

RESOLUTION NO. RS2020 - 191

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 Mill Creek Flood Risk Management Project in Davidson County, Tennessee. (MWS Project No. 18-SWC-136)

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 RS2017-976; and,

WHEREAS, the parties wish to amend the agreement to delete Article II.B. in its entirety and replace with a new Article II.B. and delete Article VI.A in its entirety and replace with a new Article VI.A, a copy of which amendment one is attached hereto; and,

WHEREAS, the amendment 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 relocations it has provided for the nonstructural flood risk management features of the project prior to the final accounting for such features; and,

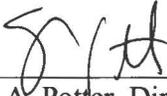
WHEREAS, it is to the benefit of the citizens of The Metropolitan Government of Nashville and Davidson County that amendment one be accepted.

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 Mill 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:



\_\_\_\_\_  
Scott A. Potter, Director  
Water and Sewerage Services

INTRODUCED BY:

\_\_\_\_\_  
\_\_\_\_\_

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

APPROVED AS TO THE  
AVAILABILITY OF FUNDS:  
Fund No. 37039  
Business Unit No. 65801190  
\$2,500,000.00



\_\_\_\_\_  
Kevin Crumbo, Director  
Department of Finance

F

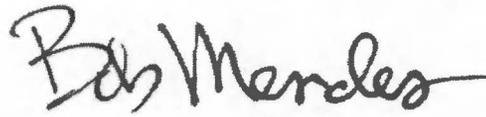
APPROVED AS TO FORM  
AND LEGALITY:



\_\_\_\_\_  
Assistant Metropolitan Attorney

**Electronic Signature Page**

(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

A handwritten signature in black ink that reads "Bob Mendes". The signature is written in a cursive style with a long horizontal stroke at the end.

Bob Mendes  
Councilman At-Large

**Electronic Signature Page**

(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

*Angie E. Henderson*

Angie Henderson  
Councilmember, District 34

**Electronic Signature Page**

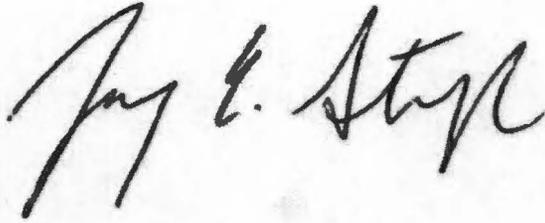
(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

Russ Bradford

Russ Bradford  
Council Member, District 13

**Electronic Signature Page**

(Attach to Legislation Pursuant to Rule 8 of the Council Rules of Procedure)

A handwritten signature in black ink, appearing to read "Joy L. Styles". The signature is written in a cursive, flowing style.

Joy Styles

Council Member, District 32

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

THIS AMENDMENT NUMBER 1 is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, 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 & Davidson County, Tennessee (hereinafter the “Non-Federal Sponsor”), represented by its Mayor.

WITNESSETH, THAT:

WHEREAS, Section 1402(a) of the Water Resources Development Act of 2016 (Public Law 114-322) directed that the portion of the project for flood risk management, Mill Creek, Tennessee authorized by Section 1401(2) of the Water Resources Development Act of 2016 that consists of measures within the Mill Creek basin (hereinafter the “Project”) be carried out pursuant to Section 205 of the Flood Control Act of 1948, as amended (33 U.S.C. 701s);

WHEREAS, on December 15, 2017, the Government and the Non-Federal Sponsor entered into a Project Partnership Agreement (hereinafter the “Agreement”) for construction of the Project; and

WHEREAS, the Government and the Non-Federal Sponsor desire to amend the Agreement to add provisions to allow the Government to reimburse the Non-Federal Sponsor for eligible costs that the Non-Federal Sponsor has incurred for the real property interests, placement area improvements, and relocations it has provided for the nonstructural flood risk management features of the Project 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 Article II.B. in its entirety with the following:

“B. The Non-Federal Sponsor shall contribute a minimum of 35 percent, up to a maximum of 50 percent, of construction costs allocated by the Government to structural flood risk management, as follows:

1. Structural Flood Risk Management Features.

a. The Non-Federal Sponsor shall pay 5 percent of construction costs allocated to structural flood risk management.

