

**PROPOSITION 84 INTEGRATED REGIONAL WATER MANAGEMENT PROGRAM 2014  
DROUGHT SOLICITATION IMPLEMENTATION GRANT FUNDING CONTRACT  
BETWEEN THE**

**SANTA ANA WATERSHED PROJECT AUTHORITY**

**AND**

**CITY OF GARDEN GROVE**

This Proposition 84 Integrated Regional Water Management Program ("IRWMP") 2014 Drought Solicitation Implementation Grant Funding Contract ("Contract") is made between Santa Ana Watershed Project Authority, acting through the Project Agreement 22 Committee ("SAWPA"), and City of Garden Grove (the "Sub-Grantee"). SAWPA and the Sub-Grantee may be individually referred to as "Party", and collectively referred to as the "Parties".

WHEREAS, on July 20, 2015, the California Department of Water Resources ("DWR") and SAWPA entered into a Proposition 84 Integrated Regional Water Management Implementation Grant Agreement ("Grant Agreement") providing that SAWPA would serve as the program manager for the \$12,860,110 in IRWMP grant funds to be disbursed to sub-grantees, consistent with IRWMP requirements, and ensuring that the maximum benefit of such funds are realized in the Santa Ana River and the Upper Santa Margarita Watersheds; and

WHEREAS, the Sub-Grantee is participating in the Implementation of Conservation Based Rate Structures Project ("Project"); and

WHEREAS, at the time of the request, SAWPA adopted a policy statement that defined adoption of conservation-based water rate structures as an agency transitioning from a flat or tiered rate structure to a customer-specific allocation that follows an increasing block rate structure that includes at least three blocks, with one or more blocks accounting for high or exceeding water use, based on State efficiency standards or more stringent efficiency standards. The policy statement specified that the customer class for which the rate applies shall comprise at least 50 percent of the agency's potable water demand.

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 participates in investigation and possible implementation of conservation-based water rates structure. The rate structure shall use individualized water budgets as the method of providing customer-specific allocations that will allow accounting for excessive water use. The rate structure shall include parcel-based water budgets with an indoor budget based on per capita water use and an outdoor water use budget based on irrigated area and evapotranspiration rates. The Sub-Grantee will receive IRWMP grant funds in two phases for a rate structure that complies with this definition, and the policy statement adopted by SAWPA, following the review of SAWPA.

**Phase 1**

This phase will occur after invoicing is completed for work needed to prepare the Sub-Grantee to possibly implement and prepare the Sub-Grantee's governing board to possibly adopt a conservation-based water rate structure ("Phase 1"). Preparation may include a rate design study. If a study is used, it shall fully evaluate conservation-based rate structures in such a way to facilitate the Sub-Grantee's governing board's decisions on adoption of a rate structure.

## **Phase 2**

This phase will occur after invoicing of the Sub-Grantee's costs for implementation of a conservation-based water rate structure after adoption by the Sub-Grantee's elected governing board ("Phase 2"). If adopted, the Sub-Grantee will maintain its conservation-based water rate structure in accordance with the policy statement for three years after the date of adoption of a conservation-based water rate structure by the Sub-Grantee's elected governing board.

The Sub-Grantee shall start work on a conservation based rate study and provide SAWPA a copy of the detailed scope of work and deadlines by August 31, 2016 and bring a final draft conservation based rate study ready before the agency elected board and provide SAWPA a copy by March 31, 2017.

If an agency fails to meet the deadlines, they will not be eligible to receive the amount of funding remaining in their funding contract with SAWPA without a SAWPA waiver, and the SAWPA contract may be terminated. SAWPA may waive these deadlines for agencies under special circumstances.

### **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 between DWR and SAWPA, Agreement No. 4600010903, attached hereto as **Attachment "A"**.

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 (as the Grant Agreement pertains to the Grantee). Such compliance shall include providing SAWPA with all deliverables, budget detail, reports and all other documents required by the Grant Agreement (as the Grant Agreement pertains to the Grantee).

