

AMENDMENT NO. 2  
TO  
PROJECT COOPERATION AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE CITY OF NORTHPORT, A MUNICIPAL CORPORATION  
FOR CONSTRUCTION OF  
THE SECTION 205 FLOOD CONTROL (LEVEE) PROJECT, BLACK WARRIOR RIVER  
AT NORTHPORT, ALABAMA

THIS AMENDMENT NO. 2 is entered into this 28<sup>th</sup> day of August, 2015, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), represented by the U.S. Army Engineer, Mobile District (hereinafter the "District Engineer"), and the CITY OF NORTHPORT, ALABAMA, a municipal corporation (hereinafter the "Non-Federal Sponsor"), represented by its City Administrator.

WITNESSETH, THAT:

WHEREAS, the Government and the Non-Federal Sponsor entered into a Project Cooperation Agreement on November 15, 1996 (hereinafter the "Agreement") for construction of the Section 205 Flood Control (Levee) Project (the "Project"), Black Warrior River, Northport, Alabama;

WHEREAS, the Government is authorized to study and report on design deficiencies of completed Federal projects under the original construction authorization;

WHEREAS, on April 10, 2013, the Government and the Non-Federal Sponsor entered into an Amendment to the Agreement to repair the cracked section of the levee that was observed during an inspection on July 13, 2010;

WHEREAS, repair work did not begin because the Government and the Non-Federal Sponsor further evaluated options to repair the cracked section of the levee;

WHEREAS, a design deficiency correction was approved for construction by the Chief of the Business Technical Division, South Atlantic Division on April 6, 2015, pursuant to the authority contained in Section 205 of the Flood Control Act of 1948, as amended (33 U.S.C. 701s); and

WHEREAS, the Government and the Non-Federal Sponsor desire to further amend the Agreement to include construction of the approved design deficiency correction.

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

1. The fourth WHEREAS clause of the Agreement is amended by striking "\$5,000,000" and replacing with "\$10,000,000".

2. The following is added after the sixth WHEREAS clause of the Agreement:

"WHEREAS, a design deficiency correction was approved for construction by the Chief of the Business Technical Division, South Atlantic Division on April 6, 2015, pursuant to the authority contained in Section 205 of the Flood Control Act of 1948, as amended (33 U.S.C. 701s)."

3. ARTICLE I.A. of the Agreement is amended by striking the paragraph and replacing with the following:

"A. The term "Project" shall mean the "flood risk management features" as generally described in the Final Detailed Project Report dated September 1995 and approved by the Director of Engineering and Technical Services, South Atlantic Division on January 18, 1996, and the "design deficiency correction features" as generally described in the Design Deficiency Report dated March 2015 and approved by the Chief of the Business Technical Division, South Atlantic Division on April 6, 2015."

4. ARTICLE I.B. of the Agreement is amended by striking the first sentence and replacing with the following:

"The term "total project costs" shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to design and construction of the Project."

5. ARTICLE I.D. of the Agreement is amended by striking "with Articles II.D.1. and II.D.3." and replacing with "with Articles II.D.1., II.D.3., II.M.1., and II.M.3.".

6. New ARTICLE I.K. is added as follows:

"K. The term "flood risk management features" shall mean construction of a 2.1 mile earthen levee to protect against flooding up to the 300-year event occurring along the Black Warrior River and Two-mile Creek, with 38 acres (33 acres of upland hardwood and 5 acres of wetlands) acquired for mitigation of displaced habitat, as generally described in the Final Detailed Project Report dated September 1995 and approved by the Director of Engineering and Technical Services, South Atlantic Division on January 18, 1996."

7. New ARTICLE I.L. is added as follows:

"L. The term "design deficiency correction features" shall mean relocation of the levee section that is approximately 320 feet long between Stations 92+80 and 96+00 westward approximately 35 feet from centerline of the existing levee as generally

described in the Design Deficiency Report dated March 2015 and approved by the Chief of the Business Technical Division, South Atlantic Division on April 6, 2015."

8. New ARTICLE I.M. is added as follows:

"M. The term "total flood risk management costs" shall mean the portion of total project costs allocated to the flood risk management features."

