and contiguous networks of familiarity between organizations, and between communities and the water organizations.

Deliverables:

- Copies of applications from selected agencies and NGOs that express interest in intern services to support community members
- Roster of participating interns
- Logs of all intern hours served and activities
- Interim and final reports of interns

PROGRAM ELEMENT 3: Project Development

This program element contains activities that, once complete, will provide important and needed changes to the IRWM Plan for the Santa Ana Funding Region, will support the next steps of existing IRWM projects that benefit overburdened communities, and daylight and develop new water project concepts that meet the stated needs of community members. These outcomes will represent a strengthened understanding by the RWMG of community needs, and ensure that future implementation/construction funding and activities are directed to meeting the needs identified by members of overburdened communities.

Activity 18 Technical Assistance for Community Needs

During engagement efforts the program team will learn of projects, plans and programs. Following evaluation of these projects, plans and programs, an appropriate set will receive Technical Assistance (TA) including but not limited to project engineering services, curriculum development, translation services, and program support. The evaluation of the projects, plans, and programs will follow a set of evaluation criteria to be developed by the DCI TAC. This effort may also link to the State Water Resources Control Board's Technical Assistance Program, via the CSU DACC and CRWA which are both statewide TA providers.

Deliverables:

- A ranked list of projects, plans, and programs uncovered during the engagement process
- Project ranking criteria
- List of projects, plans and programs selected by the TAC to receive technical assistance
- Documentation of technical assistance efforts
- Copies of any materials produced during technical assistance
- Documentation of referrals to other TA programs

Activity 19 OWOW Plan Update 2018

The Disadvantaged Community Involvement program information (or results) will be incorporated in the OWOW Plan. This will include an update to Subchapter 5.11 Disadvantaged and Tribal Communities of the OWOW Plan and a general update throughout in reference to disadvantaged community engagement best practices, maps, and other related materials. This will be a complementary effort to the actions funded the related Proposition 1 IRWM Planning Grant.

Deliverables:

- Draft OWOW Plan Update 2018
- Final OWOW Plan Update 2018

Activity 20 CivicSpark Water Fellows

SAWPA will host two CivicSpark Water Action Fellows each of the three years of the program. The Fellows will support program implementation at SAWPA, completing components of each of the Program Elements. Among their duties, the Fellows will support the CSU interns with in-service training, mentorship, coordination, and cohort-building.

Deliverables:

- Roster of CivicSpark Water Fellows
- Logs of volunteer activities
- Volunteer engagement plan
- Training agendas developed by Fellows

PROGRAM ELEMENT 4: Grant Administration

Activity 21 Agreement Administration

The Grantee will respond to DWR's reporting and compliance requirements associated with the grant administration and will coordinate with the project managers responsible for implementing the projects contained in this agreement.

Activity 22 Invoicing

The Grantee will be responsible for compiling invoices for submittal to DWR. This includes collecting invoice documentation from each of the project proponents and compiling the information into a DWR Invoice Packet.

Activity 23 Progress Reports and Final Report

The Grantee will be responsible for compiling progress reports and final report for submittal to DWR. Reports will meet generally accepted professional standards for technical reporting and the requirements terms of the contract with DWR outlined in Exhibit F of this agreement.

Deliverables:

- Executed Agreement
- Invoices and associated backup documentation
- Progress Reports
- Final Report

EXHIBIT B
BUDGET

Program Element	Grant Amount	Total
Program Element 1: Strengths & Needs Assessment	\$ 898,644	\$ 898,644
Program Element 2: Engagement / Education	\$ 1,853,068	\$ 1,853,068
Program Element 3: Project Development	\$ 3,233,288	\$ 3,233,288
Program Element 4: Grant Administration	\$ 315,000	\$ 315,000
Total	\$ 6,300,000	\$ 6,300,000

EXHIBIT C
SCHEDULE

Program Element	Start Date	End Date
Program Element 1: Strengths & Needs Assessment	January-2017	June-2018
Program Element 2: Engagement & Education	January-2017	December-2019
Program Element 3: Project Development	January-2017	October-2019
Program Element 4: Grant Administration	January-2017	December-2019

EXHIBIT D
STANDARD CONDITIONS

D.1) ACCOUNTING AND DEPOSIT OF FUNDING DISBURSEMENT:

- a) **Separate Accounting of Funding Disbursements and Records:** Grantee shall account for the money disbursed pursuant to this Grant Agreement separately from all other Grantee funds. Grantee shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. Grantee shall keep complete and accurate records of all receipts and disbursements of such funds. Grantee shall require its contractors or subcontractors 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 State at any and all reasonable times.
- b) **Fiscal Management Systems and Accounting Standards:** The Grantee agrees that, at a minimum, its 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 or this Grant Agreement.
- c) **Disposition of Money Disbursed:** All money disbursed pursuant to this Grant Agreement shall be deposited, administered, and accounted for pursuant to the provisions of applicable law and be placed in a non-interest bearing account.
- d) **Remittance of Unexpended Funds:** Grantee shall remit to State any unexpended funds that were disbursed to Grantee under this Grant Agreement and were not used to pay Eligible Project Costs within a period of sixty (60) calendar days from the final disbursement from State to Grantee of funds or, within thirty (30) calendar days of the expiration of the Grant Agreement, whichever comes first.

D.2) ACKNOWLEDGEMENT OF CREDIT: Grantee shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the Project or using any data and/or information developed under this Grant Agreement. During construction of the project, Grantee shall install a sign at a prominent location, which shall include a statement that the project is financed under Water Quality, Supply and Infrastructure Improvement Act of 2014, administered by State of California, Department of Water Resources. Grantee shall notify State that the sign has been erected by providing them with a site map with the sign location noted and a photograph of the sign.

D.3) AIR OR WATER POLLUTION VIOLATION: Under State laws, the Grantee shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to §13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

D.4) AMENDMENT: This Grant Agreement may be amended at any time by mutual agreement of the Parties, except insofar as any proposed amendments are in any way contrary to applicable law. Requests by the Grantee for amendments must be in writing stating the amendment request and the reason for the request. State shall have no obligation to agree to an amendment.

