

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

89-1087 A-1

SAP Number

## San Bernardino County Flood Control District

Department Contract Representative  
Telephone Number

David Doublet, P.E.  
(909) 387-7918

Contractor  
Contractor Representative  
Telephone Number  
Contract Term  
Original Contract Amount  
Amendment Amount  
Total Contract Amount  
Cost Center

Department of The Army  
Col. Julie A. Balten  
(213) 452-3961

### Briefly describe the general nature of the contract:

Amendment No. 1 to Agreement No. 89-1087 with the United States Army Corps of Engineers, Orange County Flood Control District, and Riverside County Flood Control and Water Conservation District, to revise the project management plan and scope of work descriptions.

#### FOR COUNTY USE ONLY

Approved as to Legal Form

Sophie A. Akins, County Counsel

Date

12-21-2020

Reviewed for Contract Compliance

Andy Silao, P.E.

Date

12/21/2020

Reviewed/Approved by District

Brendon Biggs, Chief Flood Control Engineer

Date

12-22-2020

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:   
for Sophie A. Akins  
Deputy County Counsel

Addendum to Project PMP and work descriptions for BBA work defined in LCA Amendment Number 1.

This document generally defines the scope of work and outlines intended efforts for the Bipartisan Budget Act (BBA) of 2018 funding for the Santa Ana River Mainstem (SARM) Project addressed in LCA Amendment Number 1. The intent is to complete these efforts with 100% BBA funds to the extent they are available and used for such purpose.

The BBA work generally consists of the following environmental work and close out work:

- Environmental work. This is composed of compliance, monitoring and mitigation including noise mitigation, oak tree planting, Arundo mitigation, least Bell's vireo monitoring, cowbird trapping, wildlife corridor monitoring, environmental compliance, and adaptive management during the construction phase. Environmental mitigation work by the Corps using BBA funds will include restoration at compensatory mitigation sites, including initial planting and an establishment period for achievement of success criteria. After the establishment period, the sites will be transferred to the relevant sponsor for long term operation and maintenance. Environmental work by the Corps using BBA funds will also include reseeding and/or replanting of temporary impact areas at the site of feature construction. Contracts will include a one-year warranty period. Subsequent to the warranty period, the relevant sponsor will be responsible for operation and maintenance including weeding and other site maintenance activities for a prescribed period.
- Close-out work. BBA funds will also be used for closeout activities for the project features, including development of final notices of completion, breakdown of the Prado field office, contract research and reconciliation, final crediting, audits, and other necessary documentation and project management to support fiscal completion of the project.

Work efforts below show an estimate of the BBA funds that will be used and how they use will benefit each sponsor. 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 LCA. The estimates below do not amend or modify the provisions of the LCA.

#### San Bernardino County

BBA funds will be used to complete environmental compliance, monitoring, and mitigation and close out activities. For San Bernardino County, environmental work includes Phase 2B noise mitigation, oak tree planting, Arundo mitigation, least Bell's vireo monitoring, cowbird trapping, wildlife corridor monitoring, environmental compliance and adaptive management during construction. It also includes close-out activities for Mill Creek, San Timoteo, and 7 Oaks Dam. BBA funds will also be used for Reach 9 efforts for final notices of completion, closeout activities for breakdown of the field office, contract research and reconciliation and other necessary documentation and project management to support fiscal completion of the project. The estimate also includes final crediting and audits by the Corps as part of



the final financial reconciliation for San Bernardino's portion of the project for financial close out actions.

Estimated cost: \$1.6 million.

#### Riverside County

BBA funds will be used to complete environmental mitigation and monitoring for Reach 9 features and close out activities. For Riverside County, environmental work includes features in Riverside County and includes Phase 2A, 2B, and BNSF noise mitigation, oak tree planting, Arundo mitigation, least Bell's vireo monitoring, cowbird trapping, wildlife corridor monitoring, environmental compliance, and adaptive management efforts during construction. BBA funds will also be used for final notices of completion, closeout activities for breakdown of the field office, contract research and reconciliation and other necessary documentation and project management support fiscal completion of the project for the following features: Oak Street Drain, 7 Oaks Dam, and Reach 9 Phases 2A and 2B. The estimate also includes final crediting and Corps audits as part of the final financial reconciliation for Riverside's portion of the project for financial close out actions.

