



SOUTHWESTERN ILLINOIS FLOOD PREVENTION DISTRICT COUNCIL
BOARD OF DIRECTORS MEETING
April 17, 2013 7:30 am

Metro-East Park and Recreation District Office
104 United Drive, Collinsville, Illinois 62234

1. Call to Order
Jim Pennekamp, President
2. Approval of Minutes of March 20, 2013
3. Public Comment on Pending Agenda Items
4. Program Status Report
Les Sterman, Chief Supervisor
5. Budget Update and Approval of Disbursements
6. Design and Construction Update
Jay Martin, AMEC Environment & Infrastructure
7. Authorization to Advertise Construction Packages #2a and #6 for Bid
Les Sterman, Chief Supervisor
8. Commitment of Additional Cost-Share to Corps of Engineers
for Wood River Cutoff Wall Projects
Les Sterman, Chief Supervisor
9. Project Partnership Agreement
Wood River Design Deficiency Correction
Les Sterman, Chief Supervisor
10. Update from Corps of Engineers
Tracey Kelsey, U.S. Army Corps of Engineers
11. Public Comment
12. Other Business

Executive Session (if necessary)
13. Adjournment

Next Meeting: May 15, 2013

AGENDA

MINUTES

SOUTHWESTERN ILLINOIS FLOOD PREVENTION DISTRICT COUNCIL BOARD OF DIRECTORS MEETING

March 20, 2013

The regular meeting of the Board of Directors was held at the Metro-East Park and Recreation District Office, 104 United Drive, Collinsville, Illinois at 7:30 a.m. on Wednesday March 20, 2013.

Members in Attendance

Dan Maher, Vice-President (Chair, St. Clair County Flood Prevention District)
John Conrad, Secretary/Treasurer (Chair, Monroe County Flood Prevention District)
Alvin Parks, Jr., St. Clair County Flood Prevention District
Paul Bergkoetter, St. Clair County Flood Prevention District
Bruce Brinkman, Monroe County Flood Prevention District
Ronald Polka, Monroe County Flood Prevention District
Tom Long, Madison County Flood Prevention District
Ron Motil, Madison County Flood Prevention District

Members Absent

James Pennekamp, President (Chair, Madison County Flood Prevention District)

Others in Attendance

Alan Dunstan, Madison County Board Chair
Mark Kern, St. Clair County Board Chair
Delbert Wittenauer, Monroe County Board Chair
Les Sterman, SW Illinois FPD Council
Kathy Andria, American Bottom Conservancy
David Baxmeyer, Baxmeyer Construction Co.
Michael Brokering, Scheffel & Co., PC
Mike Feldmann, U.S. Army Corps of Engineers
Mark Harms, SCI Engineering, Inc.
Gary Hoelscher, Hoelscher Engineering
Mike Huber, KdG Engineers
Charles Juneau, Juneau Associates Inc., PC
Joe Kellett, U.S. Army Corps of Engineers
Tracey Kelsey, U.S. Army Corps of Engineers
Kevin Koenigstein, Treasurer, Monroe County
Steve Langendorf, Scheffel & Co., PC
Linda Lehr, Monroe County
Matt McAnarney, Se. Durbin's Office
Jack Norman, Groundwater Advisory Council
Jon Omvig, AMEC Environment & Infrastructure
Joe Parente, Madison County
Randy Pollard, Sen. Mark Kirk's Office

Adam Saltgaver, The Bank of Edwardsville
Dale Stewart, Southwestern Illinois Building and Trades Council
Chuck Unger, The Bank of Edwardsville

Call to order

Vice-President Dan Maher called the meeting to order.

Approval of minutes of February 20, 2013

Mr. Sterman pointed out a couple of errors in the minutes. On page 4, Bruce Brinkman was indicated as absent and his name was misspelled.

A motion was made by Ron Polka, seconded by Bruce Brinkman, to approve the minutes of the February 20, 2013 meeting as corrected. Mr. Conrad called the roll and the following votes were made on the motion:

- Mr. Polka - Aye
- Mr. Brinkman – Aye
- Mr. Bergkoetter - absent
- Mr. Conrad - Aye
- Mr. Long – Aye
- Mr. Maher – Aye
- Mr. Motil – Aye
- Mr. Parks – absent
- Mr. Pennekamp – absent

The motion was approved.

Public Comment on Pending Agenda Items

Mr. Maher asked if there were any comments from the public on any agenda item on today's agenda. There were none.

Program Status Report

Mr. Maher asked Mr. Sterman to provide a status report for the project.

Project design continues to move toward completion, with attention now almost completely focused on securing the necessary approvals, permits and permissions to start construction. The last couple of construction packages are due to go in to the Corps in April and that will mostly conclude the design process except for responding to Corps comments. The exception is bid package #7 (for cutoff walls), where we have put the review process on hold while we consider whether to request that the Corps take responsibility for designing and building that portion of the project. As we have discussed in previous meetings, we need some basic information from the Corps on scope, budget and schedule for their proposed project before we can agree to send the needed funds for our share of the costs for this project (see below for more discussion of that decision).

There were some very important procedural milestones that were reached in March. On March 4 the Illinois Environmental Protection Agency issued the water quality certification under Sec. 401 of the federal Clean Water Act. It has taken over a year to secure this certification, which means that IEPA has come to the engineering judgment that “the proposed project may be completed without causing water pollution as defined in the Illinois Environmental Protection Act, provided that the project is carefully planned and supervised.”

On March 1, we received the conditional permit under Sec. 404 for relating to the impacts of the project on wetlands. One major condition of the provisional permit has now been met, the Sec. 401 water quality certification from the IEPA. The remaining major condition is the granting of the Sec. 408 permission by the Corps. In essence, now, the last major regulatory hurdle for the project rests with the Corps of Engineers and the Sec. 408 review process over which they have jurisdiction.

We are working now with our selected provider of wetland mitigation, Republic Services, to finalize the Wetland Mitigation Plan and to complete and negotiate our contract with them to fulfill the requirements of that plan. We selected Republic last February and have concluded negotiations on contract terms and conditions, but we are awaiting a revised price based on conditions imposed by the Corps as part of the conditional permit.

While all review issues have now been closed on bid package #2a (pump station in the Fish Lake district) we believed that had not yet received the Sec. 408 permission from the Corps. However, it turns out that the approval was sent to the Fish Lake Levee District.

We require some basic scope, cost and schedule information from the Corps before we can determine whether offloading parts of the project would be a prudent decision. I defined and communicated the information that we need from the Corps, initially on January 18 and again on February 5 and received a response on March 15. There have been changes in cost since the initial proposal and other conditions, but I’m hopeful that the Corps’ participation in the project remains cost-effective for us. Concerns about labor issues remain, however, particularly in meeting our requirement that contractors enter into project labor agreements on the project.

Contracts with consultants to provide real estate acquisition and appraisal services have been executed and work is now underway.

The Council’s FY2012 audit has been produced by our auditor, Scheffel & Co and will be presented for your review at the March 20 Board meeting.

In late February, I attended a meeting in Washington at the invitation of the Corps and FEMA to discuss the cooperative effort of these two agencies to share data and to coordinate their approaches to levee safety standards. This work is a requirement of federal legislation, brought about by the frustration of levee owners and others about the differing and irreconcilable safety standards imposed by FEMA and the Corps. Apparently, the process has broken little new ground and the principal outcome thus far is an agreement between the agencies to more broadly share data and information. Over the long-term, however, the standards may start to come

together. The implication for levee owners is not apparent at this point, but is obviously a long way off.

A motion was made by Ron Motil, seconded by Paul Bergkoetter, to accept the Program Status Report for March, 2013. Mr. Conrad called the roll and the following votes were made on the motion:

Mr. Polka - Aye
Mr. Brinkman – Aye
Mr. Bergkoetter - Aye
Mr. Conrad - Aye
Mr. Long – Aye
Mr. Maher – Aye
Mr. Motil – Aye
Mr. Parks – absent
Mr. Pennekamp – absent

The motion was approved unanimously by those present.

Budget Update and Approval of Disbursements

Mr. Sterman reported that the financial statement for February 2013 prepared by our fiscal agent, CliftonLarsonAllen was provided in your packet.

Accrued expenditures for the current fiscal year are \$6,077,730 while revenues amounted to \$4,965,720 showing a deficit of \$1,552,403. Expenditures included a surplus for the year held by the bond Trustee of \$2,215,388 through the end of February that was returned to the counties as required by the bond indenture. A total of approximately \$ 12,940,373 is now held by the counties in their respective FPD sales tax funds and is available for the Council's use on the project.

Monthly sales tax receipts for December 2012 were down by about 1.68% year over year, the seventh straight month of small declines, but are up about 0.26% for the full year, trends that are below our financial plan projections.

Attached are lists of disbursements for February 2013. Total disbursements for the month were \$637,346.87. The largest payments were to AMEC and its subcontractors for design and construction management services, and to the Illinois Environmental Protection Agency for the fees related to the Sec. 401 water quality certification. The closing balance on February 28 was \$764,061.67. This balance is unusually high because we are holding \$200,000 to provide cost-share to the Corps for pending design of cutoff walls in the Wood River area, and have not yet remitted the federal bond interest subsidy to the Trustee.

Mr. Sterman recommended that the Board accept the budget report and disbursements for February 2013.

Mr. Long noted the trend of declining sales tax revenues. He said that we should keep that in mind regarding assumptions that we make for financial planning. Mr. Sterman agreed and noted that we assume a 3% annual increase in our financial plan. Mr. Maher and Mr. Sterman suggested that there were some anomalies in the reported revenue.