- D.5) AMERICANS WITH DISABILITIES ACT:** By signing this Grant Agreement, Grantee assures State that it complies with 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.
- D.6) APPROVAL:** This Agreement is of no force or effect until signed by all parties to the agreement. Grantee may not submit invoices or receive payment until all required signatures have been obtained.
- D.7) AUDITS:** State reserves the right to conduct an audit at any time between the execution of this Grant Agreement and the completion of Project, with the costs of such audit borne by State. After completion of the Project, State may require Grantee to conduct a final audit to State's specifications, at Grantee's expense, such audit to be conducted by and a report prepared by an independent Certified Public Accountant. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Grant Agreement, and State may elect to pursue any remedies provided in Paragraph 10 or take any other action it deems necessary to protect its interests.

Pursuant to Government Code §8546.7, the Grantee shall be subject to the examination and audit by the State for a period of three years after final payment under this Grant Agreement with respect to all matters connected with this Grant Agreement, including but not limited to, the cost of administering this Grant Agreement. All records of Grantee or its contractor or subcontractors shall be preserved for this purpose for at least three (3) years after project completion or final billing, whichever comes later.

- D.8) BUDGET CONTINGENCY:** If the Budget Act of the current year covered under this Grant Agreement does not appropriate sufficient funds for the Proposition 1 Implementation Grant Program, this Grant Agreement shall be of no force and effect. This provision shall be construed as a condition precedent to the obligation of State to make any payments under this Grant Agreement. In this event, State shall have no liability to pay any funds whatsoever to Grantee or to furnish any other considerations under this Grant Agreement and Grantee shall not be obligated to perform any provisions of this Grant Agreement. Nothing in this Grant Agreement shall be construed to provide Grantee with a right of priority for payment over any other Grantee. If funding for any fiscal year after the current year covered by this Grant Agreement is reduced or deleted by the Budget Act, by Executive Order, or by order of the Department of Finance, State shall have the option to either cancel this Grant Agreement with no liability occurring to State, or offer a Grant Agreement amendment to Grantee to reflect the reduced amount.
- D.9) CALIFORNIA CONSERVATION CORPS:** As required in Water Code §79038(b), Grantee shall examine the feasibility of using the California Conservation Corps or community conservation corps to accomplish the habitat restoration, enhancement and protection activities listed in the Exhibit A, Work Plan, and shall use the services of one of these organizations whenever feasible.
- D.10) CEQA:** Activities funded under this Grant Agreement, regardless of funding source, must be in compliance with the California Environmental Quality Act (CEQA) (Public Resources Code §21000 et seq.). Information on CEQA may be found at the following links:

Environmental Information: <http://resources.ca.gov/ceqa/>

California State Clearinghouse Handbook:

https://www.opr.ca.gov/docs/SCH_Handbook_2012.pdf

- D.11) CHILD SUPPORT COMPLIANCE ACT:** For any Grant Agreement in excess of \$100,000, the Grantee acknowledges in accordance with Public Contract Code §7110, that:
- a) The Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with §5200) of Part 5 of Division 9 of the Family Code; and
 - b) The Grantee, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- D.12) CLAIMS DISPUTE:** Any claim that the Grantee may have regarding performance of this agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the State's Project Manager, within thirty (30) calendar days of the Grantee's knowledge of the claim. State and Grantee shall then attempt to negotiate a resolution of such claim and process an amendment to this Agreement to implement the terms of any such resolution.
- D.13) COMPETITIVE BIDDING AND PROCUREMENTS:** Grantee shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Grantee's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Grant Agreement.
- D.14) COMPUTER SOFTWARE:** Grantee certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Grant Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- D.15) CONFLICT OF INTEREST:** All participants are subject to State and Federal conflict of interest laws. Failure to comply with these laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent contract being declared void. Other legal action may also be taken. Applicable statutes include, but are not limited to, Government Code, §1090 and Public Contract Code, §10410 and §10411, for State conflict of interest requirements.
- a) **Current State Employees:** No State officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity, or enterprise is required as a condition of regular State employment. No State officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.
 - b) **Former State Employees:** For the two-year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency. For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve-month period prior to his or her leaving State service.

- c) Employees of the Grantee: Employees of the Grantee shall comply with all applicable provisions of law pertaining to conflicts of interest, including but not limited to any applicable conflict of interest provisions of the California Political Reform Act, Government Code §87100 *et seq.*
- d) Employees and Consultants to the Grantee: Individuals working on behalf of a Grantee may be required by the Department to file a Statement of Economic Interests (Fair Political Practices Commission Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.

- D.16) DELIVERY OF INFORMATION, REPORTS, AND DATA:** Grantee agrees to expeditiously provide throughout the term of this Grant Agreement, such reports, data, information, and certifications as may be reasonably required by State.
- D.17) DISPOSITION OF EQUIPMENT:** Grantee shall provide to State, not less than 30 calendar days prior to submission of the final invoice, an itemized inventory of equipment purchased with funds provided by State. The inventory shall include all items with a current estimated fair market value of more than \$5,000.00 per item. Within 60 calendar days of receipt of such inventory State shall provide Grantee with a list of the items on the inventory that State will take title to. All other items shall become the property of Grantee. State shall arrange for delivery from Grantee of items that it takes title to. Cost of transportation, if any, shall be borne by State.
- D.18) DRUG-FREE WORKPLACE CERTIFICATION:** Certification of Compliance: By signing this Grant Agreement, Grantee, its contractors or subcontractors hereby certify, under penalty of perjury under the laws of State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code §8350 *et seq.*) and have or will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees, contractors, and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors, or subcontractors for violations, as required by Government Code §8355(a)(1).
 - b) Establish a Drug-Free Awareness Program, as required by Government Code §8355(a)(2) to inform employees, contractors, or subcontractors about all of the following:
 - i) The dangers of drug abuse in the workplace,
 - ii) Grantee's policy of maintaining a drug-free workplace,
 - iii) Any available counseling, rehabilitation, and employee assistance programs, and
 - iv) Penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.
 - c) Provide, as required by Government Code §8355(a)(3), that every employee, contractor, and/or subcontractor who works under this Grant Agreement:
 - i) Will receive a copy of Grantee's drug-free policy statement, and
 - ii) Will agree to abide by terms of Grantee's condition of employment, contract or subcontract.
- D.19) FINAL INSPECTIONS AND CERTIFICATION OF REGISTERED PROFESSIONAL:** Upon completion of the Project, Grantee shall provide for a final inspection and certification by the appropriate registered professional (California Registered Civil Engineer or Geologist) that the Project has

been completed in accordance with submitted final plans and specifications and any modifications thereto and in accordance with this Grant Agreement. Grantee shall notify the State's Project Manager of the inspection date at least 14 calendar days prior to the inspection in order to provide State the opportunity to participate in the inspection.

