

San Geronio Pass Water Agency

DATE: April 1, 2024

TO: Board of Directors

FROM: Lance Eckhart, General Manager

BY: Lance Eckhart, General Manager

SUBJECT: AGREEMENT TO PROVIDE GAP FUNDING TO THE HIGH VALLEYS WATER DISTRICT RELATED TO APPROVED PROPOSITION 1 INTEGRATED REGIONAL WATER MANAGEMENT GRANT FUNDS

RECOMMENDATION

Authorize the General Manager to enter into an Agreement with the High Valleys Water District (HVWD) to provide Gap Funding support to utilize Proposition 1 Integrated Regional Water Management Plan (IRWM) grant funds through the Department of Water Resources.

PREVIOUS CONSIDERATION

- February 14, 2022: The Board reviewed a draft Gap Funding Agreement with the Cabazon Water District to assist in utilizing awarded grant funding.
- March 14, 2022: The Board reviewed a draft Gap Funding Agreement with the Cabazon Water District to assist in utilizing awarded grant funding.
- July 17, 2023: The Board expands the gap funding concept to a total of four small systems in the service area, including South Mesa Water Company.
- March 4, 2024: The Board approved an agreement to provide \$10.2 million in Gap Funding assistance to South Mesa Water Company for the County Line Pipeline Replacement Project

BACKGROUND

The Agency's Gap Funding program was initiated in 2022 in response to an opportunity to provide grant reimbursement assistance to the Cabazon Water District (CWD). Despite being awarded grants by the State Water Resources Control Board (State Board) and the Department of Water Resources (DWR), CWD faced financial constraints hindering its ability to fund routine operations and fulfill obligations associated with these large grant projects simultaneously. Upon confirming the CWD's cash flow challenges in utilizing authorized grant funds, Agency staff engaged with CWD to address this issue. Recognizing CWD's status as a small disadvantaged water system, collaborative efforts ensued between Agency and CWD staff and grant administrators from the State Board and DWR, to explore potential solutions. Both State Board and DWR representatives acknowledged that Gap Funding from regional entities had become increasingly common

and often necessary for small disadvantaged water systems to utilize state grant funding effectively.

Upon confirming the necessity for regional grant implementation Gap Funding assistance, Staff started drafting a Gap Funding Agreement with CWD. The Gap Funding Agreement aims to bridge the financial gap between the actual project expenses and the delayed reimbursement cycles from the State Board and DWR. The Gap Funding Agreement was presented and approved by the Board of Directors on March 14, 2022. The total project costs between the two grants awarded to CWD was \$1,700,000, with the maximum amount of Gap Funding available of \$1,100,000 between reimbursement cycles (~65% of the grant awards).

Following the Board's approval of the Gap Funding Agreement, the initial payment was issued to CWD in September 2022, and the first reimbursement was received in November 2022. Implementing the Gap Funding Program with CWD has proceeded seamlessly, with payments allocated to cover project expenditures and regular reimbursements quickly returned to the Agency. To date, the Agency has provided CWD with \$1,284,221 in Gap funding assistance, while CWD has reimbursed the Agency with \$1,188,475.66 sourced from their grants from the State Board and DWR..

The Gap Funding Program has proven to be mutually beneficial for the Agency and CWD, gaining support and generating interest at both state and regional levels. This initiative has attracted attention from various small disadvantaged water systems. The Agency has received Gap Funding requests from South Mesa Water Company, High Valley Water Company, and Banning Heights Mutual Water Company.

On March 4, 2024, the Board approved a similar Gap Funding Agreement with South Mesa Water Company based on the success of the Gap Funding Program with CWD.

ANALYSIS

The Agency has received a Gap Funding Program request from the High Valleys Water District (HVWD). HVWD was recently awarded a \$984,324 grant from DWR through the San Gorgonio Integrated Regional Water Management (IRWM) program. The City of Banning (City) is responsible for the administration and management of the San Gorgonio IRWM Plan. Acting as a pass-through entity, the City facilitates allocating funding from DWR to projects outlined in the San Gorgonio IRWM Plan. Additionally, the City is the designated administrator for the IRWM Plan and any associated grants awarded through the program. It should be noted that the City's role primarily involves facilitating grant distribution and is not directly involved in the grant work associated with HVWD. The Twin Pines Water Supply Reliability and Fire Protection Upgrades project involves improving and upsizing the HVWDs distribution system. The construction will include upgrading the approximately 1 mile of existing 2-inch pipeline mains to 8-inch, installing hydrants every 500 feet, and connecting 12 new meter connections to the newly realigned main along Twin Pipes Road. These upgrades ensure adequate fire flows, maintain consistent pressure throughout the system, and facilitate the construction of new homes on vacant property.

As part of the planning aspect of this project, HVWD utilized Provost and & Pritchard to perform a Feasibility Study for this project. The Feasibility Study assessed various components of the project, including CEQA compliance requirements, various alignments and easements along Twin Pines Road, various pipeline materials, performing system hydraulics on upsizing the existing mains, ensuring Fire Code and flow requirements are met, drafting feasibility maps outlining the different options, and providing a thorough cost estimate for construction.

Staff has collaborated with HVWD to obtain project schedules to estimate the necessary Gap Funding payments between reimbursement cycles. Projected grant expenditures are expected to average around \$200,000 per month, with quarterly expenses ranging from approximately \$450,000 to a peak of about \$984,324. HVWD aims to complete the project within 2024, with the bulk of the work scheduled during Q3 & Q4 of 2024. Given the short duration of the project, Staff recommends providing Gap Funding assistance in up to the full grant amount of \$984,324 to HVWD. Typically, grant reimbursements from DWR occur within 90 days (one quarter) but can extend up to 6 months (two quarters). The estimated project duration slightly exceeds six months.

A Gap Funding Agreement between the Agency and HVWD has been drafted, which defines roles, responsibilities, and expectations between HVWD and the Agency. The Gap Funding Agreement documents the public purpose and interests that would be provided by the Agency for engaging in such a transaction. The Gap Funding Agreement now includes revised terms concerning the repayment of advanced funds by the Agency. It stipulates that the repayment schedule may include an interest rate permitted by law, subject to the Agency's reasonable discretion in cases of non-payment or reimbursement by HVWD or DWR.

During the Gap Funding period, Staff intends to work closely with HVWD, their consultant, and DWR grant administrators to keep reimbursement cycles as efficient as possible. Regular updates will be given at the Agency's monthly Finance and Budget Committee meetings, which will include a Gap Funding Report detailing payments issued, reimbursements received, and the current outstanding Gap Funding balance.

FISCAL IMPACT

The Agency has two designations for its budgets and reserves, the General Fund, also known as the Green Bucket, which is an unrestricted fund in accounting terms, and the Debt Service Fund, also known as the Red Bucket, which is a restricted fund in accounting terms.

The Debt Service Fund is set aside for all revenues and expenditures related to the State Water Project, and it is restricted to those uses. The General Fund is available for all other Agency financial activities. Within the General Fund, other designations for revenues and expenditures have been established that do not affect the General Fund budget.

