
**CITY OF GALLATIN
COUNCIL COMMITTEE MEETING**

March 08, 2016

6:00 pm

**Dr. J. Deotha Malone
Council Chambers**

- Call to Order – Councilwoman Brackenbury
- Roll Call: Alexander – Brackenbury – Camp – Vice Mayor Hayes – Kemp – Mayberry – Overton – Mayor Brown
- Approval of Minutes: February 09, 2016 Special-Called Joint Meeting of the Gallatin City Council Committee & Municipal/Regional Planning Commission; February 09, 2016 Council Committee Meeting
- Public Recognition
- Mayor’s Comments

AGENDA

1. Appropriate 2016 GO Bond **(Rachel Nichols, Finance Director)**
2. Appropriate State of TN Training Supplement **(Rachel Nichols, Finance Director)**
3. Resolution to Donate Surplus Items to the City of Westmoreland **(Rachel Nichols, Finance Director)**
4. Resolution Establishing a Right-Of-Way Acquisition and Relocation Policy for the Nichols Lane Extension Project **(Nick Tuttle, City Engineer)**
5. East Camp Creek Watershed Section 205 – Town Creek Flood Reduction **(Nick Tuttle, City Engineer)**
6. Voluntary Buyout Program **(Debbie Johnson, HR Director)**

- Other Business
- Department Head Reports
- Adjourn

City of Gallatin
Special-Called Joint Meeting of the Gallatin
City Council Committee
&
Municipal/Regional Planning Commission

Tuesday, February 9, 2016
Dr. J. Deotha Malone Council Chambers

PRESENT:

Mayor Paige Brown
Vice Mayor Craig Hayes
Councilman John D. Alexander
Councilwoman Julie Brackenbury
Councilman Steve Camp
Councilwoman Anne Kemp
Councilman Ed Mayberry
Councilman Jimmy Overton

PRESENT:

Dick Dempsey
James Robert Ramsey
Rick Orgain
John Puryear
Johnny Wilson

OTHERS PRESENT:

Bill McCord, City Planner
Connie Kittrell, City Recorder
Susan High-McAuley, City Attorney
James Fenton, EDA Director

Denise Brown, Planner I
Gallatin News Reporter
News Examiner Reporter
Rosemary Bates, Special Projects Dir.

Mayor Brown called the meeting to order at 5:00 P.M.

Public Recognition

Mayor Brown opened public recognition.

Bill Rush with Lamar Signs requested consideration and support to convert their two billboards. Mr. Rush stated he was here tonight to answer any questions.

Greg Garretson, owner of Chik-fil-a at 101 North Belvedere Drive stated he wanted a level playing field; allow digital to all.

With no one else wishing to speak, Mayor Brown closed public recognition.

Agenda

- 1. At the request of the City of Gallatin's Planning Commission, a joint meeting with City Council has been scheduled to discuss a proposal to amend Zoning Ordinance, Article 13.00 Performance and Design Standards, Section 13.07 Sign Regulations to permit digital signs and billboards. The amendment concerns whether to allow digital signs or automatic changeable message signs with restrictions and replacement of certain billboards.**

City Planner Bill McCord referred to his staff report and highlighted information concerning different screens that are available today. Mr. McCord provided handouts on proposed changes for discussion. He also provided a PowerPoint presentation that offered much information on the digital signs/billboards.

Mr. McCord also provided videos on different types of signs in other middle Tennessee cities.

There was much discussion on allowing electronic signs/billboards with restrictions.

Mr. McCord stated he prepared an ordinance earlier and presented it to the Planning Commission.

Planning Commission member James Robert Ramsey stated this is a very complicated issue. Mr. Ramsey said this has to be fair to everyone. He said the Planning Commission needs information from Council on what they want or do not want and then they will bring something back to Council.

Planning Commission member John Puryear referenced a Supreme Court case and the definition of a billboard or sign.

City Attorney Susan High-McAuley agreed that there is a relatively new Supreme Court case that relates to content neutrality of signs. There is a question on enforcement and revamping the entire sign ordinance.

Mr. McCord stated that based on some of the comments tonight he has a good idea of what Council wants to disqualify and tolerate from the ordinance. He

said that unless he gets specific guidance he will move forward with the present ordinance.

Council and Planning Commission continued to discuss.

Ms. High-McAuley stated there is a state statute on non-conforming signs.

Council allowed Derek Vandercook to speak without objection. (Mr. Vandercook owns a local sign store.)

Mr. Vandercook of 210 North Locust stated there needs to be clarity for on-site signage and off-site signage.

Discussion continued on not allowing new billboards and other issues concerning signs/billboards.

Councilman Overton made motion to approve; Councilwoman Brackenbury seconded. Motion carried with 7 ayes and 0 nays.

Adjourn

With no other business to discuss Mayor Brown adjourned the meeting at 5:53 P.M.

Mayor Paige Brown

Connie Kittrell, City Recorder

Dick Dempsey, Chairman

Johnny Wilson, Secretary

Special Joint Council/Planning Commission
Committee Minutes
February 9, 2016

City of Gallatin Council Committee Meeting

Tuesday, February 9, 2016
Dr. J. Deotha Malone Council Chambers

PRESENT:

Mayor Paige Brown
Vice Mayor Craig Hayes
Councilman John D. Alexander
Councilwoman Julie Brackenbury
Councilman Steve Camp
Councilwoman Anne Kemp
Councilman Ed Mayberry
Councilman Jimmy Overton

ABSENT:

OTHERS PRESENT:

Rachel Nichols, Finance Director
Nick Tuttle, City Engineer
Zach Wilkinson, Public Works Dir.
David Gregory, Public Utilities Dir.
David Brown, Leisure Services Dir.
Susan High-McAuley, City Attorney
News Examiner Reporter
Debbie Johnson, Human Resource Dir.