9. New ARTICLE I.N. is added as follows:

"N. The term "total design deficiency correction costs" shall mean the portion of total project costs allocated to the design deficiency correction features."

10. ARTICLE II.D. of the Agreement is amended by striking "total project costs" and replacing with "total flood risk management costs".

11. ARTICLE II.D.1. of the Agreement is amended by striking "total project costs" and replacing it with "total flood risk management costs".

12. ARTICLE II.D.2. of the Agreement is amended by striking both instances of "Project" and replacing it with "flood risk management features".

13. ARTICLE II.D.3. of the Agreement is amended by striking the paragraph and replacing it with the following:

"3. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraphs D.1. and D.2. of this Article and Articles V., X, and XV.A. of this Agreement that are determined by the Government to be attributable to the flood risk management features will be less than 25 percent of total flood risk management costs, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to 25 percent of total flood risk management costs."

14. ARTICLE II.D.4. of the Agreement is amended by striking the paragraph and replacing it with the following:

"4. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs D.2. and D.3. of this Article and Articles V, X, and XV.A. of this Agreement that are determined by the Government to be attributable to the flood risk management features has exceed 45 percent of total flood risk management costs, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of 45 percent of total flood risk management costs. After such a determination, the Government, in its sole discretion, may provide any remaining lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas required for the flood risk management

features and perform any remaining relocations necessary for the flood risk management features on behalf of the Non-Federal Sponsor.”

15. ARTICLE II.F. is amended by striking “D., and E.” in both instances and replacing with “D., E., and L.”.

16. New ARTICLE II.K. is added as follows:

“K. The Government shall allocate total project costs between total flood risk management costs and total design deficiency correction costs.”

17. New ARTICLE II.L. is added as follows:

“L. The Non-Federal Sponsor shall contribute a minimum of 35 percent, but not to exceed 50 percent, of total design deficiency correction costs in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide a contribution of funds equal to 5 percent of total design deficiency correction costs in accordance with Article VI.B. of this Agreement.

2. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the construction, operation, and maintenance of the design deficiency correction features, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the construction, operation, and maintenance of the design deficiency correction features.

3. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraphs L.1. and L.2. of this Article and Articles V, X, and XV.A. of this Agreement that are determined by the Government to be attributable to the design deficiency correction features will be less than 35 percent of total design deficiency correction costs, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to 35 percent of total design deficiency correction costs.

4. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs L.2. and L.3. of this Article and Articles V, X, and XV.A. of this Agreement that are determined by the Government to be attributable to the design deficiency correction features has exceeded 45 percent of total design deficiency correction costs, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of 50 percent of total design deficiency correction costs. After such a determination, the Government, in its sole discretion, may provide any remaining lands, easements, rights-of-way, and suitable

borrow and dredged or excavated material disposal areas required for the design deficiency correction features and perform any remaining relocations necessary for the design deficiency correction features on behalf of the Non-Federal Sponsor."

18. ARTICLE VI.A. of the Agreement is amended by striking the paragraph and replacing it with the following:

"A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs, total flood risk management costs, total design deficiency correction costs, and costs due to betterments. At least quarterly, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, total flood risk management costs, total design deficiency correction costs, total costs due to betterments, the components of total flood risk management costs and total design deficiency correction costs, each party's share of each, the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.D., II.E., and II.L. of this Agreement, and of the non-Federal proportionate share. On the effective date of the Amendment No.2 to this Agreement, total project costs are projected to be \$6,945,174, total flood risk management costs are projected to be \$5,849,174, the Non-Federal Sponsor's cash contribution required under Article II.D. of this Agreement is projected to be \$294,459, total design deficiency correction costs are projected to be \$1,096,000, the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement for the design deficiency correction is projected to be \$377,000, and the Non-Federal Sponsor's cash contribution required under Article II.L. of this Agreement is projected to be \$54,800. Such amounts are estimates 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."

19. ARTICLE VI.B. of the Agreement is amended by striking the sentence and replacing it with the following:

"The Non-Federal Sponsor shall provide the cash contribution required under Articles II.D.1., II.D.3., II.L.1., and II.L.2. of this Agreement in accordance with the provisions of this paragraph."