Funds for the Gap Funding Program come from General Fund reserves, but are reported separately in the monthly budget report. Because of the temporary nature of the financial activity, transactions of the Gap Funding Program will not affect the General Fund budget. The General Fund activity will continue to be included in the budget report, as it has been in the past, and revenues and expenditures for the Gap Funding Program will not affect this part of the report.

If the Board chooses to approve the Gap Funding Agreement for HVWD, the total possible outstanding expenditure level will be approximately \$8 million. This includes the remaining receivable from Cabazon Water District of about \$100,000, South Mesa's portion of about \$7 million, and HVWD's portion of about \$1 million. The Agency is well-positioned to provide this financial resource to the above-mentioned organizations.

AGENCY'S STRATEGIC PLAN APPLICATION

The Gap Funding Program is consistent with the Agency's Mission Statement to support the region's quality of life through sustainable water management and with the following strategies:

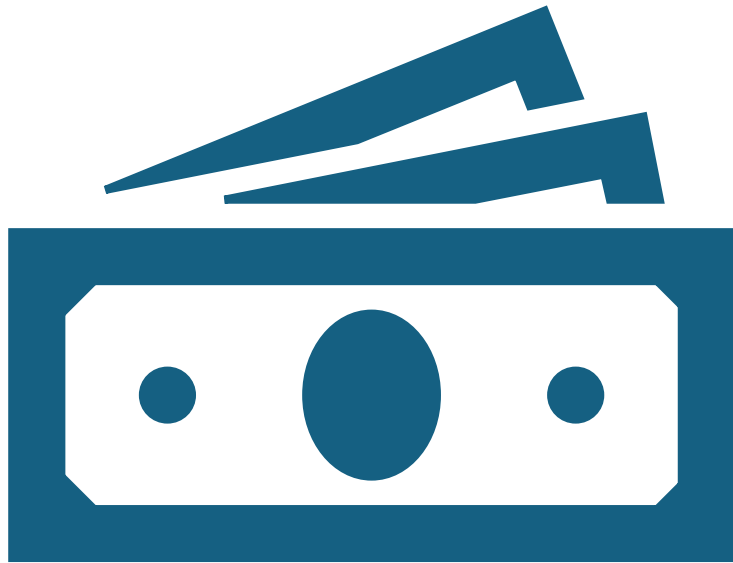
- Align with the current and future water landscape, supporting the region's long-term needs by diversifying the local supply portfolio and advancing water sustainability.
- Sustain long-term financial stability by engaging in prudent planning to guide informed decision-making.
- Maintain, foster and expand collaboration with local, regional, state and federal partners to develop strategic solutions to water supply challenges and opportunities.
- Serve the public with dedication, determination, transparency, collaboration, and a commitment to expanding knowledge.

ACTION

Authorize the General Manager to enter into an Agreement with the High Valleys Water District to provide Gap Funding support to utilize Proposition 1 Integrated Regional Water Management Plan (IRWM) grant funds through the Department of Water Resources

ATTACHMENTS

- Agreement for Providing Gap Funding to High Valleys Water District Related to Approved Proposition 1 Round 2 Integrated Regional Water Management Plan (IRWM) Implementation Grant
- Agreement Between High Valleys Water District and the City of Banning for Funds from a Proposition 1 Round 2 Integrated Regional Water Management (IRWM) Implementation Grant to the San Gorgonio Region
- Gap Funding Program Cabazon Water District Tracking Sheet

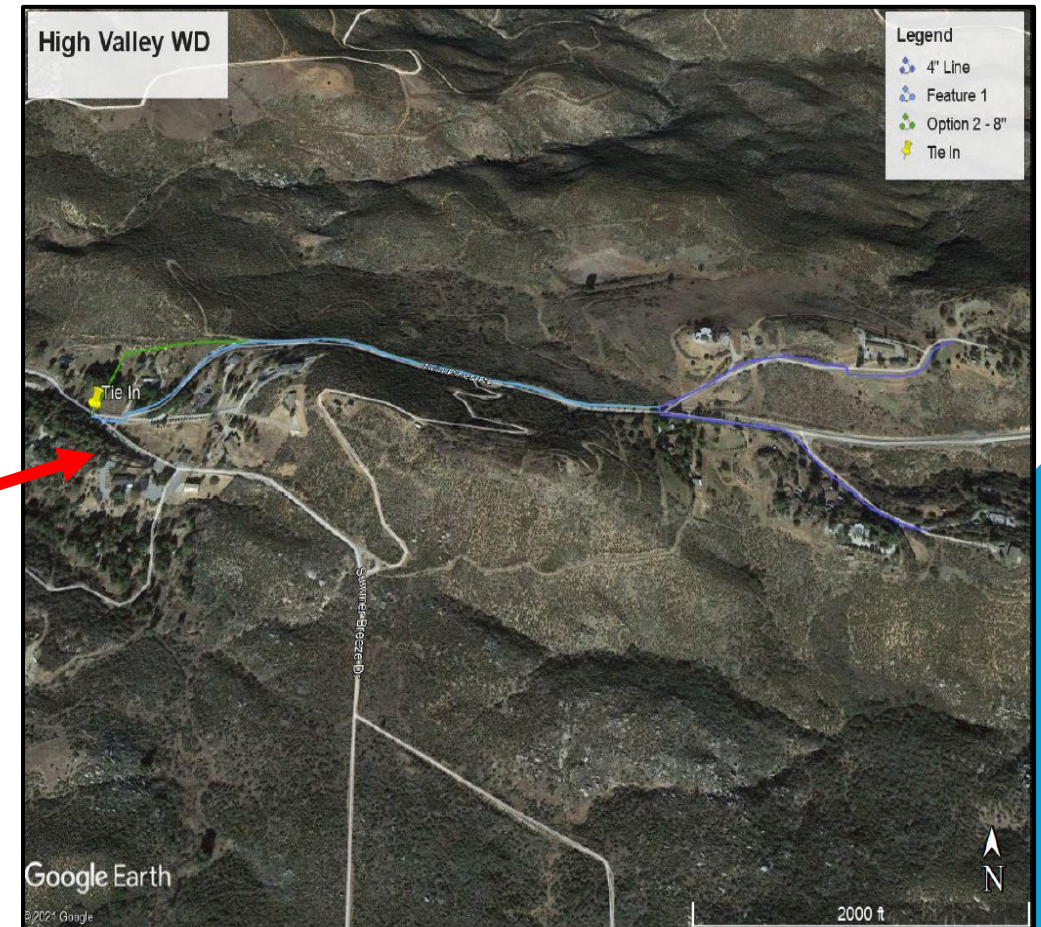
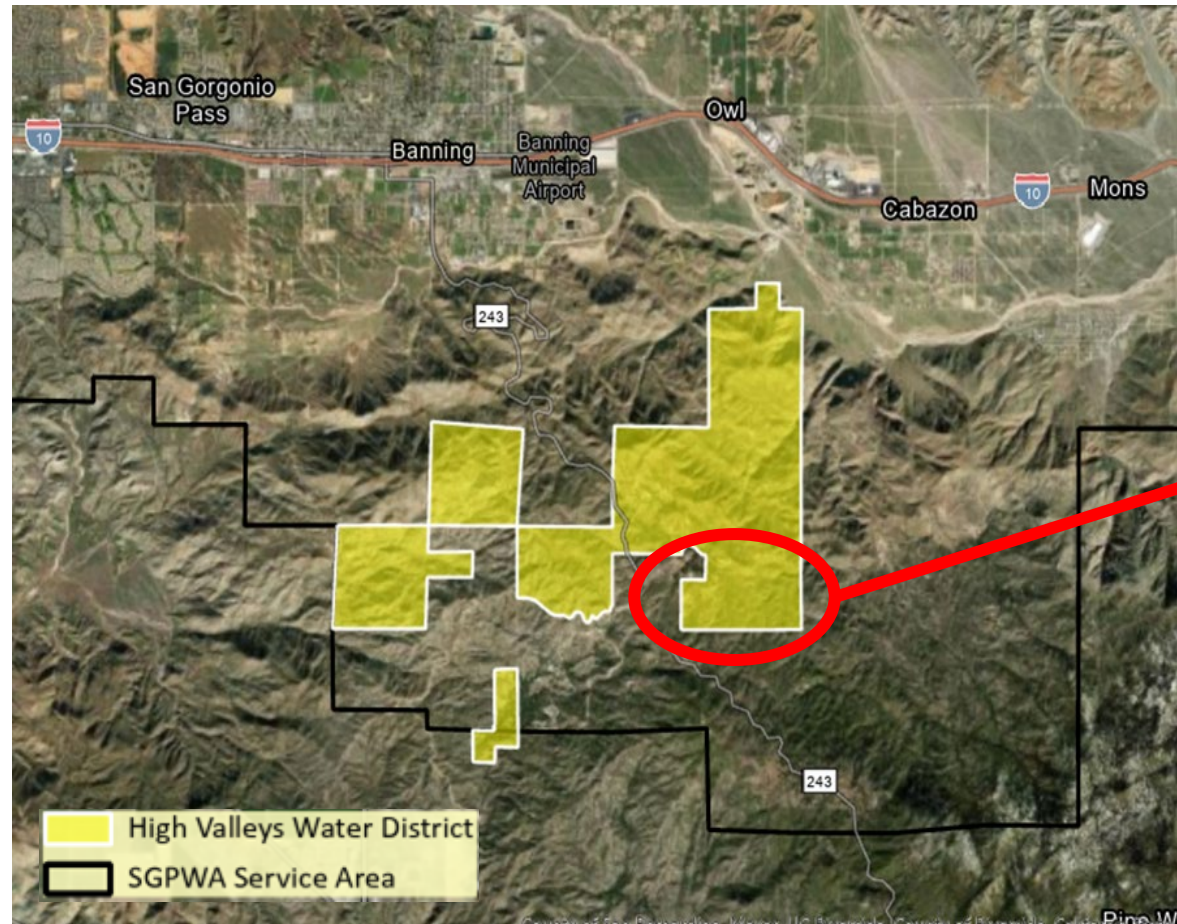