Chuck Stuart, Building Official Dir.
Don Bandy, Police Chief
Bill McCord, City Planner
Connie Kittrell, City Recorder
Gallatin News Reporter
Tommy Dale, Assistant Fire Chief
Lori Smiley, IT Director
James Fenton, EDA Director

Mayor Paige Brown called the meeting to order at 6:00 P.M.

Approval of Minutes

Mayor Brown presented January 26, 2016 Council Committee minutes for approval.

Councilman Alexander made motion to approve; Councilman Overton seconded.
Motion carried with 7 ayes and 0 nays.

Public Recognition

Mayor Brown opened public recognition and with no one wishing to speak public recognition was closed.

Mayor's Comments

- Mayor stated Council will meet in executive session immediately following this meeting in the City Attorney's office.

Agenda

Mayor Brown stated she received a request to move Items #10. and #11. immediately following Item #1.

Councilwoman Brackenbury made motion to move up Items #10. and #11. immediately following Item #1.; Councilman Camp seconded. Motion carried with 7 ayes and 0 nays.

1. Presentation of 2015 Annual Financial Report/Audit

Finance Director Rachel Nichols introduced Matt Wood with Alexander, Thompson and Arnold Auditing Firm.

Matt Wood presented the audit report and gave an overview on internal control recommendations. Mr. Wood referenced Page 4. and Page 103. of the audit and highlighted the findings.

Mr. Wood explained a letter was also sent on items that were not significant enough as an internal control issue to report in the findings. He said there were four (4) items listed.

10. Ordinance Amending the Zoning on 61.48 (+/-) Acres from Planned General Commercial (PGC) to Multiple Residential and Office (MRO) District with a Preliminary Master Development Plan for Hidden Creek - Parkside Builders Residential Subdivision

City Planner Bill McCord gave a detailed explanation of the request to amend the zoning.

There were several issues discussed: traffic, signalization, crosswalks, on street parking, and turn lanes.

Councilman Overton made motion to approve; Councilwoman Brackenbury seconded. Motion carried with 7 ayes and 0 nays.

(There was no PowerPoint presentation due to technical difficulties.)

11. Ordinance Amending the Zoning on 2.37 (+/-) Acres Parcel from Commercial Services (CS) District to Planned General Commercial District (PGC) District with a Preliminary Master Development Plan for Volunteer State Bank

City Planner Bill McCord explained the request to change the zoning on this parcel. Mr. McCord spoke about the request from the Historical Committee to relocate the historical structure, removal and preserving the 17 existing trees and the extension of Tulip Poplar behind the property. He stated the Planning Commission recommended approval with several conditions.

Councilwoman Kemp made motion to approve; Councilman Mayberry seconded.

There was much discussion on the trees, signage, and the easement.

Josh Lyon with Klober Engineering Services stated the road started out at 60 feet and tapered down to 50 feet for a two (2) lane road.

Councilman Overton disclosed he has an indirect conflict because he works for Volunteer State Bank.

Councilman Overton stated he would like to change the easement to 60 – 50 feet and remove Item #4. to remove four (4) maple trees adjacent to West Main Street and the front yard.

There was much discussion on saving the trees and the City's lack of a tree ordinance.

Council allowed Mr. Frank Freels with Volunteer State Bank to speak.

Mr. Freels stated the property was purchased for the visibility. He said the city is holding the bank accountable for an ordinance that does not exist. He added that this building will be an asset to the city but he does not want the trees to remain.

Councilman Camp said he would like to examine these trees to determine their condition and to save at least one (1) or two (2) trees.

Council discussed the ordinance timeline.

Mayor Brown called for the vote. Motion carried with 7 ayes and 0 nays.

Mayor Brown requested moving Item #7. to the next item and there was no objection.

Vice Mayor Hayes left the meeting at this time.

7. Request for a Monument at City Cemetery's Confederate Circle

Randy Lucas, Camp Commander of the General William B. Bate Camp 34 of the Sons of Confederate Veterans referenced his letter to Mayor Brown requesting an easement to place a monument at the City Cemetery Confederate Circle.

Mr. Lucas said he was not asking for any action tonight but only to make the City aware of the plans to place a monument. He added that they plan to begin the fund raising for the monument.

Mayor Brown said Leisure Services Director David Brown would need to be involved in this request. She added that permission to set the monument would be more appropriate than an easement and Council would need to review and approve the verbiage on the monument.

Mr. Brown said once the location is determined he will research the ownership of that location.

Mr. Lucas stated he would get the location and present the verbiage to the City.

Councilwoman Kemp left the meeting at this time.

2. Ordinance to Appropriate Funds on Sewer Contract 212

Finance Director Rachel Nichols explained the error and correction.

Councilman Mayberry made motion to approve; Councilwoman Brackenbury seconded. Motion carried with 5 ayes and 0 nays.

3. Reclassifying the Superintendent of Public Works

Human Resource Director Debbie Johnson presented a new Resolution due to a typo error in the previous Resolution. Ms. Johnson stated this reclassification is a result of the recent salary study and recommended by Dr. McGrath.

Councilman Alexander made motion to approve; Councilman Overton seconded. Motion carried with 5 ayes and 0 nays.

4. Reappointment of Dave Jose to the Gallatin Industrial Development Board and the Gallatin Health Educational and Housing Facilities Board

EDA Director James Fenton presented the reappointment of Dave Jose to the Gallatin Industrial Development Board and the Gallatin Health Educational and Housing Facilities Board.

