

AMENDMENT NUMBER 1
TO THE
PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
ORANGE COUNTY FLOOD CONTROL DISTRICT
FOR CONSTRUCTION OF THE
PRADO DAM

This Amendment Number 1 is entered into this 7th day of October, 2020 by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for the Los Angeles District and the Orange County Flood Control District (hereinafter the "Non-Federal Sponsor"), represented by the Chairwoman of the Board of Supervisors of the County of Orange.

WITNESSETH, THAT:

WHEREAS, construction of the Prado Dam, a separable element of the Santa Ana River Mainstem, California project for flood control, 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 Non-Federal Sponsor entered into a Project Cooperation Agreement on February 11, 2003 (hereinafter referred to as the "Agreement") for construction of the Prado Dam (hereinafter the "Project", as defined in Article I.A. of the Agreement);

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 River Road Dike, Alcoa Dike Phase 2, Spillway, and Norco Bluffs, Other Mitigation / Dikes, and Close Out Actions related to the Project (hereinafter the "BBA 2018 Work"), estimated at \$555,429,000, at full Federal expense;

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;

"WHEREAS, the Santa Ana River Mainstem project was not included in the President's Budget for Federal Fiscal Years 2020 and 2021; 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 Non-Federal Sponsor agree to amend the Agreement as follows:

1. Insert after the sixth 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 River Road Dike, Alcoa Dike Phase 2, Spillway, and Norco Bluffs, Other Mitigation / Dikes, and 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 9/24/2020, estimated at \$555,429,000, at full Federal expense;

2. Insert as the last Article the following:

“ARTICLEXX - 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 \$555,429,000. Any costs funded with BBA 2018 funds shall not be included in the calculation of total project costs for cost-sharing purposes.

B. The Non-Federal Sponsor remains responsible for providing the lands, easements, and rights-of-way, and performing all relocations, and making improvements to lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required to complete the BBA 2018 Work.

1. For lands, easements, and rights-of-way acquired from private owners after the effective date of Amendment Number 1 to this Agreement for the BBA 2018 Work, the Government shall reimburse the Non-Federal Sponsor, subject to the availability of BBA 2018 funds, for costs it incurs in acquiring such lands, easements, and rights-of-way. The crediting procedures in Article IV.B. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Non-Federal Sponsor, the Government, in its sole discretion, may agree to acquire any lands, easements, or rights-of-way for the BBA 2018 Work on the Non-Federal Sponsor's behalf, using BBA 2018 funds.

2. Any publicly owned lands, easements, and rights-of-way required for completing the BBA 2018 Work will be provided by the Non-Federal Sponsor at no cost to the Government and without credit or reimbursement.

3. For relocations performed after the effective date of Amendment Number 1 to this Agreement for the BBA 2018 Work, the Government shall reimburse the Non-Federal

Sponsor, subject to the availability of BBA 2018 funds, for costs it incurs in performing such relocations. The crediting procedures in Article IV.C. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Non-Federal Sponsor, the Government, in its sole discretion, may agree to perform any relocations for the BBA 2018 Work on the Non-Federal Sponsor's behalf, using BBA 2018 funds.

4. For improvements to lands, easements, and rights-of-way to enable the disposal of dredged or excavated material made after the effective date of Amendment Number 1 to this Agreement for the BBA 2018 Work, the Government shall reimburse the Non-Federal Sponsor, subject to the availability of BBA 2018 funds, for costs it incurs in making such improvements. The crediting procedures in Article IV.D. will be used to determine the costs, documented to the satisfaction of the Government, that are eligible for reimbursement. If requested by the Non-Federal Sponsor, the Government, in its sole discretion, may agree to make any improvements for the BBA 2018 Work on the Non-Federal Sponsor's behalf, using BBA 2018 funds.

C. Subject to the availability of BBA 2018 funds, the Government shall reimburse the Non-Federal Sponsor for costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs 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 XV.A.

D. The provisions of Article XIX 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.

E. The Non-Federal Sponsor shall be responsible solely for any costs it incurs, after the effective date of Amendment Number 1 to this Agreement, for participation in the Project Coordination Team and for conducting audits for the BBA 2018 Work, without credit or reimbursement by the Government.

F. 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 this Agreement.

G. Nothing in this Article affects the responsibility of the Non-Federal Sponsor for operation, maintenance, repair, replacement, and rehabilitation of the Project as provided in Article VIII and for indemnification as provided in Article IX.

H. Except as provided in Article XX.C., nothing in this Article affects the responsibilities of the parties regarding hazardous substances as provided in Article XV.

I. BBA 2018 funds shall not be used to provide reimbursements for any contributions provided by the Non-Federal Sponsor 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 this Agreement remain unchanged.

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

[REDACTED]
JULIE A. BALTEN
Colonel, U.S Army
Los Angeles

[REDACTED]
MICHELLE STEE
Chairwoman, Board of Supervisors
Orange County, California

DATE: 10-7-2020

DATE: 10-6-20

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

[REDACTED]
DATE: 9/4/2020

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:

[REDACTED]
Clerk of the Board of Supervisors
County of Orange



CERTIFICATION REGARDING LOBBYING

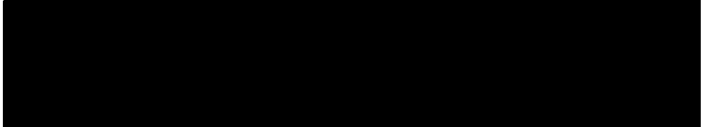
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



MICHELLE STEEL
Chairwoman, Board of Supervisors
Orange County, California
for the Orange County Flood Control District

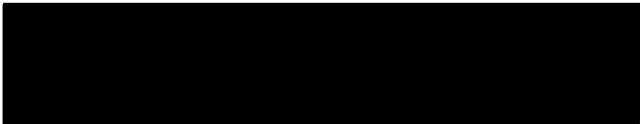
DATE: 10-6-20

CERTIFICATE OF AUTHORITY

I, Leon J. Page, do hereby certify that I am the principal County Counsel appointed by the Board of Supervisors of the Orange County Flood Control District; that the Orange County Flood Control District, a body corporate and politic, is a legally constituted public and corporate body, with full authority and legal capacity to perform the terms of the Amendment Number 1 to the Project Cooperation Agreement between the Department of the Army and the Orange County Flood Control District in connection with the construction of the Prado Dam, a Separable Element of the Santa Ana River Mainstem, including Santiago Creek, California Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Amendment, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who executed this Amendment on behalf of the Orange County Flood Control District acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this

7th day of October 2020



Leon J. Page
County Counsel