- D.20) GRANTEE COMMITMENTS:** Grantee accepts and agrees to comply with all terms, provisions, conditions and commitments of this Grant Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations, and statements made by the Grantee in the application, documents, amendments, and communications filed in support of its request for funding.
- D.21) GRANTEE NAME CHANGE:** Approval of the State's Program Manager is required to change the Grantee's name as listed on this Grant Agreement. Upon receipt of legal documentation of the name change the State will process an amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
- D.22) GOVERNING LAW:** This Grant Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
- D.23) INDEMNIFICATION:** Grantee shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including, but not limited to any claims or damages arising from planning, design, construction, maintenance and/or operation of levee rehabilitation measures for this Project and any breach of this Agreement. Grantee shall require its contractors or subcontractors to name the State, its officers, agents and employees as additional insured on their liability insurance for activities undertaken pursuant to this Agreement.
- D.24) INDEPENDENT CAPACITY:** Grantee, and the agents and employees of Grantees, in the performance of the Grant Agreement, shall act in an independent capacity and not as officers, employees, or agents of the State.
- D.25) INSPECTION OF BOOKS, RECORDS, AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Grant Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Grant Agreement. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Grant Agreement, and State may withhold disbursements to Grantee or take any other action it deems necessary to protect its interests.
- D.26) INSPECTIONS OF PROJECT BY STATE:** State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Grant Agreement. This right shall extend to any subcontracts, and Grantee shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Grant Agreement with State.
- D.27) INVOICE DISPUTES:** In the event of an invoice dispute, payment will not be made until the dispute is resolved and a corrected invoice submitted. Failure to use the address exactly as provided may result in return of the invoice to the Grantee. Payment shall be deemed complete upon deposit of the payment, properly addressed, postage prepaid, in the United States mail. Any claim that Grantee may have regarding the performance of this Grant Agreement including, but not limited to claims for additional compensation or extension of time, shall be submitted to the DWR Project Manager within thirty (30) calendar days of

Grantee's knowledge of the claim. State and Grantee shall then attempt to negotiate a resolution of such claim and process an amendment to the Grant Agreement to implement the terms of any such resolution.

D.28) NONDISCRIMINATION: During the performance of this Grant Agreement, Grantee and its contractors or subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medical and family care leave or pregnancy disability leave. Grantee and its contractors or subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and its contractors or subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code § 12990 (a-f) *et seq.*) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, § 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code § 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Grantee and its contractors or subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Grant Agreement.

- D.29) NO DISCRIMINATION AGAINST DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the Grantee certifies by signing this Grant Agreement, under penalty of perjury under the laws of State of California that Grantee is in compliance with Public Contract Code § 10295.3.
- D.30) OPINIONS AND DETERMINATIONS:** Where the terms of this Grant Agreement provide for action to be based upon, judgment, approval, review, or determination of either party hereto, such terms are not intended to be and shall never be construed as permitting such opinion, judgment, approval, review, or determination to be arbitrary, capricious, or unreasonable.
- D.31) PERFORMANCE AND ASSURANCES:** Grantee agrees to faithfully and expeditiously perform or cause to be performed all Project work as described in Exhibit A (Work Plan) and to apply State funds received only to Eligible Project Costs in accordance with applicable provisions of the law.
- D.32) PRIORITY HIRING CONSIDERATIONS:** If this Grant Agreement includes services in excess of \$200,000, the Grantee shall give priority consideration in filling vacancies in positions funded by the Grant Agreement to qualified recipients of aid under Welfare and Institutions Code § 11200 in accordance with Public Contract Code § 10353.
- D.33) PROHIBITION AGAINST DISPOSAL OF PROJECT WITHOUT STATE PERMISSION:** The Grantee shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, or with Grantee's service of water, without prior permission of State. Grantee shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of Grantee to meet its obligations under this Grant Agreement, without prior written permission of

State. State may require that the proceeds from the disposition of any real or personal property be remitted to State.

- D.34) REMEDIES NOT EXCLUSIVE:** The use by either party of any remedy specified herein for the enforcement of this Grant Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.
- D.35) RETENTION:** Notwithstanding any other provision of this Grant Agreement, State may, for each project, withhold five percent (5.0%) of the funds requested by Grantee for reimbursement of Eligible Costs. Each project in this Grant Agreement will be eligible to release its respective retention when that project is completed and Grantee has met requirements of Paragraph 15, "Submissions of Reports", except in the case of the last project to be completed under this Grant Agreement, in which case retention for such project will not be disbursed until the "Final Report" is submitted to and approved by State. State shall disburse retained funds to the Grantee.
- D.36) RIGHTS IN DATA:** Grantee 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 Grant Agreement shall be made available to the State and shall be in the public domain to the extent to which release of such materials is required under the California Public Records Act., Government Code §6250 *et seq.* Grantee may disclose, disseminate and use in whole or in part, any final form data and information received, collected and developed under this Grant Agreement, subject to appropriate acknowledgement of credit to State for financial support. Grantee shall not utilize the materials for any profit-making venture or sell or grant rights to a third party who intends to do so. The State shall have the right to use any data described in this paragraph for any public purpose.
- D.37) SEVERABILITY:** Should any portion of this Grant Agreement be determined to be void or unenforceable, such shall be severed from the whole and the Grant Agreement shall continue as modified.
- D.38) STATE REVIEWS:** The parties agree that review or approval of project applications, documents, permits, plans, and specifications or other project information by the State is for administrative purposes only and does not relieve the Grantee of their responsibility to properly plan, design, construct, operate, maintain, implement, or otherwise carry out the project.
- D.39) SUSPENSION OF PAYMENTS:** This Grant Agreement may be subject to suspension of payments or termination, or both, and Grantee may be subject to debarment if the State determines that:
- a) Grantee, its contractors, or subcontractors have made a false certification, or
 - b) Grantee, its contractors, or subcontractors violates the certification by failing to carry out the requirements noted in this Grant Agreement.
- D.40) SUCCESSORS AND ASSIGNS:** This Grant Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties. No assignment or transfer of this Grant Agreement or any part thereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by State and made subject to such reasonable terms and conditions as State may impose.
- D.41) TERMINATION BY GRANTEE:** Subject to State approval which may be reasonably withheld, Grantee may terminate this Agreement and be relieved of contractual obligations. In doing

so, Grantee must provide a reason(s) for termination. Grantee must submit all progress reports summarizing accomplishments up until termination date.