High Valleys Water District Gap Funding Program

Board of Directors Meeting

April 1, 2024

Twin Pines Water Supply Reliability and Fire Protection Upgrades



Twin Pines Water Supply Reliability and Fire Protection Upgrades

- DWR Integrated Regional Water Management (IRWM) Grant
- \$984,324 Grant
- Construction Grant:
 - Upsizing existing pipelines
 - 2” current to 8” upgrade
 - Adequate fire flow protection
 - 12 new metered connections
 - Ensuring reliable water supply to existing homes

Date	Milestone
February 2024	Submit 50% design submittal
April 2024	Submit 90% design submittal
May 2024	Design complete; advertised for construction
July 2024	Open bids
August 2024	HVWD board awards contract
September 2024	First monthly payment
December 2024	Probably last monthly payment

Twin Pines Water Supply Reliability and Fire Protection Upgrades



Date	Amount
September 2024	~\$50,000
October 2024	~\$350,000
November 2024	~\$350,000
December 2024	~\$150,000

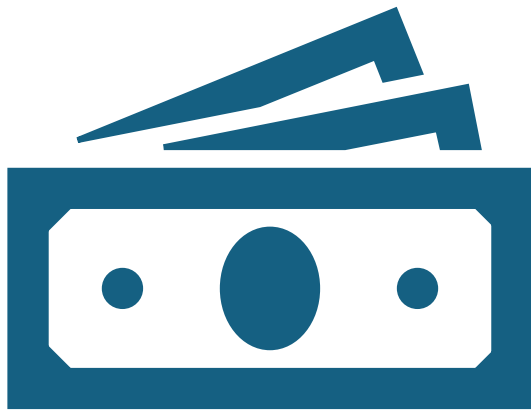
Twin Pines Water Supply Reliability and Fire Protection Upgrades



Twin Pines Water Supply Reliability and Fire Protection Upgrades

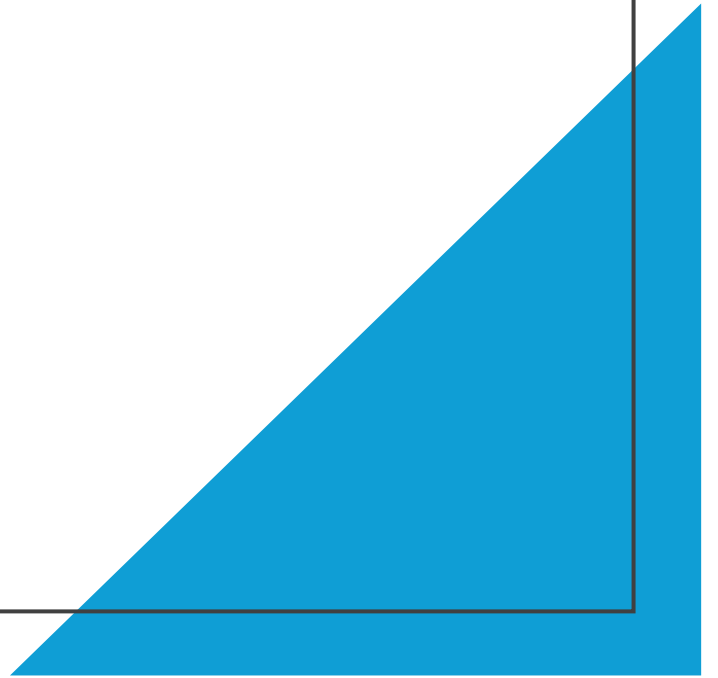


Recommendation



Authorize the General Manager to enter into an Agreement with the High Valleys Water District to provide Gap funding support to utilize Proposition 1 Integrated Regional Water Management Plan (IRWM) grant funds through the Department of Water Resources

Questions



AGREEMENT FOR PROVIDING GAP FUNDING
TO
HIGH VALLEYS WATER DISTRICT
RELATED TO APPROVED PROPOSITION 1 ROUND 2 INTEGRATED REGIONAL
WATER MANAGEMENT (IRWM) IMPLEMENTATION GRANT

This AGREEMENT FOR PROVIDING GAP FUNDING (“**Agreement**”) is made and entered into as of March ___, 2024, by and between the SAN GORGONIO PASS WATER AGENCY, a public agency formed under the San Gorgonio Pass Water Agency Law set forth in Act 1100 of the Water Code Uncodified Acts (“**SGPWA**”) and the HIGH VALLEYS WATER DISTRICT, a public agency organized and operating under the California Water District Law, Water Code section 34000 *et seq.* (“**HVWD**”). SGPWA and HVWD are sometimes individually referred to herein as a “**Party**” and collectively as the “**Parties**”.

