

**COOPERATION AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
and
DYER COUNTY LEVEE AND DRAINAGE DISTRICT NO. 1
for
REHABILITATION OF A NON-FEDERAL FLOOD CONTROL WORK**

THIS AGREEMENT, entered into this 16 day of MARCH, 20 12, by and between THE DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government") represented by the District Engineer, Memphis District, U.S. Army Corps of Engineers, and the Dyer County Levee and Drainage District No. 1, (hereinafter referred to as the "Public Sponsor"), represented by Mayor Richard Hill, Mayor of Dyer County.

WITNESSETH THAT:

WHEREAS, pursuant to 33 U.S.C. 701n, the Government is authorized to assist in the repair or restoration of flood control improvements threatened or destroyed by flood;

WHEREAS, via written correspondence, the Public Sponsor has requested the Government to repair or restore a certain flood control work damaged by recent flooding or coastal storms, in accordance with 33 U.S.C. 701n and established policies of the U.S. Army Corps of Engineers; and,

WHEREAS, the Public Sponsor hereby represents that it has the authority and legal capability to furnish the non-Federal cooperation hereinafter set forth and is willing to participate in the rehabilitation effort in accordance with the terms of this Agreement;

NOW, THEREFORE, the Government and the Public Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this agreement:

A. The term "Rehabilitation Effort" shall mean providing the least cost structural option and providing the greatest stability during future high water events. This entails constructing a full levee cross section with a 15-ft crown width and 3:1 side slopes with a new alignment around the protected side of the deep scour holes. This also entails repair of levee breaches and restoration of the levee to the pre-flood event condition in the remaining breaches. The undamaged levee provided approximately a level of protection from a four percent chance exceedance flood, as generally described in a report entitled "Project Information Report PL 84-99 Rehabilitation of Damaged Flood Control Works" prepared by the District Engineer, U.S. Army Engineer District Memphis, dated 1 November 2011, and approved by the Division Engineer on 14 November 2011.

B. The term "Rehabilitation Effort costs" shall mean all costs incurred by the Public Sponsor and the Government, in accordance with the terms of this Agreement, directly related to implementation of the Rehabilitation Effort. The term shall include, but is not necessarily be limited to, actual construction costs, including supervision and inspection costs; costs of contract dispute settlements or awards; and the cost of investigations to identify the existence of hazardous substances as identified in Article XIA. The term shall not include any costs for operation and maintenance; any costs that correct deferred or deficient maintenance; any increased costs for betterments or Public Sponsor preferred alternatives; or the costs of lands, easements, rights-of-way, relocations, or suitable borrow and dredged or excavated material disposal areas required for the Rehabilitation Effort.

C. The term "betterment" shall mean the design and construction of a Rehabilitation Effort feature accomplished on behalf of, or at the request of, the Public Sponsor, in accordance with standards that

exceed the standards that the Government would otherwise apply for accomplishing the Rehabilitation Effort.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND PUBLIC SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States and using those funds and funds provided by the Public Sponsor, shall expeditiously implement the Rehabilitation Effort, applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. The Public Sponsor shall be afforded the opportunity to review and comment solicitations for all contracts, including relevant plans and specifications, prior to the issuance of such solicitations. The Contracting Officer will, in good faith, consider the comments of the Public Sponsor, but award of contracts, modifications or change orders, and performance of all work on the Rehabilitation Effort (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Contracting Officer.

B. As further specified in Article III, the Public Sponsor shall provide all lands, easements, and rights-of-way, and suitable borrow and dredged or excavated material disposal areas, and perform all relocations determined by the Government to be necessary for construction, operation, and maintenance of the Rehabilitation Effort and the Project.

C. As further specified in Article IV, the Public Sponsor shall contribute, in cash, in-kind services, or a combination thereof, a contribution toward construction of the Rehabilitation Effort in an amount equal to 20 percent of total Rehabilitation Effort costs.

D. The Public Sponsor shall not use Federal funds to meet its share of total Rehabilitation Effort costs under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

E. The Public Sponsor shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Rehabilitation Effort, and any related betterments, except for damages due to the fault or negligence of the Government or the Government's contractors.

F. The Public Sponsor agrees to participate in and comply with the policies and procedures of the U.S. Army Corps of Engineers Rehabilitation and Inspection Program.

G. The Public Sponsor may request the Government to accomplish betterments. The Public Sponsor shall be solely responsible for any increase in costs resulting from the betterments and all such increased costs will be paid in advance by the Public Sponsor in accordance with Article IV.

ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 91-646 COMPLIANCE

A. The Government shall provide the Public Sponsor with a description of the anticipated real estate requirements and relocations for the Rehabilitation Effort. Thereafter, the Public Sponsor shall furnish all lands, easements, and rights-of-way, including suitable borrow and dredged or excavated material disposal areas, and perform any relocations, as may be determined by the Government in that description, or in any subsequent description, to be necessary for the construction, operation, and maintenance of the Rehabilitation Effort. The necessary lands, easements, and rights-of-way may be provided incrementally for each construction contract. All lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed under a construction contract must be furnished prior to the solicitation of that construction contract.

B. The Public Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way,

and performing relocations for construction, operation, and maintenance of the Rehabilitation Effort, including those necessary for relocations, borrow materials, and dredged and excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - METHOD OF PAYMENT

A. The Public Sponsor shall provide, during the period of construction, cash payments, in-kind services, or a combination thereof, required to meet the Public Sponsor's obligations under Article II of the Agreement. Rehabilitation Effort costs are currently estimated to be \$2,101,280 and the Public Sponsor's share (cash and services in kind) of total Rehabilitation Effort costs is currently estimated to be \$420,256. In order to meet the Public Sponsor's cash payment requirements, the Public Sponsor must provide a cash contribution estimated to be \$100,000. The dollar amounts set forth in this paragraph are based upon the Government's best estimates that reflect projections of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based upon costs actually incurred and are not to be construed as the total financial responsibilities of the Government and the Public Sponsor.

B. The required cash contribution shall be provided as follows: At least ten calendar days prior to the award of the first construction contract, the Government shall notify the Public Sponsor of the Public Sponsor's estimated share of the total Rehabilitation Effort costs including the Public Sponsor's estimated share of the costs attributable to the Rehabilitation Effort incurred prior to the initiation of construction. Within five calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED, Memphis District – B1" to the Chief, Finance & Accounting Officer, Frank de Boer. The Government shall draw on the funds provided by the Public Sponsor such sums as the Government deems necessary to cover contractual and in-house fiscal obligations attributable to the Rehabilitation Effort as they are incurred, as well as Rehabilitation Effort costs incurred by the Government. In the event that Rehabilitation Effort costs are expected to exceed the estimate given at the outset of construction, the Government shall immediately notify the Public Sponsor of the additional contribution the Public Sponsor will be required to make to meet the Public Sponsor's share of the revised estimate. Within ten calendar days thereafter, the Public Sponsor shall provide the Government the full amount of the additional required contribution.

C. During the period of construction, the Government will provide periodic financial reports on the status of the total Rehabilitation Effort costs and status of contributions made by the Public Sponsor. Upon completion of the Rehabilitation Effort and resolution of all relevant contract claims and appeals, the Government shall compute the Rehabilitation Effort costs and tender to the Public Sponsor a final accounting of the Public Sponsor's share of Rehabilitation Effort costs.

1. In the event the total contribution by the Public Sponsor is less than the Public Sponsor's required share of total Rehabilitation Effort costs, the Public Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the Public Sponsor's required share of Rehabilitation Effort costs.

2. In the event total contribution by the Public Sponsor is more than the Public Sponsor's required share of Rehabilitation Effort costs, the Government shall, no later than 90 calendar days after the final accounting is complete, subject to the availability of funds, return the excess to the Public Sponsor; however, the Public Sponsor shall not be entitled to any refund for in-kind services. In the event the existing funds are not available to repay the Public Sponsor for excess contributions provided, the Government shall seek such appropriations as are necessary to repay the Public Sponsor for excess contributions provided.

ARTICLE V - CREDITING OF IN-KIND SERVICES

The Government has approved a credit for In-Kind Services, compatible with the Rehabilitation Effort, in the estimated amount of \$320,256 for implementation of such services by the Public Sponsor. The affording of such credit shall be subject to an onsite inspection by the Government to verify that the work was accomplished in a satisfactory manner and is suitable for inclusion in the Rehabilitation Effort. The actual amount of such credit shall be subject to an audit conducted to determine reasonableness, allocability, and allowability of costs. The Government shall apply the credit amount toward any additional cash contribution required under this Agreement. The Public Sponsor shall not receive credit for any amount in excess of such additional cash contribution, nor shall the Public Sponsor be entitled to any reimbursement for any excess credit amount.

ARTICLE VI - OPERATION AND MAINTENANCE

A. After the Contracting Officer has determined that construction of the Rehabilitation Effort is complete and provided the Public Sponsor with written notice of such determination, the Public Sponsor shall operate and maintain the Project, at no cost to the Government, in accordance with specific directions prescribed by the Government in Engineer Regulation 500-1-1 and any subsequent amendments thereto.