- D.42) TERMINATION FOR CAUSE:** Subject to the right to cure under Paragraph 9, the State may terminate this Grant Agreement and be relieved of any payments should Grantee fail to perform the requirements of this Grant Agreement at the time and in the manner herein, provided including but not limited to reasons of default under Paragraph 10.
- D.43) TERMINATION WITHOUT CAUSE:** The State may terminate this Grant Agreement without cause on 30 calendar days advance written notice. The Grantee shall be reimbursed for all reasonable expenses incurred up to the date of termination.
- D.44) THIRD PARTY BENEFICIARIES:** The parties to this Grant Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
- D.45) TIMELINESS:** Time is of the essence in this Grant Agreement.
- D.46) TRAVEL:** Travel includes the reasonable and necessary costs of transportation, subsistence, and other associated costs incurred by personnel during the term of this Agreement. Travel and per diem expenses to be reimbursed under this Agreement shall be at the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations and shall be reimbursed consistent with the rates current at the time of travel. These rates are published at: <http://www.calhr.ca.gov/employees/Pages/travel-meals.aspx>, or its successor website. For the purpose of computing such expenses, Grantee's designated headquarters shall be: 11615 Sterling Avenue, Riverside, CA 92503. No travel outside the Santa Ana Funding Area shall be reimbursed unless prior written authorization is obtained from the State's Project Manager.
- D.47) VENUE:** The State and the Grantee hereby agree that any action arising out of this Agreement shall be filed and maintained in the Superior Court in and for the County of Sacramento, California, or in the United States District Court in and for the Eastern District of California. The Grantee hereby waives any existing sovereign immunity for the purposes of this Agreement.
- D.48) WAIVER OF RIGHTS:** None of the provisions of this Grant Agreement shall be deemed waived unless expressly waived in writing. It is the intention of the parties here to that from time to time either party may waive any of its rights under this Grant Agreement unless contrary to law. Any waiver by either party of rights arising in connection with the Grant Agreement shall not be deemed to be a waiver with respect to any other rights or matters, and such provisions shall continue in full force and effect.
- D.49) WORKERS' COMPENSATION:** Grantee affirms that it is aware of the provisions of §3700 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and Grantee affirms that it will comply with such provisions before commencing the performance of the work under this Grant Agreement and will make its contractors and subcontractors aware of this provision.

EXHIBIT E
AUTHORIZING RESOLUTION

RESOLUTION NO. 2017.9

A RESOLUTION OF THE COMMISSIONERS OF THE SANTA ANA WATERSHED PROJECT AUTHORITY AUTHORIZING THE GENERAL MANAGER, OR DESIGNEE, TO EXECUTE A GRANT AGREEMENT AND SUB-AGREEMENTS FOR THE DISADVANTAGED COMMUNITY INVOLVMENT PROGRAM INTEGRATED REGIONAL WATER MANAGEMENT PLANNING GRANT WITH THE STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES

WHEREAS, the Santa Ana Watershed Project Authority is the accepted Regional Water Management Group within the Santa Ana Funding Area of the California Integrated Regional Water Management Program;

WHEREAS, the One Water One Watershed 2.0 Plan has a goal to accomplish effective, equitable and collaborative integrated water management, with the objective of engaging with disadvantaged communities to eliminate environmental injustices;

WHEREAS, the Disadvantaged Communities Involvement Program will 1) explore the strengths and needs of overburdened communities in the watershed, 2) will through engagement and education uncover and share the needs and capacities within water agencies and communities, and 3) will assure integrated water management projects that are supported by communities are made ready for implementation and prioritized in the OWOW Plan Update 2018;


NOW, THEREFORE, BE IT RESOLVED that the Commission of the Santa Ana Watershed Project Authority, pursuant to Section 22050 of the California Public Contract Code, hereby resolves that:

The General Manager, or Designee, is authorized to execute a grant agreement with the State of California, Department of Water Resources, and associated sub-agreements, to accept and conduct the work of a Disadvantaged Community Involvement Program Grant pursuant to the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Water Code Section 79700 *et seq.*)

ADOPTED THIS 16th day of May, 2017.

SANTA ANA WATERSHED PROJECT AUTHORITY

By


Susan Lien Longville, Chair

Attest:



Kelly Berry, CMC
Clerk of the Board

EXHIBIT F
REPORT FORMATS AND REQUIREMENTS

The following reporting formats should be utilized. Please obtain State approval prior to submitting a report in an alternative format.

PROGRESS REPORTS

Progress reports shall generally use the following format. This format may be modified as necessary to effectively communicate information. For each project, discuss the following at the task level, as organized in Exhibit A (Work Plan):

- Estimate of percent work complete.
- Milestones or deliverables completed during the reporting period.
- Discussion of work accomplished during the reporting period and submission of deliverables per Exhibit A.
- Scheduling concerns and issues encountered that may delay completion of the task.
- Work anticipated for the next reporting period.
- Updated schedule or budget inclusive of any changes that have occurred.

FINAL REPORT

The Final Report shall generally use the following format. This format may be modified as necessary to effectively communicate information on the various projects in the IRWM Program funded by this Grant Agreement, and includes the following:

Executive Summary

The Executive Summary consists of a maximum of twenty (20) pages summarizing information for the grant as well as the individual projects.

Stakeholder Summary

- General description of water management needs of DACs, Economically Distressed Areas (EDAs), and underrepresented communities at the Funding Area learned from the activities performed in this program
- General summary of DACs, EDAs, and underrepresented communities involved in IRWM efforts through this Program
- Map(s) identifying all DACs, EDAs, and underrepresented communities with IRWM regions learned from the activities performed in this program

Involvement Activity Summary

- General description of involvement activities performed in this Program, including both successful and unsuccessful involvement activities
- Identification of projects developed from the DAC involvement activities, if applicable

Findings

- Needs Assessment
 - Narrative summary of community characteristics identified and specific community water management needs and resources (technical, managerial, and financial) to address the needs of DACs, EDAs, and underrepresented communities
 - Needs Assessment template table filled in (at the community level)
- Identification of ongoing barriers for DAC involvement in IRWM efforts

- Recommendations for water managers on future DAC involvement activities in IRWM efforts

Looking into the Future

- Next steps for the IRWM regions to continue DAC involvement efforts

References

EXHIBIT G
REQUIREMENTS FOR STATEWIDE MONITORING AND DATA SUBMITTAL

Surface and Groundwater Quality Data

Groundwater quality and ambient surface water quality monitoring data that include chemical, physical, or biological data shall be submitted to the State as described below, with a narrative description of data submittal activities included in project reports, as described in Exhibit G.