RECITALS

A. HVWD and SGPWA are within the San Gorgonio Pass Integrated Regional Water Management Plan (“**Plan**”). The Plan provides a pathway for local agencies and stakeholders to collaboratively identify and implement water management solutions that provide multiple integrated benefits to stakeholders and communities within the San Gorgonio Region. SGPWA and HVWD participated in the development of the Plan, which is administered by the City of Banning (“**City**”).

B. HVWD succeeded in securing a Proposition 1, Round 2 IRWM Implementation Grant (“**Grant**”) to complete Project 1, identified as the Twin Pines Water Supply Reliability And Fire Protection Upgrades (“**Project**”), as set forth in that certain grant agreement with City, dated as of January 17, 2024 (“**City Agreement**”). A copy of the City Agreement is attached hereto as **Exhibit “A”**. The City Agreement documents that City will engage HVWD as a Subgrantee to complete the Project Scope of Work, which is an integral part of the State Grant Agreement between the State of California Department of Water Resources (“**DWR**”) and City

under Agreement Number 4600015401, pursuant to Chapter 7. Regional Water Security, Climate and Drought Preparedness.

C. The implementation of the Project will help reduce water losses, which helps meet the objectives of the Plan.

D. The Grant will be distributed quarterly to HVWD through the City as the disbursement administrator. Disbursements under the Grant can involve lengthy warrant procedures (“**Reimbursement Cycle**”). This time period may necessitate that HVWD advance its own funds to pay its contractors while awaiting reimbursement. As a small water system servicing disadvantaged communities, HVWD would likely have difficulty advancing the necessary sums and may risk losing the Grant as contractors require a much shorter invoice payment turnaround time in order to undertake the Project.

E. HVWD estimates the need for an advance of funds during one or more Reimbursement Cycles to cover Project costs. HVWD desires to enter into a gap funding agreement with SGPWA to avoid the loss of the Grant and potential abandonment of the Project.

F. SGPWA agrees to enter into a gap funding agreement with HVWD because the Project provides a benefit to the public by improving water supply reliability within the Plan area.

NOW THEREFORE, in consideration of the foregoing recitals and the promises and covenants contained herein, the Parties agree as follows:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into the Agreement and made a part thereof by this reference.

2. **Purpose.** The purpose of this Agreement is to establish: (i) the manner, terms and conditions pursuant to which SGPWA will advance certain funds to HVWD; and (ii) the purposes for which HVWD may use the funds so advanced.

3. **Effective Date.** The Effective Date of this Agreement shall be _____, 2024.

4. **Term of Agreement.** Unless otherwise extended or earlier terminated, the term of this Agreement shall commence on the Effective Date and shall end on the date that HVWD repays the Advanced Funds, as defined below and as required under this Agreement (“**Term**”).

5. **Maximum Advanced Funds.** The maximum amount that may be requested by HVWD and advanced by SGPWA (“**Advanced Funds**”) shall not exceed the total of **Nine Hundred and Eighty-Four Thousand Three Hundred and Twenty-Four Dollars (\$984,324.00)** during any and all Reimbursement Cycles and during the term of this Agreement. Once the maximum amount of Advanced Funds is reached, SGPWA shall have no obligation to consider any further advance requests from HVWD.

6. **Payment Procedures to HVWD.** HVWD will submit to SGPWA a copy of the invoice or invoices, and accompanying backup documentation, that HVWD has submitted or intends to submit to City/DWR and for which HVWD is requesting Advanced Funds from SGPWA (“**Invoices**”). Subject to availability of funds as determined in SGPWA’s reasonable discretion, and the limitations set forth in Section 5 above, and provided HVWD is not otherwise in breach of any term of this Agreement, SGPWA will issue payment to HVWD in the amounts so requested within ____ days of receiving the Invoices. Notwithstanding anything to the contrary as may be set forth herein, all such requests shall be made no later than December 31, 2024.

(a) **Outstanding Gap Funding Agreements** It is hereby acknowledged that as of the Effective Date of this Agreement, SGPWA may be a party to one or more similar gap funding agreements with other entities. The reasonable discretion of SGPWA in determining whether, and in what amounts, to provide Advanced Funds to HVWD may be based on a number of factors including, but not limited to, the amount of advanced funds outstanding from all such gap funding agreements and the amount SGPWA has budgeted for all such gap funding agreements in the applicable fiscal year.

7. **Use of Advanced Funds.** HVWD may use the Advanced Funds solely to pay Project costs that are eligible for reimbursement under the terms of the City Agreement, and for no other purpose.

8. **Repayment of Advanced Funds to SGPWA.** The Parties agree as follows:

a. HVWD shall repay SGPWA the Advanced Funds in monthly or quarterly increments, on whichever of the following occurs first: (i) within 15 days of HVWD's receipt of Grant funds from a Reimbursement Cycle; or (ii) as other general funds become available as determined in HVWD's reasonable discretion. Said repayment obligation shall continue until the Advanced Funds are repaid to SGPWA in full; provided, however, that Advanced Funds not spent by HVWD at the time the Project is complete shall become immediately due and payable to SGPWA.

b. Upon expiration or earlier termination of this Agreement, whichever occurs first, all Advanced Funds that have not been spent by HVWD shall become immediately due and payable to SGPWA. HVWD's obligation to repay the Advanced Funds in full to Agency is not limited or extinguished by reason of the failure of City/DWR to distribute the Grant to HVWD. If necessary, the Parties shall negotiate in good faith a reasonable repayment schedule pursuant to which HVWD will repay to SGPWA the Advanced Funds for which HVWD expected but did not receive Grant disbursements from City/DWR. Said repayment schedule may include, in SGPWA's reasonable discretion, an interest rate at a rate as permitted by law.

c. HVWD's obligation to repay the Advanced Funds under this Section 8 shall survive the expiration or earlier termination of this Agreement.

d. Notwithstanding anything to the contrary as may be set forth herein, the repayment of any and all outstanding Advanced Funds shall be due and owing as of March 31, 2025.