Councilman Mayberry made motion to approve; Councilman Alexander seconded. Motion carried with 5 ayes and 0 nays.

5. Resolution Authorizing the Industrial Development Board to Negotiate and Accept Payments in Lieu of Ad Valorem Taxes and Reaffirming the Paying in Lieu of Taxes (PILOT) Program Previously Adopted

EDA Director James Fenton presented this resolution.

Councilwoman Brackenbury made motion to approve; Councilman Overton seconded. Motion carried with 5 ayes and 0 nays.

6. Discussion of Renaming a City Building

Leisure Services Director David Brown provided handouts of photos naming the new extension at the Civic Center the Tommy Garrott Aquatic Facility. He said he would get with the family to determine the exact name.

There was discussion about a monument.

Councilman Overton asked that this be on the next work session to allow time to gather pricing and consult family members.

7. Downtown Crosswalk Repairs

Public Works Director Zach Wilkinson provided and explained handouts on options to repair the downtown crosswalks. Mr. Wilkinson spoke about each option; brick pavers, stamped asphalt and stamped colored concrete. He also spoke about the costs and life expectancy of each option.

Councilman Mayberry asked if there was any downtown grant money left over to help with the cost of these repairs. Finance Director Rachel Nichols stated she did not think there was any downtown grant money left over.

Mr. Wilkinson said he could absorb the stamped concrete in two locations in the repair budget in-house.

Mayor Brown requested this be placed on the next work session for more discussion.

8. CSX Railroad Crossing Repairs

Public Works Director Zach Wilkinson stated he met last week with TDOT, the local rail master in this area and the Engineering Department. Mr. Wilkinson said CSX verbally committed to make the repairs if the city will furnish the materials.

Mr. Wilkinson gave rough cost estimates for:

Red River Road	\$22,000 - concrete panels	
West Eastland Avenue	\$36,000 - concrete panels	
S.R. 25 at Amerigas	\$2,000 - rubber panels	\$20,000 - concrete panels

Mr. Wilkinson said money would need to be appropriated to purchase the panels.

Councilwoman Brackenbury made motion to approve; Councilman Alexander seconded. Motion carried with 5 ayes and 0 nays.

Other Business

Mayor Brown called for other business:

- Councilman Overton said Gallatin Chamber of Commerce Director Kim Myers will be at the next work session to give an update on Connect Gallatin and the marketing grant.

Department Head Reports

- City Engineer Nick Tuttle said they are repaving and widening Green Wave Drive. Mr. Tuttle said the City needs permanent easements from the school board to get on school property with construction activity. Mr. Tuttle said they will be going to the next school board meeting to request those easements.
- City Engineer Nick Tuttle gave an update on the S.R. 109 Project. He said the holdup was some language with the TVA but TDOT is back on track to bid the project on May 13th. He's hopeful there will be activity by June or July.
- City Engineer Nick Tuttle gave an update on the Nichols Lane extension over to Drivers Lane in coordination with the State project. He said the city needs guidelines/policy pertaining to acquisition and he will be bringing something back for Council approval. Mr. Tuttle also encouraged Council input.

- City Engineer Nick Tuttle said in two weeks someone from the Corps. of Engineers will be here to discuss the Town Creek Mitigation Project and the cost sharing.
- Councilwoman Brackenbury asked if there was any news from the Corps. of Engineers concerning the park and the Rotary Club. Mayor said nothing to report at this time.
- City Planner Bill McCord informed Council of an MPO Public Hearing tomorrow night from 5:00 - 7:00 on the Long Range 2040 Plan here in the Council Chambers.

Adjourn

Councilman Overton made motion to adjourn; Councilman Mayberry seconded. Motion carried with 5 ayes and 0 nays.

Mayor adjourned the meeting at 7:31 P.M.

Mayor Paige Brown

Connie Kittrell, City Recorder

**CITY OF GALLATIN
COUNCIL COMMITTEE AGENDA**

3/8/2016

DEPARTMENT: Finance

AGENDA # 1

SUBJECT:

Appropriate 2016 GO Bond

SUMMARY:

Ordinance to appropriate funds received from 2016 GO bond sale for various projects

RECOMMENDATION:

approve

ATTACHMENT:

Resolution
 Ordinance

Correspondence
 Contract

Bid Tabulation
 Other

Approved
Rejected
Deferred

Notes:

ORDINANCE APPROPRIATING 2016 GENERAL OBLIGATION BOND
IN THE AMOUNT OF \$12,203,285.45

BE IT ORDAINED BY THE CITY OF GALLATIN, TENNESSEE, that the sum of \$11,040,000 is hereby appropriated from the 2016 GO Bond Proceeds, account 313-36920, and \$1,163,285.45 is hereby appropriated from the 2016 GO Bond Premium, account 313-36910, for the following projects:

Albert Gallatin Ave/Hattentrack Rd, 31441670-931-46, \$6,000,000.00

S Water improvements (Smith - Maple), 31441670-931-73, \$1,500,000.00

Airport & Coles Ferry Roads intersection, 31441670-931-152, \$500,000.00

Anthony St drainage, 31441670-934-43, \$500,000.00

Fire Hall #5 construction, 31442220-922, \$1,800,000.00

Airport Rd (Gregory Dr - Hartsville Pk), 31441670-931-161, \$500,000.00

Additional paving list, 31441670-931-35, \$180,000.00

Bond expenses, 31441670-692, \$123,145.50

Bond premium available, 31441670-693, \$1,100,139.95; and

BE IT FURTHER ORDAINED BY THE CITY OF GALLATIN, TENNESSEE, that this Ordinance shall take effect from and after its final passage, the public welfare requiring such.