Surface water quality monitoring data shall be prepared for submission to the California Environmental Data Exchange Network (CEDEN). The CEDEN data templates are available on the CEDEN website. Inclusion of additional data elements described on the data templates is desirable. Data ready for submission should be uploaded to your CEDEN Regional Data Center via the CEDEN website. CEDEN website: <http://www.ceden.org>.

If a project's Work Plan contains a groundwater ambient monitoring element, groundwater quality monitoring data shall be submitted to the State for inclusion in the State Water Resources Control Board's Groundwater Ambient Monitoring and Assessment (GAMA) Program. Information on the GAMA Program can be obtained at: http://www.waterboards.ca.gov/gama/geotracker_gama.shtml. If further information is required, the Grantee can contact the State Water Resources Control Board (SWRCB) GAMA Program.

Groundwater Level Data

Grantee shall submit to DWR groundwater level data collected as part of this grant. Water level data must be submitted using the California Statewide Groundwater Elevation Monitoring (CASGEM) online data submission system. Grantee should use their official CASGEM Monitoring Entity or Cooperating Agency status to gain access to the online submittal tool and submit data. If the data is from wells that are not part of the monitoring network, the water level measurements should be classified as voluntary measurements in the CASGEM system. If the grantee is not a Monitoring Entity or Cooperating Agency, please contact your DWR grant project manager for further assistance with data submittal. The activity of data submittal should be documented in appropriate progress or final project reports, as described in Exhibit G. Information regarding the CASGEM program can be found at <http://www.water.ca.gov/groundwater/casgem/>.

EXHIBIT H**STATE AUDIT DOCUMENT REQUIREMENTS GUIDELINES FOR GRANTEES****State Audit Document Requirements**

The list below details the documents/records that State Auditors typically reviewed in the event of a Grant Agreement being audited. Grantees should ensure that such records are maintained for each State funded Program/Project. Where applicable, this list of documents also includes documents relating to the Grantee's funding match which will be required for audit purposes.

Internal Controls:

1. Organization chart (e.g., Agency's overall organization chart and organization chart for this Grant Agreement's funded project.
2. Written internal procedures and flowcharts for the following:
 - a) Receipts and deposits
 - b) Disbursements
 - c) State reimbursement requests
 - d) State funding expenditure tracking
 - e) Guidelines, policy(ies), and procedures on State funded Program/Project
3. Audit reports of the Grantee's internal control structure and/or financial statements within the last two years.
4. Prior audit reports on State funded Program/Project.

State Funding:

1. Original Grant Agreement, any amendment(s) and budget modification documents.
2. A list of all bond-funded grants, loans or subventions received from the State.
3. A list of all other funding sources for each Program/Project.

Contracts:

1. All subcontractor and consultant contracts and related, if applicable.
2. Contracts between the Grantee, member agencies, and project partners as related to the State funded Program/Project.

Invoices:

1. Invoices from vendors and subcontractors for expenditures submitted to the State for payments under the Grant Agreement.
2. Documentation linking subcontractor invoices to State reimbursement requests and related Grant Agreement budget line items.
3. Reimbursement requests submitted to the State for the Grant Agreement.

Cash Documents:

1. Receipts (copies of warrants) showing payments received from the State.
2. Deposit slips or bank statements showing deposit of the payments received from the State.

3. Cancelled checks or disbursement documents showing payments made to vendors, subcontractors, consultants, and/or agents under the Grant Agreement.

Accounting Records:

1. Ledgers showing receipts and cash disbursement entries for State funding.
2. Ledgers showing receipts and cash disbursement entries of other funding sources.
3. Bridging documents that tie the general ledger to reimbursement requests submitted to the State for the Grant Agreement

Administration Costs:

1. Supporting documents showing the calculation of administration costs.

Personnel:

1. List of all contractors and Grantee staff that worked on the State funded Program/Project.
2. Payroll records including timesheets for contractor staff and the Grantee's

Project Files:

1. All supporting documentation maintained in the Program/Project files.
2. All Grant Agreement related correspondence.

Memorandum

Date: March 7, 2017

To: Arthur Hinojosa, Chief
Division of Integrated Regional Water ManagementTracie L. Billington, P.E. Chief *TB 3/7/17*
Financial Assistance BranchFrom: Division of Integrated Regional Water Management
~~Department of Water Resources~~

Subject: Approval of Disadvantaged Community (DAC) Involvement Grant Award for the Santa Ana Funding Area

This memorandum requests your approval to award \$6.3 million in Proposition 1 DAC Involvement grant funding to the Santa Ana Watershed Project Authority (SAWPA) for the Santa Ana Funding Area proposal titled *Disadvantaged Communities Involvement Program*.

Proposition 1, the Water Quality Supply, and Infrastructure Improvement Act of 2014, was passed by California voters on November 4, 2014, and authorized the Legislature to appropriate \$510 million for IRWM, of which not less than 10 percent (\$51 million) was allocated for the purposes of ensuring the involvement of DACs, economically distressed areas, and underrepresented communities (collectively referred to as DACs) in IRWM planning efforts.

On August 1, 2016, the Department of Water Resources (DWR) issued the final Proposition 1 IRWM Grant Program Guidelines (Guidelines) and DAC Involvement Request for Proposals (RFP). The Guidelines present the general processes that are used by DWR to administer the Grant Program. The RFP contains solicitation-specific information for awarding the \$51 million, including delegation of the grant approval authority from the Director to the Chief of the Division of IRWM. For this solicitation, DWR requires a single Funding Area-wide proposal from each of the 12 Proposition 1 Funding Areas. DWR is accepting proposals on an ongoing basis with the goal of awarding all DAC Involvement funds by summer 2017.