A motion was made by Tom Long, seconded by Bruce Brinkman, to accept the budget report and approve the disbursements for February 2013. Mr. Conrad called the roll and the following votes were made on the motion:

Mr. Polka - Aye
Mr. Brinkman – Aye
Mr. Bergkoetter - Aye
Mr. Conrad - Aye
Mr. Long – Aye
Mr. Maher – Aye
Mr. Motil – Aye
Mr. Parks – absent
Mr. Pennekamp – absent

The motion was approved unanimously by those present.

Mr. Parks arrived at this time.

Accept 2013 Audit Report

Mr. Sterman said that the audit was a little more challenging this year, mainly because we have a new fiscal agent and a new person assigned by our auditing firm, Scheffel & Company.

Michael Brokering, representing Scheffel & Company, reviewed the audited financial statements that were distributed to the Board in the mailing and at the meeting. He explained the statements, tables and notes in detail.

Mr. Brokering called the Board's attention to the note on subsequent events that relates to the "sequestration" process at the Federal level. That process could affect the interest rate subsidy that the Council gets from the Federal government, although the full extent of that impact is not known at this time.

Two letters from Scheffel to the Board that accompany the audit were also noted. The letters point out that there were no difficulties in performing the audit, but that several adjustments were made to the financial statements. There are no audit findings to report. A second letter discusses weaknesses in internal controls. The only comment, and it is not new, is that because of the small size of the Council's staff, there is some limitation in financial controls. Mr. Brokering noted that this is pretty common in very small organizations, and noted that it was important for the Board to continue to review disbursements and financial statements monthly.

Mr. Long asked who does the bank reconciliations. Mr. Brokering said that our fiscal agent, LarsonAllen does that job. Mr. Sterman described the purchasing procedure. All of the sales taxes go directly to the bond trustee.

Mr. Bergkoetter asked whether the investments made by the Council are reflected in the capital assets of the levee districts. He noted that we need to let them know how much we expend so that they will know how their capital assets are affected.

A motion was made by Alvin Parks, seconded by Paul Bergkoetter, to accept the FY2012 Audit Report and provide copies to the counties and to the bond rating agencies. Mr. Conrad called the roll and the following votes were made on the motion:

Mr. Polka - Aye
Mr. Brinkman – Aye
Mr. Bergkoetter - Aye
Mr. Conrad - Aye
Mr. Long – Aye
Mr. Maher – Aye
Mr. Motil – Aye
Mr. Parks – Aye
Mr. Pennekamp – absent

The motion was approved unanimously.

Design and Construction Update

Mr. Maher called on Jon Omvig, AMEC's project manager, to provide a report. Mr. Omvig used a PowerPoint® presentation (attached) to illustrate his remarks. He described progress on the following items that occurred over the last month:

- BP #2A – Fish Lake Pump Station
All comments closed, Advertise & Issue for Bid after USACE issuance of 408 permit
- BP #7 – Deep and Shallow Cutoff Walls
Received and tabulated all comments from the USACE and the SAR Team
AMEC Team holding pending USACE design
- BP #6 – PDP/FL Seepage Improvements
Submitted to USACE on 1/22/2013
Comments received from USACE on 2/21/2013
33 Comments in DR CHECKS
- BP # 4 – MESD Seepage Improvements (Conoco Phillips)
Submitted to USACE on 2/15/2013
Comments due from USACE on 3/20/2013
22 Comments in DR CHECKS
- BP #2B - WR/MESD/PDP Pump Stations
Submitted to USACE on 2/15/2013

Comments due from USACE on 3/21/2013
138 Comments in DR CHECKS

- Working on appraisals and property acquisitions

Mr. Omgig reported that we need to finalize the mitigation plan as part of finalizing the Sec. 404 permit.

Mr. Long asked how much work can start this Spring. Mr. Omgig reported that several things need to happen with permits and land acquisition before construction can start. He said that three of the packages are on schedule for approval in May. We hope that we can get work underway in mid to late July, but this is an aggressive schedule.

Next steps include finalizing the Corps' role in building deep and shallow cutoff walls, and restructuring the sequencing of bid packages to align better with Corps schedules for projects to be undertaken by the Corps.

Mr. Sterman said that one of the critical items to be resolved is property acquisition. Letters are going out today to property owners that will be affected by the project.

Mr. Maher asked for a motion to accept Mr. Martin's progress report. A motion was made by Tom Long with a second by Ron Motil to accept the AMEC progress report. Mr. Conrad called the roll and the following votes were made on the motion:

Mr. Polka - Aye
Mr. Brinkman – Aye
Mr. Bergkoetter - Aye
Mr. Conrad - Aye
Mr. Long – Aye
Mr. Maher – Aye
Mr. Motil – Aye
Mr. Parks – Aye
Mr. Pennekamp – absent

The motion was approved unanimously.

Commitment of Cost-Share to Corps of Engineers for Wood River Cutoff Wall

Mr. Maher asked Mr. Sterman to report on this item.

At the November, 2012 Board meeting, I was authorized to execute a Design Agreement with the Corps of Engineers so that the Council can provide the required sponsor funds to match Federal funds appropriated to carry out design activities for the Corps' project to achieve the authorized level of flood protection in the Wood River and Metro-East districts. In December, the Corps proposed that they use anticipated federal funding to undertake the design and construction of the portions of the proposed shallow and deep cutoff walls in the Wood River district that are needed to meet FEMA levee safety standards. The benefits of offloading this

costly part of the project are twofold: it would avoid the Sec. 408 review process; and, it could result in substantial cost savings to the Council.

In December, the Board agreed to provide \$100,000 toward cost-share for design of the Wood River project. At the time the Corps estimated that the total cost of the design of the Wood River cutoff wall projects would be \$800,000 of which the Council's cost-share would be \$200,000 (the cost-share under the Design Agreement is 25%).

Before we sent them a check, we asked for some essential information, the same information that we would ask from anyone working for the Council, namely the scope, cost and budget of the project. On January 18 and again on February 4, I communicated those conditions to the Corps as follows:

1. A description of the scope of the project(s) to be undertaken by the Corps (including data collection, design, construction and related activities).
2. Cost-estimate including contingency, with a schedule of cash needs from the Council.
3. Design and construction schedule.
4. Commitment to appropriate progress reports.
5. Provision of required FEMA certification information.
6. Commitment to Council's requirements for local workforce participation.

On March 8, I met with Corps staff to further discuss the project, particularly our need for the information described above. We also discussed the willingness of the Corps to require the use of project labor agreements on our project.

On March 15, the Corps provided a scope of work, schedule, and cost, generally corresponding to items 1-4 on the list above (see attached). We should be able to address item 5 with some further discussion. The last item involving a commitment to maintaining the Council's requirement for workforce participation (i.e. requiring contractors to sign project labor agreements) is problematic.

The cost estimate has changed from that provided last December. Design costs have nearly doubled. The latest cost estimate for the project is about \$1.5 million for design, about \$3 million in program costs, and a construction cost ranging from \$13.9 to \$20 million. The total cost of the cutoff wall projects therefore, would be between \$18.4 million and \$24.5 million. Our current cost estimate for these projects is about \$21.7 million. Because we would be obligated to pay only about 35% of the total cost if the Corps were to construct these projects, the cost to the Council would be in the range between \$6.44 million and \$8.6 million, so there would be a significant financial savings to us -- at least \$13.1 million based on our currently adopted cost estimate.

However, despite the financial advantage to the Council, Mr. Sterman said that he believes it is important to address the labor issue for the area to reap net economic benefits. In short, if the project is not substantially built with local labor, the tax dollars spent on construction will largely leave the area, so the region will not benefit from the multiplier effect of those dollars circulating in our regional economy. The Council made a commitment through Board action in April, 2012

to cause any contractor working on the project and paid with Council funds to enter into a project labor agreement.

Unless otherwise directed by the Board, Mr. Sterman asserted that this policy applies to any work undertaken on our project as currently defined that is built wholly or partially with Council funds.

In meeting with the Corps and reviewing the various guidance documents, Mr. Sterman came to the conclusion that there is nothing that would prevent the agency from requiring a PLA. In fact, there is a current Executive Order (Executive Order 13502: Use of Project Labor Agreements for Federal Construction Projects, signed in 2009) that encourages federal agencies to do so. The Council has previously concluded that it is in the best interest of the project and the community to use a PLA on this project and I see no reason that the Corps cannot exercise the discretion granted by current guidance and law to honor this commitment to our local workforce.

By action taken in December the Chief Supervisor is authorized to provide up to \$100,000 as cost-share for the Wood River project. Based on the Corps' new estimates, the total cost-share for design of the cutoff walls will be \$375,000. Because further delay would jeopardize the project schedule, Mr. Sterman recommended that we provide cost-share in installments, with \$100,000 to be provided immediately and the remainder provided following a satisfactory resolution of the labor issue.

No further action is necessary at this time, since Mr. Sterman already has authorization to commit \$100,000 to the Corps. Further Board action will be required for the remainder of design costs and no commitment will be made to any construction activities until the labor issue is resolved.

Mr. Sterman indicated that he was just reviewing this issue to make sure that the Board is in agreement with this approach. The Board indicated that this approach was acceptable.

Corps of Engineers Update

Mr. Maher called on Tracey Kelsey from the Corps of Engineers to make a report.