PASSED FIRST READING:

PASSED SECOND READING:

MAYOR PAIGE BROWN

ATTEST:

APPROVED AS TO FORM:

CONNIE KITTRELL
CITY RECORDER

SUSAN HIGH-MCAULEY
CITY ATTORNEY

**CITY OF GALLATIN
COUNCIL COMMITTEE AGENDA**

3/8/2016

DEPARTMENT: Finance

AGENDA # 2

SUBJECT:

Appropriate State of TN training supplement

SUMMARY:

Ordinance to appropriate State police and fire training supplements

RECOMMENDATION:

approve

ATTACHMENT:

Resolution
 Ordinance

Correspondence
 Contract

Bid Tabulation
 Other

Approved
Rejected
Deferred

Notes:

ORDINANCE APPROPRIATING \$76,800 RECEIVED FROM
THE STATE OF TENNESSEE FOR TRAINING SUPPLEMENTS

BE IT ORDAINED BY THE CITY OF GALLATIN, TENNESSEE, that the sum of \$76,800 is hereby appropriated from revenues received from the State of Tennessee Training Supplement, account # 110-33420, to the Police Department Training Supplement account, #11042110-129, for post certified officer supplements in the amount of \$40,800 and to the Fire Department Training Supplement account, 11042220-129, in the amount of \$36,000, and;

BE IT FURTHER ORDAINED BY THE CITY OF GALLATIN, TENNESSEE, that this Ordinance shall take effect from and after its final passage, the public welfare requiring such.

PASSED FIRST READING:

PASSED SECOND READING:

MAYOR PAIGE BROWN

ATTEST:

CONNIE KITTRELL
CITY RECORDER

APPROVED AS TO FORM:

SUSAN HIGH-MCAULEY
CITY ATTORNEY

**CITY OF GALLATIN
COUNCIL COMMITTEE AGENDA**

3/8/2016

DEPARTMENT: Finance

AGENDA # 3

SUBJECT:

Resolution to donate surplus items to City of Westmoreland

SUMMARY:

Resolution to donate 12 surplus 4-drawer filing cabinets to the City of Westmoreland

RECOMMENDATION:

approve

ATTACHMENT:

Resolution
 Ordinance

Correspondence
 Contract

Bid Tabulation
 Other

Approved
Rejected
Deferred

Notes:

City of Westmoreland

1001 Park Street • P.O. Box 8
Westmoreland, TN 37186

Jerry Kirkman, Mayor
Kelly Moran, City Recorder

Phone: 615.644.3382
Fax: 615.644.3950

March 1, 2016

JR Smith
Purchasing Agent
City of Gallatin

Mr. Smith,

I appreciate your meeting with me yesterday to look at the file cabinets and partitions that you have available. After speaking with our Mayor and the other department heads, I would like to ask if the City of Gallatin would be so generous as to donate 12 four drawer file cabinets to the City of Westmoreland.

Thank you,



Kelly Moran
City Recorder
City of Westmoreland

RESOLUTION AUTHORIZING DONATION OF FILING CABINETS
TO THE CITY OF WESTMORELAND

WHEREAS, pursuant to T.C.A. § 12-3-1005, Tennessee municipalities are authorized to transfer property by gift to other Tennessee municipalities; and

WHEREAS, the City of Gallatin has excess filing cabinets that are no longer needed due to electronic storage usage; and

WHEREAS, the City of Westmoreland has requested donation of twelve (12) four-drawer filing cabinets; and

WHEREAS, T.C.A. § 12-3-1005 requires the governing body to pass a resolution authorizing the transfer of such hose;

BE IT RESOLVED BY THE CITY OF GALLATIN, TENNESSEE that twelve (12) four-drawer filing cabinets valued at \$600.00 are hereby transferred to the City of Westmoreland;

BE IT FURTHER RESOLVED BY THE CITY OF GALLATIN, TENNESSEE, that this Resolution shall take effect upon final passage, the public welfare requiring it.

IT IS SO ORDERED:

PRESENT AND VOTING:

AYE:

NAY:

DATED:

MAYOR PAIGE BROWN

APPROVED AS TO FORM:

ATTEST:

CONNIE KITTRELL
CITY RECORDER

SUSAN HIGH-MCAULEY
CITY ATTORNEY

**CITY OF GALLATIN
COUNCIL COMMITTEE AGENDA**

March 8, 2016

DEPARTMENT: Engineering

AGENDA # 4

SUBJECT:

Resolution Establishing a Right-Of-Way Acquisition and Relocation Policy for the Nichols Lane Extension Project

SUMMARY:

The Engineering Division is currently acquiring ROW for the Nichols Lane Extension Project. Since this project is funded using City money and not Federal or State money, the City will need to adopt a policy to follow in order to establish relocation benefits for the property owners and tenants.

RECOMMENDATION:

ATTACHMENT:

Resolution
 Ordinance

Correspondence
 Contract

Bid Tabulation
 Other

Approved
Rejected
Deferred

Notes:

RESOLUTION NO. R1603-13

**RESOLUTION ESTABLISHING A RIGHT-OF-WAY ACQUISITION AND
RELOCATION POLICY FOR THE CITY TO FOLLOW FOR THE NICHOLS
LANE EXTENSION PROJECT**

WHEREAS, the City is currently acquiring right-of-way for the Nichols Lane Extension Project and the project will not be using any Federal or State money. Because of this, the City is not required to follow any Federal or State guidelines outside of Eminent Domain laws and will need to adopt a Right-Of-Way Acquisition and Relocation Policy in order to establish relocation benefits for Property Owners and Tenants for this project.