9. **Indemnification.** HVWD shall indemnify and hold and save SGPWA, its officers, agents and employees free and harmless from any and all liabilities for any liens, claims and damages that may arise out of or in any way related to this Agreement and the Projects,

including without limitation any liens, claims and damages (including attorneys' fees) arising from or in any way related to planning, design, construction, maintenance and operation of the Projects and any breach of this Agreement. The indemnification obligation under this Section 9 shall survive the expiration or earlier termination of this Agreement.

10. No Partnership, Joint Venture or Agency Relation. Nothing in this Agreement shall be construed to render SGPWA in any way or for any purpose a partner, joint venture with HVWD, nor shall this Agreement be construed to authorize either Party to act as agent for the other.

11. Insurance. HVWD shall name SGPWA, SGPWA's officers, employees and agents as additional insureds on all insurance policies procured for the Projects.

12. Entire Agreement; Amendment. This Agreement contains the entire understanding between the Parties with respect to its subject matter, and supersedes all prior agreements, oral or written, and all prior or contemporaneous discussions or negotiations between the Parties. This Agreement cannot be amended except in a writing signed by both Parties.

13. No Waiver. Any failure or delay on the part of either Party to exercise any right under this Agreement shall not constitute a waiver of the right, and shall not preclude such Party from exercising or enforcing the right, or any other provision of this Agreement, on any subsequent occasion.

14. Notices. All notices or other communications required or desired to be given pursuant to this Agreement shall be in writing and shall be hand-delivered or sent by a reputable overnight courier service providing delivery confirmation. Each such notice or communication shall be deemed to be duly given when hand-delivered or one (1) day after being deposited for next day delivery with an overnight courier. Each such notice or communication shall be addressed to the Parties at the address noted on the signature page, or such other address as a Party notifies the other in writing.

15. Headings; Section References. Captions and headings appearing in this Agreement are inserted solely as reference aids for ease and convenience; they shall not be

deemed to define or limit the scope or substance of the provisions they introduce, nor shall they be used in construing the intent or effect of such provisions.

16. Severability. If any provision of this Agreement is finally determined by a court to be invalid or unenforceable as written, the provision shall, if possible, be enforced to the extent reasonable under the circumstances and otherwise shall be deemed deleted from this Agreement. The other provisions of this Agreement shall remain in full force and effect so long as the material purposes of the Agreement and understandings of the Parties are not impaired.

17. Binding Effect Assignment. This Agreement shall be binding on and inure to the benefit of the Parties, and their respective successors and permitted assigns. HVWD shall not have the right to assign its rights under this Agreement except with the prior written consent of SGPWA, which consent may be withheld at SGPWA's sole discretion.

18. Attorneys' Fees. In the event that any action or proceeding is brought to enforce one or more of the terms of this Agreement, to restrain an alleged violation of this Agreement, or to determine the validity of this Agreement or any part, the prevailing Party in any such action or proceeding shall be entitled to recover from the other its reasonable costs and attorneys' fees, in addition to any other remedies available to it in law or equity. If both Parties are successful in one or more causes of action during any such proceeding, the costs and fees shall be apportioned as determined by the court.

19. Governing Law and Venue. This Agreement is a contract governed in accordance with the laws of the State of California. The Parties hereby agree that venue for any action brought to enforce the terms of this Agreement shall be in a court of competent jurisdiction in the county of Riverside, California, and consent to the jurisdiction thereof.

20. Counterparts. Counterpart execution of this Agreement is hereby authorized, including electronic transmission of pdf or similar format, and each counterpart of this Agreement so executed shall, irrespective of the date of its execution and delivery, be deemed an original, and all such counterparts together shall constitute one and the same instrument.

21. Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof.

22. No Obligations to Third Parties. Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights or benefit upon, nor obligate any Party to any person or entity other than the Parties.

[Signatures follow on the next page]

DRAFT

IN WITNESS WHEREOF, the Parties have executed this agreement as of the date first written above.

HVWD:

SGPWA:

HIGH VALLEYS WATER DISTRICT

SAN GORGONIO PASS WATER
AGENCY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

EXHIBIT "A"
CITY AGREEMENT

DRAFT

**AGREEMENT BETWEEN THE
THE CITY OF BANNING, CALIFORNIA
AND
HIGH VALLEYS WATER DISTRICT
FOR FUNDS FROM A PROPOSITION 1 ROUND 2 INTEGRATED REGIONAL
WATER MANAGEMENT (IRWM) IMPLEMENTATION GRANT TO THE SAN
GORGONIO REGION TO COMPLETE**

**PROJECT 1: TWIN PINES WATER SUPPLY RELIABILITY AND FIRE
PROTECTION UPGRADES**

THIS AGREEMENT is entered into this 17th day of January 2024, by and between the High Valleys Water District, hereinafter called "Subgrantee" or "Local Project Sponsor," and the City of Banning, hereinafter called "THE CITY" or "Grantee" for the purposes of completing PROJECT 1: TWIN PINES WATER SUPPLY RELIABILITY AND FIRE PROTECTION UPGRADES, hereinafter called "Project," and receiving reimbursement from the State Grant for a portion of Project expenses.

RECITALS

A. The City of Banning, California hereinafter called "THE CITY" or "Grantee" has agreed to enter into Agreement Number 4600015401, hereinafter called State Grant Agreement, with the Department of Water Resources of the State of California, hereinafter called "DWR" or "State," pursuant to Chapter 7. Regional Water Security, Climate, and Drought Preparedness (Wat. Code, § 79740 et seq.). The State funding will assist in financing the projects identified in the Grant Agreement associated with the adopted Integrated Regional Water Management (IRWM) Plan for the San Gorgonio Region. The State Grant Agreement (**Exhibit F**), and any subsequent amendments thereto, are incorporated herein by reference.

B. The term Local Project Sponsor (LPS) refers to the implementing agency intended to receive grant funding pursuant to said State Grant Agreement for work to be completed by LPS as set forth in said State Grant Agreement. LPS shall be assigned in accordance with the participating agencies identified in the State Grant Agreement. All work to be completed by LPS is referred to in this Agreement as "Project" and is defined as a group of activities as set forth in the State Grant Agreement **Exhibit A** (Work Plan); however, an individual LPS that enters into a Subgrantee Agreement with THE CITY for grant funds is responsible only for its portion of activities and not for activities proposed by any other LPS.

C. The parties acknowledge that THE CITY will administer the distribution of grant funds to each LPS pursuant to the State Grant Agreement. The LPS agrees to act on behalf of THE CITY

for the purposes of its individual Project management, oversight, compliance, and operations and maintenance. LPS is responsible for all other aspects of its Project in a manner to ensure THE CITY's compliance with the State Grant Agreement. LPS is solely responsible for design, construction, and operation and maintenance of the project it has proposed in State Grant Agreement, **Exhibit A**, Work Plan. Review or approval of plans, specifications, bid documents, or other construction documents by THE CITY or the State is solely for the purpose of proper administration of funds by THE CITY or the State and shall not be deemed to relieve or restrict responsibilities of the LPS under this Agreement.

D. The term of this Agreement begins on the date this Agreement is fully executed by both THE CITY and the Local Project Sponsor and ends on the termination date specified in the State Grant Agreement.