20. ARTICLE VI.B.1. of the Agreement is amended by striking the paragraph and replacing it with the following:

"1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first construction contract for the flood risk management features, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected cash contribution under Articles II.D.1. and II.D.3. of this Agreement, and not less than 7 calendar days after the effective date of Amendment

No. 2 to this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected cash contribution under Articles II.L.1. and II.L.2. of this Agreement. Not later than such scheduled date for the flood risk management features or within 30 days of receipt of the notification provided after the effective date of Amendment No. 2 to this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Mobile" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited the required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or providing an Electronic Funds Transfer of the required funds in accordance with procedures established by the Government."

21. ARTICLE VI.B.2. of the Agreement is amended by striking the paragraph and replacing it with the following:

"2. For the second and subsequent fiscal years of construction of the flood risk management features or the design deficiency correction features, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected cash contribution under Articles II.D.1. and II.D.3 or Articles II.L.1. and II.L.2. of this Agreement. Not less than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through any of the funding mechanisms specified in Article VI.B.1. of this Agreement."

22. ARTICLE VI.D. of the Agreement is amended by replacing "total project costs" in the second sentence with "total project costs, total flood risk management costs, total design deficiency correction costs,".

23. ARTICLE VI.D.1. of the Agreement is amended by replacing "total project costs plus" with "total project costs, total flood risk management costs, and total design deficiency correction costs plus".

24. ARTICLE VI.D.2. of the Agreement is amended by:

a. replacing "total project costs plus" in the first sentence with "total project costs, total flood risk management costs, and total design deficiency correction costs plus"; and

b. replacing "Article II.D.1." in the first sentence with "Articles II.D.1. and II.L.1.".

25. "ARTICLE XVI – TERMINATION OR SUSPENSION" is replaced with "ARTICLE XIV – TERMINATION OR SUSPENSION".



26. ARTICLE XIV.A. of the Agreement is amended by replacing "Article II.B., II.D., II.E., VI, or XVIII.C." with "Article II.B., II.D., II.E., II.L., VI, or XVIII.C.".

27. ARTICLE XVIII.C. of the Agreement is amended by striking all text after the phrase "as follows" and replacing it with the following:

"for flood risk management features, 25 percent borne by the Non-Federal Sponsor, and 75 percent borne by the Government, and for design deficiency correction features, 35 percent borne by the Non-Federal Sponsor, and 65 percent borne by the Government."

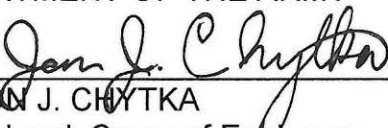
28. ARTICLE XX is deleted in its entirety.

29. All other terms and conditions of the November 15, 1996 Agreement, as amended, remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2, which shall become effective upon the date it is signed by the District Engineer.


DEPARTMENT OF THE ARMY

BY:

  
JON J. CHYTKA  
Colonel, Corps of Engineers  
District Commander

CITY OF NORTHPORT

BY:

  
SCOTT COLLINS  
City Administrator  
City of Northport

DATE:

8/28/2015

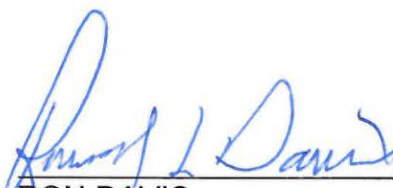
DATE:

8/28/2015

## CERTIFICATE OF AUTHORITY

I, Ron Davis, do hereby certify that I am the principal legal officer of the CITY OF NORTHPORT, that the CITY OF NORTHPORT is a legally constituted public body with full authority and legal capability to perform the terms of Amendment No. 2 to the Project Cooperation Agreement between the Department of the Army and the CITY OF NORTHPORT for Construction of the Section 205 Flood Control (Levee) Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, and that the persons who have executed this Amendment No. 2 to the Project Cooperation Agreement on behalf of the CITY OF NORTHPORT have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 28<sup>th</sup> day of August, 2015.

  
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RON DAVIS  
City Attorney



## 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.



SCOTT COLLINS  
City Administrator  
City of Northport

DATE: 8/28/2015