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 (as the Grant Agreement pertains to the Grantee). Such compliance shall be to the extent reasonably necessary and as may be reasonably required by SAWPA in order to enable SAWPA to comply with the Grant Agreement as "Grantee."

### **SECTION 3. ESTIMATED ELIGIBLE COSTS; PHASE 1 AND 2 ALLOCATIONS; GRANT AMOUNT**

The estimated total reasonable and eligible cost of Phase 1 and Phase 2 at the time of SAWPA and DWR's approval of the Grant Agreement is up to \$215,030.00. Funding will be provided on a reimbursement basis of the Sub-Grantee's expenses. There are no matching funds required although only eligible costs are covered as described in this Section. The amount of eligible costs for reimbursement by IRWMP grant funds for Phase 1 is up to \$107,515.00. The amount of eligible costs for reimbursement for Phase 2 is up to \$107,515.00 although any portion of Phase 1's allocation not utilized by the Sub-Grantee is also eligible for reimbursement for the second phase. The Sub-Grantee is eligible for Phase 2's allocation once it provides SAWPA with a resolution of adoption of conservation-based water rates structures by the Sub-Grantee's elected governing board. In addition, to be eligible to receive IRWMP grant funds for Phase 2, the Sub-Grantee shall provide updated customer water use data for a period of time that SAWPA will specify before conservation-based water rates were adopted in order to establish a water usage baseline by customer class. For the reporting required described in Section 12 and 14 of this

Contract, the Sub-Grantee shall report on water savings by customer class in order to provide an effective comparison to the established baseline.

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 an amount not to exceed the Sub-Grantee's estimated reasonable costs. However, SAWPA's actual grant disbursements to the Sub-Grantee under this Contract shall not exceed payments received from DWR.

After Phase 2, if the Sub-Grantee fails or refuses to maintain its conservation-based water rates structure for three (3) years after adoption, SAWPA shall consider such failure or refusal to be a material violation and breach of this Contract. SAWPA's sole right and remedy for violation of this section is to require any monies received by Sub-Grantee from SAWPA for Phase 2 to be returned with interest calculated at the State of California general obligation bond interest rate in effect at the time of the breach. Sub-Grantee will not be in violation of this section for failure to maintain the conservation-based rates due to the establishment or change of law or ruling on the part of a court which provides that conservation-based water rates are not allowed by law.

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

Eligible project costs include the reasonable costs of a water rates consultant, a conservation-based water rate design study, aerial imagery and global information system data, legal review, consultant fees for training board members, temporary customer service during the initial implementation of the work, Proposition 218 notices, bill design and shadowing and initial equipment needed during the implementation of the conservation based water rate structure.

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

- Costs incurred before the dates specified below.
- Operation and maintenance costs, including post 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.
- Monitoring and assessment costs for efforts required after project construction is complete.
- Support of existing agency requirements and/or mandates in response to negligent behavior.
- Purchase of land in excess of the minimum required acreage necessary to operate as an integral part of a project.
- Payment of principal or interest of existing indebtedness or any interest payments unless the debt is incurred after execution of this Grant Agreement.
- Overhead not directly related to project costs.
- Travel and per diem costs.

Work performed after January 1, 2010, is eligible to be counted as local match. Work performed on or after January 17, 2014, is eligible for reimbursement.

#### **SECTION 4. DISBURSEMENT**

IRWMP grant funds will be disbursed in accordance with the disbursement provisions of the Grant Agreement. Disbursement will follow the invoicing received by SAWPA and transmitted to DWR in accordance with Section 10 and the allocations in accordance with Section 1.

**SECTION 5. 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 government accounting standards and the conditions outlined in Exhibit D.

**SECTION 6. TERM**

This Contract shall not be effective until it has been executed by the 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. Notwithstanding the foregoing, the obligations of this Contract and the Grant Agreement shall continue through the life of the Grant Agreement.

**SECTION 7. COVENANT TO MAINTAIN RATE STRUCTURE PROGRAM**

Under Phase 2, the Sub-Grantee shall maintain and implement its conservation-based water rates structure for three (3) years following adoption, provided that Sub-Grantee may change its rates during such three (3) year period provided that the changed rates are conservation-based rates. The Parties understand and agree that this covenant shall survive the expiration or termination of this Contract. The Parties agree that reporting on the benefits of the rate structure implementation is required until June 30, 2028.

