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Contract Number

24-473

SAP Number

## San Bernardino County Flood Control District

|                                    |                                       |
|------------------------------------|---------------------------------------|
| Department Contract Representative | Michael B. Fam, Division Chief        |
| Telephone Number                   | 909-387-8120                          |
| Contractor                         | Santa Ana Watershed Project Authority |
| Contractor Representative          | Marie Jauregui                        |
| Telephone Number                   | 951-354-4248                          |
| Contract Term                      | June 11, 2024, through March 31, 2031 |
| Original Contract Amount           | \$2,521,678                           |
| Amendment Amount                   | \$0                                   |
| Total Contract Amount              | \$2,521,678                           |
| Cost Center                        | 1920002522 F02837                     |

**Briefly describe the general nature of the contract:** *This grant funding contract with the Santa Ana Watershed Project Authority, in the amount of \$2,521,678, for a contract period of June 11, 2024 through March 31, 2031, for the design and construction of Cable Creek Basin (Upper) Project located in the City of San Bernardino.*

### FOR COUNTY USE ONLY

Approved as to Legal Form

► *Sophie Curtis*

Sophie A. Curtis, County Counsel

Date May 31, 2024

Non-Standard Contract Coversheet

Reviewed for Contract Compliance

► *Andy Silao*

Andy Silao, P.E.

Date 5/31/2024

Reviewed/Approved by District

► *Noel Castillo*

Noel Castillo, Chief Flood Control Engineer

Date 5/31/24

Revised 3/14/19

PROPOSITION 1 ROUND 2 INTEGRATED REGIONAL WATER MANAGEMENT  
IMPLEMENTATION GRANT

GRANT FUNDING CONTRACT  
BETWEEN THE

SANTA ANA WATERSHED PROJECT AUTHORITY

AND

SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT

This Proposition 1 Round 2 Integrated Regional Water Management Program ("IRWMP") Implementation Grant Funding Contract ("Contract") is made between Santa Ana Watershed Project Authority ("SAWPA"), and San Bernardino County Flood Control District, (the "Sub-Grantee"). SAWPA and the Sub-Grantee may be individually referred to as "Party", and collectively referred to as the "Parties".

WHEREAS, Section 79740 et seq. of the Water Code authorized approximately \$510 million to assist water infrastructure systems adapt to climate change, provide incentives for water agencies to collaborate in managing the region's water resources and setting regional priorities for water infrastructure, improve regional water self-reliance, and reduce reliance on the Sacramento-San Joaquin Delta;

WHEREAS, on January 10, 2024, the California Department of Water Resources ("DWR") and SAWPA entered into a Proposition 1 Round 2 Integrated Regional Water Management Implementation Grant Agreement No. 4600015418 ("Grant Agreement"), attached hereto as **Attachment A**, providing that SAWPA would serve as the program manager for the \$29,058,570 in IRWMP grant funds to be disbursed to Sub-Grantees, 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; and

WHEREAS, consistent with the Grant Agreement, SAWPA intends to disburse to the Sub-Grantee a portion of the \$29,058,570 in IRWMP grant funds for its project component by way of this Grant Funding 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 Sub-Grantee's Project is the component described in the IRWMP Grant Agreement as **Cable Creek Basin (Upper)**. The project will construct a debris detention basin at the existing Cable Creek Spreading Grounds that will reduce the 100-year peak discharge from Cable Creek to a safe range of approximately 8,600 cubic feet per second, which will protect approximately 390 additional acres in the Santa Ana River Watershed. The project will also serve as a sedimentation basin and stormwater recharge/detention basin with groundwater recharge potential of up to 859 acre-feet annually.

The approximately 390 acres that will have 100-year flood protection contains residents, businesses, and public infrastructure in the City of San Bernardino.

**SECTION 2.**                    CONTRACT DOCUMENTS; ORDER OF PRECEDENCE; SUB-GRANTEE GENERAL COMMITMENT

This Contract incorporates and includes as part of its terms and conditions the Grant Agreement.

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 3.**                    ESTIMATED ELIGIBLE PROJECT COSTS; GRANT AMOUNT

The estimated reasonable cost of the Project at the time of SAWPA's and DWR's approval of the Project is **Twenty Million** dollars (\$20,000,000). 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 **Two Million Five Hundred Twenty-One Thousand Six Hundred Seventy-Eight** dollars (\$2,521,678). In all events, SAWPA's actual grant disbursements to the Sub-Grantee under this Contract shall not exceed payments received from the DWR.

