

AMENDMENT NUMBER 1
TO THE
LOCAL COOPERATION AGREEMENT
AMONG THE DEPARTMENT OF THE ARMY,
ORANGE COUNTY FLOOD CONTROL DISTRICT,
SAN BERNARDINO COUNTY FLOOD CONTROL DISTRICT, AND
RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
FOR CONSTRUCTION OF THE
SANTA ANA RIVER MAINSTEM, INCLUDING SANTIAGO CREEK,
CALIFORNIA FLOOD CONTROL PROJECT

This Amendment Number 1 is entered into this ____ day of _____, 20__, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for the Los Angeles District and the Santa Ana River Mainstem sponsors, comprised of the Orange County Flood Control District (hereinafter referred to as "Orange"), represented by the Chair of the Board of Supervisors of the County of Orange, Riverside County Flood Control and Water Conservation District (hereinafter referred to as "Riverside"), represented by the Chairwoman of the Board of Supervisors, and the San Bernardino County Flood Control District (hereinafter referred to as "San Bernardino"), represented by the Chairman of the Board of Supervisors of the County of San Bernardino (hereinafter collectively referred to as the "Sponsors").

WITNESSETH, THAT:

WHEREAS, construction of the Santa Ana River Mainstem, including Santiago Creek, California project was authorized by Section 401(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended;

WHEREAS, the Government and the Sponsors entered into a Local Cooperation Agreement on December 14, 1989, that was modified on January 4, 1994 (First Modification), June 21, 1994 (Supplement No. 1), April 12, 2001 (Supplement No. 2), and February 24, 2003 (Second Modification, deleting the Prado Dam feature, which is covered in a separate project cooperation agreement) (hereinafter collectively referred to as the "Agreement"), for construction of the Santa Ana River Mainstem, including Santiago Creek, California project (hereinafter the "Project", as defined in Article I.A. of the Agreement), with many features of the Project now having been completed;

WHEREAS, the Corps has initiated additional analysis on the Santiago Creek feature, which is not ready for construction as of the date of this Amendment, and construction of that feature is not addressed by this Amendment;

WHEREAS, to the extent funding provided in Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter "BBA 2018") is available and used for such purpose, the Government will complete the Reach 9 Environmental Work and the Close Out Actions related to the Project (hereinafter the "BBA 2018 Work") as

referenced in the Project Management Plan addendum prepared by the Government dated December 2, 2020, estimated at \$ 35,571,000, at full Federal expense;

WHEREAS, the Santa Ana River Mainstem project was not included in the President's Budget for Federal Fiscal Years 2020 and 2021;

WHEREAS, the Government and the Sponsors acknowledge that no additional lands, easements, rights-of-way, relocations, or improvements to lands, easements, and rights-of-way to enable the disposal of dredged or excavated material are required for completion of the BBA 2018 Work;

WHEREAS, work previously approved for funding with non-BBA 2018 funds shall be completed with non-BBA 2018 funds and shall be subject to the cost-sharing otherwise provided for in the Agreement; and

WHEREAS, the provisions of Section 902 of the Water Resources Development Act of 1986, as amended, do not apply to the funds provided in BBA 2018 that will be used for completing the BBA 2018 Work.

NOW, THEREFORE, the Government and the Sponsors agree to amend the Agreement as follows:

1. Insert after the fourth WHEREAS clause the following:

“WHEREAS, to the extent funding provided in Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123, enacted February 9, 2018 (hereinafter “BBA 2018”) is available and used for such purpose, the Government will complete the Reach 9 Environmental Work and the Close Out Actions related to the Project (hereinafter the “BBA 2018 Work”) as referenced in the Project Management Plan addendum prepared by the Government dated December 2, 2020, estimated at \$35,571,000, at full Federal expense;”

2. Insert as the last Article the following:

“ARTICLE XXV – COMPLETION OF THE BBA 2018 WORK

Notwithstanding any other provisions of this Agreement, the Government shall complete the BBA 2018 Work at full Federal expense to the extent that BBA 2018 funds are available and used for such purpose in accordance with the following provisions:

A. As of the effective date of Amendment Number 1 to this Agreement, the total amount of BBA 2018 funds available for the BBA 2018 Work is estimated at \$35,571,000. Any costs funded with BBA 2018 funds shall not be included in the calculation of total project costs for cost-sharing purposes.

B. Subject to the availability of BBA 2018 funds, the Government shall reimburse the Sponsors for costs, documented to the satisfaction of the Government, that the Sponsors incur for

the BBA 2018 Work, after the effective date of Amendment Number 1 to this Agreement, for investigations for hazardous substances conducted pursuant to Article X.A.

C. The provisions of Article XVIII regarding the Section 902 project cost limits do not apply to the funds provided in BBA 2018 that are used for completing the BBA 2018 Work.

D. The Sponsors shall be responsible solely for any costs they incur, after the effective date of Amendment Number 1 to this Agreement, for participation in any Project Coordination Team established by the Government and Sponsors to discuss significant issues or actions in the delivery of the BBA 2018 Work and for conducting audits for the BBA 2018 Work, without credit or reimbursement by the Government.

E. In the event that there are insufficient BBA 2018 funds to complete the BBA 2018 Work, such completion shall be subject to cost-sharing as otherwise provided for in the Agreement.

F. Nothing in this Article affects the responsibility of the Sponsors for operation, maintenance, repair, replacement, and rehabilitation of the Project as provided in Article VIII and for indemnification as provided in Article IX.

G. Except as provided in Article XXV.B., nothing in this Article affects the responsibilities of the parties regarding hazardous substances as provided in Article X.

H. BBA 2018 funds shall not be used to provide reimbursements for any contributions provided by the Sponsors that exceed its cost share for work that has been or will be completed with other than BBA 2018 funds.”

3. All other terms and conditions of the Agreement remain unchanged, and nothing in this Amendment affects the status of Santiago Creek as an authorized feature of the Project.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment
Number 1 which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

ORANGE COUNTY FLOOD CONTROL
DISTRICT

BY: _____
JULIE A. BALTEN
Colonel, US Army
District Commander

BY: _____

Chair, Board of Supervisors
Orange County, California

DATE: _____

DATE: _____

APPROVED AS TO FORM:
Office of the County Counsel
County of Orange, CA

BY: _____
Deputy

DATE: _____

Signed and certified that a copy of
this Agreement has been delivered
to the Chairwoman of the Board per G.C.
Sec. 25103, Resolution 79-1535

ATTEST:

BY: _____
Clerk of the Board of Supervisors
County of Orange

RECOMMENDED FOR APPROVAL:

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT

By_____

JASON E. UHLEY
General Manager-Chief Engineer

By_____

KAREN SPIEGEL
Chairwoman, Board of Supervisors

APPROVED AS TO FORM:

ATTEST:

GREGORY P. PRIAMOS
County Counsel

KECIA R. HARPER
Clerk to the Board

By_____

LEILA MOSHREF-DANESH
Deputy County Counsel

By_____

(SEAL)

SAN BERNARDINO COUNTY FLOOD
CONTROL DISTRICT



Curt Hagman, Board Chairman

Dated:

SIGNED AND CERTIFIED THAT A
COPY OF THIS DOCUMENT HAS
BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell, Clerk of the Board

By: _____
Deputy

APPROVED AS TO LEGAL FORM:

Michelle D. Blakemore, County Counsel

By: _____
Sophie A. Akins
Deputy County Counsel