**SECTION 8. COMPLIANCE WITH GRANT REQUIREMENTS, LAWS AND REGULATIONS**

Before IRWMP grant funds are provided for the adoption of conservation-based water rates, the Sub-Grantee shall:

- (1) Provide SAWPA with documentation showing the adoption of the Santa Ana Funding Area's IRWM Plan, the One Water One Watershed 2.0 Plan which is available on SAWPA's website.
- (2) Provide documentation from DWR that verifies the supplier's 2010 Urban Water Management Plan (UWMP) addresses the requirements of the California Water Code (CWC).
- (3) Self-certify their compliance with the requirements contained in AB 1420.
- (4) Self-certify their compliance with the water metering requirements contained in CWC Section 525 et. seq.
- (5) If applicable, provide their surface water diversion reports surface water diversion reports in compliance with requirements outlined in Part 5.1 (commencing with Section 5100) of Division 2 of the CWC.

The Sub-Grantee agrees that it shall, at all times, comply with and require its consultants, contractors and subcontractors to comply with all applicable federal and state laws, rules, regulations and guidelines as described in the Grant Agreement, including Exhibit D. To maintain eligibility, the Sub-Grantee, as an urban water supplier, must meet the following ongoing requirements to receive IRMWP grant funds:

Maintain compliance with the Urban Water Management Planning Act and Sustainable Water Use and Demand Reduction, Part 2.55 of Division 6. By June 28, 2016, submit documentation to SAWPA that demonstrates the Sub-Grantee is meeting the 2015 interim gallons per capita per day (GPCD) target. If

not meeting the interim target, also include a schedule, financing plan, and budget for achieving the GPCD. Subsequently, if not meeting the 2015 GPCD target, submit annual reports that include a schedule, financing plan, and budget for achieving the GPCD every year by June 28, starting in 2017.

**SECTION 9.        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 any term, provision, condition, or commitment of this Contract;
- (2) The Sub-Grantee fails to maintain its conservation-based water rates structure per Section 3 of this Contract; or
- (3) DWR directs SAWPA to withhold any such grant funds.

**SECTION 10.      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. Refer to **Attachment C**.
- (3) Sufficient evidence of funding documentation 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.

(B) Invoices also shall include the following information:

- (1) Appropriate receipts and reports for all costs incurred.

**SECTION 11.      RECORDS AND REPORTS**

(A) Without limitation on the requirement that the work 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 Project;
- (2) Establish an accounting system that adequately and accurately itemizes and describes final total costs of the work;
- (3) 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

- (B) The Sub-Grantee shall maintain its books, records and other material concerning the work in accordance with generally accepted government accounting standards and as required by the Grant Agreement.
- (C) The Sub-Grantee agrees to expeditiously provide, during implementation phase and for three (3) years after the termination of the Grant Agreement, 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 12. QUARTERLY PROGRESS REPORTS**

Quarterly Progress Reports shall be completed using the templates provided as shown in **Attachment B**. 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 cover the period between August 1, 2015, and October 31, 2015, and be submitted no later than November 15, 2015, to SAWPA, with future reports due in successive 3-month increments. Future quarterly reports shall cover the periods February-April (due May 15), May-July (due August 15), August-October (due November 15), and November-January (due February 15). Quarterly Progress Reports are required until the Project Closeout Documentation is received and submitted to the State.

#### **SECTION 13. 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 document. The work review and evaluation may be performed by SAWPA or may be contracted to a responsible third party. Any findings and recommendations of the work review and evaluation shall be addressed by the Sub-Grantee within sixty (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) SAWPA may call for an audit of financial information relative to the work at any time during the term of this Contract and for three years after project completion or final payment, whichever is later, 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 14. POST-PERFORMANCE REPORTS**

Post-Performance Reports shall be submitted to SAWPA within seventy-five (75) calendar days after the first operational year of a project has elapsed. This record keeping and reporting process shall be repeated annually until June 30, 2028.

