

COOPERATIVE AGREEMENT FOR INTEGRATED REGIONAL WATER MANAGEMENT FUNDING IN THE SANTA ANA FUNDING AREA

This Cooperative Agreement (Agreement), which shall have an effective date as of the date fully executed by all parties hereto, is between the County of Orange, Orange County Sanitation District, Orange County Water District (collectively referred to as Orange County Parties), and the Santa Ana Watershed Project Authority (SAWPA), a joint powers authority. SAWPA and the Orange County Parties are collectively referred to as the “Parties.”

WHEREAS SAWPA is the Regional Water Management Group for the Santa Ana Funding Area, for purposes of Integrated Regional Water Management (IRWM) project identification, prioritization, proposal, and grant funding allocation with respect to the One Water One Watershed (OWOW) Plan and any subsequent updates;

WHEREAS integrated planning at a regional scale is an important aspect of water resources management that is valuable in identifying opportunities for actions that create multiple, regional benefits and resolve or avoid conflicts in the watershed, and such integrated planning is valuable in promoting and improving collaboration across jurisdictions and functions at both the watershed scale and within significant parts of the watershed;

WHEREAS North Orange County comprises a significant part of the Santa Ana Funding Area, including the San Gabriel River-Coyote Creek, Anaheim Bay Huntington Harbour, Newport Bay, and Newport Coastal Streams sub-watersheds, where water management issues and priorities, such as surface and coastal water quality, differ from those in the upper Santa Ana River watershed;

WHEREAS the Orange County Parties, pursuant to an agreement amongst themselves, to wit, the Memorandum of Understanding for Integrated Regional Water Management in North and Central Orange County Watershed Management Areas, are a Regional Water Management Group for purposes of development and implementation of an IRWM Plan;

WHEREAS the Orange County Parties have, with the collaboration of other North Orange County stakeholders from the San Gabriel River-Coyote Creek, Anaheim Bay Huntington Harbour, lower Santa Ana River, Newport Bay, and Newport Coastal Streams hydrologic units, developed and adopted an IRWM Plan for North and Central Orange County, referred as to as “the OC Plan,” which was developed and written to comply with State IRWM standards;

WHEREAS the hydrologic units represented in the OC Plan are currently part of the Santa Ana Funding Area covered by the OWOW Plan;

WHEREAS prior to entering into this Agreement, the County of Orange submitted an application to the California Department of Water Resources (DWR), to be recognized as a separate region in the Santa Ana Funding Area, to operate independently of SAWPA for purposes of project identification, prioritization, proposal, and grant funding allocation, with respect to projects in the OC Plan;

WHEREAS this Agreement serves to memorialize an agreement between the Parties whereby, in exchange for the Orange County Parties agreeing to forego efforts to form a separate region in the Santa Ana Funding Area for the OC Plan, and, instead, remain a part of the Santa Ana Funding Area covered by the OWOW Plan, SAWPA agrees to abide by the terms and conditions stated herein, in all rounds of grant funding administered by the State of California under Proposition 1 and any subsequent IRWM grant programs.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged by all Parties, and in light of the foregoing recitals, the Parties hereby agree as follows:

1. INTEGRATION OF THE OC PLAN AND OWOW:

- a. SAWPA has incorporated the OC Plan by reference in an appendix of the OWOW Plan. SAWPA has made other revisions to the OWOW Plan before its adoption reflecting the existence of the OC Plan and its interaction with the OWOW Plan. SAWPA will make other amendments to the OWOW Plan in future updates or as required by DWR.
- b. This Agreement determines how State grant funds for IRWM will be allocated for projects in the OWOW Plan, which includes the OC Plan. Projects allocated funds pursuant to Section 2a and 2b.i. below will not be rated/ranked by the OWOW Steering Committee and will be reviewed by the Committee only for compliance with the requirements of the applicable DWR project solicitation.