On November 10, 2016, DWR received the DAC Involvement proposal from SAWPA on the behalf of the Santa Ana Funding Area. DWR reviewed the proposal based on the criteria published in the RFP, and returned comments back to SAWPA on December 22, 2016. Comments included a request for the following information:

- 1) A letter of support for the proposal from the Santa Ana Regional Water Management Group
- 2) Additional detail and evidence of the known DAC water management needs
- 3) A discussion on the barriers encountered when attempting to involve DACs in past activities

Arthur Hinojosa, Chief
March 7, 2017
Page 2

- 4) Additional discussion regarding the criteria that will be developed, as part of the Technical Assistance for Community Needs task, to evaluate DAC projects, plans, and programs
- 5) Completion of a funding area wide final assessment report
- 6) Examples to demonstrate the team's ability to successfully and timely complete the proposed activities
- 7) A basis for the cost estimate of proposed activities

SAWPA revised the proposal and submitted an amended proposal to DWR on January 25, 2017, in which most of the information was provided. On February 9, 2017, DWR received a complete basis of cost estimate which completed the amended proposal. The revised proposal addresses DWR comments and therefore, staff recommend the award of grant funds. Attachment 1 presents a brief proposal summary and list of the activities that were included in the final proposal.

Following your approval of the award, DWR will send a commitment letter to the grant recipient formally notifying the proposal approval, the grant amount, and conditions that must be met prior to the execution of the grant agreement.

Listed below is the relevant fiscal information:

Grantee	Grant Amount	Fund	Fund Center	General Ledger No.
Santa Ana Watershed Project Authority	\$3,150,000	6083L92016	3860102906006900	9066170101
	\$3,150,000	6083L92017	3860102906008000	

APPROVED:



Arthur Hinojosa, P.E. Chief
Division of Integrated Regional Water Management

Date 3-7-17

Attachment 1: Proposal Summary

Attachment 1 Proposal Summary

Proposition 1 Disadvantaged Community Involvement Grant Program

Funding Area: Santa Ana **Applicant:** Santa Ana Watershed Project Authority (SAWPA)

Grant Amount: \$6.3 million **Proposal Title:** Disadvantaged Communities Involvement Program

Proposal Summary: By geographic area, 28 percent of the Santa Ana River watershed is considered as a Disadvantaged Community (DAC). The Santa Ana River watershed also includes a small area of sovereign tribal land (0.5 percent of the geographic area), some of which qualifies as a DAC. The SAWPA's One Water One Watershed (OWOW) planning efforts (i.e., their IRWM Plan) has identified general water management needs, as well as specific needs in some individual communities. DACs in the watershed cannot afford to invest in the infrastructure or maintenance necessary to meet or sustain their water needs; this is highlighted in the OWOW 2.0 Plan as the largest challenge. Other water management needs in the watershed include climate impacts on water supplies, legacy groundwater and local stormwater pollution, increased water demand through growth, and inadequate or limited understanding between water managers and community members.

The Santa Ana Funding Area DAC Involvement Proposal includes exploring the strengths and needs of DAC communities in the watershed, through engagement and education, uncover and share the needs and capacities within the water agencies and communities, and assure integrated water management projects that are supported by communities are made ready for implementation and prioritized in the OWOW Plan Update 2018.

Task Description	Amount Requested
Strengths & Needs Assessment	
<ul style="list-style-type: none"> • DACI Technical Advisory Committee (TAC): The TAC will include a representative from each of the program partners and the DAC and Tribal Pillar Chair, and will recruit other members from DACs in the watershed. This group will meet regularly to advise the DACI program efforts, and will assist developing community connections. 	\$143,202
<ul style="list-style-type: none"> • Disadvantaged Community/Tribal Pillar: SAWPA will assist the Pillar (one of the OWOW topic-based coordination efforts) to convene for workshops approximately five times per year. These workshops will provide opportunities to learn and consider relevant topics, including issues of homelessness. The Pillar, through conversation and deliberation, will develop the OWOW Plan Update 2018 chapter about DACs. 	\$56,893
<ul style="list-style-type: none"> • Engage Local Elected Leaders: The Local Government Commission (LGC) will lead efforts to interview and/or survey local elected leaders who serve DACs. 	\$73,035
<ul style="list-style-type: none"> • Engage Mutual Water Companies: The California Rural Water Association (CRWA) will engage with mutual water companies throughout the watershed to learn about the strengths and needs of these organizations. 	\$64,884
<ul style="list-style-type: none"> • Engage Water Agencies: SAWPA staff will engage with water agencies throughout the watershed to gather and summarize the understanding of strengths and needs of DACs within their water service areas. 	\$53,474
<ul style="list-style-type: none"> • Community Listening Workshops: The California State University Disadvantaged Community Center (CSU DACC) will conduct community workshops throughout the watershed, during which community members will share their understanding of the water-related strengths and needs of their community. 	\$96,843
<ul style="list-style-type: none"> • Community Water Ethnography of the Santa Ana River Watershed: CSU DACC will lead the writing of the Community Water Ethnography of the Santa Ana River Watershed, a report about social, cultural and water-related strengths and needs of the DACs in the watershed. 	\$230,603
<ul style="list-style-type: none"> • Homelessness & Water Convening: SAWPA staff and program partners will convene a one-day event to reveal synergies and develop new partnerships between those seeking to manage homelessness in the watershed and those engaged with water management. 	\$65,588
Engagement/Education	