Ms. Kelsey recounted the progress on the Sec. 408 review process and the design of the Corps project on the cutoff wall construction. She emphasized the potential financial savings to the Council, should the Corps undertake this project.

Ms. Kelsey noted that the Corps is also expecting an appropriation in MESD, so that additional coordination will be necessary in this area.

Mr. Wittenauer asked several questions about the coordination of the Corps and Council projects. Ms. Kelsey and Mr. Omvig responded to those questions.

A motion was made by Mr. Long with a second by Mr. Motil to accept the report by the Corps of Engineers. Mr. Conrad called the roll and the following votes were made on the motion:

Mr. Polka - Aye
Mr. Brinkman – Aye
Mr. Bergkoetter - Aye
Mr. Conrad - Aye
Mr. Long – Aye
Mr. Maher – Aye
Mr. Motil – Aye
Mr. Parks – Aye
Mr. Pennekamp – absent

The motion was approved unanimously.

Public Comment

There was no additional public comment.

Other Business

There was no other business.

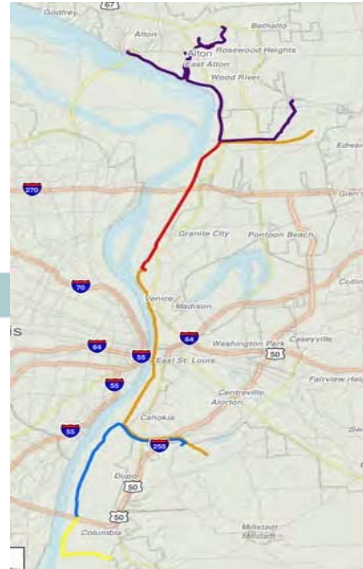
Adjournment

Motion made by Mr. Long, seconded by Mr. Polka to adjourn the meeting. The motion was approved unanimously by voice vote, all voting aye.

Respectfully submitted,

John Conrad,
Secretary/Treasurer, Board of Directors

Progress Report
March 20, 2013
SW IL Levee System
 By Jon Omgig



Look back

- BP #2A – ***Fish Lake Pump Station***
- All comments closed, Advertise & Issue for Bid after USACE issuance of 408 permit

- BP #7 – ***Deep and Shallow Cutoff Walls***
- Received and tabulated all comments from the USACE and the SAR Team
- AMEC Team holding pending USACE design

- BP #6 – ***PDP/FL Seepage Improvements***
- Submitted to USACE on 1/22/2013
 - Comments received from USACE on 2/21/2013
 - 33 Comments in DR CHECKS

Look back continued



- BP # 4 – **MESD Seepage Improvements (Conoco Phillips)**
- Submitted to USACE on 2/15/2013
 - Comments due from USACE on 3/20/2013
 - 22 Comments in DR CHECKS

- BP #2B - **WR/MESD/PDP Pump Stations**
- Submitted to USACE on 2/15/2013
 - Comments due from USACE on 3/21/2013
 - 138 Comments in DR CHECKS

- Working on appraisals and property acquisitions

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Look back continued










- 404 Permit – USACE issued provisional permit on 3/1/2013
 - Need to finalize mitigation plan within 60 days of FPDC signing the permit

- Provisional 404 becomes final and valid when signed and when USACE issues 408 approval for each bid package

- 401 Water Quality Certification – IEPA issued on 3/4/2013

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Bid Package	Task	Start Date	Finish Date
2A	Final Design - Pump Stations (FL Only)	1/12/2012 	12/28/2012
	USACE 408 Permit Review	8/6/2012	8/31/2012
	408 Permit Approval		4/30/2013
2B	Final Design - Pump Stations (WR, MESD, PDP)	8/15/2012	5/20/2013
	USACE 408 Permit Review	2/18/2013 	3/21/2013
	408 Permit Approval		5/20/2013
3	Final Design - Relief Wells, Berm, Blanket Drain (WR)	8/20/2012	6/12/2013
	USACE 408 Permit Review	 4/12/2013	5/15/2013
	408 Permit Approval		6/12/2013
4	Final Design - Clay Blanket, Relief Well Sys. (MESD)	10/8/2012	4/17/2013
	USACE 408 Permit Review	2/15/2013 	3/20/2013
	408 Permit Approval		4/30/2013
5	Final Design - Clay Blanket, Relief Well Sys. (MESD)	10/9/2012	6/7/2013
	USACE 408 Permit Review	 4/5/2013	5/8/2013
	408 Permit Approval		6/7/2013
6	Final Design - Relief Wells & Berms (PDP/FL)	5/15/2012	4/22/2013
	USACE 408 Permit Review	1/22/2013 	2/21/2013
	408 Permit Approval		4/30/2013
7	Final Design - Cutoff Walls (WR)	8/9/2012	12/17/2012
	USACE 408 Permit Review	12/17/2012 	4/17/2013
	408 Permit Approval		5/17/2013

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Next Packages to be submitted



- BP # 03 – **WR Seepage Improvements (Excluding Cut Off Walls)**
- Due to USACE on 4/12/2013
 - Comments due from USACE on 5/15/2013
- BP # 05 – **MESD Seepage Improvements (MESD excluding Conoco Phillips)**
- Due to USACE on 4/05/2013
 - Comments due from USACE on 5/08/2013

6

Next Steps



- USACE ownership of Deep and Shallow cutoff walls. Cost, funding and schedule.
- Restructure sequencing of Bid Packages to mesh better with the USACE schedule for their design
- Advance process regarding Mel Price and COR certification
- What solutions can the USACE design/construction that support achieving the FEMA mark? Options in MESD?

7



Thanks...any
questions?

8



Memo to: Board of Directors
From: Les Sterman
Subject: Program Status Report for April, 2013
Date: April 15, 2013

AMEC continues to work both to submit all of the final Sec. 408 review packages to the Corps as well as to resolve comments on those packages that have already been submitted. While the initial approval was given for Bid Package 2a, a pump station in the Fish Lake district, additional questions were raised following the subsequent submittal and review of Bid Package 6 for berms and relief wells in the area. The primary questions concerned how the flow from the proposed relief wells was reconciled with the pump station capacity. Because of the sequence of submissions (pump stations submitted prior to berms/relief wells), there was a potential for additional questions concerning the alignment of these packages. AMEC has been responding to those questions and we expect that Bid Package 2a will be approved imminently and Bid Package 6 soon thereafter, enabling us to advertise those packages for bid in May. However, the questions raised in the review of Bid Package 6 suggest the need for some revisions of Bid Packages 3 and 5, originally scheduled for mid-April. AMEC will address this scheduling issue in more depth at the Board meeting, but at this point I do not anticipate a threat to the date for project completion.

The Council's design process for Bid Package 7 (for cutoff walls) has been put on hold because the Corps is proceeding with the design of these project elements in accordance with our design agreement with them. Upon receipt of the information that we requested from the Corps concerning the scope, budget and schedule for the project, we agreed to provide the initial installment of cost-share so that they could begin the design process. At the April meeting, I will ask for approval to provide the remaining cost-share for the design. Other issues remain to be resolved, particularly concerning labor agreements, prior to our agreement to provide cost-share for construction.

On March 2, a meeting was held at the offices of the Corps of Engineers concerning the use of Project Labor Agreements on the portions of the project undertaken by the Corps. As described at the last Board meeting, as currently written the Council's policy on the use of Project Labor Agreements requires the use of PLAs on any portion of the project undertaken wholly or partially with Flood Prevention District Sales Tax funds. The meeting was organized by the Leadership Council and included business, civic and labor leaders, along with local contractors experienced in the use of PLAs. Leadership from the Corps St. Louis District also attended, along with procurement and construction staff. While there remains some apparent resistance on

the part of Corps staff to the use of PLAs, we were able to respond to some of the concerns that have been raised over the last several weeks. The Corps has an internal procedure that describes how they would go about considering the use of a PLA for a construction job. They appeared willing to begin advancing the process, but indicated that there are a number of hurdles to overcome before a PLA could be considered. The first step in the Corps procedure is to do a “market survey” requesting comments from the contracting community on the use of a PLA for the project. That request for comments was issued on April 12, with responses due back by May 13.

The President’s budget proposal, released on April 10, included funds for the Wood River and MESD projects (\$20.86 million and \$12.85 million respectively). Should these amounts be appropriated by Congress, they should be sufficient to accomplish the cutoff wall work in Wood River and other projects in MESD (possibly a cutoff wall as well).

The property appraisal and acquisition process is now underway for bid packages 2a and 6. The hope is that we can acquire the property rights quickly, so those projects can proceed without delay.

We are awaiting a revised wetland mitigation proposal from Republic Services, so that we can satisfy one of the conditions of our Sec. 404 permit and begin work as quickly as possible, coinciding with the start of project construction.

Given the foregoing progress, there are several items that I will propose advancing at the April Board meeting, including commitments of additional cost-share for design work on the Wood River Cutoff wall, consideration of the Project Partnership Agreement for the Wood River Project, and permission to advertise for bids for construction packages 2a and 6.



Memo to: Board of Directors
From: Les Serman
Subject: Budget and Disbursement Report for March 2013
Date: April 15, 2013

Budget Highlights

Attached is the financial statement for March 2013 prepared by our fiscal agent, CliftonLarsonAllen. The report includes an accounting of revenues and expenditures for the month ending March 31, 2013, as compared to our fiscal year budget.

