

RESOLUTION NO. RS2020-626

A resolution approving amendment one to an agreement between the United States Department of the Army and the Metropolitan Government of Nashville and Davidson County, acting by and through the Department of Water and Sewerage Services, for the Sevenmile Creek Flood Risk Management Project in Davidson County, Tennessee. (MWS Project No. 19-SWC-214)

WHEREAS, The Metropolitan Government of Nashville and Davidson County “Metro,” acting by and through the Department of Water and Sewerage Services, previously entered into an agreement with the United States Department of the Army “Government,” approved by RS2019-1593; and,

WHEREAS, the amendment replaces the structural flood risk management feature with the addition of 11 flood-prone properties, which will be identified in separate legislation, to the nonstructural flood risk management features, and adds provisions which allow the Government to reimburse Metro for eligible costs that Metro has incurred for the real property interests, placement area improvements, and relocation it has provided for the nonstructural flood risk management features of the project prior to the final accounting for such features; and,

WHEREAS, it is to the benefit of the citizens of The Metropolitan Government of Nashville and Davidson County that amendment one be accepted.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That amendment one to the agreement between the United States Department of the Army and the Metropolitan Government of Nashville and Davidson County, reflecting the Sevenmile Creek Flood Risk Management Project, a copy of which amendment one is attached hereto and incorporated herein, is approved and the Metropolitan Mayor is authorized to execute the same.

Section 2. That this resolution shall take effect from and after its adoption, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

RECOMMENDED BY:

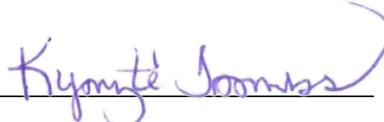
DocuSigned by:

Scott Potter

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Scott A. Potter, Director  
Water and Sewerage Services

INTRODUCED BY:


\_\_\_\_\_  
Council Member(s)

APPROVED AS TO THE  
AVAILABILITY OF FUNDS:  
PIF 19-040  
Fund No. 67411  
\$2,500,000.00

DocuSigned by:

Kevin Crumbo/Ho

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Kevin Crumbo, Director  
Department of Finance

APPROVED AS TO FORM  
AND LEGALITY:

DocuSigned by:

Sara Ladd

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Assistant Metropolitan Attorney

AMENDMENT NUMBER 1  
TO THE  
PROJECT PARTNERSHIP AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,  
TENNESSEE  
FOR  
THE SEVENMILE CREEK FLOOD RISK MANAGEMENT PROJECT

THIS AMENDMENT NUMBER 1 is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for the Nashville District (hereinafter the "District Commander") and the Metropolitan Government of Nashville and Davidson County, Tennessee (hereinafter the "Non-Federal Sponsor"), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, construction of the Mill Creek, Tennessee flood risk management project (hereinafter the "Authorized Project") was authorized by Section 1401(2) of the Water Resources Development Act of 2016, Public Law 114-322;

WHEREAS, on February 19, 2019, the Government and the Non-Federal Sponsor entered into a Project Partnership Agreement (hereinafter the "Agreement") to construct the Sevenmile Creek basin portion of the Authorized Project (hereinafter the "Project"); and

WHEREAS, the Government and the Non-Federal Sponsor desire to amend the Agreement to modify the Project by replacing the structural flood risk management feature with additional nonstructural flood risk management features, and to add provisions to allow the Government to reimburse the Non-Federal Sponsor for eligible costs it incurs for providing real property interests, placement area improvements, and relocations for the nonstructural flood risk management features prior to the final accounting for such features.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree to amend the Agreement as follows:

1. Replace the fifth Whereas clause with the following:

“WHEREAS, the Government's share of the cost of construction of the Project will be funded using funds provided under the Construction heading, Title IV, Division B of the Bipartisan Budget Act of 2018, Public Law 115-123 enacted February 9, 2018 (hereinafter "BBA 2018"), with the total amount of BBA 2018 funds for such share estimated at \$10,783,000 as of the effective date of Amendment Number 1 to this Agreement;”

2. Replace Article I.A. in its entirety with the following:

“A. The term “Project” means the nonstructural flood risk management features consisting of residential buyout and removal and residential elevation features as generally described in the Mill Creek Flood Risk Management study, dated June 4, 2015 and approved by the Chief of Engineers on October 15, 2015 and modified by the Mill (Sevenmile) Creek Validation Report, dated September 10, 2019; December 10, 2019 and approved by Division Commander for Great Lakes and Ohio River Division on July 21, 2020.”

3. Replace Article I.B. in its entirety with the following:

“B. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes, but is not necessarily limited to: the Government’s costs of engineering, design, and construction, including preparation of the Validation Report; the Government’s supervision and administration costs; the Non-Federal Sponsor’s creditable costs for providing real property interests, placement area improvements, and relocations and for providing in-kind contributions, if any; and the costs of historic preservation activities except for data recovery for historic properties. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Project Coordination Team to discuss significant issues and actions; audits; betterments; or additional work; or the Non-Federal Sponsor’s cost of negotiating this Agreement.”

4. Replace Article II.B. in its entirety with the following:

“B. The Non-Federal Sponsor shall contribute 35 percent of construction costs, as follows:

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project.

2. In providing in-kind contributions, if any, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. As functional portions of the work are completed, the Non-Federal Sponsor shall begin operation and maintenance of such work. Upon completion of the work, the Non-Federal Sponsor shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work.