#### **SECTION 15. TERMINATION; IMMEDIATE REPAYMENT; INTEREST**

- (A) SAWPA may terminate this Contract at any time prior to completion of the work for Sub-Grantee's violation of any provision of this Contract upon written notice by SAWPA of the violation and failure of Sub-Grantee to come into compliance within five days of the notification.
- (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 with interest, which shall be equal to the State of California general obligation bond interest rate in effect at the time of SAWPA's notice of termination.

- (C) SAWPA may terminate this Contract should DWR terminate SAWPA as program manager, terminate funding for this Contract, or terminate the Grant Agreement. Upon such DWR-caused termination, SAWPA shall not be liable to Sub-Grantee for any damages, costs or expenses resulting from such termination. If the State so declares, Sub-Grantee shall be required to return any monies previously distributed to Sub-Grantee pursuant to the terms of the Grant Agreement.

**SECTION 16.      ARBITRATION**

Any dispute which may arise under this Contract by and between the SAWPA and the Sub-Grantee, including the Sub-Grantee's subcontractors, shall be submitted to binding arbitration. The arbitrator shall decide each and every dispute in accordance with the laws of the State of California, 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 17.      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 18.      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.

**SECTION 19.      AMENDMENT**

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

**SECTION 20.      SAWPA REVIEWS; SUB-GRANTEE AS INDEPENDENT CONTRACTOR**

- (A) The Parties agree that review or approval of the Project by SAWPA is for administrative and eligibility purposes only and does not relieve the Sub-Grantee of its responsibility to properly develop, adopt, implement, and maintain its conservation-based water rates structure. As between SAWPA and the Sub-Grantee, the Sub-Grantee agrees that it has sole responsibility for proper development, adoption, implementation, and maintenance of its conservation-based water rates structure.
- (B) The Sub-Grantee is an independent contractor exclusively responsible for the work 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 21.      INDEMNIFICATION**

The Sub-Grantee shall defend, indemnify and hold harmless SAWPA and its directors, commissioners, officers, employees, agents and assigns against any and all losses, claims, damages or liabilities, joint or several, including attorneys fees and expenses incurred in connection therewith, to which SAWPA may become liable in connection with or arising from this Contract. Sub-Grantee shall reimburse SAWPA for any legal or other expenses incurred by it in connection with investigating any claims against it and defending any actions, insofar as such losses, claims, damages, liabilities or actions arise out of or related

to this Contract. Sub-Grantee shall indemnify and save SAWPA harmless from and against any claims, losses, damages, attorneys fees and expenses arising from any and all other contracts, contractors, subcontractors, suppliers, laborers, and any other person, entity or corporation furnishing or supplying such services, materials or supplies in connection with Sub-Grantee’s work funded, in part, by this Contract. Sub-Grantee shall indemnify and save SAWPA harmless from any and all claims, losses, damages, attorneys fees and expenses that may arise from any breach or default by Sub-Grantee in the performance of its obligations under this Contract, or any act of negligence by the Sub-Grantee or any of its agents, contractors, subcontractors, servants, employees or licensees concerning the subject matter of this Contract. Sub-Grantee shall indemnify and hold SAWPA harmless from any and all claims, losses, damages, attorneys’ fees and expenses arising out of the completion of the work or the authorization of payment of work costs or by the Sub-Grantee. No indemnification is required under this Section for claims, losses or damages arising out of the sole and exclusive misconduct or negligence under this Contract by SAWPA.

**SECTION 22.      PROJECT AND INFORMATION ACCESS**

The Sub-Grantee agrees to ensure that SAWPA, DWR, or any authorized representative thereof, shall have reasonable access to supporting conservation rate structure information at all reasonable times during the term of the Grant Agreement, and thereafter for the useful life of this Contract.

**IN WITNESS THEREOF**, the parties have executed this Contract on the dates set forth below.

SANTA ANA WATERSHED PROJECT AUTHORITY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Celeste Cantú, General Manager

**Sub-Grantee**

NAME

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Scott C. Stiles, City Manager

\_\_\_\_\_  
Printed Name