B. The Public Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon land that the Public Sponsor owns or controls for access to the Project for the purposes of inspection, and, if necessary, for the purpose of completing, operating, and maintaining the Project. If an inspection shows the Public Sponsor for any reason is failing to fulfill the Public Sponsor's obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Public Sponsor. If, after 30 calendar days from receipt of such notice, the Public Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon lands the Public Sponsor owns or controls for access to the Project for the purposes of completing, operating, and maintaining the Project, or to deny further assistance under Public Law 84-99. No action by the Government shall operate to relieve the Public Sponsor of responsibility to meet the Public Sponsor obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE VII - FEDERAL AND STATE LAWS

In the exercise of the Public Sponsor's rights and obligations hereunder, the Public Sponsor agrees to comply with all applicable Federal and state laws and regulations.

ARTICLE VIII - RELATIONSHIP OF PARTIES

The Government and the Public Sponsor act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, nor employee of the other.

ARTICLE IX - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE X - COVENANT AGAINST CONTINGENT FEES

The Public Sponsor warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or

selling agencies maintained by the Public Sponsor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in the Government's discretion, to add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE XI - TERMINATION OR SUSPENSION

If at any time the Public Sponsor fails to carry out its obligations under this Agreement, the District Engineer shall terminate or suspend work on the Rehabilitation Effort, unless the District Engineer determines that continuation of work on the Rehabilitation Effort is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with this Rehabilitation Effort and Project. However, deferral of future performance under this agreement shall not affect existing obligations or relieve the parties of liability for any obligation previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Rehabilitation Effort and proceed to a final accounting in accordance with Article IV of this Agreement. In the event that either party elects to defer future performance under this Agreement pursuant to this Article, such deferral shall remain in effect until such time as either the Government or Public Sponsor elects to proceed with further construction or terminates this Agreement.

ARTICLE XII - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the Contracting Officer, the Public Sponsor shall perform, or cause to be performed, such investigations for hazardous substances as are determined necessary by the Government of the Public Sponsor to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. Sections, 9601-9675, on lands necessary to Rehabilitation Effort construction, operation, and maintenance. All actual costs incurred by the Public Sponsor that are properly allowable and allocable to performance of any such investigations for hazardous substances shall be included in total Rehabilitation Effort costs and cost shared as a construction cost.

B. In the event it is discovered through an investigation for hazardous substances or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Project or the Rehabilitation Effort contain any hazardous substances regulated under CERCLA, the Public Sponsor and the Government shall provide prompt notice to each other, and the Public Sponsor shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

C. The Government and the Public Sponsor shall determine whether to initiate construction of the Rehabilitation Effort, or, if already in construction, to continue with construction of the Rehabilitation Effort, or to terminate construction of the Rehabilitation Effort for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Rehabilitation Effort. Should the Government and the Public Sponsor determine to proceed or continue with the construction after considering any liability that may arise under CERCLA, the Public Sponsor shall be responsible, as between the Government and the Public Sponsor, for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of the total Rehabilitation Effort costs as defined in this Agreement. In the event the Public Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Public Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Rehabilitation Effort or proceed with further work as provided in Article X of this Agreement.

D. The Public Sponsor and Government shall consult with each other to assure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made

pursuant to paragraph C of this Article shall not relieve any party from any liability that may arise under CERCLA.

E. As between the Government and the Public Sponsor, the Public Sponsor shall be considered the operator of the Project (which the Rehabilitation Effort is repairing and restoring) for purposes of CERCLA liability. To the maximum extent practicable, the Public Sponsor shall operate and maintain the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XIII - NOTICES

A. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram, or mailed by first-class (postage prepaid), registered, or certified mail, as follows:

If to the Public Sponsor:

Mayor Richard Hill
c/o Mr. Jimmy Moody
Dyer County Levee and Drainage District No. 1
P.O. Box 1360
Dyersburg, TN 38024

If to the Government:

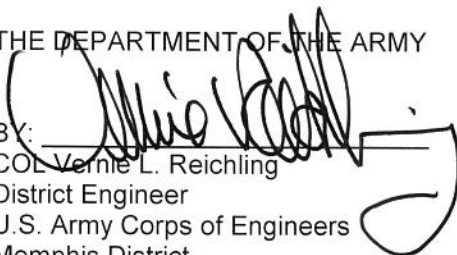
District Engineer
U.S. Army Corps of Engineers, Memphis District
167 North Main Street, B202
Memphis, TN 38103

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is either personally delivered, or, seven calendar days after it is mailed, as the case may be.

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

THE DEPARTMENT OF THE ARMY

BY: 
COL Vernie L. Reichling
District Engineer
U.S. Army Corps of Engineers
Memphis District

DATE: 3/16/12

THE DYER COUNTY LEVEE AND DRAINAGE
DISTRICT NO. 1

BY: 
Mayor Richard Hill
Mayor of Dyer County

DATE: 3/16/2012

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 section 1352, title 31, U.S. Code. 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.