b. 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 structural flood risk management features. If the Government determines that the Non-Federal Sponsor’s estimated creditable costs for real property interests, placement area improvements, and relocations for such features will exceed 45 percent of construction costs allocated to structural flood risk management, the Government, in its sole discretion, may acquire any of the remaining real property interests, construct any of the remaining placement area improvements, or perform any of the remaining relocations with the cost of such work included as part of the Government’s cost of construction. Nothing in this provision affects the Non-Federal Sponsor’s responsibility under Article IV for the costs of any cleanup and response related thereto.

c. 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.

d. After determining the amount to meet the 5 percent required by paragraph B.1.a., above, for the then-current fiscal year and after considering the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.1.b. and B.1.c., above, the Government shall determine the estimated additional amount of funds required from the Non-Federal Sponsor to meet its minimum 35 percent cost share for the structural flood risk management features for the then-current fiscal year. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.

e. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Non-Federal Sponsor with a written estimate of the full amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share for the structural flood risk management features. Not later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.

2. Nonstructural Flood Risk Management Features.

a. 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 nonstructural flood risk management features.

b. 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.

c. If the Government determines that the Non-Federal Sponsor's estimated creditable costs for real property interests, placement area improvements, and relocations for the nonstructural flood risk management features will exceed 35 percent of construction costs allocated to such features, following submission by the Non-Federal Sponsor of written requests and supporting cost documentation as required by Article V for the real property interests, placement area improvements, and relocations it has provided for the nonstructural flood risk management features, the Government, subject to the availability of funds, may reimburse the Non-Federal Sponsor for 65 percent of the eligible costs, as determined by the Government, that the Non-Federal Sponsor has incurred for such features, less 35 percent of the costs incurred by the Government for such features. If the Government determines that continued reimbursements for real property interests, placement area improvements, and relocations for the nonstructural flood risk management features, based on the Government's and Non-Federal Sponsor's projected remaining costs for such features, could result in excess reimbursements to the Non-Federal Sponsor, the Government shall suspend any further reimbursements pending completion of final accounting for such features pursuant to Article VI.E. In addition, should the final accounting determine that funds are required from the Non-Federal Sponsor to meet its 35 percent cost share for the nonstructural flood risk management features, 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 funds in accordance with Article VI.E.

d. Nothing in paragraph B.2.c., 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.E."

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

"A. As of the effective date of this Agreement, total construction costs are projected to be \$12,809,000, with the Government's share of such costs projected to be \$7,871,000 and the

Non-Federal Sponsor's share of such costs projected to be \$4,938,000. Construction costs allocated to structural flood risk management are projected to be \$3,037,000, with the Government's share of such costs projected to be \$1,519,000 and the Non-Federal Sponsor's share of such costs projected to be \$1,518,000, which includes the 5 percent contribution of funds projected to be \$152,000, costs for creditable real property interests, relocations, and placement area improvements projected to be \$1,816,000, costs for creditable in-kind contributions projected to be \$0, and the additional amount of funds required to meet the minimum 35 percent cost share projected to be \$0. Construction costs allocated to nonstructural flood risk management are projected to be \$9,772,000, with the Government's share of such costs projected to be \$6,352,000 and the Non-Federal Sponsor's share of such costs projected to be \$3,420,000. Costs allocated to nonstructural flood risk management for creditable real property interests, relocations, and placement area improvements are projected to be \$7,630,000, costs for creditable in-kind contributions are projected to be \$1,369,000, and the additional amount of funds required to meet the 35 percent cost share is projected to be \$0. The costs for providing real property interests, relocations, and placement area improvements for nonstructural flood risk management are projected to exceed the 35 percent non-Federal cost share, with eligible reimbursements to the Non-Federal Sponsor pursuant to Article II.B.2.c. for providing such real property interests, relocations, and placement area improvements projected to be \$4,730,000. Costs for betterments are projected to be \$200,000. 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."

3. 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 & DAVIDSON COUNTY

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

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

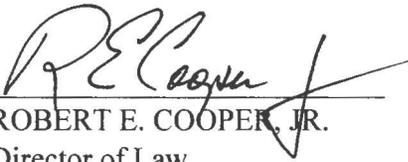
DATE: \_\_\_\_\_

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

CERTIFICATE OF AUTHORITY

I, Robert E. Cooper, Jr. do hereby certify that I am principal legal officer for the Metropolitan Government of Nashville & Davidson County, Tennessee, that the Metropolitan Government of Nashville & 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 & Davidson County, Tennessee in connection with the Mill 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 & Davidson County, Tennessee has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
23rd day of January, 2019.20

  
\_\_\_\_\_  
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: \_\_\_\_\_