Task Description	Amount Requested
<ul style="list-style-type: none"> • Tribal Consultation: Building upon past consultation efforts, the Disadvantaged Community/Tribal Pillar Chair, in partnership with SAWPA staff, CRWA and CSU DACC will confer with the sovereign tribal communities within the Santa Ana Watershed and the adjacent areas not served by a Regional Water Management Group. 	\$200,276
<ul style="list-style-type: none"> • Value of Water/Tap Water Trust: This activity will seek to share the value and safety of tap water within the communities of the watershed. There are negative economic and health outcomes from reliance on bottled water that for the Santa Ana watershed can be overcome with a respectful, multi-lingual, and compassionate outreach campaign. 	\$116,580
<ul style="list-style-type: none"> • Translation Services: SAWPA will contract for translation services to produce an on-call list of in-person meeting and written material translation consultants. 	\$171,833
<ul style="list-style-type: none"> • Engagement Best Practices Publications: The Water Education Foundation (WEF) will research and produce a printed publication that will take a broad look at the engagement of DACs with water management, with case studies from around the state, including the SAWPA region. 	\$118,617
<ul style="list-style-type: none"> • State of the Santa Ana Watershed Conferences: WEF, in partnership with SAWPA, will develop and host two conferences. Both events will in-part focus on the water management needs of communities, and the transition to implementation phases, respectively. The funding will support the DAC related aspects of the conferences. 	\$123,075
<ul style="list-style-type: none"> • Community Water Education: The CSU DACC will design and host nine DAC water education events, distributed appropriately to serve local DACs throughout the watershed. These events will provide learning opportunities for DAC members on how to engage with the water management process in the watershed. 	\$107,481
<ul style="list-style-type: none"> • Water Agency Community Engagement Training: Using information garnered during the Strengths & Needs Assessment, the CSU DACC will partner with SAWPA to provide nine DAC oriented trainings to water agencies staff in the watershed. This training will include engagement skills and specific knowledge about DACs served by the participating water agencies. 	\$156,204
<ul style="list-style-type: none"> • Local Elected Leader Training: LGC will develop and execute nine DAC oriented trainings for local elected leaders and their staff in the watershed. These training sessions will relay the findings of the Strengths & Needs Assessment program element, basic information on water management topics, and best practices for helping the DACs they serve, interact with water planning. 	\$233,035
<ul style="list-style-type: none"> • Community Engagement Interns Program: This program will support water-related DAC engagement internships for students from the CSU, University of California, and community college campuses of the watershed. The program, administered by the CSU DACC, will seek applications from public agencies and environmental or social justice non-governmental organizations for the services of interns to assist with community engagement or public affairs work related to DACs. 	\$644,091
Project Development	
<ul style="list-style-type: none"> • Technical Assistance (TA) for Community needs: During engagement efforts the program team will learn of projects, plans and programs. Following evaluation of these projects, plans and programs, an appropriate set will receive TA for project engineering services, curriculum development, translation services, and program support. The evaluation of the projects, plans, and programs will follow a set of evaluation criteria to be developed by the DACI TAC. This effort may also link to the State Water Resources Control Board's Technical Assistance Program, via the CSU DACC and CRWA which are both statewide TA providers. 	\$3,087,588
<ul style="list-style-type: none"> • OWOW Plan Update 2018: The DAC Involvement program information (or results) will be incorporated in the OWOW Plan. This will include an update to Subchapter 5.11 DAC/Tribal Communities and a general update throughout in reference to DAC engagement best practices, maps, and other related materials. This will be a complementary effort to the actions funded the related Proposition 1 IRWM Planning Grant. 	\$130,699

Task Description	Amount Requested
<ul style="list-style-type: none"> • CivicSpark Water Fellows: SAWPA will host two CivicSpark Water Action Fellows each of the three years of the program. The Fellows will support program implementation at SAWPA, completing components of each of the Program Elements. Among their duties, the Fellows will support the CSU interns with in-service training, mentorship, coordination, and cohort-building. 	\$111,000
Contract Administration	\$315,000
Total:	\$6,300,000

NOTICE OF EXEMPTION

<p>TO: Office of Planning and Research P. O. Box 3044 Sacramento, CA 95812-3044</p> <p>San Bernardino County Clerk of the Board of Supervisors 385 N. Arrowhead Ave. 2nd Floor San Bernardino, CA 92415-0130</p>	<p>FROM: Big Bear Area Regional Wastewater Agency P.O. Box 517 122 Palomino Drive Big Bear City, CA 92314</p>
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1. Activity Title:	2016 Proposition 1 Integrated Regional Water Management Disadvantaged Community Involvement Program Technical Assistance Sub-Grant Agreement Between The Santa Ana Watershed Project Authority And Big Bear Area Regional Wastewater Agency (“Sub-Grant Agreement”)
2. Applicant and Lead Agency:	Big Bear Area Regional Wastewater Agency (“BBARWA”)
3. Activity Location:	The Sub-Grant Agreement has no specific physical location. The agreement provides BBARWA with funding to cover costs BBARWA has incurred and will incur in connection with permitting for the Replenish Big Bear project, which is a recycled water project in Big Bear Valley, San Bernardino County, California.
4. Description of nature, purpose, and beneficiaries of Activity:	<p>On December 4, 2019, BBARWA approved the Sub-Grant Agreement between the Santa Ana Watershed Project Authority (“SAWPA”) and BBARWA.</p> <p>The Sub-Grant Agreement provides for the disbursement of certain funds by SAWPA to BBARWA. In particular, Section 79745 of the Water Code provides \$6.3 million to the Santa Ana River Watershed for the purposes of ensuring involvement of disadvantaged communities, economically distressed areas, or underrepresented communities within integrated regional water management efforts. In June 2017, the California Department of Water Resources (“DWR”) and SAWPA entered into a Proposition 1 Integrated Regional Water Management Program (“IRWMP”) Disadvantaged Communities Involvement (“DCI”) Program Grant Agreement (“Grant Agreement”) providing that SAWPA would serve as the program manager for the \$6,300,000 in IRWMP grant funds to be disbursed within the Santa Ana River Watershed for the DCI Program and ensuring that the maximum benefit of such funds are realized in the Santa Ana River Watershed. Consistent with the Grant Agreement, SAWPA sought to disburse to BBARWA a portion of the IRWMP grant funds through the Sub-Grant Agreement.</p> <p>The Sub-Grant Agreement does not commit BBARWA to any project and does not authorize any construction or development. Rather, the Sub-Grant Agreement merely seeks to provide BBARWA with a mechanism to fund certain permitting costs BBARWA has incurred and will incur in connection with a recycled water project in Big Bear Valley, known as “Replenish Big Bear.” In particular, the Sub-Grant Agreement provides funding for BBARWA’s costs relating to the permitting process (e.g.,</p>