3. The Government has determined that the Non-Federal Sponsor’s estimated credits for real property interests, placement area improvements, and relocations will exceed 35 percent of construction costs. As such, following each submission by the Non-Federal Sponsor of a written request and supporting cost documentation as required by Article V for the real property interests, placement area improvements, and relocations it has provided, the

Government, in its sole discretion and subject to the availability of BBA 2018 funds, may reimburse the Non-Federal Sponsor during construction for 65 percent of the eligible costs, as determined by the Government, that the Non-Federal Sponsor has incurred after the effective date of this Agreement for such real property interests, placement area improvements, and relocations, less 35 percent of the costs incurred by the Government during that same period. If the Government determines that continued reimbursements for real property interests, placement area improvements, and relocations, based on the Government's and Non-Federal Sponsor's projected remaining costs for such work, could result in excess reimbursements to the Non-Federal Sponsor, the Government shall suspend any further reimbursements pending completion of final accounting pursuant to Article VI.C.

4. Nothing in paragraph B.3., above, affects the Non-Federal Sponsor's responsibility under Article IV for the costs of any cleanup and response related thereto, or the timing for any reimbursements for in-kind contributions under Article VI.C."

5. In Article II.N., replace the reference to "Article VI.C." with "Article VI.D."

6. Delete Article II.O. in its entirety.

7. In Article III.D., replace the reference to "Article VI.C." with "Article VI.D."

8. Replace Article VI in its entirety with the following:

**"ARTICLE VI – ACCOUNTING AND PAYMENT OF FUNDS**

"A. As of the effective date of this Agreement, construction costs are projected to be \$16,589,200, with the Government's share of such costs projected to be \$10,783,000 and the Non-Federal Sponsor's share of such costs projected to be \$5,806,200. Costs to be incurred by the Government are projected to be \$2,716,200. Costs to be incurred by the Non-Federal Sponsor for creditable real property interests, relocations, and placement area improvements are projected to be \$13,079,600 and creditable in-kind contributions are projected to be \$793,400. Reimbursements pursuant to Article II.B.3. for eligible costs incurred by the Non-Federal Sponsor for real property interests, relocations, and placement area improvements are projected to be \$7,551,100. Costs for betterments are projected to be \$1,000,000. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with monthly financial reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government to date; costs incurred by the Non-Federal Sponsor to date; and the total amount of reimbursements made to the Non-Federal Sponsor to date.

C. After the Non-Federal Sponsor has provided its final written request and supporting cost documentation to the Government pursuant to Article II.B.3., the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. As a part of the final accounting, the Government will determine the total

reimbursable amount owed to the Non-Federal Sponsor, which would include any reimbursements made to the Non-Federal Sponsor during construction for real property interests, placement area improvements and relocations pursuant to Article II.B.3. and the Federal share of any in-kind contributions provided by the Non-Federal Sponsor that are determined by the Government to be eligible for reimbursement after final accounting. Should the final accounting determine that funds in excess of the total reimbursable amount have been reimbursed to the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such excess reimbursements by delivering a check payable to “FAO, USAED, Nashville (H3)” to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If the final accounting determines that the reimbursements provided to the Non-Federal Sponsor are less than the total reimbursable amount owed to the Non-Federal Sponsor, the Government, subject to the availability of BBA 2018 funds, shall reimburse the difference to the Non-Federal Sponsor.

D. If the Government agrees to acquire or provide, as applicable, real property interests, placement area improvements, relocations, additional work, or betterments on behalf of the Non-Federal Sponsor, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government by delivering a check payable to “FAO, USAED, Nashville (H3)” to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 30 calendar days from receipt of written notice from the Government.”

9. Replace Article VII.B. with the following:

“B. If the Government determines at any time that the Federal funds made available in BBA 2018 for construction of the Project are not sufficient to provide further reimbursements, the Government shall so notify the Non-Federal Sponsor in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend reimbursements provided pursuant to Article II.B.3. until sufficient funds are provided to allow such reimbursements to resume.”

10. All other terms and conditions of the Agreement remain unchanged.

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

DEPARTMENT OF THE ARMY

METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON  
COUNTY, TENNESSEE

BY: \_\_\_\_\_  
SONNY B. AVICHAL, P.E.  
Lieutenant Colonel, U.S. Army  
District Commander

BY: \_\_\_\_\_  
JOHN COOPER  
Mayor

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

CERTIFICATE OF AUTHORITY

I, Robert E. Cooper Jr., do hereby certify that I am principal legal officer for the Metropolitan Government of Nashville and Davidson County, Tennessee, that the Metropolitan Government of Nashville and Davidson County, Tennessee is a legally constituted public body with full authority and legal capability to perform the terms of Amendment Number 1 to the Project Partnership Agreement between the Department of the Army and the Metropolitan Government of Nashville and Davidson County, Tennessee in connection with the Sevenmile Creek Flood Risk Management 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 person who executed this Amendment on behalf of the Metropolitan Government of Nashville and Davidson County, Tennessee has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
15<sup>th</sup> day of October, 2020.

DocuSigned by:

*Robert E. Cooper, Jr.*

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ROBERT E. COOPER, Jr.

Director of Law

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.

\_\_\_\_\_  
JOHN COOPER  
Mayor

DATE: \_\_\_\_\_

# ORIGINAL

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***METROPOLITAN COUNTY COUNCIL***

**Resolution No.** \_\_\_\_\_

A resolution approving amendment one to an agreement between the United States Department of the Army and the Metropolitan Government of Nashville and Davidson County, acting by and through the Department of Water and Sewerage Services, for the Sevenmile Creek Flood Risk Management Project in Davidson County, Tennessee. (MWS Project No. 19-SWC-214)

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*Introduced* \_\_\_\_\_

*Amended* \_\_\_\_\_

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*Adopted* \_\_\_\_\_

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*Approved* \_\_\_\_\_

*By* \_\_\_\_\_  
*Metropolitan Mayor*

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