WHEREAS, the City considers the Federal Uniform Act and TDOT's Right-Of-Way Acquisition and Relocation Policy to be a fair and thorough policy and would like to use those policies as the City's with the exception of calculating all relocation benefits using 12 months instead of 42 months; and

NOW THEREFORE BE IT RESOLVED BY THE CITY OF GALLATIN, TENNESSEE, that the City will follow the Federal Uniform Act and TDOT's Right-Of-Way Acquisition and Relocation Policy, with the exception of calculating relocation benefits using a period of 12 months, for the Nichols Lane Extension Project.

BE IT FURTHER RESOLVED BY THE CITY OF GALLATIN, TENNESSEE, that this Resolution shall take effect from and after its final passage, the public welfare requiring such.

IT IS SO ORDERED.

PRESENT AND VOTING:

AYE:

NAY:

DATED:

MAYOR PAIGE BROWN

ATTEST:

APPROVED AS TO FORM:

CONNIE KITTRELL
CITY RECORDER

SUSAN HIGH-MCAULEY
CITY ATTORNEY

**CITY OF GALLATIN
COUNCIL COMMITTEE AGENDA**

March 8, 2016

DEPARTMENT: Engineering

AGENDA # 5

SUBJECT:

EAST CAMP CREEK WATERSHED SECTION 205 (TOWN CREEK FLOOD REDUCTION)

SUMMARY:

The USACOE is at a point to propose the Feasibility Cost Share Agreement (attached) for the design for improvements to reduce flooding along Town Creek in the downtown area of Gallatin. The draft project management plan is available for viewing in the Engineering Office or can be emailed if requested. Attached is an excerpt from the draft PMP that contains a funding summary for the project.

The USACOE will make a presentation of the project at the meeting.

RECOMMENDATION:

ATTACHMENT:

Resolution
 Ordinance

Correspondence
 Contract

Bid Tabulation
 Other

Approved
Rejected
Deferred

Notes:

6.0 RESOURCE MANAGEMENT

Funding for LRN's role is being provided via a Feasibility Cost Share Agreement (FCSA). The sponsor will be providing their 50% of the costs associated with the FCSA. LRN will be providing the 50% federal share. For more information regarding funding please see the Gallatin Section 205 FCSA.

The City of Gallatin wishes to contribute work-in-kind to the Gallatin Section 205 Feasibility Study. This could include surveys, data collection, field work, borings, participating with PDT and review. Basic work-in-kind credit is currently estimated to be \$15,000.

Table 6-1 shows the Federal and sponsor cash contributions and IKC for each FY for this project to date.

Table 6-1: Funding Summary (Federal FY's)(\$K)

Sources	FY16	FY17	FY18	FY19	FY20	Total received to date	Estimated total need	Estimated future need (FY17, 18)
Federal cash	80	120	160	170	185	100	715	200
Sponsor cash	79	119	159	169	79	0	605	198
Sponsor In-kind Contributions (IKC) allocated	1	1	1	1	1	0	5	2
Sponsor Total	80	120	160	170	80	0	610	200

7.0 SCHEDULE

7.1 Milestones

The major components and milestones of this project are:

- Execute FCSA – 25 March 16
- Corps starts work on Feasibility Study – April 16

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
The City of Gallatin, TN
FOR THE
Gallatin Flood Risk Management Study

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the U.S. Army Engineer, Nashville District and City of Gallatin, TN (hereinafter the “Non-Federal Sponsor”), represented by the Mayor.

WITNESSETH, THAT:

WHEREAS, the Government received a letter, dated April 16, 2015, from the City of Gallatin, TN in which it stated its desire to participate in a feasibility study for flood risk management at East Camp Creek Basin, and in which it acknowledged its financial responsibilities for the study and a project, if one is recommended;

WHEREAS, the Secretary of the Army is authorized by Section 205 of the Flood Control Act of 1948, Public Law 80-858, as amended (33 U.S.C. 701s; hereinafter “Section 205”) 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 \$10,000,000 shall be allotted for a project at any single locality;

WHEREAS, the Government initiated a feasibility study, to be initially federally funded up to \$100,000, and during this Federally funded portion the Government determined that the costs of the feasibility study would exceed \$100,000;

WHEREAS, the Government and the City of Gallatin, TN desire to enter into an agreement (hereinafter the “Agreement”) to complete the feasibility study (hereinafter the “*Study*” as defined in Article I.A. of this Agreement) and to share equally the costs of the *Study* that exceed \$100,000;

WHEREAS, Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements applicable to the *Study*; WHEREAS, the Non-Federal Sponsor desires to provide in-kind contributions (hereinafter the “*in-kind contributions*” as defined in Article I.I. of this Agreement) that are necessary to prepare the feasibility report and to receive credit for such contributions toward the amount of its required contribution for the *Study*;

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 *Study* in accordance with the terms of this Agreement; and

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 *Study*.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I – DEFINITIONS

A. The term “*Study*” shall mean the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, when appropriate, recommends a coordinated and implementable solution for flood risk management at East Camp Creek Watershed at Gallatin, TN. The term includes *in-kind contributions* described in paragraph I. of this Article.