Estimated cost: \$9.3 million

#### Orange County

BBA funds have been approved to complete environmental mitigation and monitoring for Reach 9 features. For Orange County, this includes Phase 1, 2B, 3, 4, 5A, 5B, noise mitigation, oak tree planting, arundo mitigation, least Bell's vireo monitoring, cowbird trapping, wildlife corridor monitoring, environmental compliance, and adaptive management efforts during construction.. BBA funds will also be used for final notices of completion, closeout activities for the field office, contract research and reconciliation and other necessary documentation and project management to support fiscal completion of the project for the following features: 7 Oaks Dam, lower Santa Ana River reaches, Marsh, and remaining Reach 9 efforts. The estimate also includes final crediting and audits by the Corps as part of the final financial reconciliation for Orange County's portion of the project for financial close out actions.

Estimated cost: \$24.7 million

## Summary of LCA A1 estimates

## SARM - LCA/BBA Estimate of Investment Savings at 25% minimum Cost Share Requirement

1-Dec-20

Feature/Activity									25% Cost Share				Total Savings
	San B	Riverside	Orange	Total	San B	Riverside	Orange		San B	Riverside	Orange		
Reach 9 Phase 2A Environ	0.0%	100.0%	0.0%	\$30,000	\$0	\$30,000	\$0	\$0	\$0	\$7,500	\$0	\$0	\$7,500
Reach 9 Phase 2B Environ	0.6%	38.0%	61.5%	\$30,000	\$165	\$11,400	\$18,435	\$41	\$2,850	\$4,609	\$0	\$0	\$7,500
Reach 9 Phase 3 Environ	0.0%	0.0%	100.0%	\$350,000	\$0	\$0	\$350,000	\$0	\$0	\$87,500	\$0	\$0	\$87,500
Reach 9 Phase 4 Environ	0.0%	0.0%	100.0%	\$110,000	\$0	\$0	\$110,000	\$0	\$0	\$27,500	\$0	\$0	\$27,500
Reach 9 Phase 5A Environ	0.0%	0.0%	100.0%	\$100,000	\$0	\$0	\$100,000	\$0	\$0	\$25,000	\$0	\$0	\$25,000
Reach 9 Phase 5B Environ	0.0%	0.0%	100.0%	\$500,000	\$0	\$0	\$500,000	\$0	\$0	\$125,000	\$0	\$0	\$125,000
Reach 9 BNSF Environ	0.0%	95.0%	5.0%	\$5,500,000	\$0	\$5,225,000	\$275,000	\$0	\$1,306,250	\$68,750	\$0	\$0	\$1,375,000
Reach 9 Environ (Misc)	0.1%	19.6%	80.3%	\$12,000,000	\$12,000	\$2,352,000	\$9,636,000	\$3,000	\$588,000	\$2,409,000	\$0	\$0	\$3,000,000
Reach 9 Environmental				\$18,620,000	\$12,165	\$7,618,400	\$10,989,435	\$3,041	\$1,904,600	\$2,747,359	\$0	\$0	\$4,655,000
Reach 9 Close out	0.1%	19.6%	80.3%	\$200,000	\$200	\$39,200	\$160,600	\$50	\$9,800	\$40,150	\$0	\$0	\$50,000
LSAR Close Out	0.0%	0.0%	100.0%	\$100,000	\$0	\$0	\$100,000	\$0	\$0	\$25,000	\$0	\$0	\$25,000
Seven Oaks Close Out	7.0%	5.3%	87.7%	\$200,000	\$14,060	\$10,540	\$175,400	\$3,515	\$2,635	\$43,850	\$0	\$0	\$50,000