If the Sub-Grantee proceeds to construction of such facilities, the final grant amount will be determined in accordance with the provisions of this Contract. If the Sub-Grantee fails or refuses to proceed with or complete the construction of facilities, SAWPA shall consider such failure or refusal to be a material violation and breach of this Contract. SAWPA shall have all rights and remedies as are otherwise available to it for breach of this Contract by the Sub-Grantee.

If actual Project costs exceed the Project's estimated reasonable cost, SAWPA shall have no obligation to provide grant funds for such exceedence.

Eligible Project costs include the reasonable costs of studies, engineering, design, land and easement acquisition, legal fees, preparation of environmental documentation, environmental mitigations, monitoring, project construction, and any other task set forth in Exhibit A of the Grant Agreement.

Reimbursable administrative expenses are the necessary costs incidental but directly related to the Project.

Costs not eligible for reimbursement or not eligible to be counted as local match include, but are not limited to:

- Costs for work performed before the dates specified below.
- Costs for preparing and filing a grant application



- Operation and maintenance costs, including post-construction performance and monitoring costs.
- Purchase of equipment that is not an integral part of the Project.
- Establishing a reserve fund.
- Purchase of water supply.
- Replacement of existing funding sources for on-going programs.
- Support of existing agency requirements and/or mandates.
- Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of the Project, as set forth and detailed by engineering and feasibility studies, or acquisition of land by eminent domain.
- Overhead and indirect costs not directly related to Project costs, such as generic overhead or markup.
- Travel costs and per diem costs, unless allowed under Exhibit D, Item 46 of the Grant Agreement.
- Mitigation for environmental impacts not resulting from implementation of the Project funded by this program.

Work performed after January 1, 2015, are eligible to be counted as local match. Work performed after May 5, 2023, are eligible for grant reimbursement.

#### **SECTION 4. SCOPE OF WORK AND COMPLETION OF PROJECT**

The Scope of Work is described in Exhibit A of the Grant Agreement. The Parties understand that time is of the essence and agree to expeditiously proceed with and complete the Project.

#### **SECTION 5. DISBURSEMENT**

Grant funds will be disbursed in accordance with the disbursement provisions of the Grant Agreement. SAWPA will disburse grant funds received from DWR to Sub-Grantee within 30 days of receipt of grant funds, except as described in *Section 14. Withholding of Grant Disbursements* of this Contract.

Retention is stipulated in Exhibit D, Item 36 of the Grant Agreement.

#### **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 separate Project accounts in accordance with generally accepted accounting principles and practices, consistently applied.

#### **SECTION 7. TERM**

This Contract shall not be effective until it has been fully executed by both parties. The Term of this Contract shall be the same as the Term of the Grant Agreement, unless sooner terminated pursuant to the provisions of this Contract or the Grant Agreement.

#### **SECTION 8. COVENANT TO OPERATE AND MAINTAIN PROJECT FACILITIES**

The Sub-Grantee shall properly staff, operate and maintain all portions of the Project during the Project's useful life and in accordance with this Contract, the Grant Agreement, and all applicable state and federal laws, rules and regulations. In the event that the Sub-Grantee assigns or

transfers all or any portions of the Project to another entity, the Sub-Grantee shall be responsible to ensure that the assignee or transferee of all or any portions of the Project shall properly staff, operate and maintain all portions of the Project during its useful life and in compliance with this Contract, the Grant Agreement, and all applicable state and federal laws, rules and regulations. The Parties to this Contract understand and agree that this covenant shall survive the expiration or termination of this Contract. The Parties further understand and agree that this covenant is for the benefit of SAWPA and DWR and shall be enforceable during the useful life of the Project facilities.

Sub-Grantee shall prepare and maintain the Project Performance Monitoring Plan ("PPMP") required by the Grant Agreement. DWR and SAWPA shall approve the PPMP prior to the disbursement of grant funds for construction or monitoring activities.

Sub-Grantee shall not abandon, substantially discontinue use of, lease, or dispose of the Project, including its construction, or any significant part or portion thereof, during the useful life of the Project without SAWPA's and DWR's prior written approval.

#### **SECTION 9.            ASSIGNMENT**

Neither this Contract, nor any duties or obligations under this Contract, nor any of the Project facilities referenced in 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 10.            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. The Sub-Grantee shall comply with, implement, and fulfill all environmental mitigation measures applicable to the Project, and which may otherwise be required by this Contract and the IRWMP Grant Agreement, the California Environmental Quality Act ("CEQA"), and the State CEQA Guidelines.