2. PROJECT IDENTIFICATION, RATING/RANKING, SELECTION, GRANT FUNDS ALLOCATION AND ADMINISTRATION:

- a. Projects in North and Central Orange County proposed for general implementation IRWM grant funding will be rated, ranked and selected for funding by the processes in the OC Plan and not by those in the OWOW Plan.
- b. IRWM grant funds for the Santa Ana Funding Area will be distributed as follows:
 - i. Thirty percent (30%) of the IRWM general implementation grant funds will be allocated to projects in the OC Plan selected pursuant to Section 2.a. In the event that a portion of an allocation is not expended in one funding round of a multi-round process, any unexpended funds shall be rolled over and added to the thirty percent allocation for the next round.

- ii. Ten percent (10%) of the general implementation grant funds will be allocated for projects that benefit both the upper and the lower watersheds in the Santa Ana Funding Area and selected by the process in the OWOW Plan. In the event that selected projects that benefit both the upper and the lower watersheds in the Santa Ana Funding Area do not expend any portion of the 10% allocation, any unexpended funds shall be allocated as follows: thirty-four percent (34%) of any unexpended funds will be allocated to projects selected through the OC Plan as determined under Section 2.a. above, and sixty-six percent (66%) to projects selected through the OWOW for the upper watershed (area in San Bernardino County or Riverside County).
 - iii. Sixty percent (60%) of the general implementation grant funds will be allocated to projects in the upper watershed selected by the process in the OWOW Plan. The Parties agree that projects so selected will not be challenged for funding under this agreement on the basis that the project will increase recycling or groundwater recharge in the upper watershed. In the event that a portion of an allocation is not expended in one funding round of a multi-round process, any unexpended funds shall be rolled over and added to the sixty percent allocation for the next round.
 - iv. Disadvantaged Community (DAC) implementation funds, as defined by DWR, shall be treated separately and will be allocated by the process in the OWOW Plan to projects based on their direct and entire benefit to disadvantaged communities. DAC-supported projects from North and Central Orange County submitted to OWOW seeking DAC implementation funds will be eligible for this grant funding subject to the selection process in the OWOW Plan and will not count as part of the thirty percent (30%) OC Plan funding allocation as required under 2.b.i.
- c. As agreed upon by the OWOW Steering Committee and SAWPA Commission, ten percent (10%) of the total general implementation grant funding allocated to projects that benefit the Santa Ana Funding Area under 2.b.ii, projects in the upper watershed under 2.b.iii, and DAC projects under 2.b.iv will be allocated to small budget projects that requested grant funding less than or equal to \$500,000.
- d. SAWPA will administer the OWOW program and project grant contracting with DWR and the funded projects' lead agencies.
- i. In selecting and submitting projects per Section 2.a above, the Orange County Parties will comply with a mutually agreed upon schedule and information requirements for submittals to be included in State-led processes related to IRWM funding such as grant applications, workshops and site visits.
 - ii. Five percent (5%) of DWR Proposition 1 IRWM grant funds assigned to the Santa Ana Funding Area will be used for SAWPA's administration of IRWM funding.

- iii. The Parties recognize that the overall number of projects funded under each round of Proposition 1 will need to be limited to ensure SAWPA grant administration is effective and efficient. The number of individual projects in the OC Plan which are funded under the allocation required in section 2.b.i is limited to four (4) for Round 1 of Proposition 1, unless SAWPA determines that additional projects can be supported.
- iv. SAWPA will be responsible for executing a funding agreement with the lead agency and or project proponent for each project selected for IRWM grant funds.
- v. Agreement of the Parties will be required for any request for DWR to modify or consolidate the funding rounds of Proposition 1.