B. The term “*total study 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 performance of the *Study* plus the costs of the *Study* incurred by the Government prior to the effective date of this Agreement. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs of plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; the Government’s costs of preparation of the decision document for the *Study*; the costs of *in-kind contributions* determined in accordance with Article II.B.3. of this Agreement; the Government’s costs of Agency Technical Review and other review processes required by the Government; the Government’s costs of Independent External Peer Review, if required, except for the costs of any contract for an Independent External Peer Review panel; the Government’s costs of preparation of a floodplain management plan; the Government’s supervision and administration costs; the Non-Federal Sponsor’s and the Government’s costs of participation in the Study Coordination Team in accordance with Article III of this Agreement; the Government’s costs of contract dispute settlements or awards; and the Non-Federal Sponsor’s and the Government’s costs of audit in accordance with Article VI.B. and Article VI.C. of this Agreement. The term does not include the first \$100,000 incurred by the Government for the *Study*; any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies or feasibility studies under any other agreement or program; any costs of a contract for an Independent External Peer Review panel; the Non-Federal Sponsor’s costs of negotiating this Agreement; or any costs of negotiating a project partnership agreement for design and construction of a project or separable element thereof.

C. The term “*period of study*” shall mean the time from the effective date of this Agreement

to the date that the decision document for the study is duly approved by the Government or the date that this Agreement is terminated in accordance with Article IX of this Agreement.

D. The term “*financial obligations for the study*” shall mean the financial obligations of the Government and the costs for *in-kind contributions*, as determined by the Government, that result or would result in costs that are or would be included in *total study costs*.

E. The term “*non-Federal proportionate share*” shall mean the ratio of the sum of the costs included in *total study costs* for *in-kind contributions*, as determined by the Government, and the Non-Federal Sponsor’s contribution of funds required by Article II.B.1.b. of this Agreement to *financial obligations for the study*, as projected by the Government.

F. The term “*Federal program funds*” shall mean funds provided by a Federal agency, other than the Department of the Army, plus any non-Federal contribution required as a matching share therefor.

G. The term “*fiscal year*” shall mean one year beginning on October 1 and ending on September 30.

H. The term “*PMP*” shall mean the project management plan, and any modifications thereto, developed by the Government, and agreed to by the Non-Federal Sponsor, that specifies the scope, cost, and schedule for *Study* activities and guides the performance of the *Study* through the *period of study*.

I. The term “*in-kind contributions*” shall mean planning, supervision and administration, services, materials, supplies, and other in-kind services that are performed or provided by the Non-Federal Sponsor after the effective date of this Agreement in accordance with the *PMP* and that are necessary for performance of the *Study*.

J. The term “*Section 205 Annual Program Limit*” shall mean the statutory limitation on the Government’s annual allotment for planning, design, and construction of all projects implemented pursuant to Section 205 of the Flood Control Act of 1948, Public Law 80-858, as amended (33 U.S.C. 701s). As of the effective date of this Agreement, such limitation is \$55,000,000.

K. The term “*fiscal year of the Non-Federal Sponsor*” shall mean one year beginning on July 1 and ending on June 30.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor, expeditiously shall conduct the *Study*, applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies. The Non-Federal Sponsor expeditiously shall perform or provide the *in-kind contributions* in accordance with applicable Federal laws, regulations, and policies.

1. To the extent possible, the Government and the Non-Federal Sponsor shall conduct the *Study* in accordance with the *PMP*.

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all products that are developed by contract or by Government personnel during the *period of study*. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the final approval of all *Study* products shall be exclusively within the control of the Government.

3. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all Government contracts, including relevant scopes of work, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of work on the *Study* using the Government’s own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Study*, except for *in-kind contributions*, shall be exclusively within the control of the Government.

4. At the time the U.S. Army Engineer, Nashville District (hereinafter the “District Engineer”) furnishes the contractor with the Government’s Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the *Study*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

5. The Non-Federal Sponsor shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *in-kind contributions*, including relevant scopes of work, prior to the Non-Federal Sponsor’s issuance of such solicitations. To the extent possible, the Non-Federal Sponsor shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsor shall provide

such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsor also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsor shall consider in good faith the comments of the Government but the contents of solicitations, award of contracts or commencement of work on the *Study* using the Non-Federal Sponsor's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on *in-kind contributions* shall be exclusively within the control of the Non-Federal Sponsor.

6. At the time the Non-Federal Sponsor furnishes a contractor with a notice of acceptance of completed work for each contract awarded by the Non-Federal Sponsor for *in-kind contributions*, the Non-Federal Sponsor shall furnish a copy thereof to the Government.

B. The Non-Federal Sponsor shall contribute 50 percent of *total study costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide a contribution of funds as determined below:

a. If the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions listed in the next sentence will be less than the Non-Federal Sponsor's required share of 50 percent of *total study costs*, the Government shall determine the amount of funds that would be necessary to meet the Non-Federal Sponsor's required share without considering the credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph B.4. of this Article. The Government shall determine the amount of funds that would be necessary by subtracting from the Non-Federal Sponsor's required share of 50 percent of *total study costs* the collective value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement.

b. The Non-Federal Sponsor shall provide funds in the amount determined by this paragraph in accordance with Article IV.B. of this Agreement. To determine the contribution of funds the Non-Federal Sponsor shall provide, the Government shall reduce the amount determined in accordance with paragraph B.1.a. of this Article by the amount of credit the Government projects will be afforded for *in-kind contributions* pursuant to paragraph B.4. of this Article.

2. The Government, subject to the availability of funds and as limited by paragraph B.5. of this Article and the *Section 205 Annual Program Limit*, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 50 percent of *total study costs* if the Government determines at any time that the collective value of the following has exceeded 50 percent of *total study costs*: (a) the Non-Federal Sponsor's contribution of funds required by paragraph B.1.b. of this Article; (b) the amount of credit to be afforded for *in-kind contributions* pursuant to paragraph B.4. of this Article; and (c) the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement.