Accrued expenditures for the current fiscal year are \$6,204,115 while revenues amounted to \$6,129,558 showing a deficit of \$74,557. Expenditures included a surplus for the year held by the bond Trustee of \$2,215,388 through the end of March that was returned to the counties as required by the bond indenture. A total of approximately \$ 12,940,373 is now held by the counties in their respective FPD sales tax funds and is available for the Council's use on the project.

Monthly sales tax receipts for January 2013 (the latest month reported by the Illinois Department of Revenue) were up by about 1.83% year over year, which reverses a seven month pattern of small monthly declines, which is good news, although it is still marginally less than the 3% annual increases assumed in our financial plan. Perhaps the January tax receipts will signal a new upward trend, however.

Disbursements

Attached are lists of bank transactions for March 2013. Total disbursements for the month were \$302,235.21. The largest payments were to AMEC and its subcontractors for design and construction management services, to the Corps of Engineers for cost-share relating to the design of the Wood River cutoff walls, and for several months of legal fees from Husch Blackwell relating to property acquisition, permitting and other matters. The closing balance on March 31 was \$688,897.43.

Recommendation:

Accept the budget report and disbursements for March 2013.

**SOUTHWESTERN ILLINOIS FLOOD PREVENTION
DISTRICT COUNCIL**

**GENERAL FUND
STATEMENT OF REVENUES AND EXPENDITURES – BUDGET AND ACTUAL**

SIX MONTHS ENDING MARCH 2013 AND 2012



CliftonLarsonAllen

CliftonLarsonAllen LLP
www.cliftonlarsonallen.com

Board Members
Southwestern Illinois Flood Prevention District Council
Collinsville, Illinois

We have compiled the accompanying General Fund Statement of Revenues and Expenditures – Budget and Actual of Southwestern Illinois Flood Prevention District Council (the “Council”) for the six months ended March 2013 and 2012. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or provide any assurance about whether the financial statements are in accordance with accounting principles generally accepted in the United States of America.

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America and for designing, implementing, and maintaining internal control relevant to the preparation and fair presentation of the financial statements.

Our responsibility is to conduct the compilation in accordance with Statement on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. The objective of a compilation is to assist management in presenting financial information in the form of financial statements without undertaking to obtain or provide assurance that there are no material modifications that should be made to the financial statements. During our compilation we did become aware of departures from accounting principles generally accepted in the United States of America that are described in the following paragraph.

Management has omitted the management discussion and analysis. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context.

Management has not presented government-wide financial statements to display the financial position and changes in financial position of its governmental activity. Accounting principles generally accepted in the United States of America require the presentation of government-wide financial statements. The change in fund balance for the Council's governmental activity is not reasonably determinable.

Management has not presented a balance sheet for the general fund. Accounting principles generally accepted in the United States of America require the presentation of a balance sheet for each fund contained in the financial statements. The amounts that would be reported in a balance sheet of the general fund for the Council are not reasonably determinable.

Management has not presented a change in fund balance on the Statement of Revenues and Expenditures – Budget and Actual. Accounting principles generally accepted in the United States of America require the Statement of Revenues, Expenditures and Changes in Fund Balance include a presentation of changes in fund balance. The amounts that would be reported in government-wide financial statements for the Council's governmental activity is not reasonably determinable.

Management has also elected to omit substantially all of the disclosures required by generally accepted accounting principles. If the omitted disclosures were included with the financial statements, they might influence the user's conclusions about the Council's results of operations. Accordingly, these financial statements are not designed for those who are not informed about such matters.

The accompanying original and final budget amounts presented on the General Fund Statement of Revenues and Expenditures – Budget and Actual presented for the year ending September 30, 2013 and 2012, have not been compiled or examined by us, and, accordingly, we do not express an opinion or any other form of assurance on them.

We are not independent with respect to Southwestern Illinois Flood Prevention District Council.

A handwritten signature in cursive script that reads "Clifton Larson Allen LLP".

CliftonLarsonAllen LLP

St. Louis, Missouri
April 11, 2013

**SOUTHWESTERN ILLINOIS FLOOD PROTECTION DISTRICT COUNCIL
GENERAL FUND
STATEMENT OF REVENUES AND EXPENDITURES - BUDGET AND ACTUAL
SIX MONTHS ENDED MARCH 31, 2013 (Actual)
FISCAL YEAR ENDING SEPTEMBER 30, 2013 (Budget)**

	BUDGET		ACTUAL	VARIANCE WITH
	ORIGINAL	FINAL		FINAL BUDGET
				POSITIVE (NEGATIVE)
REVENUES				
Sales Tax Proceeds From Districts	\$ 11,639,000	\$ 11,639,000	\$ 5,722,315	\$ 5,916,685
Interest Income	960,000	960,000	407,243	552,757
Other Contributions	-	-	-	-
Total Revenues	12,599,000	12,599,000	6,129,558	6,469,442
EXPENDITURES				
Current				
Design and Construction				
Engineering Design & Construction Management	6,000,000	6,000,000	1,452,619	4,547,381
Construction	42,600,000	42,600,000	718,428	41,881,572
Construction and design by US ACE	1,400,000	1,400,000	100,000	1,300,000
Federal Cost-Share	-	-	-	-
Total Design and Construction	50,000,000	50,000,000	2,271,047	47,728,953
Professional Services				
Legal & Legislative Consulting	126,000	126,000	70,174	55,826
Construction Oversight	160,000	160,000	-	160,000
Impact Analysis/Research	10,000	10,000	-	10,000
Financial Advisor	20,000	20,000	-	20,000
Bond Underwriter/Conduit Issuer	93,529	93,529	940	92,589
Total Professional Services	409,529	409,529	71,114	338,415
Refund of Surplus Funds to County FPD Accounts				
Madison County	2,955,782	2,955,782	1,065,779	1,890,003
Monroe County	280,157	280,157	101,066	179,091
St. Clair County	2,907,860	2,907,860	1,048,543	1,859,317
Total Refund of Surplus Funds to County	6,143,799	6,143,799	2,215,388	3,928,411
Debt Service				
Principal and Interest	7,107,440	7,107,440	2,298,720	4,808,721
Federal Interest Subsidy	(910,140)	(910,140)	(798,802)	(111,338)
Total Debt Service	6,197,300	6,197,300	1,499,918	4,697,383
Total Operating Expenses	62,750,628	62,750,628	6,057,467	56,693,162
General and Administrative Costs				
Salaries, Benefits	192,331	192,331	123,446	68,885
Advertising	-	-	-	-
Bank Service Charges	420	420	253	167
Conference Registration	500	500	372	128
Equipment and Software	3,000	3,000	1,769	1,231
Fiscal Agency Services (EWG)	23,000	23,000	11,050	11,950
Furniture	-	-	-	-
Meeting Expenses	1,000	1,000	29	971
Postage/Delivery	400	400	160	240
Printing/Photocopies	2,500	2,500	946	1,554
Professional Services	15,000	15,000	548	14,452
Publications/Subscriptions	250	250	105	145
Supplies	1,500	1,500	1,392	108
Telecommunications/Internet	2,000	2,000	1,032	968
Travel	15,000	15,000	4,569	10,431
Insurance	1,000	1,000	977	23
Total General & Administrative Costs	257,901	257,901	146,648	111,253
Total Expenditures	63,008,529	63,008,529	6,204,115	56,804,415
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES				
	(50,409,529)	(50,409,529)	(74,557)	50,334,973
OTHER FINANCING SOURCES				
Proceeds From Borrowing	-	-	-	-
NET CHANGE IN FUND BALANCE	\$ (50,409,529)	\$ (50,409,529)	\$ (74,557)	\$ 50,334,973

**SOUTHWESTERN ILLINOIS FLOOD PROTECTION DISTRICT COUNCIL
GENERAL FUND
STATEMENT OF REVENUES AND EXPENDITURES - BUDGET AND ACTUAL
SIX MONTHS ENDED MARCH 31, 2012 (Actual)
FISCAL YEAR ENDING SEPTEMBER 30, 2012 (Budget)**

