RESOLUTION 28-2011

RESOLUTION APPROVING AMENDMENT NUMBER ONE TO AGREEMENT BETWEEN THE DEPARTMENT OF THE ARMY AND THE CITY OF MILLINGTON FOR CORRECTION OF DEFICIENCIES IN LEVEE

WHEREAS, on May 15, 1990, the City of Millington ("City") and the Department of the Army ("Department") entered a Local Cooperation Agreement between the Department and the City for construction of a levee in the City (the "Agreement"); and

WHEREAS, the Department has determined that the levee is deficient in design and construction and in need of repair; and

WHEREAS, the Department has requested the City to execute Amendment Number One to the Agreement, copies of which Agreement and Amendment are attached to this Resolution as collective Exhibit A, and which Amendment provides for payment of costs for design and construction to correct such deficiencies; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Mayor and Aldermen of the City of Millington, Tennessee, that the Amendment described above and attached as part of Exhibit A be, and the same hereby is, approved.

BE IT FURTHER RESOLVED that the Mayor be, and he hereby is, authorized to execute and deliver the Amendment on behalf of the City.

This Resolution is adopted as of the 1st day of August, 2011.

Richard L. Hodges, Mayor

Bruce Rasmussen, City Clerk and Treasurer

AMENDMENT NUMBER ONE
TO THE
LOCAL COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF MILLINGTON, TENNESSEE
FOR CONSTRUCTION OF THE
MILLINGTON, TENNESSEE PROJECT

THIS AMENDMENT No. 1 is entered into this 1st day of Aguust, 2011, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the U.S. Army Engineer, Memphis District, and the CITY OF MILLINGTON, TENNESSEE (hereinafter the "Non-Federal Sponsor"), represented by the MAYOR OF MILLINGTON.

WITNESSETH, THAT:

WHEREAS, an Agreement entitled "Local Cooperation Agreement Between the Department of the Army and the City of Millington, Tennessee for Construction of the Millington, Tennessee Project", and dated May 15, 1990, was previously executed by the Government and the Non-Federal Sponsor for the construction of a water resource project (Project) in Millington, Tennessee, consisting of a "Levee" and the associated "Mitigation." As set forth in said Agreement, authority for the Project was Section 205 of the Flood Control Act of 1948, as amended, (33 U.S. C. § 701s); and

WHEREAS, construction of the Levee as a functional portion of the Project was completed in 1991 and tendered to the Non-Federal Sponsor for operating, maintaining, repairing, replacing and rehabilitating; and

WHEREAS, the Government has determined the Levee to be deficient in its design and construction and in need of repair as described in the City of Millington Section 205 Design Deficiency Report dated 29 April 2011; and

WHEREAS, the Secretary of the Army is authorized by Section 205, as amended, to allot from certain appropriations an amount not to exceed $55,000,000 per *fiscal year* for the implementation of small structural and nonstructural projects for flood control and related purposes; provided that no more than $7,000,000 shall be allotted for a project at any single locality;

WHEREAS, the Government and the Non-Federal Sponsor desire to amend the aforesaid Local Cooperation Agreement (hereinafter the "Amendment") for design and

construction of measures to correct the deficiencies described in the aforesaid City of Millington Section 205 Design Deficiency Report;

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, the Non-Federal Sponsor does not qualify for a reduction of the non-Federal cost share for flood control pursuant to the guidelines that implement Section 103(m) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(m));

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and Section 103(j) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(j)), provide, *inter alia*, that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the *Project* in accordance with the terms of this Agreement, as herein amended;

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful implementation of the *Project*, as herein amended.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows, with respect to this amendment of the aforesaid Local Cooperation Agreement for this project;

Article II e. Shall be amended to change "25 percent" to "35 percent."

Article VI a. Shall be amended as follows: "Total project costs are estimated to be $1,358,000 of which $682,000 reflects costs to complete the repairs as described in the City of Millington Section 205 Design Deficiency Report."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by

DEPARTMENT OF THE ARMY	City of Millington, TN
BY: _____	BY: _____
District Engineer	**Richard L. Hodges** Mayor, City of Millington
DATE: _____	DATE: 8/1/2011

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.

Richard L. Hodges
Mayor, City of Millington

DATE: 8/1/2014