E. The parties desire to set forth the terms and conditions under which the Local Project Sponsor is to receive grant funds from THE CITY.

SECTION I SCOPE OF SERVICES

THE CITY hereby engages Subgrantee to complete the Project as forth in **Exhibit A**, Project Scope of Work, hereinafter referred to as **Exhibit A**, Work Plan, which is an integral part of the State Grant Agreement between the State of California Department of Water Resources and THE CITY of Banning, Agreement Number 4600015401, pursuant to Chapter 7. Regional Water Security, Climate, and Drought Preparedness (Wat. Code, § 79740 et seq.), hereinafter referred to as State Grant Agreement and incorporated as **Exhibit F** to this Agreement.

SECTION II COMPENSATION

A. GRANT REIMBURSEMENT SCHEDULE

Grant reimbursements payable to Subgrantee for services specified herein shall be in accordance with **Exhibit B**, Budget as shown in the State Grant Agreement. The cost of the Project is estimated to be \$984,324. Subgrantee agrees to be responsible for the Other Cost Share of the Project as shown in **Exhibit B**, Budget (\$20,000). Costs incurred after May 5, 2023 will be eligible for grant reimbursement and costs incurred after May 5, 2023 can be used as required local cost share. However, Grantee received 100% local cost share waiver.

B. METHOD OF PAYMENT

Reimbursement of funds expended by Subgrantee shall be based on work described in **Exhibit A**,

Work Plan. In order to receive disbursement of grant funds, Local Project Sponsor shall submit to THE CITY quarterly invoices for eligible project costs as defined in the State Grant Agreement Item 7 (Eligible Project Cost) in a form required by THE CITY. Supporting documentation as described in the State Grant Agreement Item 8 (Method of Payment) shall accompany each invoice. The documentation required by this paragraph shall be sent to:

Jennifer Jackson, Grants Coordinator
City of Banning
jjackson@banningca.gov

THE CITY shall request reimbursement from the State for Subgrantee's costs, subject to a finding by THE CITY that the invoice and supporting documentation are consistent with the requirements of **Exhibit F**, State Grant Agreement. Where THE CITY finds the invoice and supporting documentation for work to be unsatisfactory, THE CITY shall describe deficiencies in writing or by electronic mail (e-mail) to Subgrantee within ten (10) days. Subgrantee shall have the option of revising the invoice and supporting documentation to delete reimbursement requests for invoices that are deemed unsatisfactory or revising unsatisfactory invoices and resubmitting a reimbursement request. Payments to Subgrantee are due and payable within thirty (30) days after receipt of grant funds from the State. As specified in State Grant Agreement, Exhibit D.36, ten percent (10%) of the maximum payment shall be retained by State, until such time as State releases the retention to THE CITY. The final invoice for work performed shall be submitted by Subgrantee to THE CITY not later than 30 days after completion of Project work as set forth in **Exhibit C**, Schedule. THE CITY shall submit such invoice to State with request for release of retention(s) not later than 60 days after receipt of invoice.

C. MAXIMUM PAYMENT

Payments to Subgrantee for Project expenses incurred under this Agreement **shall not exceed \$964,324.**

SECTION III INSPECTION OF WORK

Authorized representatives of THE CITY shall have access to Subgrantee's offices or other work location during normal business hours for the purpose of review and inspection of work activities undertaken pursuant to this Agreement.

SECTION IV OWNERSHIP OF PROJECT REPORT

For the purposes of retaining records for any future audits, Subgrantee shall provide THE CITY electronic copies of all original documents, explanations of methods, maps, tables, computer

programs, reports and other documents prepared under this Agreement and described as deliverables in **Exhibit F**, State Grant Agreement. Subgrantee may be required to provide additional documents to the State. THE CITY shall forward to the State all such requested documents.

SECTION V TIME OF PERFORMANCE

Subgrantee shall begin work upon the effective date of the DWR Grant Agreement and shall complete all tasks described herein according to the schedule shown in **Exhibit C**, Schedule. Time is of the essence to the Agreement, and late performance may result in a termination of the Agreement pursuant to Section IX, Termination.

SECTION VI RESPONSIBILITIES

- A. Subgrantee agrees to secure at Subgrantee's own expense all personnel, materials, and related services required to perform the services under this Agreement. Subgrantee shall act as an independent contractor and not as an agent or employee of THE CITY. Subgrantee shall have exclusive and complete control over Subgrantee's employees and subcontractors and shall determine the method of performing the services hereunder.
- B. THE CITY shall provide Subgrantee with all data and documents in its possession related to the State Grant as requested.
- C. Subgrantee shall perform the work and provide the documentation required of THE CITY or pertinent to Local Project Sponsor's Project in a timely manner as set forth, without limitation, in **Exhibit A**, Work Plan. Notwithstanding the foregoing, any documents or information required to be submitted to the State, Department of Water Resources, agents of the Department of Water Resources, agents of the State, shall be submitted by Subgrantee to THE CITY for submittal by THE CITY to the appropriate party designated in the State Grant Agreement.
- D. Subgrantee agrees to provide all required reports as specified in State Grant Agreement Item 14 (Submission of Reports), **Exhibit F**, according to a format and schedule as specified by THE CITY. This pertains to the quarterly Progress Report, Final Report, and Post-Performance Reports.
- E. Subgrantee shall coordinate and arrange for all meetings required to be held with other agencies or persons hereunder for the Project work specified in **Exhibit A**, Work Plan. Subgrantee shall be responsible for the reproduction of work produced by Subgrantee hereunder.
- F. THE CITY is to provide administrative services for the benefit of Local Project Sponsor and other local project sponsors, in the administration of this Agreement and the State Grant

Agreement. THE CITY is to receive compensation via grant reimbursement for these services as set forth in the State Grant Agreement Exhibits A and B (Work Plan and Budget).

G. THE CITY agrees to provide grant administrative services for the term specified in the State Grant Agreement. In the event the terms or conditions of the State Grant Agreement are changed to accommodate the Local Project Sponsor, THE CITY shall be reimbursed by the Subgrantee for any additional administrative costs that are solely attributable to grant administration occurring beyond the original scope of work described in the State Grant Agreement.

H. Subgrantee acknowledges that State Grant Agreement Item 5 (Basic Conditions) establishes the State shall have no obligation to disburse money for the Project under this Agreement until THE CITY, and as applicable the Subgrantee, has satisfied all the applicable conditions specified in Item 5.

I. Subgrantee acknowledges its responsibility to comply with the applicable provisions of the State Grant Agreement Exhibit D. Standard Conditions. Special attention is directed to State Grant Agreement Section D5 "Audits." Subgrantee may be required to share in expenses associated with an audit and shall be required to maintain records for at least three 3) years after Project completion.

J. The Subgrantee agrees to indemnify, defend and save harmless THE CITY, its officers, agents and employees, from any and all claims and losses accruing or resulting to any and all subcontractors, material suppliers, laborers and any other person, firm or corporation who may be injured or damaged by the negligent acts, errors, and/or omissions of the Subgrantee, Subgrantee's employees, or Subgrantee's subcontractors or sub-subcontractors in the performance of this Agreement.