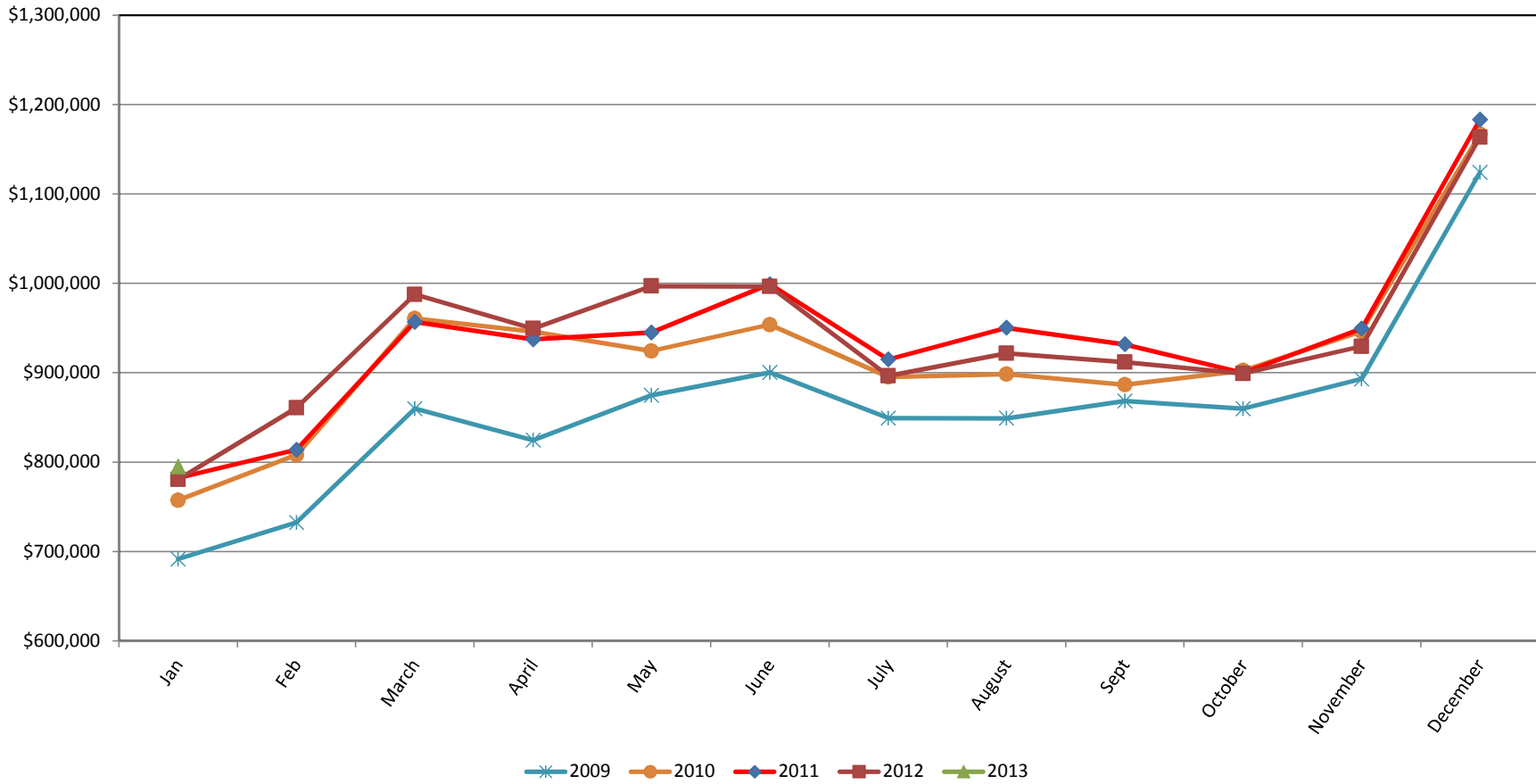
	BUDGET		ACTUAL	VARIANCE WITH
	ORIGINAL	FINAL		FINAL BUDGET
				POSITIVE (NEGATIVE)
REVENUES				
Sales Tax Proceeds From Districts	\$ 11,000,000	\$ 11,000,000	\$ 5,829,803	\$ 5,170,197
Interest Income	878,365	878,365	89,923	788,442
Other Contributions	-	-	-	-
Total Revenues	<u>11,878,365</u>	<u>11,878,365</u>	<u>5,919,726</u>	<u>5,958,639</u>
EXPENDITURES				
Current				
Design and Construction				
Engineering Design & Construction Management	6,000,000	6,000,000	1,698,528	4,301,472
Construction	20,000,000	20,000,000	546,836	19,453,164
Construction and design by US ACE	1,100,000	1,100,000	-	1,100,000
Federal Cost-Share	-	-	-	-
Total Design and Construction	<u>27,100,000</u>	<u>27,100,000</u>	<u>2,245,364</u>	<u>24,854,636</u>
Professional Services				
Legal & Legislative Consulting	126,000	126,000	41,587	84,413
Construction Oversight	160,000	160,000	40,147	119,853
Impact Analysis/Research	1,000	1,000	-	1,000
Financial Advisor	20,000	20,000	941	19,059
Bond Underwriter/Conduit Issuer	93,529	93,529	-	93,529
Total Professional Services	<u>400,529</u>	<u>400,529</u>	<u>82,675</u>	<u>317,854</u>
Refund of Surplus Funds to County FPD Accounts				
Madison County	1,999,276	1,999,276	788,327	1,210,949
Monroe County	260,706	260,706	77,279	183,427
St. Clair County	1,241,796	1,241,796	802,035	439,761
Total Refund of Surplus Funds to County	<u>3,501,778</u>	<u>3,501,778</u>	<u>1,667,641</u>	<u>1,834,137</u>
Debt Service				
Principal and Interest	7,107,440	7,107,440	2,323,270	4,784,170
Federal Interest Subsidy	(910,140)	(910,140)	-	(910,140)
Total Debt Service	<u>6,197,300</u>	<u>6,197,300</u>	<u>2,323,270</u>	<u>3,874,030</u>
Total Operating Expenses	<u>37,199,607</u>	<u>37,199,607</u>	<u>6,318,950</u>	<u>30,880,657</u>
General and Administrative Costs				
Salaries, Benefits	189,365	189,365	91,073	98,292
Advertising	2,500	2,500	-	2,500
Bank Service Charges	420	420	319	101
Conference Registration	700	700	336	364
Equipment and Software	2,300	2,300	-	2,300
Fiscal Agency Services	20,000	20,000	23,807	(3,807)
Furniture	300	300	-	300
Meeting Expenses	1,000	1,000	83	917
Miscellaneous Startup Expenses	-	-	-	-
Office Rental	-	-	-	-
Postage/Delivery	600	600	183	417
Printing/Photocopies	2,500	2,500	351	2,149
Professional Services	18,000	18,000	1,362	16,638
Publications/Subscriptions	200	200	-	200
Supplies	1,350	1,350	407	943
Telecommunications/Internet	3,500	3,500	1,603	1,897
Travel	12,500	12,500	4,549	7,951
Other Business Expenses	-	-	-	-
Insurance	3,000	3,000	990	2,010
Total General & Administrative Costs	<u>258,235</u>	<u>258,235</u>	<u>125,063</u>	<u>133,172</u>
Total Expenditures	<u>37,457,842</u>	<u>37,457,842</u>	<u>6,444,013</u>	<u>31,013,829</u>
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	(25,579,477)	(25,579,477)	(524,287)	25,055,190
OTHER FINANCING SOURCES				
Proceeds From Borrowing	-	-	-	-
NET CHANGE IN FUND BALANCE	<u>\$ (25,579,477)</u>	<u>\$ (25,579,477)</u>	<u>\$ (524,287)</u>	<u>\$ 25,055,190</u>

Flood Prevention District Sales Tax Trends 2009-2012

2009														County Share
Jan	Feb	March	April	May	June	July	August	Sept	October	November	December	Total		
Madison	\$321,968	\$336,765	\$397,425	\$387,385	\$414,350	\$421,402	\$399,616	\$401,188	\$400,090	\$404,847	\$405,930	\$492,814	\$4,783,780	46.319%
St. Clair	\$337,979	\$362,696	\$424,556	\$398,395	\$419,126	\$438,230	\$411,968	\$410,484	\$429,852	\$412,637	\$446,806	\$581,721	\$5,074,450	49.134%
Monroe	\$31,641	\$32,903	\$37,830	\$38,757	\$41,326	\$40,847	\$37,817	\$37,497	\$38,652	\$42,270	\$40,332	\$49,755	\$469,627	4.547%
Total Month	\$691,588	\$732,364	\$859,811	\$824,537	\$874,802	\$900,479	\$849,401	\$849,169	\$868,594	\$859,754	\$893,068	\$1,124,290	\$10,327,857	
Cumulative Total	\$691,588	\$1,423,952	\$2,283,763	\$3,108,300	\$3,983,102	\$4,883,581	\$5,732,982	\$6,582,151	\$7,450,745	\$8,310,499	\$9,203,567	\$10,327,857		
2010														
Madison	\$353,146	\$374,416	\$456,795	\$462,697	\$440,815	\$452,308	\$427,329	\$433,047	\$419,455	430,210	\$442,904	\$529,069	\$5,222,191	47.272%
St. Clair	\$367,458	\$399,480	\$464,089	\$439,748	\$439,139	\$458,299	\$421,447	\$423,718	\$424,971	\$429,581	\$457,927	587067	\$5,312,924	48.094%
Monroe	\$36,770	\$34,324	\$39,884	\$43,769	\$44,358	\$43,102	\$46,499	\$41,816	\$42,207	\$42,746	\$45,411	\$51,004	\$511,890	4.634%
Total Month	\$757,374	\$808,220	\$960,768	\$946,214	\$924,312	\$953,709	\$895,275	\$898,581	\$886,633	\$902,537	\$946,242	\$1,167,140	\$11,047,005	
Cumulative Total	\$757,374	\$1,565,594	\$2,526,362	\$3,472,576	\$4,396,888	\$5,350,597	\$6,245,872	\$7,144,453	\$8,031,086	\$8,933,623	\$9,879,865	\$11,047,005		
% change/month	9.51%	10.36%	11.74%	14.8%	5.7%	5.9%	5.4%	5.8%	2.1%	5.0%	6.0%	3.8%		
% change/total	9.51%	9.95%	10.62%	11.72%	10.39%	9.56%	8.95%	8.54%	7.79%	7.50%	7.35%	6.96%	6.96%	
2011														
Madison	\$380,021	\$383,976	\$460,129	\$454,562	\$466,904	\$477,396	\$436,637	\$473,303	\$448,256	\$444,204	\$455,842	\$538,000	\$5,419,230	48.108%
St. Clair	\$363,984	\$395,231	\$455,562	\$437,820	\$436,490	\$475,972	\$433,460	\$433,777	\$441,030	\$412,793	\$451,390	\$594,129	\$5,331,638	47.330%
Monroe	\$38,315	\$34,759	\$41,192	\$44,975	\$41,786	\$45,836	\$44,887	\$43,323	\$42,564	\$42,690	\$42,252	\$51,266	\$513,845	4.562%
Total Month	\$782,320	\$813,966	\$956,883	\$937,357	\$945,180	\$999,204	\$914,984	\$950,403	\$931,850	\$899,687	\$949,484	\$1,183,395	\$11,264,713	
Cumulative Total	\$782,320	\$1,596,286	\$2,553,169	\$3,490,526	\$4,435,706	\$5,434,910	\$6,349,894	\$7,300,297	\$8,232,147	\$9,131,834	\$10,081,318	\$11,264,713		
% change/month	3.29%	0.71%	-0.40%	-0.94%	2.26%	4.77%	2.20%	5.77%	5.10%	-0.32%	0.34%	1.39%		
% change/total	3.29%	1.96%	1.06%	0.52%	0.88%	1.58%	1.67%	2.18%	2.50%	2.22%	2.04%	1.97%	1.97%	
2012														
Madison	\$381,470	\$406,476	\$473,049	\$471,191	\$481,989	\$477,254	\$427,562	\$434,603	\$428,193	\$428,521	\$429,127	\$523,240	\$5,362,675	47.481%
St. Clair	\$361,727	\$415,491	\$468,490	\$432,173	\$468,782	\$473,567	\$425,923	\$441,838	\$438,184	\$424,289	\$454,916	\$589,183	\$5,394,563	47.763%
Monroe	\$37,471	\$38,904	\$46,086	\$46,051	\$46,231	\$45,671	\$43,063	\$45,307	\$45,641	\$46,230	\$45,429	\$51,062	\$537,146	4.756%
Total Month	\$780,668	\$860,871	\$987,625	\$949,415	\$997,002	\$996,492	\$896,548	\$921,748	\$912,018	\$899,040	\$929,472	\$1,163,485	\$11,294,384	
Cumulative Total	\$780,668	\$1,641,539	\$2,629,164	\$3,578,579	\$4,575,581	\$5,572,073	\$6,468,621	\$7,390,369	\$8,302,387	\$9,201,427	\$10,130,899	\$11,294,384		
% change/month	-0.21%	5.76%	3.21%	1.29%	5.48%	-0.27%	-2.01%	-3.02%	-2.13%	-0.07%	-2.11%	-1.68%		
% change/total	-0.21%	2.83%	2.98%	2.52%	3.15%	2.52%	1.87%	1.23%	0.85%	0.76%	0.49%	0.26%	0.26%	

