

**AGREEMENT BETWEEN
THE DEPARTMENT OF THE ARMY
AND
METROPOLITAN GOVERNMENT OF NASHVILLE & DAVIDSON COUNTY,
TENNESSEE
TO
PROVIDE RELOCATION ASSISTANCE
FOR THE
THE RICHLAND CREEK FLOOD RISK MANAGEMENT PROJECT
DAVIDSON COUNTY, TENNESSEE**

THIS AGREEMENT entered into this ____ day of June, 2023, by and between THE DEPARTMENT OF THE ARMY (hereinafter the "Government"), acting by and through the United States of America Army Engineer for the Nashville District (hereinafter the "USACE") and Metropolitan Government of Nashville and Davidson County, Tennessee (hereinafter the "Non-Federal Sponsor") acting by and through its Director of Water Services;

WITNESSETH, THAT:

WHEREAS, implementation of the Richland Creek Flood Risk Management Project, (hereinafter the "Project"), was authorized by Section 1402(a) of the Water Resources Development Act of 2016, Public Law 114-322 directs that the portion of the specifically authorized Richland Creek, Tennessee project consisting of measures within the Cumberland River Tributary which includes the acquisition and relocation of twenty-three residential structures and the elevation of sixteen residential structures (hereinafter the "Project") be carried out pursuant to Section 205 of the Flood Control Act of 1948, as amended (33 U.S.C. §701s) (hereinafter "Section 205"). The Project includes the Richland Creek Watershed area;

WHEREAS, pursuant to the authority provided in Section 205, design and construction of the Richland Creek Flood Risk Management Project (hereinafter the "Project", as defined in Article I.A. of this Agreement) was approved by the Division Commander for Great Lakes and Ohio River Division on July 10, 2020.

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. §2213), specifies the cost-sharing requirements applicable to the Project;

WHEREAS, 33 U.S.C. §701h authorizes the Government to undertake, at the Non-Federal Sponsor's full expense, additional work while the Government is carrying out the project;

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. §1962d-5b), provides that this

Agreement shall be enforceable in the appropriate district court of the United States;

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Partnership Agreement (hereinafter the "PPA"), dated 20 March 2023 for implementation of the Project;

WHEREAS, Article II. Section B.1. of the PPA provides that the Non-Federal Sponsor shall provide the real property interests, placement area improvements, and relocations required for construction, operation, and maintenance of the Project;

WHEREAS, Article III. Section D. of the PPA provides that, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real property interests, construct placement area improvements, perform necessary relocations, and assist the Non-Federal Sponsor, as part of its acquisition of the required real estate in providing relocations of the displaced individuals in accordance with Public Law 91-646 (hereinafter P.L. 91-646). The Non-Federal Sponsor's payment for all such services shall be in advance of the Government incurring any financial obligation therefore, in accordance with Article VI. Section C. of the PPA; and

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into this separate agreement providing for the Government to provide relocation assistance pursuant to P.L. 91-646 to the individuals displaced because of the project as part of the real estate acquisition, on behalf of the Non-Federal Sponsor.

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

1. This Agreement is in support of and in furtherance of the PPA and shall not be interpreted in any manner inconsistent with or in contradiction to the PPA. The mention of any specific provision of the PPA in this Agreement shall not operate to exclude reference to nor negate any other provision of the PPA.

2. The Government shall, on behalf of the Non-Federal Sponsor, provide relocation assistance pursuant to P.L. 91-646 to the individuals displaced because of the project as part of the real estate acquisition, on behalf of the Non-Federal Sponsor, in accordance with Article III of the PPA, to be necessary for the implementation, operation, and maintenance of the Project. Acquisition shall include the authority to accept delivery of all instruments of conveyance on behalf of the Non-Federal Sponsor.

3. The Government shall furnish all services and work under this Agreement in accordance with applicable U.S. laws and regulations. Unless otherwise required by law, all contract work undertaken by the Government shall be performed in accordance with Department of the Army procurement and claims policies and procedures. All real estate work shall be performed in accordance with Department of Army real estate regulations as well as other applicable law.

4. The Non-Federal Sponsor shall pay for the services to be provided pursuant to this Agreement in advance of the Government incurring any financial obligation for said services, in accordance with Article VI of the PPA. The Government will draw on the funds provided by the Non-Federal Sponsor, such sums as the Government deems necessary to cover contractual and in-house financial obligations attributable to the services provided hereunder, as they are incurred. The Government estimates a labor cost of \$18,000.00 per tract. Funds will be received on a yearly basis based on the amount of tracts the Non-Federal Sponsor anticipates to acquire per year. The funds will be received by the Government before services will be rendered.

5. The procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to the Agreement shall be those developed and used in accordance with Article X of the PPA.

6. The Project Coordination Team appointed in accordance with Article II.M. of the P.P.A. shall, in addition to the tasks specified in Article V of the PPA, generally oversee implementation of the services to be provided pursuant to this Agreement.

7. Either the Government or the Non-Federal Sponsor may terminate this Agreement by providing 60 calendar days written notice to the other party.

8. In the event of termination of this Agreement, the Government and the Non-Federal Sponsor shall consult with each other concerning all claims for termination costs. The Non-Federal Sponsor shall continue to be obligated for payment of costs incurred by the Government under this Agreement, for costs of closing out or transferring any ongoing contracts, and for costs of litigating all civil actions arising pursuant to this Agreement to final resolution.

9. As provided in Article IX of the PPA, before either party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

10. The principal personnel and points of contact for matters relating to this Agreement shall be the representatives of the parties appointed to the Project Coordination Team.

11. This Agreement may be modified or amended only by written agreement of the parties.

12. This Agreement shall be effective upon the date of the signature of the District Engineer.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above-recited.

U.S. ARMY CORPS OF ENGINEERS
NASHVILLE DISTRICT

METROPOLITAN GOVERNMENT OF
NASHVILLE AND DAVIDSON COUNTY

Robert W. Green
Lieutenant Colonel, U.S. Army
District Commander

DocuSigned by:
Scott Potter

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Scott Potter
Director of Water Services

DATE: _____

DATE: 6/8/2023

Mary C. Keith
District Chief of Real Estate
Real Estate Contracting Officer

ATTEST:

Print Name: _____
Title: _____
Date _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, wallawallace Dietz, do hereby certify that I am the principal legal officer of 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 the Agreement between the Department of the Army and the METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE in connection with the RICHLAND 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 Agreement, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. Section 1962d-5b), and that the person who has executed this Agreement on behalf of the METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, has acted within their statutory authority. The Director of Water Services and his successor has the authority to enter into the agreement and any other agreement to accomplish the mission of the project.

IN WITNESS WHEREOF, I have made and executed this certification this
8th day of June 2023.

DocuSigned by:
Wallace Dietz
Wallace Dietz
Director of Law

ORIGINAL

METROPOLITAN COUNTY COUNCIL

Resolution No. _____

A resolution approving 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, to provide relocation assistance for the Richland Creek Flood Risk Management Project in Davidson County, Tennessee.

Introduced _____

Amended _____

Adopted _____

Approved _____

By _____
Metropolitan Mayor