	seeking National Pollutant Discharge Elimination System (“NPDES”) permits, coordinating with regulatory agencies, developing technical analyses in response to feedback from regulatory agencies, etc.) in connection with the Replenish Big Bear project. The Sub-Grant Agreement does not involve any approval of, or commitment to proceed with, the Replenish Big Bear Project.
5. Name of Public Agency approving Activity:	BBARWA and SAWPA are both signatories to the Sub-Grant Agreement. BBARWA approved the Sub-Grant Agreement on December 4, 2019.
6. Exempt status:	
<input checked="" type="checkbox"/> Not a project. State type and section number:	State CEQA Guidelines sections 15060, subd. (c)(3) & 15378, subd. (b)(4)
<input checked="" type="checkbox"/> Common sense exemption.	State CEQA Guidelines section 15061, subd. (b)(3)
7. Reason why project was exempt:	<p>BBARWA approved the Sub-Grant Agreement on December 4, 2019. The Sub-Grant Agreement is exempt from, and otherwise not subject to, CEQA for the following reasons.</p> <p>First, the Sub-Grant Agreement is not subject to CEQA under State CEQA Guidelines section 15060, which provides that “[a]n activity is not subject to CEQA if ... [t]he activity is not a project as defined in [State CEQA Guidelines] Section 15378.” (State CEQA Guidelines, § 15060, subd. (c)(3).) State CEQA Guidelines section 15378, in turn, expressly excludes from the definition of “project” the “creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.” (State CEQA Guidelines, § 15378, subd. (b)(4).) Here, the Sub-Grant Agreement is not subject to CEQA because it constitutes a government funding mechanism or other government fiscal activity which does not involve any commitment to any specific project. Notably, the Sub-Grant Agreement merely constitutes an agreement by which BBARWA may obtain funds from the Disadvantaged Community Involvement Technical Assistance Project to cover the costs it has incurred or will incur in connection with permitting for the Replenish Big Bear Project. BBARWA’s approval of the Sub-Grant Agreement in no way commits BBARWA to the Replenish Big Bear Project. The Sub-Grant Agreement is thus not subject to CEQA. (State CEQA Guidelines, §§ 15060, subd. (c)(3), 15378, subd. (b)(4).)</p> <p>Second, the Sub-Grant Agreement is not subject to CEQA under the “common sense exemption” set forth in State CEQA Guidelines section 15061. The common sense exemption provides that an “activity is not subject to CEQA” where “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” (State CEQA Guidelines, § 15061, subd. (b)(3).) Here, approval of the Sub-Grant Agreement will not result in any activity that could potentially impact the environment. Rather, approval of the Sub-Grant Agreement will merely serve to fund</p>

	BBARWA's efforts to obtain the necessary permits for the Replenish Big Bear Project. The activity does not constitute an approval of the Replenish Big Bear Project or any other activity that could possibly result in a significant effect on the environment.
8. Lead Agency Contact Person:	David Lawrence
Telephone:	909-584-4033
9.	<u>Public hearing</u> : BBARWA considered the Sub-Grant Agreement, determined that the Sub-Grant Agreement is not subject to CEQA, and approved the Sub-Grant Agreement at a public hearing held on December 4, 2019.

Signature: _____ Date: _____

Name: David Lawrence, General Manager of Big Bear Area Regional Wastewater Agency

Date Received for Filing: _____

(Clerk Stamp Here)

Authority cited: Sections 21083 and 21110, Public Resources Code.

Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.



Big Bear Area Regional
Wastewater Agency
David Caretto – Chair
John Green – Vice Chair
Karyn Oxandaboure – Secretary
Rick Herrick – Director
Jim Miller – Director

AGENDA ITEM: 11.B.

MEETING DATE: December 4, 2019

TO: Governing Board of the Big Bear Area Regional Wastewater Agency

FROM: David Lawrence, P.E., General Manager *DL*

PREPARED BY: Bridgette Burton, Management Analyst *BB*

REVIEWED BY: John Shimmin, Plant Manager; and Jennifer McCullar, Finance Manager *JM*

SUBJECT: Authorization to Award Contract and Appropriate \$30,000 for the SCADA Project

BACKGROUND & DISCUSSION:

The Agency has been planning the replacement of its Supervisory Control and Data Acquisition (SCADA) system (the Project). The required engineering and design started in FY 2019 with the replacement scheduled this year. SCADA is a crucial part of BBARWA's operations. It is an automated system that uses programmable logic controls to monitor and control treatment processes and pump stations. The Project includes the purchase and installation of a production host and the implementation of SCADA system upgrades. The new production host installation and configuration is underway with Accent Computer Solutions, Inc., the Agency's IT consultant, and the SCADA system upgrade and installation was put out to bid.

Water Systems Consulting, Inc. (WSC) developed the project scope of work and technical engineering specifications. On September 24, 2019, a Request for Proposal was advertised. The scope of work included upgrading the control system panel components, with the contractor being responsible for installing, programming and integrating the software for a complete and functional system. A mandatory pre-bid conference was held on October 8, 2019 to review the scope of work with potential bidders. Sealed bids were received on October 24, 2019 from three bidders.

The results are provided in the table below:

Contractor	Total Base Bid
ROI Engineering, LLC	\$436,955.76
Technical Systems, Inc.	\$507,610.00
Tesco Controls, Inc.	\$599,999.24

ROI Engineering, LLC was determined to be the lowest responsive and responsible bidder. The Agency has worked with ROI in the past and they have provided exceptional service.

FINANCIAL IMPACT:

The Agency's budget for the Project was \$480,000. The Project is currently estimated to total approximately \$505,000, exceeding the budget by \$25,000. The recommendation is to appropriate \$30,000 to allow for additional engineering and/or project management if needed. There are adequate funds in the capital and replacement fund to make the appropriation.

RECOMMENDATION:

1. Appropriate \$30,000 from the Capital and Replacement Fund; and
2. Authorize the General Manager to negotiate and execute the contract with ROI Engineering, LLC for \$436,955.76.



Big Bear Area Regional
Wastewater Agency
David Caretto – Chair
John Green – Vice Chair
Karyn Oxandaboure – Secretary
Rick Herrick – Director
Jim Miller – Director

AGENDA ITEM: 11.C.

MEETING DATE: December 4, 2019

TO: Governing Board of the Big Bear Area Regional Wastewater Agency

FROM: David Lawrence, P.E., General Manager *DL*

PREPARED BY: Kim Booth, Administrative Assistant *KB*

REVIEWED BY: Bridgette Burton, Management Analyst *BB*

SUBJECT: Schedule Budget Workshop

BACKGROUND & DISCUSSION:

The Agency staff would like to schedule the Budget Workshop. The Budget Workshop can be scheduled for February 26th, the date for the regular meeting of the Governing Board in February. The Budget Workshop is normally scheduled for a 4-hour window; a timeframe of 10:00 a.m. to 2:00 p.m. is common.

FINANCIAL IMPACT:

No financial impact.

RECOMMENDATION:

Discuss and schedule the Budget Workshop

Moved: _____ Second: _____ Ayes: _____ Noes: _____ Abstain/Absent: _____

Approved Date: _____ Witness: _____

Secretary of the Governing Board