

AMENDMENT NUMBER 3
OF THE
LOCAL COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE CITY OF VALLEY PARK, MISSOURI
FOR THE CONSTRUCTION OF THE
LOWER MERAMEC RIVER BASIN (VALLEY PARK), MISSOURI PROJECT

THIS AMENDMENT is entered into this 15th day of April, 2013 by and between the **DEPARTMENT OF THE ARMY** (hereinafter the "Government"), represented by the U.S. Army Engineer, St. Louis District, and the **CITY OF VALLEY PARK, MISSOURI** (hereinafter the "Local Sponsor"), represented by the Mayor Pro Tem.

WITNESSETH, THAT:

WHEREAS, construction of the Lower Meramec River Basin (Valley Park), Missouri Project at the City of Valley Park, Missouri (hereinafter the "Project") was authorized by Public Law 97-128, Section 2(h);

WHEREAS, on August 12, 1992 the Government and the Local Sponsor entered into a Local Cooperation Agreement (hereinafter the "Agreement") for the construction of the Project;

WHEREAS, on September 23, 1997 the Government and the Local Sponsor agreed to amend the Agreement to incorporate some of the provisions contained in model Project Cooperation Agreement for structural flood control;

WHEREAS, on March 18, 2004 the Government and the Local Sponsor agreed to further amend the Agreement to reflect the Federal cost limitation for the Project;

WHEREAS, the Secretary of the Army is authorized, pursuant to 33 U.S.C. 701h-1, to accept an advance of funds from the Local Sponsor for the prosecution of work for this Project;

WHEREAS, the Local Sponsor considers it to be in its interest to expedite the construction of the Project by advancing to the Government funds in excess of its required cash contribution for the Project, to be used to fund the Federal share of the cost of the associated recreation features of the Project (hereinafter "advanced funds");

WHEREAS, the Local Sponsor understands that it will be repaid for such advanced funds only if Congress appropriates funds specifically for that purpose; and

WHEREAS, Section 102 of the Energy and Water Development Act of 2006, Public Law 109-103 (33 U.S.C. 2221), provides that total reimbursements for all applicable general authorities and specific project authorities shall not exceed \$100,000,000 in each fiscal year.

NOW, THEREFORE, the Government and the Local Sponsor agree to further amend the Agreement as follows:

1. ARTICLE II – OBLIGATIONS OF THE PARTIES

Article II is amended by adding the following paragraphs at the end thereof:

“n. In addition to the contribution of funds required by paragraph f. of this Article, the Local Sponsor shall provide advanced funds to the Government in an amount sufficient to fund the entire Federal share of the cost of the associated recreation features of the Project. The amount of the advanced funds to be provided by the Local Sponsor for the Federal share of the total cost of the associated recreation features is currently projected to be [REDACTED] for design and [REDACTED] for construction.

1. Nothing in Amendment No. 3 to this Agreement shall constitute, represent, or imply any commitment to budget or appropriate funds for this Project or to repay the Local Sponsor for the advanced funds it provides. Therefore, execution of Amendment 3 to this Agreement does not represent or give rise to obligations of the United States.

2. The Government shall not repay the Local Sponsor for any advanced funds obligated by the Government unless funds are specifically appropriated for that purpose.”

2. ARTICLE VI – METHOD OF PAYMENT

- a. Article VI.a. is amended by striking the second and third sentences and replacing it with: “As of the effective date of Amendment No. 3 to this Agreement, total project costs are projected to be [REDACTED]; the Local Sponsor’s required cash contribution is projected to be [REDACTED], and the advanced funds to be provided by the Local Sponsor is projected to be [REDACTED].”
- b. Article VI.b.3. is amended at the end of the first sentence before the period by inserting “and the amount of advanced funds to be provided by the Local Sponsor for the Federal share of the total cost of the associated recreation features.”
- c. Article VI.b.4 is amended after “associated recreation features” by inserting “or the amount of advanced funds to be provided by the Local Sponsor for the Federal share of the total cost of the associated recreation features.”
- d. Article VI.e. is amended by striking the second sentence and replacing it with: “The final accounting shall determine total project costs, total cost of the structural flood control features, total cost of the associated recreation features, each party’s contribution provided for each, the advanced funds provided by the Local Sponsor in accordance with Article II.n. of this Agreement, each party’s

required share of total cost of the structural flood control features, and each party's required share of total cost of the associated recreation features."

e. Article VI.e.2. is amended by striking the paragraph and replacing it with:

"In the event the final accounting shows that the total contribution provided by the Local Sponsor, except for the advanced funds provided in accordance with Article II.n. of this Agreement, exceeds its required share of total project costs plus costs due to any betterments provided in accordance with Article II.k. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Local Sponsor no later than 90 calendar days after the final accounting is complete; however, the Local Sponsor shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.c. of this Agreement. In addition, the Government shall refund to the Local Sponsor any portion of the advanced funds provided by the Local Sponsor that were not obligated by the Government for work on the Project, subject to the availability of funds."

3. All other terms and provisions of the Agreement, as amended, remain unchanged.

IN WITNESS WHEREOF, the parties have executed Amendment No. 3 to the Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

**THE CITY OF VALLEY PARK,
MISSOURI**

BY: 

Christopher G. Hall
Colonel, Corps of Engineers
St. Louis District

BY: 

Michael Pennise
Mayor Pro Tem
City of Valley Park

DATE: 4-15-13

DATE: 4-15-13

CERTIFICATE OF AUTHORITY

I, Timothy A. Engelmeyer, do hereby certify that I am the principal legal officer of the City of Valley Park, Missouri, that the City of Valley Park, Missouri is a legally constituted public body with full authority and legal capability to perform the terms of Amendment Number 3 between the Department of the Army and the City of Valley Park, Missouri in connection with the Lower Meramec River Basin (Valley Park), Missouri Project and to pay damages in accordance with the terms of Amendment Number 3, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d-5b), and that the persons who have executed Amendment Number 3 on behalf of the City of Valley Park, Missouri have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 15th day of April, 2013.



Timothy A. Engelmeyer
Attorney for the City of Valley Park, Missouri

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 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, grand, 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.


Michael Pennise, Mayor Pro Tem
City of Valley Park, Missouri