K. Subgrantee agrees to perform all work for the Project under this Agreement in compliance with the terms and conditions of **Exhibit F**, State Grant Agreement.

SECTION VII INSURANCE

The Subgrantee shall procure, purchase at its expense and maintain in full force and effect such insurance as will protect it from claims, damages, losses, liability, costs, and expenses as set forth herein which may arise out of or result from or in any way connected with the Subgrantee's activities, work, services, and/or operations performed by the Subgrantee under this Agreement, whether such activities or operations be by itself or by any subcontractor or by any sub-subcontractor or by anyone directly or indirectly employed by any of them, or by anyone else for whose acts the Subgrantee or any of them is or may be liable. The procurement and maintenance by the Subgrantee of policies required under this Agreement shall not relieve, limit or satisfy Subgrantee's obligation to indemnify, defend and save harmless THE CITY, its officers, directors, agents and employees pursuant to Section VIII of this Agreement.

A. Subgrantee represents that Subgrantee will, prior to commencement of work pursuant to this agreement, name and endorse on to his Comprehensive General Liability insurance policy THE CITY and the State, its officers, agents and employees as "an insured" with respect to liability arising out of the activities, services, operations or work performed by Subgrantee for THE CITY (ISO form CG 20 09 11 85 or its equivalence). Subgrantee shall obtain and keep in full force and effect insurance policies and in appropriate limits as specified by the Insurance Requirements (**Exhibit D**) and shall require any subcontractor or sub-subcontractor to provide evidence of similar liability insurance coverages.

B. Subgrantee shall add to Subgrantee's Comprehensive General Liability insurance policy a severability interest clause or such similar wording if Subgrantee's policy does not automatically have this clause already written into it. Such language shall be similar to: "The insurance afforded applies separately to each insured against whom claim is made or suit is brought, including claims made or suits brought by any person included within the persons insured provision of this insurance against any other such person or organization."

C. All policies carried by Subgrantee shall contain a provision or be endorsed to state that coverage as respects to THE CITY and the State, its officers, agents and employees shall not be suspended, voided, canceled or non-renewed except after the insurance company has given to THE CITY at least forty-five (45) days prior written notice to the address shown below prior to any such termination of coverage becomes effective.

D. Subgrantee shall, on all policies or coverages required to be carried by Subgrantee pursuant to this Agreement, give THE CITY forty-five (45) days prior written notice by certified mail, return receipt requested, to the address shown below notification of any limitations, reductions or material change in coverage or in limits available.

E. Prior to the execution of the Agreement, Subgrantee shall file with THE CITY certificates of insurance coverage actually in force required to be carried by Subgrantee pursuant to this Section VII and Insurance Requirements (**Exhibit D**). With respect to each renewal or replacement of any such insurance, the requirements of this paragraph must be complied with not less than forty-five (45) days prior to the expiration or cancellation of the policy being renewed or replaced.

F. All insurance policies carried by or available to Subgrantee shall be primary and not excess nor contributing with any insurance issued to or available to THE CITY. Any insurance or self-insurance maintained or carried by THE CITY shall be excess of the Subgrantee's insurance and shall not participate in nor contribute with such insurance carried by or available to Subgrantee. THE CITY will not be responsible for any payment of premiums due as a result of compliance with the terms and conditions of the insurance requirements. The cost of such insurance shall be borne solely by the Subgrantee.

G. In the event Subgrantee elects to utilize existing policies to meet insurance requirements specified herein for comprehensive general liability and or professional errors and omissions coverages, Subgrantee shall provide an accurate history of claims filed against either of those policies during the past twenty-four (24) months along with amounts paid and reserves outstanding.

H. THE CITY shall be under no duty either to ascertain the existence of or to examine such insurance policies or to advise Subgrantee in the event such insurance coverage does not comply with the requirements hereof. However, THE CITY may, at any time, and from time to time, inspect and copy any and all insurance policies, endorsements, certificates and correspondence required to be carried by Subgrantee pursuant to this Agreement.

SECTION VIII INDEMNIFICATION

Subgrantee shall defend, indemnify and hold and save THE CITY, 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 caused by the negligence acts, errors, and/or omissions of the Subgrantee, 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 caused by the negligence acts, errors, and or omissions of the Subgrantee.

THE CITY shall defend, indemnify and hold and save Subgrantee, 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 caused by the negligence acts, errors, and/or omissions of THE CITY, including, but not limited to any claims or damages arising from any breach of this Agreement caused by the negligence acts, errors, and, or omissions of THE CITY.

SECTION IX CHANGES AND CHANGED CONDITIONS

If, during the course of the work herein contemplated, the need to change the Project Work Plan or the time schedule should arise, for whatever reasons, whichever party first identifies such need to change shall notify the other party in writing. The representatives of the parties shall meet within seven (7) working days of the date of such notice, to discuss the need for change so identified and to set the proposed action to be taken by the parties. A change in the Project Work Plan may also result in a change in the compensation amount. Compensation changes shall be based upon the Project Budget (**Exhibit B**) attached hereto. Any changes agreed to shall be documented by duly executed amendments to this Agreement and to **Exhibit F**, State Grant Agreement.

SECTION X TERMINATION

THE CITY may terminate this Agreement by written notice to Subgrantee at any time prior to completion of work described in **Exhibit A**, Work Plan, at the option of THE CITY, upon violation

by the Subgrantee of any material provision after such violation has been called to the attention of the Subgrantee and after failure by the Subgrantee to bring itself into compliance with the provisions of this Agreement within a reasonable time as established by THE CITY. In the event of such termination, the Subgrantee agrees, upon demand, to immediately repay to THE CITY an amount equal to the amount of grant funds disbursed to the Subgrantee prior to such termination, if such a demand is made by the State. In the event of termination, interest shall accrue on all amounts due at the highest legal rate of interest from the date that notice of termination is mailed to the Subgrantee to the date of full repayment by the Subgrantee. In addition, Subgrantee agrees to pay all costs incurred by THE CITY to recover such funds.

SECTION XI SUB-CONTRACTING

Subgrantee agrees that all provisions in the State Grant Agreement applying to Subgrantee shall also apply to its sub-contractors.

SECTION XII NONDISCRIMINATION AND FAIR EMPLOYMENT

During the performance of this Agreement, the Subgrantee and its contractors shall comply with the requirements in State Grant Agreement, **Exhibit F**.

SECTION XIII DRUG-FREE WORKPLACE CERTIFICATION

Certification of Compliance: Subgrantee, its contractors or subcontractors shall 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. Prior to commencement of work pursuant to this agreement, the Subgrantee, and all sub-subgrantees and subcontractors performing any portion of the work, shall complete and submit to THE CITY a Drug-Free Workplace Certification (**Exhibit E**).

SECTION XIV INTEREST OF SUBGRANTEE

During the performance of this Agreement, the Subgrantee and its contractors shall comply with the requirements in State Grant Agreement, **Exhibit F**.