Flood Prevention District Sales Tax Trends 2009-2012

Actual Receipts 2009-2012



**SOUTHWESTERN ILLINOIS FLOOD PREVENTION DISTRICT COUNCIL
SUPPLEMENTARY SUPPORTING SCHEDULE
BANK TRANSACTIONS
March 31, 2013**

Beginning Bank Balance February				764,140.94
Receipts				
UMB	03/12/2013	Transfer	15,228.83	
UMB	03/12/2013	Transfer	286,620.13	
AT&T	03/18/2013	Refund	70.22	
Bank of Edwardsville	03/31/2013	Interest Income	316.03	
Total Receipts				302,235.21
Disbursements				
FEDEX	03/01/2013	Delivery	16.26	
Courtyard by Marriot	03/01/2013	Travel	201.30	
The Bank-Service Fees	03/12/2013	Wire Transfer Fee	10.00	
The Bank-Service Fees	03/12/2013	Wire Transfer Fee	10.00	
AMEC Earth & Environmental, Inc.	03/12/2013	Services	220,466.38	
Cost Less Copy Center	03/12/2013	Printing	92.00	
Dorgan, McPike & Assoc, LTD	03/12/2013	Legal	3,000.00	
Wisper ISP, Inc.	03/12/2013	Internet Service	54.99	
ButcherMark Financial Advisors LLC	03/12/2013	Services	11,555.15	
Husch Blackwell Sanders	03/12/2013	Services	33,153.75	
USPS	03/20/2013	Postage	10.68	
FAO, USAED, St. Louis(B3)	03/21/2013	Services	100,000.00	
Walmart	03/22/2013	Office Supplies	45.72	
Walmart	03/25/2013	Office Supplies	26.09	
Office Max	03/26/2013	Office Supplies	19.01	
CliftonLarsonAllen LLP	03/28/2013	Fiscal Agent	1,850.00	
Cost Less Copy Center	03/28/2013	Printing	82.00	
Husch Blackwell Sanders	03/28/2013	Services	6,420.65	
Les Sterman	03/28/2013	Office Expense & Phone	392.47	
Wisper ISP, Inc.	03/28/2013	Internet Service	54.99	
The Bank-Service Fees	03/31/2013	Bank Charges	17.28	
Total Disbursements				377,478.72
				688,897.43



Memo to: Board of Directors
From: Les Serman
Subject: Approval to Advertise Construction Packages #2a and #6 for Bid
Date: April 15, 2013

I appears that Sec. 408 approval of Construction Bid Packages #2a and #6 will occur in the next few weeks. A general description of these projects is shown below:

Bid Package 2A

The levee system improvements proposed in this construction package include one new pump station and appurtenances. The pump station is being constructed to convey flow from new relief wells planned as part of a broader Southwestern Illinois Levee Certification Design Project. Flow to the new Fish Lake pump station will be conveyed via underground pipe systems. The purpose of these improvements is to restore the level of protection such that the levee systems will be eligible for FEMA accreditation in accordance with 44 Code of Federal Regulations (CFR) 65.10 criteria, which requires protection from the base flood (100-year flood) shown on Flood Rate Insurance Maps. All proposed work is along the Fish Lake Levee System in Monroe County, Illinois.

Bid Package 6

The improvements proposed in Bid Package 6 include the construction of new clay caps, seepage berms, relief wells and relief well conveyance systems to address underseepage. Relief well conveyance systems include both ditches and subsurface pipe & trench construction. Both modification and abandonment of existing relief wells are also proposed as part of this bid package. All proposed work is alongside the Prairie Du Pont and Fish Lake Levee System, which spans across St. Clair & Monroe Counties in Southwestern Illinois.

A number of additional conditions must be met before contracts can be let, such as the acquisition of the necessary real estate property interests and approval of the final Sec. 404 permit, but it is my hope that these conditions can be met quickly.

In order to minimize any delays in the bidding process, I am requesting the authorization to advertise these projects for bid. This is the initial step in the bidding process. Once bids

are received, they will be reviewed by our construction management consultant, after which Board and County Board approvals will be required before any bids are awarded.

Recommendation: Authorize the Chief Supervisor to advertise Construction Bid Packages #2a and #6 for bids. Further Board approval will be sought before any bid is awarded.



Memo to: Board of Directors

From: Les Sterman

Subject: Commitment of Cost-Share to Corps of Engineers for Wood River Cutoff Wall Projects

Date: April 15, 2013

At the November, 2012 Board meeting, I was authorized to execute a Design Agreement with the Corps of Engineers so that the Council can provide the required sponsor funds to match Federal funds appropriated to carry out design activities for the Corps' project to achieve the authorized level of flood protection in the Wood River and Metro-East districts. In December, the Corps proposed that they use anticipated federal funding to undertake the design and construction of the portions of the proposed shallow and deep cutoff walls in the Wood River district that are needed to meet FEMA levee safety standards. The benefits of offloading this costly part of the project are twofold: it would avoid the Sec. 408 review process; and, it would result in substantial cost savings to the Council.

In December, the Board agreed to provide \$100,000 toward cost-share for design of the Wood River project. The Corps now estimates that the cost-share for the complete design of the project will be \$375,000, or 25% of the overall design cost of \$1,490,000. The Corps has now provided sufficient information to justify this cost. The request for additional funding is attached.

Notwithstanding the unresolved questions concerning the project construction, mainly related to the final cost estimate for construction and the use of a Project Labor Agreement, I think it is prudent to proceed with design. Because further delay would jeopardize the project schedule I am recommending that we provide the final installment in cost-share for the design work on the Wood River cutoff walls. If we are unable to resolve construction issues, it will likely be more efficient for the Council to proceed with the Corps design than to pursue the ongoing Sec. 408 review of AMEC's design.

Recommendation: Authorize the Chief Supervisor to provide up to \$275,000 of additional cost-share to the Corps of Engineers in accordance with the Design Agreement for the design of shallow and deep cutoff walls in the Wood River district.



REPLY TO

DEPARTMENT OF THE ARMY
ST. LOUIS DISTRICT CORPS OF ENGINEERS
1222 SPRUCE STREET
ST. LOUIS, MISSOURI 63103-2833

APR 15 2013

Programs and Project Management Division
Project Development Branch

Mr. Les Sterman, Chief Supervisor of Construction and the Works
Southwestern Illinois Flood Prevention District Council
104 Untied Drive
Collinsville, Illinois 62234

Dear Mr. Sterman:

In accordance with Article II B.1 of the Design Agreement executed between the Southwestern Illinois Flood Protection District Council (FPD) and the U.S. Army Corps of Engineers (Corps) for the Design Deficiency Corrections for Wood River, Illinois Flood Protection Project, I am requesting additional cost share contributions of the FPD's Fiscal Year 2013 sponsor funds. The FY13 President's Budget amount for the project is \$4,202,000. To date, the FPD has provided \$100,000 in cost share funds. Please provide an additional \$275,000 of local sponsor funds in order to continue work per the Design Agreement. Additional cost share contributions will be requested as necessary.

The check should be made payable to "FAO, USAED, St. Louis (B3)" and should be mailed to:

U.S. Army Corps of Engineers
St. Louis District
Attention: CEMVS-PM-N (Kohler)
1222 Spruce Street
St. Louis, Missouri 63103-2833.

If preferred, funds may be provided to the St. Louis District by Electronic Funds Transfer. Greg Kohler, Project Manager, will be happy to assist you to facilitate the funds transfer.

If you have any questions, please contact Greg Kohler at (314) 331-8169 or e-mail Greg.Kohler@usace.army.mil.

Sincerely,

Tracey Kelsey P.E., PMP
Program Manager
Programs and Project Management



Memo to: Board of Directors

From: Les Sterman

Subject: Project Partnership Agreement with the U.S. Army Corps of Engineers for the Wood River Design Deficiency Correction

Date: April 15, 2013

A **Project Partnership Agreement (PPA)** is an agreement between the Government and a non-Federal sponsor (state, municipal government, flood control district, port authority, etc.) for construction of a water resources project. It describes the project and the responsibilities of the Government and the non-Federal sponsor in the cost sharing and execution of work. These agreements (or their predecessor Project Cooperation Agreements) have been executed between the sponsor levee districts in our area and the Corps of Engineers for a number of previous construction and reconstruction projects.

While we have not as yet made any commitment to participating in the proposed Corps construction project for the shallow and deep cutoff walls in the Wood River District, I believe it is useful to have all the required agreements in place should we choose to move forward. It typically takes a while for the Corps to execute a PPA, so having the agreement in-hand with the authority to execute it could avoid future delays.

The Corps has a model agreement that applies in this situation. Typical for the Corps, the model agreement is difficult or impossible to modify. However, as a practical matter, it is an ongoing agreement where both parties need to meet their funding and other responsibilities or the contract is terminated. Like our Design Agreement with the Corps for this project, we can choose to implement the contract through a Board decision to provide cost-share funding. In the absence of that funding, work will not proceed and our further responsibility under the terms of the agreement is limited.

A draft of the contract is attached.

I have asked our attorneys at Husch Blackwell to review the PPA to advise us of substantive conditions of which we should particularly be aware. The firm has substantial experience with these agreements. Their analysis highlighted several areas:

1. *Termination Provisions*
Article XIII.A. requires the Assistant Secretary of the Army to terminate the PPA or suspend future performance if, at any time, the non-Federal Sponsors

(defined to include Wood River and SWILFPD) fail to fulfill their obligations under the PPA unless the Assistant Secretary determines the continuation of work on the project is interest of the U.S. or is necessary to satisfy agreements with other non-Federal interests.

Article XIV.C. permits the Corps or the Non-Federal sponsor to suspend or terminate the PPA in the event hazardous substances are found to exist on project property.

In the event the PPA is terminated, the Corps may reserve a percentage of total federal funds made available for the project and a percentage of funds contributed by SWILFPD to pay costs of termination, including costs to resolve contract disputes. Additionally, any termination of the PPA will not relieve any party of liability for any obligation previously incurred.

2. Rights-of-Way

Article III.A. provides that the Non-Federal Sponsors (Wood River and SWILFPD) are responsible for acquiring all rights-of-way the Corps, in consultation with the Non-Federal Sponsors, determines to be required for construction, operation and maintenance of the project. Additionally, Article IV.A. requires the Corps to include in total project costs and afford credit towards the Non-Federal Sponsors costs to acquire any right-of-way.

3. Credit Mechanism

Article IV.A. provides that the Corps shall include in total project costs and afford credit towards the non-Federal Sponsors' share of total project costs for the value of LERRDs. Article IV.B. specifies that, to receive credit its LERRD costs, the Non-Federal sponsors shall provide to the Corps "in a timely manner" documents sufficient to enable the Corps to determine the value of any contribution provided. Upon receipt of such documents, the Corps shall "in a timely manner" determine the fair market value of such contributions for the purpose of determining the amount of credit to be afforded or reimbursed.

Husch Blackwell notes that these provisions are identical to those included in PPAs or PCAs for other area levee projects.

Recommendation: Authorize the Board President and/or Chief Supervisor to execute the Project Partnership Agreement with the U.S. Army Corps of Engineers for the Wood River Design Deficiency Correction Project.

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE WOOD RIVER DRAINAGE AND LEVEE DISTRICT AND THE
SOUTHWESTERN ILLINOIS FLOOD PREVENTION DISTRICT COUNCIL
FOR
CONSTRUCTION
OF THE
DESIGN DEFICIENCY CORRECTIONS FOR WOOD RIVER, ILLINOIS PROJECT

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, St. Louis District and the Wood River Drainage and Levee District (hereinafter “Wood River D&LD”), represented by the President, and the Southwestern Illinois Flood Prevention District Council (hereinafter “SW IL FPDC”), represented by the Chief Supervisor of Construction and the Works (Wood River D&LD and SW IL FPDC when referred to collectively are referred to as the “Non-Federal Sponsors”).

WITNESSETH, THAT:

WHEREAS, construction of the Wood River Levee System Design Deficiency Corrections Project for flood risk management (hereinafter the “*Project*”, as defined in Article I.A. of this Agreement) in Madison County, Illinois was authorized by the Flood Control Act of 1938, Public Law 75-761, as modified by the Flood Control Act of 1965, Public Law 89-298, and the Water Resources Development Act of 2007, Public Law 110-114;

WHEREAS, the Government and the Non-Federal Sponsors desire to enter into a Project Partnership Agreement (hereinafter the “*Agreement*”) for construction of the *Project*;

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, (33 U.S.C. 2213) specifies the cost-sharing requirements applicable to the *Project*;

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

WHEREAS, the Government and a non-Federal interest entered into an agreement, dated November 28, 2012, for engineering and design of the *Project*

(hereinafter the “Design Agreement”), under the terms of which the non-Federal interest contributed a portion of the costs for engineering and design;

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

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

WHEREAS, the Government and the Non-Federal Sponsors, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsors 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 Sponsors, and facilitate the successful implementation of the *Project*.

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

ARTICLE I - DEFINITIONS

A. The term “*Project*” shall mean new relief wells; filling existing wood stave relief wells with grout; ditching; new pump stations; seepage berms; landside clay fill; a slurry trench cutoff wall at the riverside levee toe to bedrock (140 ft deep); a slurry trench cutoff wall at the riverside levee toe to 25 ft deep; and environmental and archeological mitigation work as generally described in the Wood River Levee System Limited Reevaluation Report for Design Deficiency Corrections, dated August 31, 2011 and approved by the Commander, Mississippi Valley Division on August 31, 2011.

B. The term “*total project costs*” shall mean the sum of all costs incurred by the Non-Federal Sponsors and the Government in accordance with the terms of this Agreement directly related to construction of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s share of Preconstruction Engineering and Design costs pursuant to the terms of the Design Agreement; the value of the contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement; the Government’s engineering and design costs during construction; the Non-Federal Sponsors’ and the Government’s costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government’s costs of historic preservation activities in accordance

with Article XVII.A. and Article XVII.B.1. of this Agreement; the Government's actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto; the Government's supervision and administration costs; the Non-Federal Sponsors' and the Government's costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to Article II.B.4. of this Agreement; and the Non-Federal Sponsors' and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement of the *Project*; any costs of *betterments* under Article II.G.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement; or the Non-Federal Sponsors' costs of negotiating this Agreement.

C. The term "*period of construction*" shall mean the time from the date the Government issues the solicitation for the first construction contract for the *Project* or commences construction of the *Project* using the Government's own forces, whichever is earlier, to the date that construction of the *Project* is complete, as determined by the Government, or the date that this Agreement is terminated in accordance with Article XIII or Article XIV.C. of this Agreement, whichever is earlier.

D. The term "*financial obligations for construction*" shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total project costs* except for obligations pertaining to the provision of lands, easements, and rights-of-way, the performance of *relocations*, and the construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material.

E. The term "*non-Federal proportionate share*" shall mean the ratio of the Non-Federal Sponsors' total contribution of funds required by Article II.B.1. and Article II.B.3. of this Agreement to *financial obligations for construction*, as projected by the Government.

F. The term "*highway*" shall mean any highway, roadway, street, or way, including any bridge thereof, that is owned by a public entity.

G. The term "*relocation*" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, *highway*, railroad (excluding existing railroad bridges and approaches thereto), or public facility when such action is authorized in accordance with applicable legal principles of just compensation; or providing a functionally equivalent facility when such action is specifically provided for, and is identified as a relocation, in the authorizing legislation for the *Project* or any report referenced therein. Providing a

functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

H. The term “*functional portion of the Project*” shall mean a portion of the *Project* for which construction has been completed and that can function independently, as determined by the U.S. Army Engineer, St. Louis District (hereinafter the “District Engineer”) in writing, although the remainder of the *Project* is not complete.

I. The term “*betterment*” shall mean a difference in the construction of an element of the *Project* that results from the application of standards that the Government determines exceed those that the Government would otherwise apply to the construction of that element. The term does not include any construction for features not included in the *Project* as defined in paragraph A. of this Article.

J. 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 therefore.

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

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

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 SW IL FPDC, expeditiously shall construct the *Project* (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto), applying those procedures usually applied to Federal projects, in accordance with Federal laws, regulations, and policies.

1. The Government shall not issue the solicitation for the first contract for construction of the *Project* or commence construction of the *Project* using the Government’s own forces until the SW IL FPDC has confirmed in writing its willingness to proceed with the *Project*.