DATED this 16 day of March, 2012




Mayor Richard Hill
Mayor of Dyer County

CERTIFICATE OF AUTHORITY

I, Michael Gaudin, do hereby certify that I am the principal legal officer of the Dyer County Levee and Drainage District No. 1, that the Dyer County Levee and Drainage District No. 1 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 Dyer County Levee and Drainage District No. 1 in connection with the Rehabilitation of a Non-Federal Flood Control Work at Dyer County Little Levee in Dyer County, Tennessee, 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 Agreement on behalf of the Dyer County Levee and Drainage District No. 1 have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 16th day of March 2012.

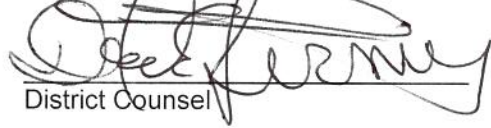


Michael Gaudin
County Attorney

CERTIFICATE OF LEGAL REVIEW

This Cooperation Agreement between The United States of America and the Dyer County Levee and Drainage District No. 1 for the Rehabilitation of Non-Federal Flood Control Work has been fully reviewed by the Office of Counsel, Memphis District, and is legally sufficient.

DATED this 15 day of March, 20 12


District Counsel

RESOLUTION APPROVING COOPERATION AGREEMENT

WHEREAS, the Dyer County Levee and Drainage District No.1 (the "District") is in receipt of a proposed Cooperation Agreement (the "Cooperation Agreement") between the District and The Department of the Army (the "Government") represented by the District Engineer, Memphis District, U.S. Army Corps of Engineers, in connection with the Rehabilitation of a Non-Federal Flood Control Work at Dyer County Little Levee in Dyer County, Tennessee; and

WHEREAS, the Board of Directors has determined that it is in the best interest of the District to enter into the Cooperation Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the District, meeting at Dyersburg, Tennessee, on the 16th day of March, 2012, that:

SECTION 1. The District hereby approves the Cooperation Agreement and agrees to be bound by the terms and conditions thereof.

SECTION 2. The Chairman of the Board of Directors of the District, Richard Hill, Dyer County Mayor, is hereby authorized and directed to execute, on behalf of the District, the Cooperation Agreement, Certificate Regarding Lobbying and any other documents necessary or desirable to fulfill the obligations of the District.

SECTION 3. This Resolution shall be effective upon its passage and approval.

ADOPTED THIS 16th DAY OF MARCH, 2012.


Richard Hill, Chairman


Milton Magee, Secretary

Director MAGEE moved to adopt Resolution.

Director NESTER seconded the Motion to adopt.

Voting in Favor 6. Voting Against 0.



Reply to
Attention of:

DEPARTMENT OF THE ARMY
MEMPHIS DISTRICT CORPS OF ENGINEERS
167 NORTH MAIN STREET B-202
MEMPHIS, TENNESSEE 38103-1894

March 16, 2012

Planning, Programs and Project
Management Division
Project Management Branch

Mayor Richard Hill
c/o Mr. Jimmy Moody
Dyer County Levee and Drainage District No. 1
Post Office Box 1360
Dyersburg, TN 38024

Dear Mayor Hill:

This letter is to request funds in the amount of \$45,027.60 be furnished to the U.S. Army Corps of Engineers, Memphis District for the Dyer County Little Levee, PL84-99 Rehabilitation of Damaged Flood Control Works Project. This project is necessary due to the significant flood damages that occurred during the period of 25 April to 30 May 2011. The damages sustained in the high water event consisted of 24 breaches as a result of overtopping and 1 controlled breach. These funds requested will cover 20 percent of the Engineering and Design work to be performed in Fiscal Year 2012. The remaining amount of approximately \$375,228.40 will need to be provided as cash or in-kind services in Fiscal Year 2013. The funds must be made payable to "FAO, USAED, Memphis District-B1" and mailed to:

U. S. Army Corps of Engineers, Memphis District
ATTN: CEMVM-RM-F
167 North Main Street, B202
Memphis, Tennessee 38103-1894

The Memphis District looks forward to working with the Dyer County Levee and Drainage District No. 1 on this project. Should you have any questions or need further assistance, please contact me at 901-544-0766.

Sincerely,


Jason E. Allmon, P.E.
Project Manager

DYER COUNTY TRUSTEE 08-98
DYER COUNTY LEVEE & DRAINAGE
P O BOX 1360
DYERSBURG TN 38024

126

87-104/843

DATE *March 16, 2012*

PAY TO THE ORDER OF

FAO - USAED, Memphis Dist-B1 \$ *45,027*^{*60*}
Forty - Five Thousand Twenty - Seven + 60/100 DOLLARS

Security features
include
MICR LARS



FOR Little Levee, PL 8499
Rehabilitation & Damaged Flood Control Works

Judy Patton

MP