**SECTION XV
CONTINGENT FEES**

Subgrantee warrants that Subgrantee has not employed or retained any company or person, other than a bona fide employee working solely for the Subgrantee to solicit or secure this Agreement, and that Subgrantee has not paid or agreed to pay any company, or person, other than a bona fide employee working solely for Subgrantee, any fee, commission, percentage, brokerage fee, gifts, or other consideration, contingent upon or resulting from the award or making of this Agreement. For breach of violation of this warranty, THE CITY shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage, gift or contingent fee.

**SECTION XVI
DISPUTES**

In the event of a dispute arising out of the performance of this Agreement either party shall, as soon as a conflict is identified, submit a written statement of the conflict to the other party. Within five (5) working days of receipt of such a statement of conflict, the second party will respond and a meeting will be arranged not more than five (5) working days thereafter to arrive at a negotiated settlement or procedure for settlement. If, within twenty (20) working days from the initial filing of a statement of conflict an agreement cannot be reached, it is agreed that the dispute may be resolved in a court of law competent to hear this matter. This Agreement shall be construed in accord with California law and it is agreed that venue shall be in the County of Riverside. The prevailing party shall be awarded costs of suit, and attorneys' fees.

**SECTION XVII
NOTICES**

All communications to either party by the other shall be deemed given when made in writing and delivered or mailed to such party at its respective address, as follows:

GRANTEE: City of Banning
99 E. Ramsey St.
P.O. Box 998
Banning, CA 92220-0998

SUBGRANTEE: High Valleys Water District
47781 Twin Pines Road
Banning, CA 92220

SECTION XVIII
AMENDMENTS

This Agreement together with **Exhibits A through F** sets forth the entire understanding of the parties with respect to the subject matter herein. There are no other agreements expressed or implied, oral or written, except as set forth herein. This Agreement may not be amended except upon written amendment, executed by both parties hereto.


SECTION XIX
ATTACHMENTS

The following exhibits attached hereto and referred to in the preceding sections are, by reference, incorporated herein and made an integral part of this Agreement:

- Exhibit A.** Work Plan
- Exhibit B.** Project Schedule
- Exhibit C.** Project Budget
- Exhibit D.** Insurance Requirements
- Exhibit E.** Drug-Free Workplace Policy and Certification
- Exhibit F.** Grant Agreement between the State of California Department of Water Resources and the City of Banning, Agreement Number 4600015401, Proposition 1 Round 2 Integrated Regional Water Management (IRWM) Implementation Grant

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective as of the day and year first above written.

CITY OF BANNING

SIGNED: 
BY: DOUGLAS SCHULZE
TITLE: CITY MANAGER

HIGH VALLEYS WATER DISTRICT


SIGNED: 
BY: Curtis S. Haughton
TITLE: General Manager
FEDERAL TAX ID: 95-2798225

EXHIBIT A – WORK PLAN

See Exhibit A to State Grant Agreement No. 4600015401

PROJECT 1: TWIN PINES WATER SUPPLY RELIABILITY AND FIRE PROTECTION UPGRADES

EXHIBIT B – BUDGET

See Exhibit B to State Grant Agreement No. 4600015401

PROJECT 1: TWIN PINES WATER SUPPLY RELIABILITY AND FIRE PROTECTION UPGRADES

EXHIBIT C – SCHEDULE

See Exhibit C to State Grant Agreement No. 4600015401

PROJECT 1: TWIN PINES WATER SUPPLY RELIABILITY AND FIRE PROTECTION UPGRADES

EXHIBIT D -- INSURANCE REQUIREMENTS

I. Minimum Scope and Limits of Insurance

Subgrantee shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

A. Commercial General Liability Insurance with a minimum limit of \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location.

B. Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$1,000,000.00 per accident for bodily injury and property damage. If Subgrantee does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Subgrantee shall obtain a non-owned auto endorsement to the Commercial General Liability policy.

C. Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Subgrantee has no employees while performing Services under this Agreement, workers' compensation policy is not required; however, Subgrantee shall execute a declaration that it has no employees.

D. Professional Liability/Errors and Omissions Insurance with minimum limits of \$1,000,000.00 per claim and in the aggregate.

II. Acceptability of Insurers.

The insurance policies required under this Article shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self-insurance shall not be considered to comply with the insurance requirements under this Article.

III. Additional Insured.

The commercial general and automobile liability policies shall contain an endorsement naming THE CITY, its officers, employees, agents and volunteers as additional insureds.

IV. Primary and Non-Contributing.

The insurance policies required under this Article shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to THE CITY. Any insurance or self-insurance maintained by THE CITY, its officers, employees, agents or volunteers, shall be in excess of Subgrantee's insurance and shall not contribute with it.

V. Subgrantee's Waiver of Subrogation.

The insurance policies required under this Article shall not prohibit Subgrantee and Subgrantee's employees, agents or sub-contractors from waiving the right of subrogation prior to a loss. Subgrantee hereby waives all rights of subrogation against THE CITY.

VI. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by THE CITY. At THE CITY's option, Subgrantee shall either reduce or eliminate the deductibles or self-insured retentions with respect to THE CITY; or Subgrantee shall procure a bond guaranteeing payment of losses and expenses.

VII. Cancellations or Modifications to Coverage.

Subgrantee shall not cancel, reduce or otherwise modify the insurance policies required by this Article during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to THE CITY. If any insurance policy required under this Article is canceled or reduced in coverage or limits, Subgrantee shall, within two (2) Business Days of notice from the insurer, phone, fax or notify THE CITY via certified mail, return receipt requested, of the cancellation of or changes to the policy.

EXHIBIT E -- DRUG-FREE WORKPLACE POLICY CERTIFICATION

EXHIBIT F

Grant Agreement

between

The State of California Department of Water Resources

and

The City of Banning,

Agreement Number 4600015401

Proposition 1 Round 2 Integrated Regional Water Management (IRWM) Implementation Grant

San Gorgonio Pass Water Agency
 Gap Funding Program
 Cabazon Water District Tracking
 Report Date: March 20, 2024

Current Balance: 95,745.70 (CWD owes us)

Payments Made to CWD: 1,284,221.36

Payments Received from CWD: 1,188,475.66

Approximate Project Cost: 1,700,000.00

Approximate Remaining Amount: 400,000.00

Payments Made

Date	Request Amount	Paid Date	Check #
9/13/22	75,583.32	9/20/22	120650
11/17/22	27,699.45	11/21/22	120724
2/27/23	279,168.30	3/6/23	120844
4/26/23	796,236.63	5/4/23	120913
8/1/23	105,533.66	8/29/23	121053

Reimbursements Received

Date	Rec'd Amount	Check #
11/7/22	42,465.59	25301
1/10/23	33,117.73	25424
1/10/23	5,600.75	25425
2/7/23	22,098.70	25488
5/8/23	1,304.00	25667
6/23/23	1,523.00	25774
7/18/23	277,864.30	25848
9/11/23	794,713.63	25934
10/10/23	9,787.96	26002