#### **SECTION 11.            ACKNOWLEDGEMENT OF CREDIT/SIGNAGE REQUIREMENTS**

Sub-Grantee shall include appropriate acknowledgement of credit to the State, SAWPA and to all cost-sharing partners for their support when promoting the Project or using any data and/or information developed under this Sub-Grantee Agreement. Signage shall be posted in a prominent location at the Project Site(s), if applicable, or at the Sub-Grantees headquarters and shall include the following disclosure statement: "Funding for this project has been provided in full or in part from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 and through an agreement with the State Department of Water Resources and by the Santa Ana Watershed Project Authority". The sign shall include the Department of Water Resources logo, One Water One Watershed logo and the SAWPA logo (available from SAWPA). Before it is constructed, the Sub-Grantee shall provide the draft design layout of the sign to SAWPA for approval. Sub-Grantee shall notify SAWPA that the sign has been erected by providing a site map with the sign location noted and a photograph of the sign.



## **SECTION 12.**            CONSTRUCTION ACTIVITIES AND NOTIFICATION

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

- (1) Any substantial change in the scope, budget, or work performed on the Project. The Sub-Grantee agrees that no substantial change in the scope of the Project may be undertaken until written notice of the proposed change has been provided to SAWPA, and SAWPA and DWR have given written approval for such a change;
- (2) Any public or media event publicizing the accomplishments and/or results of this Grant Agreement shall provide the opportunity for attendance and participation by SAWPA and DWR. Sub-Grantee must notify SAWPA at least 20 calendar days prior to the event.
- (3) Unscheduled cessation of all major construction work on the Project 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 project completion for a period of 90 calendar days or more beyond the initial estimated date of completion of the Project previously provided to SAWPA;
- (5) Completion of construction of the Project and provide SAWPA and DWR the opportunity to participate in the inspection. Sub-Grantee must notify SAWPA at least 20 calendar days prior to final inspection.

## **SECTION 13.**            PAYMENT OF PROJECT COSTS

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

## **SECTION 14.**            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 Project; or
- (3) DWR directs SAWPA to withhold any such grant funds.

## **SECTION 15.**            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).

(3) Sufficient evidence (i.e. receipts, copies of checks, timesheets) must be provided for all costs included in the invoice.

(4) Each invoice shall clearly delineate those costs claimed for reimbursement from the State's grant amount and those costs that represent the Sub-Grantee's share as applicable.

(B) Invoices also shall include the following information:

(1) Costs incurred for work performed in implementing the IRWM program or program contracts during the period identified in the particular invoice.

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

(3) Appropriate receipts and reports for all costs incurred.

#### **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 IRWMP Grant Agreement, and shall also:

(1) Establish an official Project file that documents all significant actions relative to the Project;

(2) Establish separate accounts that adequately and accurately itemize and describe all amounts received and expended on the Project, including all grant funds received under this Contract;

(3) Establish separate accounts that adequately and accurately itemizes and describes all income received which is attributable to the Project, specifically including any income attributable to grant funds disbursed under this Contract;

(4) Establish an accounting system that adequately and accurately itemizes and describes final total costs of the Project, including both direct and indirect costs;

(5) 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; and

(6) If Force Account is used by the Sub-Grantee for any phase of the Project, establish an account that adequately and accurately itemizes and describes all employee hours, and associated tasks charged to the Project per employee.



(B) The Sub-Grantee shall require all Project contractors and subcontractors to maintain books, records, and other material relative to the Project 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 five (5) years after the Grant Agreement termination date. 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 their authorized representatives.

(C) The Sub-Grantee shall maintain its books, records and other material concerning the Project in accordance with generally accepted government accounting standards and as required by the IRWMP Grant Agreement.

(D) All documents required or requested to be provided to SAWPA shall be submitted electronically in the 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.

(E) The Sub-Grantee agrees to expeditiously provide, during work on the Project and for three years after the projection 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. QUARTERLY PROGRESS REPORTS**

Quarterly Progress Reports shall be completed using the templates provided. 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. The first quarterly report shall be submitted no later than the 30<sup>th</sup> of the month following the end of the reporting period. The first progress report shall cover the following reporting period: January 2, 2015 (or project start, if later) to March 31, 2024, and will be due to SAWPA on <April 30, 2024. Subsequent progress reports will be due as follows: Jan-Mar reporting period – due Apr 30; Apr-Jun reporting period – due Jul 31; Aug-Sep reporting period – due Oct 31; Oct-Dec reporting period – due Jan 31.

#### **SECTION 18. PROJECT REVIEW AND EVALUATION; FINAL REPORTS AND AUDIT**

(A) SAWPA may perform a project review or otherwise evaluate the project to determine compliance with the contract documents at any time or if questions about the proper use or management of the funds arise. SAWPA may review or evaluate the contractor or vendor for compliance with the terms and conditions of the contract documents. The project review and evaluation may be performed by SAWPA or may be contracted to a responsible third party. Any findings and recommendations of the project review and evaluation shall be addressed by the Sub-Grantee within 60 days of the date such findings and recommendations are provided to the Sub-Grantee and before the next invoice is paid by SAWPA.

(B) Inventory of equipment purchased with grant funds.

(1) At least 75 days prior to submission of the final project invoice, Sub-Grantee shall consult with SAWPA on the scope of the inventory of equipment purchased with grant funds. This inventory shall include all items with a current estimated fair market value of more than \$5,000 per item.



(2) At least 45 days prior to submission of the final project invoice, Sub-Grantee shall provide SAWPA with a final inventory list of equipment purchased with grant funds. DWR shall have the opportunity to take title to any item on the inventory list. Should DWR take title to any item on the inventory list, DWR shall arrange for delivery and transportation of such inventory.

(C) In addition to the documents and deliverables required to be provided by the IRWMP Grant Agreement, within 90 days after completion of the Project but no later than 14 days prior to the due date indicated in the IRWMP Grant Agreement, the Sub-Grantee shall provide to SAWPA, a Project Completion Report. The Project Completion Report shall follow the Guidelines in Exhibit F of the Grant Agreement.

(D) SAWPA may call for an audit of financial information relative to the Project, 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 19. PROJECT CLOSEOUT DOCUMENTATION**

To ensure that that the Project 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 subcontracts, completion of all punch lists, defects correction, satisfaction of warranty or guarantee issues, and any other requirements for the completion of the scope of work. Such close-out procedures shall include those procedures contained in the IRWMP Grant Agreement or otherwise required by SAWPA and DWR.

## **SECTION 20. POST-PERFORMANCE REPORTS**

Post-Performance Reports shall be submitted to SAWPA within 75 calendar days after the first operational year of the Project has elapsed. This record keeping and reporting process shall be repeated annually for a total of three (3) years after the completed project begins operation.

## **SECTION 21. MONITORING REQUIREMENTS**

(A) All groundwater projects and projects that include groundwater monitoring requirements are consistent with the Groundwater Quality Monitoring Act of 2001.

(B) 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 administered by the State Water Resources Control Board.

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

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

(2) If Sub-Grantee'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/water\\_issues/programs/gama](http://www.waterboards.ca.gov/water_issues/programs/gama). If further information is required, the Sub-Grantee can contact the State Water Resources Control Board GAMA Program. A copy of all data submitted shall be given to SAWPA.

(D) If groundwater level data is collected, Sub-Grantee must submit this data to DWR's Water Data Library (WDL) with a narrative description of data submittal activities (included in project reports). Information regarding the WDL and the format to submit the data in can be found at: <http://wdl.water.ca.gov/>. A copy of all data submitted shall be given to SAWPA.

In the near future, DWR's WDL will be replaced by the California Statewide Groundwater Elevation Monitoring program (CASGEM). Once this program comes online, Sub-Grantee will then submit groundwater level data to CASGEM. Information regarding the CASGEM program can be found at: <http://www.water.ca.gov/groundwater/casgem/>.

## **SECTION 22. TERMINATION; IMMEDIATE REPAYMENT; INTEREST**

(A) SAWPA may terminate this Contract at any time prior to completion of the Project for Sub-Grantee's violation of any provision of this Contract upon written notice by SAWPA of the violation and the failure of Sub-Grantee to come into compliance within a reasonable time as established by SAWPA.

(B) In the event of such termination, the Sub-Grantee agrees, upon demand, to immediately repay to SAWPA an amount equal to the amount of grant funds disbursed to the Sub-Grantee prior to such termination. In the event of termination, prejudgment interest shall accrue on all amounts due from the date that notice of termination is mailed to the Sub-Grantee to the date of full repayment by the Sub-Grantee.

(C) 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 23. 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 24. ARBITRATION**

Any dispute which may arise under this Contract by and between the SAWPA and the Sub-Grantee, including the Sub-Grantee's subcontractors, laborers, and suppliers, shall be submitted to binding arbitration pursuant to the Construction Industry Arbitration Rules and Mediation Procedures of the American Arbitration Association (AAA). The arbitrator shall decide



each and every dispute in accordance with the laws of the State of California and AAA rules, and all other applicable laws. Unless the Parties stipulate in writing to the contrary, prior to the appointment of the arbitrator, all disputes shall first be submitted to non-binding mediation.

**SECTION 25.**            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 26.**            WAIVER

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

**SECTION 27.**            AMENDMENT

This Contract may be amended at any time by mutual written agreement of the Parties and the DWR.

**SECTION 28.**            SAWPA REVIEWS; SUB-GRANTEE AS INDEPENDENT CONTRACTOR

(A) The Parties agree that review or approval of the Project or Project plans and specifications by SAWPA is for administrative and eligibility purposes only and does not relieve the Sub-Grantee of its responsibility to properly plan, design, construct, operate, and maintain the Project. As between SAWPA and the Sub-Grantee, the Sub-Grantee agrees that it has sole responsibility for proper planning, design, construction, operation, and maintenance of the Project.

(B) The Sub-Grantee is an independent contractor exclusively responsible for the design, construction, operation and maintenance of the specific project funded by this Grant Funding Contract and that the Sub-Grantee is not acting as SAWPA's agent, nor is SAWPA acting as an agent of the Sub-Grantee.

**SECTION 29.**            INDEMNIFICATION

(A) The Sub-Grantee shall defend, indemnify and hold and save SAWPA and DWR and their directors, commissioners, officers, employees, agents and assigns (collectively the "Indemnified Parties") free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and the Grant Agreement, including but not limited to any claims or damages arising from planning, design, construction, maintenance, and/or operation of this Project and any breach of this Agreement. The Sub-Grantee shall require its contractors or subcontractors to name SAWPA, the State, its officers, agents and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Sub-Agreement.

(B) The Sub-Grantee understands and agrees that it has complied and will comply with CEQA and the State CEQA Guidelines for the project which is the subject matter of this Grant Funding Contract. Sub-Grantee understands and agrees that it is ultimately and solely responsible, as the lead agency, for compliance with CEQA and any mitigation measures

required for the Project. The Sub-Grantee hereby agrees to indemnify, defend and hold harmless SAWPA and the DWR from any and all claims or actions related to this Project that may be made by any third party or public agency alleging, among other things, violations of CEQA or the State CEQA Guidelines.

(C) The Sub-Grantee shall ensure that adequate insurance coverage is provided by Sub-Grantee and/or its contractors and subcontractors on the Project funded, in part, by this Contract. Such insurance shall include adequate coverage for comprehensive commercial general liability, business auto liability, workers compensation liability, professional and errors and omissions liability, property insurance, including all builders risk insurance. Such insurance coverage shall, at a minimum, insure against injuries to third parties, damage to property owned by third parties, physical damage to the Project and all related facilities, theft of building materials and supplies intended for the Project, delays in Project completion, delays in Project Completion due to strikes and governmental actions, liquidated damages, employee injuries and work-related illnesses, design errors resulting in increased project costs, environmental damage caused by construction activities related to the Project, and nonperformance by the contractors and subcontractors. Such insurance coverages shall be provided by admitted insurance companies authorized to do business in the State of California, and with a minimum "Best's Insurance Guide" rating of "A:VII".

#### **SECTION 30.            PROJECT AND INFORMATION ACCESS**

The Sub-Grantee agrees to ensure that SAWPA, DWR, or any authorized representative thereof, shall have reasonable access to the Project site at all reasonable times during Project construction, and thereafter for the useful life of the Project.

#### **SECTION 31.            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 dates set forth below.

SANTA ANA WATERSHED PROJECT  
AUTHORITY

Dated: 4/16/2024

By: [Signature]

San Bernardino County Flood Control District  
**Sub-Grantee**

Dated: JUN 11 2024

By: [Signature]  
*Authorized Representative*

Dawn Rowe  
*Typed Name*

Chair  
*Title*

SIGNED AND CERTIFIED THAT A COPY OF  
THIS DOCUMENT HAS BEEN DELIVERED  
TO THE CHAIRMAN OF THE BOARD  
LYNNA MCNEEL  
Clerk of the Board of Supervisors  
of the County of San Bernardino  
By [Signature]  
Deputy  
CALIFORNIA