Mill Creek Close Out	100.0%	0.0%	0.0%	\$100,000	\$100,000	\$0	\$0	\$25,000	\$0	\$0	\$0	\$0	\$25,000
Oak Street Close Out	0.0%	100.0%	0.0%	\$100,000	\$0	\$100,000	\$0	\$0	\$25,000	\$0	\$0	\$0	\$25,000
San Timoteo Close Out	100.0%	0.0%	0.0%	\$100,000	\$100,000	\$0	\$0	\$25,000	\$0	\$0	\$0	\$0	\$25,000
Santiago Creek Close Out	0.0%	0.0%	100.0%	\$100,000	\$0	\$0	\$100,000	\$0	\$0	\$25,000	\$0	\$0	\$25,000
Environ Close out/Site restore	9.2%	10.0%	80.8%	\$500,000	\$46,000	\$50,000	\$404,000	\$11,500	\$12,500	\$101,000	\$0	\$0	\$125,000
Cultural Resources Close out	9.2%	10.0%	80.8%	\$100,000	\$9,200	\$10,000	\$80,800	\$2,300	\$2,500	\$20,200	\$0	\$0	\$25,000
Environ Adaptive Mgt/Monitoring	9.2%	10.0%	80.8%	\$2,400,000	\$220,800	\$240,000	\$1,939,200	\$55,200	\$60,000	\$484,800	\$0	\$0	\$600,000
Final Audits	9.2%	10.0%	80.8%	\$200,000	\$18,400	\$20,000	\$161,600	\$4,600	\$5,000	\$40,400	\$0	\$0	\$50,000
Real estate Close out	9.2%	10.0%	80.8%	\$300,000	\$27,600	\$30,000	\$242,400	\$6,900	\$7,500	\$60,600	\$0	\$0	\$75,000
Eng Rpts	9.2%	10.0%	80.8%	\$2,000,000	\$184,000	\$200,000	\$1,616,000	\$46,000	\$50,000	\$404,000	\$0	\$0	\$500,000
SARM Proj Mgt	9.2%	10.0%	80.8%	\$3,900,000	\$358,800	\$390,000	\$3,151,200	\$89,700	\$97,500	\$787,800	\$0	\$0	\$975,000
SARM Project Mgt Facility Services	9.2%	10.0%	80.8%	\$3,000,000	\$276,000	\$300,000	\$2,424,000	\$69,000	\$75,000	\$606,000	\$0	\$0	\$750,000
Close Out Action/Site Breakdown	9.2%	10.0%	80.8%	\$1,000,000	\$92,000	\$100,000	\$808,000	\$23,000	\$25,000	\$202,000	\$0	\$0	\$250,000
GSA	9.2%	10.0%	80.8%	\$200,000	\$18,400	\$20,000	\$161,600	\$4,600	\$5,000	\$40,400	\$0	\$0	\$50,000
CADD	9.2%	10.0%	80.8%	\$200,000	\$18,400	\$20,000	\$161,600	\$4,600	\$5,000	\$40,400	\$0	\$0	\$50,000
GIS	9.2%	10.0%	80.8%	\$200,000	\$18,400	\$20,000	\$161,600	\$4,600	\$5,000	\$40,400	\$0	\$0	\$50,000
Contingency	9.2%	10.0%	80.8%	\$896,000	\$82,432	\$89,600	\$723,968	\$20,608	\$22,400	\$180,992	\$0	\$0	\$224,000
Close-out/Proj Operations				\$15,796,000	\$1,584,692	\$1,639,340	\$12,571,968	\$396,173	\$409,835	\$3,142,992	\$0	\$0	\$3,949,000
Santiago Creek	0.0%	0.0%	100.0%	\$1,155,000	\$0	\$0	\$1,155,000	\$0	\$0	\$288,750	\$0	\$0	\$288,750
<b>Grand Totals</b>				<b>\$35,571,000</b>	<b>\$1,596,857</b>	<b>\$9,257,740</b>	<b>\$24,716,403</b>	<b>\$399,214</b>	<b>\$2,314,435</b>	<b>\$6,179,101</b>			<b>\$8,892,750</b>

## Notes:

This estimated cost shared savings is based on the 25% minimum Non-Fed cost share requirement from the original LCA Article II para F.