- 3. **WITHDRAWAL OF APPLICATION FOR SEPARATE REGION IN SANTA ANA FUNDING AREA:** Upon execution of this Agreement by all Parties, the Orange County Parties agree to withdraw its application to DWR for recognition as a region in the Santa Ana Funding Area, and agree not to seek such approval so long as SAWPA is not in breach of any of its obligations under this Agreement, or until such time as the Agreement is terminated.
- 4. **GOVERNANCE:** The OWOW Steering Committee (SC) will continue to function as the advisory body to the SAWPA Commission as defined in the January 15, 2013 Santa Ana IRWMP OWOW Governance document, but shall, in its recommendations, adhere to the terms of Section 1 and 2 of this Agreement.
- 5. **MODIFICATION:** The terms of this Agreement may be amended only in writing executed by all of the Parties. This Agreement may not be modified in effect by changes in policies of any of the Parties without amending this Agreement per this section. The Parties shall review this Agreement after completion of Proposition 1 Round 1 project selection and grant funds allocation, and at least once every three years from the effective date, and the Parties shall revise if necessary.
- 6. **AUTHORITY:** The individuals executing this Agreement each represent and warrant that they have the legal power, right and actual authority to bind their respective entities to the terms and conditions hereof and thereof.
- 7. **COUNTERPARTS:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument. Four (4) duplicate originals of this Agreement shall be executed each of which shall be deemed to be an original.

8. **GOVERNING LAW AND JURISDICTION:** The existence, validity, construction, operation and effect of this Agreement and all of its terms and provisions shall be determined in accordance with the laws of the State of California.
9. **TERM and TERMINATION:** This Agreement shall have an initial term of ten years from the effective date. After the initial term, the Agreement shall automatically renew for successive terms of ten years each, unless, prior to expiration of the current term, one Party provides notice to the other Parties of its intent not to renew the Agreement. Provision of notice in this manner shall terminate the Agreement as of the expiration of the current term. In addition to expiration of the Agreement, this Agreement may be terminated by any Party in the event of a material breach by any other Party, or at any time by mutual written agreement of all of the Parties.
10. **THIRD PARTY BENEFICIARIES:** OC Plan-project proponents whose projects are selected for Prop 1 funding pursuant to this Agreement and meet eligibility criteria for the funding opportunity are intended by the Parties to be third-party beneficiaries of this Agreement. The Parties therefore agree that the Orange County Parties and the OC Plan-project proponents whose proposals are selected for Prop 1 funding and meet eligibility criteria for the funding opportunity may enforce applicable provisions of this Agreement as if they were parties hereto in the event of breach by SAWPA. However, nothing herein shall require the Orange County Parties to initiate or take any action on behalf of OC Plan-project proponents.
11. **NOTICE:** Except as otherwise provided herein, all notices and other communications required or permitted hereunder shall be in writing, and shall be delivered in person, via e-mail, or sent by registered mail or certified mail, return receipt requested, and shall be deemed received upon actual receipt or 72 hours after deposit in the mail of the United States Postal Service, postage prepaid and addressed as follows:

To SAWPA:
Santa Ana Watershed Project Authority (SAWPA)
Attention: General Manager
11615 Sterling Ave.
Riverside, CA 92503
(951) 354-4220, (951) 785-7076 (fax)

To County of Orange:
County of Orange
Attention: Deputy Director, OC Environmental Resources
2301 N. Glassell Street
Orange, CA 92865

(714) 955-0600,

To OCSD
Orange County Sanitation District
Attention: General Manager
10844 Ellis Avenue
Fountain Valley, CA 92708
(714) 962-2411

To OCWD
Orange County Water District
Attention: General Manager
18700 Ward Street, Fountain Valley, CA 92708
(714) 378-3305, (714) 378-3373 (fax)

In witness whereof, the Parties hereto have executed this Agreement as of the date of the last signatory:

DRAFT

[Revise signature page as needed]

SAWPA

By: _____
Name: _____
Title: _____
Date: _____

DRAFT

COUNTY OF ORANGE

A political subdivision of the State of California

Date: _____

By _____
Chair of the Board of Supervisors

Date: _____

By _____
Robin Stielor
Clerk of the Board of Supervisors of
Orange County, California

APPROVED AS TO FORM
COUNTY COUNSEL

By _____
Deputy

Date: _____

[Revise signature page as needed]

Orange County Sanitation District

By: _____

Name: _____

Title: _____

Date: _____

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[Revise signature page as needed]

Orange County Water District

By: _____
Name: _____
Title: _____
Date: _____

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