3. The Government shall determine and include in *total study costs* any costs incurred by the Non-Federal Sponsor for *in-kind contributions*, subject to the conditions and limitations of this paragraph. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the amount of costs to be included in *total study costs* for *in-kind contributions*.

a. Acceptance by the Government of *in-kind contributions* shall be subject to a review by the Government to verify that all economic, engineering, real estate, and environmental analyses or other items performed or provided as *in-kind contributions* are accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies, and to verify that all analyses, services, materials, supplies, and other in-kind services provided as *in-kind contributions* are necessary for the *Study*.

b. The Non-Federal Sponsor's costs for *in-kind contributions* that may be eligible for inclusion in *total study costs* pursuant to this Agreement shall be subject to an audit in accordance with Article VI.C. of this Agreement to determine the reasonableness, allocability, and allowability of such costs.

c. The Non-Federal Sponsor's costs for *in-kind contributions* that may be eligible for inclusion in *total study costs* pursuant to this Agreement are not subject to interest charges, nor are they subject to adjustment to reflect changes in price levels between the time the *in-kind contributions* are provided and the time the costs are included in *total study costs*.

d. The Government shall not include in *total study costs* any costs for *in-kind contributions* paid by the Non-Federal Sponsor using *Federal program funds* unless the Federal agency providing the funds verifies in writing that such funds are authorized to be used to carry out the *Study*.

e. The Government shall not include in *total study costs* any costs for *in-kind contributions* in excess of the Government's estimate of the costs of the *in-kind contributions* if the services, materials, supplies, and other in-kind services had been provided by the Government. In addition, the Government shall not include in *total study costs* any costs for *in-kind contributions* that were obtained at no cost to the Non-Federal Sponsor.

4. The Government, in accordance with this paragraph, shall afford credit toward the amount of funds determined in accordance with paragraph B.1.a. of this Article for the costs of *in-kind contributions* determined in accordance with paragraph B.3. of this Article. However, the maximum amount of credit that can be afforded for *in-kind contributions* shall not exceed the least of the following amounts as determined by the Government: the amount of funds determined in accordance with paragraph B.1.a. of this Article; the costs of *in-kind contributions* determined in accordance with paragraph B.3. of this Article; or 50 percent of *total study costs*.

5. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall not be entitled to reimbursement of any costs of *in-kind contributions* determined

in accordance with paragraph B.3. of this Article and included in *total study costs* that exceed the amount of credit afforded for *in-kind contributions* determined in accordance with paragraph B.4. of this Article and the Non-Federal Sponsor shall be responsible for 100 percent of all costs of *in-kind contributions* included in *total study costs* that exceed the amount of credit afforded.

C. Notwithstanding any other provision of this Agreement, Federal financial participation in the *Study* is limited by the following provisions of this paragraph.

1. In the event the Government projects that the amount of Federal funds the Government will make available to the *Study* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Study* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total study costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Study* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Study*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article IX.C. of this Agreement.

2. If the Government determines that the total amount of Federal funds provided by Congress for all studies and projects implemented pursuant to Section 205 has reached the *Section 205 Annual Program Limit*, and the Government projects that the Federal funds the Government will make available to the *Study* within the *Section 205 Annual Program Limit* will not be sufficient to meet the Federal share of *total study costs*, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *Study* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Study* within the *Section 205 Annual Program Limit*, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article IX.C. of this Agreement.

ARTICLE III - STUDY COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Study Coordination Team. Thereafter, the Study Coordination Team shall meet regularly until the end of the *period of study*. The Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Study Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Study Coordination Team informed of the progress of the *Study* and of significant pending issues and actions, and shall seek the views of the Study Coordination Team on matters that the Study Coordination Team generally oversees.

C. Until the end of the *period of study*, the Study Coordination Team shall generally oversee the *Study*, including matters related to: plan formulation and evaluation, including applicable economic, engineering, real estate, and environmental analyses; scheduling of reports and work products; independent technical review and other review processes required by the Government; completion of all necessary environmental coordination and documentation; contract awards and modifications; contract costs; the Government's cost projections; the performance of, scheduling, and determining the value of *in-kind contributions*; determination of anticipated future requirements for real property and relocation requirements and performance of operation, maintenance, repair, rehabilitation, and replacement of the proposed project including anticipated requirements for permits; and other matters related to the *Study*. This oversight of the *Study* shall be consistent with the *PMP*.

D. The Study Coordination Team may make recommendations to the District Engineer on matters related to the *Study* that the Study Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Study Coordination Team. The Government, having the legal authority and responsibility for performance of the *Study* has the discretion to accept or reject, in whole or in part, the Study Coordination Team's recommendations.

E. The Non-Federal Sponsor's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article VI.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. The Government's costs of participation in the Study Coordination Team shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, the contributions provided by the parties, the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.B.3. of this Agreement, and the credit to be afforded for *in-kind contributions* pursuant to Article II.B.4. of this Agreement.

1. As of the effective date of this Agreement, *total study costs* are projected to be \$1,220,000; the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement is projected to be \$5,000; the amount of funds determined in accordance with Article II.B.1.a. of this Agreement is projected to be \$605,000; the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.B.3. of this Agreement are projected to be \$0; the credit to be afforded for *in-kind contributions* pursuant to Article II.B.4. of this Agreement is projected to be \$605,000; and the *non-Federal proportionate share* is projected to be 50 percent. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal

Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By May 2016 and by each quarterly anniversary thereof until the conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total study costs*; the value of the Non-Federal Sponsor's contributions under Article III and Article VI of this Agreement; the amount of funds determined in accordance with Article II.B.1.a. of this Agreement; the costs included in *total study costs* for *in-kind contributions* determined in accordance with Article II.B.3. of this Agreement; the credit to be afforded for *in-kind contributions* pursuant to Article II.B.4. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.B.1.b. of this Agreement; the total contribution of funds required from the Non-Federal Sponsor for the upcoming contract and upcoming *fiscal year*; and the *non-Federal proportionate share*.

B. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.B.1.b. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 7 calendar days after the effective date of 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: (a) the *non-Federal proportionate share of financial obligations for the study* incurred prior to the commencement of the *period of study*; (b) the projected *non-Federal proportionate share of financial obligations for the study* to be incurred for such contract; and (c) the projected *non-Federal proportionate share of financial obligations for the study* using the Government's own forces through the first quarter. Within 30 calendar days of receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, LRN H3 " to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such 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 such required funds in accordance with procedures established by the Government.

2. Thereafter, until the work on the *Study* is complete, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor, and the Non-Federal Sponsor shall provide such funds in accordance with the provisions of this paragraph.

a. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for each remaining contract for work on the *Study*, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected *non-Federal proportionate share of financial obligations for the study* to be incurred for such contract. No later than such scheduled date, the Non-Federal Sponsor shall make the full amount of such required funds available to the

Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each quarter in which the Government projects that it will make *financial obligations for the study* using the Government's own forces, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected *non-Federal proportionate share of financial obligations for the study* using the Government's own forces for that quarter. No later than 30 calendar days prior to the beginning of that quarter, the Non-Federal Sponsor shall make the full amount of such required funds for that quarter available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary, when considered with any credit the Government projects will be afforded for *in-kind contributions* pursuant to Article II.B.4. of this Agreement. of this Agreement and any credit the Government projects will be afforded for *in-kind contributions* pursuant to Article II.B.4. of this Agreement, to cover: (a) the *non-Federal proportionate share of financial obligations for the study* incurred prior to the commencement of the *period of study*; and (b) the *non-Federal proportionate share of financial obligations for the study* as *financial obligations for the study* are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations for the current contract or to cover the Non-Federal Sponsor's share of such financial obligations for work performed using the Government's own forces in the current quarter, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of study* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total study costs*, each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required share of *total study costs* exceeds the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in

an amount equal to the difference by delivering a check payable to “FAO, USAED, LRN H3” to the District Engineer or providing an Electronic Funds Transfer in accordance with procedures established by the Government.

2. Should the interim or final accounting, as applicable, show that the total contributions provided by the Non-Federal Sponsor for *total study costs* exceed the Non-Federal Sponsor’s total required share thereof, the Government, subject to the availability of funds and as limited by Article II.B.5. of this Agreement and the *Section 205 Annual Program Limit*, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, or other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, or other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, records, documents, or other evidence.

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented

by OMB Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Study* shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in *total study costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VII - FEDERAL AND STATE LAWS

In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all requirements of applicable Federal laws and implementing regulations, including, but not limited to: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

ARTICLE VIII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor either pursuant to any cause of action that the other party may have or for violation of any law.

ARTICLE IX - TERMINATION OR SUSPENSION

A. Prior to conclusion of the *period of study*, upon 30 calendar days written notice to the other party, either party may elect without penalty to terminate this Agreement or to suspend

future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

B. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless the Assistant Secretary of the Army (Civil Works) determines that continuation of performance of the *Study* 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 the *Study*.

C. In the event future performance under this Agreement is suspended pursuant to Article II.C. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total study costs* the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article, the parties shall conclude their activities relating to the *Study* and conduct an accounting in accordance with Article IV.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Study* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B.1.b. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications. Upon termination of this Agreement, all data and information generated as part of the *Study* shall be made available to the parties to the Agreement.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE X - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally

or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:
Office of the Mayor
132 West Main Street
Gallatin, TN 37066

If to the Government:
U.S. Army Corps of Engineers, Nashville District
Project Manager
110 9th Avenue South, Room A405
Nashville, Tn 37203

B. A party may change the recipient or 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 the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XI - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not party to this

Agreement.

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

DEPARTMENT OF THE ARMY

City of Gallatin, Tennessee

BY: _____
Stephen F. Murphy
Lieutenant Colonel, U.S. Army
District Commander

BY: _____
Paige Brown, Mayor
City of Gallatin

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, Susan High-McAuley, do hereby certify that I am the principal legal officer of the City of Gallatin, TN, that the City of Gallatin, TN 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 City of Gallatin, TN in connection with the feasibility study for the Gallatin Section 205 Flood Risk Management Study, 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 City of Gallatin, TN have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this _____ day of _____ 20____.

Susan High-McAuley
City of Gallatin 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.

Paige Brown, Mayor
City of Gallatin

DATE: _____

**CITY OF GALLATIN
COUNCIL COMMITTEE AGENDA**

March 8, 2016

DEPARTMENT: Human Resources

AGENDA # 6

SUBJECT:

Voluntary Buyout Program

SUMMARY:

The Council will be presented with a proposal for a City of Gallatin Voluntary Buyout Program (VBP). The VBP presents a unique opportunity for employees who think it is the right time for them to leave employment to pursue other opportunities or continue their education or training. The VBP is designed to provide eligible employees who voluntarily elect to separate employment with severance and severance benefits. Participation in this program is completely voluntary, and employees should consider the program carefully before making any decision to participate.

RECOMMENDATION:

Approve proposal to create plan VBP.

ATTACHMENT:

Resolution
 Ordinance

Correspondence
 Contract

Bid Tabulation
 Other

Approved
Rejected
Deferred

Notes: