

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT  
AND RECORD OF ACTION**

June 11, 2024

**FROM**

**NOEL CASTILLO, Chief Flood Control Engineer, Flood Control District**

**SUBJECT**

Grant Funding Contract with the Santa Ana Watershed Project Authority for Cable Creek Basin (Upper) Project in the City of San Bernardino

**RECOMMENDATION(S)**

Acting as the governing body of the San Bernardino County Flood Control District:

1. Approve and accept Grant Funding Contract with the Santa Ana Watershed Project Authority, including non-standard terms, 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.
2. Authorize the Chief Flood Control Engineer, Assistant Director, Deputy Director – Project Planning, or Chief of Flood Control Planning/Water Resources to execute any non-substantive amendments on behalf of the San Bernardino County Flood Control District, subject to review by County Counsel, for the Cable Creek Basin (Upper) Project.
3. Direct the Chief Flood Control Engineer, Assistant Director, Deputy Director – Project Planning, or Chief of Flood Control Planning/Water Resources to transmit all non-substantive amendments to the Grant Funding Contract to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Noel Castillo, Chief Flood Control Engineer, 387-7906)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Create, Maintain and Grow Jobs and Economic Value in the County.**

**Operate in a Fiscally-Responsible and Business-Like Manner**

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.**

**Provide for the Safety, Health and Social Service Needs of County Residents.**

**FINANCIAL IMPACT**

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The San Bernardino County Flood Control District (District) is funded by property tax revenue, fee revenue, and local, state, and federal funding. The Santa Ana Watershed Project Authority (SAWPA) has awarded a Proposition 1 Round 2 Integrated Regional Water Management (IRWM) Program Implementation Grant to the District in the amount of \$2,521,678 to partially fund the Cable Creek Basin (Upper) Project (Project). The 50% grant match requirement of \$2,500,000 and remaining project cost (which is a total of \$20,000,000) will be funded by the District with property tax revenue. The District anticipates the construction phase of the Project to commence in the 2030-31 fiscal year or sooner depending on the availability of additional funding sources. Sufficient appropriation and revenue have been included in the

**Grant Funding Contract with the Santa Ana Watershed Project Authority for Cable Creek Basin (Upper) Project in the City of San Bernardino**

District's 2024-25 Recommended Budget (1920002522 F02837) and in future recommended budgets.

**BACKGROUND INFORMATION**

The proposed Project will construct a debris/detention basin in the location of the existing Cable Creek spreading grounds to attenuate the 100-year peak discharge from Cable Creek to approximately 8,600 cubic feet per second. The Project will protect residents, businesses, and public infrastructure in the downstream communities of North San Bernardino, Verdemon, and Muscoy. Secondary benefits of the basin will be to serve as a sedimentation basin and stormwater recharge basin, enabling groundwater recharge of up to 859 acre-feet annually.

Pursuant to a January 10, 2024, agreement between the California Department of Water Resources and SAWPA, SAWPA serves as the program manager responsible for disbursing \$29,058,570 in IRWM grant program funds to subgrantees. On April 16, 2024, the District received the proposed Grant Funding Contract signed by SAWPA for grant funding in the amount of \$2,521,678 for the design and construction of the Project.

The Grant Funding Contract is SAWPA's standard grant funding contract, which includes terms that differ from the standard District contract and omits certain District standard contract terms. The nonstandard and missing terms include the following:

1. The prevailing party is entitled to recover attorney's fees and costs.
  - The District standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
  - Potential Impact: If either party institutes any legal proceedings related to the Grant Funding Contract, the prevailing party will be entitled to recover reasonable attorney's fees, which could exceed the total Grant Funding Contract amount.
2. All disputes arising under the Grant Funding Contract must be settled by binding arbitration.
  - The District standard contract does not require arbitration.
  - Potential Impact: Binding arbitration decisions are not appealable. In addition, disputes that might otherwise be settled in small claims court would incur arbitration costs that could exceed the costs of a small claims action, and the Grant Funding Contract amount.
3. The Grant Funding Contract does not require SAWPA to indemnify the District, as required by County Policies 11-05 and 11-07, including for intellectual property infringement claims.
  - The District standard contract indemnity provision requires the contractor to indemnify, defend, and hold District harmless from third party claims arising out of the acts, errors or omissions of any person.
  - Potential Impact: SAWPA is not required to defend, indemnify or hold the District harmless from any claims, including indemnification for claims arising from SAWPA's negligent or intentional acts and intellectual property infringement. If the District is sued for any claim, including intellectual property infringement based on its use of SAWPA's software or services, the District may be solely liable for the costs of defense and damages, which could exceed the total Grant Funding Contract amount.
4. The Grant Funding Contract does not require SAWPA to meet the District's insurance standards as required pursuant to County Policies, 11-05, 11-07 and 11-07SP.

**Grant Funding Contract with the Santa Ana Watershed Project  
Authority for Cable Creek Basin (Upper) Project in the City of San  
Bernardino**

- The District standard contract requires contractors to carry appropriate insurance at limits and under conditions determined by the County’s Risk Management Department and as set forth in County policy and in the District standard contract.
  - Potential Impact: The District has no assurance that SAWPA will be financially responsible for claims that may arise under the Grant Funding Contract, which could result in expenses to the District that exceed the total Grant Funding Contract amount.
5. The District is required to indemnify and hold SAWPA harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and the Grant Funding Contract, 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 the Grant Funding Contract, or violations of the California Environmental Quality Act.
- The District standard contract does not include any indemnification or defense by the District of a contractor.
  - Potential Impact: By agreeing to indemnify SAWPA, the District could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the District, time limited, or expense limited could be brought against SAWPA without such limitations, and the District could be responsible to defend and reimburse SAWPA for costs, expenses, and damages, which could exceed the total Grant Funding Contract amount.

The District recommends approval of the Grant Funding Contract, including the non-standard terms, in order to receive grant funding for the Project.

This item will also authorize the Chief Flood Control Engineer, Assistant Director, Deputy Director of Project Planning, or Chief of Flood Control Planning/Water Resources, to execute any subsequent non-substantive amendments to the Grant Funding Contract on behalf of the District, subject to review by County Counsel.

The acceptance of grant funds from the IRWM Program to fund the Project supports the District’s and the Chief Executive Officer’s goals and objectives by creating, maintaining, and growing jobs and economic value in the county as well as operating in a fiscally-responsible and business-like manner by ensuring the development of a well-planned, balanced and sustainable County.

**PROCUREMENT**

Not applicable.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Sophie A. Curtis, Deputy County Counsel, 387-5455) on May 30, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst II, 386-9008) on May 29, 2024; Finance (Jessica Trillo, Administrative Analyst, 387-4222) on May 20, 2024; and County Finance and Administration (Paloma Hernandez-Barker, Deputy Executive Officer, 387-5423) on May 24, 2024.

**Grant Funding Contract with the Santa Ana Watershed Project  
Authority for Cable Creek Basin (Upper) Project in the City of San  
Bernardino**

Record of Action of the Board of Supervisors  
San Bernardino County Flood Control District

**APPROVED (CONSENT CALENDAR)**

Moved: Joe Baca, Jr. Seconded: Curt Hagman  
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: June 11, 2024



cc: Flood Control - Fam w/ agree  
Contractor c/o Flood w/ agree  
File w/ agree  
JLL 06/13/2024