2. The Government shall afford the Non-Federal Sponsors the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government’s issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsors 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 Sponsors 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 Sponsors, but the contents of solicitations, award of contracts or commencement of construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the *Project* shall be exclusively within the control of the Government.

3. At the time 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 *Project*, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

B. The SW IL FPDC shall contribute a minimum of 35 percent, but not to exceed 50 percent of *total project costs* in accordance with the provisions of this paragraph.

1. The SW IL FPDC shall provide a contribution of funds equal to 5 percent of *total project costs* in accordance with Article VI.B. of this Agreement.

2. In accordance with Article III of this Agreement, the Non-Federal Sponsors shall provide all lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all *relocations*, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Government determines to be required or to be necessary for construction, operation, and maintenance of the *Project*.

3. The SW IL FPDC shall provide additional funds in accordance with Article VI.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsors' required minimum share of 35 percent of *total project costs* if the Government projects at any time that the collective value of the following contributions will be less than such required minimum: (a) the value of the Non-Federal Sponsors' contributions under paragraph B.1. of this Article; (b) the value of the cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement that exceeds the 5 percent amount required by paragraph B.1. of this Article and the value of the non-cash contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement; (c) the value of the Non-Federal Sponsors' contributions under paragraph B.2. of this Article, as determined in accordance with Article IV of this Agreement; and (d) the value of the Non-Federal Sponsors' contributions under Article V, Article X, and Article XIV.A. of this Agreement.

4. The Government, subject to the availability of funds, shall refund or reimburse to the SW IL FPDC any contributions in excess of 45 percent of *total project costs* if the Government determines at any time that the collective value of the following contributions has exceeded 45 percent of *total project costs*: (a) the value of the SW IL FPDC's contributions under paragraph B.3. of this Article; (b) the value of the cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement that exceeds the 5 percent amount required by paragraph B.1. of this Article

and the value of the non-cash contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement; (c) the value of the Non-Federal Sponsors' contributions under paragraph B.2. of this Article, as determined in accordance with Article IV of this Agreement; and (d) the value of the Non-Federal Sponsors' contributions under Article V, Article X, and Article XIV.A. of this Agreement. After such a determination, the Government, in its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for the *Project*, perform any remaining *relocations* necessary for the *Project*, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the *Project* on behalf of the Non-Federal Sponsors. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the SW IL FPDC shall be responsible, as between the Government and the SW IL FPDC, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

C. When the District Engineer determines that the entire *Project*, or a *functional portion of the Project*, is complete, the District Engineer shall so notify the Non-Federal Sponsors in writing and furnish the Non-Federal Sponsors with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire *Project* or such completed portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsors a copy of all final as-built drawings for the entire *Project* or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that the entire *Project* is complete, the Government shall furnish the Non-Federal Sponsors with the final OMRR&R Manual and all final as-built drawings for the entire *Project*. In the event the final OMRR&R Manual or all final as-built drawings for the entire *Project* cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsors, and the Government and the Non-Federal Sponsors shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the *Project*, copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the *Project* that have not been provided previously shall be provided to the Non-Federal Sponsors.

D. Upon notification from the District Engineer in accordance with paragraph C. of this Article, the Wood River D&LD shall operate, maintain, repair, rehabilitate, and replace the entire *Project*, or the *functional portion of the Project* as the case may be, in accordance with Article VIII of this Agreement.

E. Upon conclusion of the *period of construction*, the Government shall conduct an accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsors.

F. The Non-Federal Sponsors shall not use *Federal program funds* to meet any of their obligations for the *Project* under this Agreement unless the Federal agency providing

the funds verifies in writing that such funds are authorized to be used to carry out the *Project*.

G. The Non-Federal Sponsors may request the Government to perform or provide, on behalf of the Non-Federal Sponsors, one or more of the services (hereinafter the “additional work”) described in this paragraph. Such requests shall be in writing and shall describe the additional work requested to be performed or provided. If in its sole discretion the Government elects to perform or provide the requested additional work or any portion thereof, it shall so notify the Non-Federal Sponsors in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsors shall be solely responsible for all costs of the additional work performed or provided by the Government under this paragraph and shall pay all such costs in accordance with Article VI.D. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way; performance of *relocations*; or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the *Project*. Notwithstanding acquisition of lands, easements, and rights-of-way, performance of *relocations*, or construction of improvements by the Government, the SW IL FPD shall be responsible, as between the Government and the SW IL FPD, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

2. Inclusion of *betterments* in the construction of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of the *Project* features that include *betterments* between *total project costs* and the costs of the *betterments*.

H. Not less than once each year the Wood River D&LD shall inform affected interests of the extent of protection afforded by the *Project*.

I. The Wood River D&LD agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

J. The Wood River D&LD shall comply with Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S.C. 701b-12), which requires a non-Federal interest to prepare a floodplain management plan within one year after the date of signing this Agreement, and to implement such plan not later than one year after completion of construction of the *Project*. The plan shall be designed to reduce the impacts of future flood events in the project area, including but not limited to, addressing those measures to be undertaken by non-Federal interests to preserve the level of flood protection provided by the *Project*. The Wood River D&LD shall provide an information copy of the plan to the Government upon its preparation.

K. The Wood River D&LD shall publicize floodplain information in the area concerned and shall provide this information to zoning and other regulatory agencies for

their use in adopting regulations, or taking other actions, to prevent unwise future development and to ensure compatibility with protection levels provided by the *Project*.

L. The Wood River D&LD shall prevent obstructions or encroachments on the *Project* (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on *Project* lands, easements, and rights-of-way or the addition of facilities which might reduce the level of protection the *Project* affords, hinder operation and maintenance of the *Project*, or interfere with the *Project's* proper function.

ARTICLE III - LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, DISPOSAL AREA IMPROVEMENTS, AND COMPLIANCE WITH PUBLIC LAW 91-646, AS AMENDED

A. The Government, after consultation with the Non-Federal Sponsors, shall determine the lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsors must provide, in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsors shall acquire all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsors must provide for that work and shall provide the Government with authorization for entry thereto. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsors shall acquire all lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, as set forth in such descriptions, and shall provide the Government with authorization for entry thereto. The Non-Federal Sponsors shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the *Project* and that were provided by the Non-Federal Sponsors are retained in public ownership for uses compatible with the authorized purposes of the *Project*.

B. The Government, after consultation with the Non-Federal Sponsors, shall determine the *relocations* necessary for construction, operation, and maintenance of the *Project*, including those necessary to enable the borrowing of material or the disposal of dredged or excavated material. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such *relocations* in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with such *relocations*. Prior to the issuance of the solicitation for each Government

contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsors shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all *relocations* the Government determines to be necessary for that work. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsors shall perform or ensure performance of all *relocations* as set forth in such descriptions.

C. The Government, after consultation with the Non-Federal Sponsors, shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with construction, operation, and maintenance of the *Project*. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsors with general written descriptions, including maps as appropriate, of such improvements in detail sufficient to enable the Non-Federal Sponsors to fulfill their obligations under this paragraph, and shall provide the Non-Federal Sponsors with a written notice to proceed with construction of such improvements. Prior to the issuance of the solicitation for each Government contract for construction of the *Project*, or prior to the Government incurring any *financial obligations for construction* of a portion of the *Project* using the Government's own forces, the Non-Federal Sponsors shall prepare plans and specifications for all improvements the Government determines to be required for the disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications. Furthermore, prior to the end of the *period of construction*, the Non-Federal Sponsors shall provide all improvements set forth in such descriptions.

D. The Non-Federal Sponsors shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended (42 U.S.C. 4601-4655), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for construction, operation, and maintenance of the *Project*, including those required for *relocations*, the borrowing of material, or the disposal of dredged or excavated material, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS

A. The Government shall include in *total project costs* and afford credit toward the Non-Federal Sponsors' share of *total project costs* for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsors must provide pursuant to Article III.A. of this Agreement; for the value of the *relocations* that the Non-Federal Sponsors must perform or for which they must ensure performance pursuant to Article III.B. of this Agreement; and

for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsors must provide pursuant to Article III.C. of this Agreement. However, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been provided previously as an item of cooperation for another Federal project. In addition, no amount shall be included in *total project costs*, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed 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 *Project*.

B. The Non-Federal Sponsors in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to Article III.A., Article III.B., or Article III.C. of this Agreement. Upon receipt of such documents, the Government in a timely manner shall determine the value of such contributions for the purpose of including such value in *total project costs* and for determining the amount of credit to be afforded or reimbursement to be provided in accordance with the provisions of this Agreement.

C. For the purposes of determining the value to be included in *total project costs* and the amount of credit to be afforded or reimbursement to be provided in accordance with this Agreement and except as otherwise provided in paragraph G. of this Article, the value of lands, easements, and rights-of-way, including those required for *relocations*, the borrowing of material, and the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsors on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsors provide the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsors after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph C.3. or paragraph C.5. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with the provisions of this paragraph.

a. The Non-Federal Sponsors shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsors shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsors

provide the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsors' appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' appraisal, the Non-Federal Sponsors may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsors' second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsors' second appraisal, the Non-Federal Sponsors choose not to obtain a second appraisal, or the Non-Federal Sponsors do not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsors. In the event the Non-Federal Sponsors do not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsors, shall consider the Government's and the Non-Federal Sponsors' appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsors for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsors, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsors, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsors, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors, prior to instituting such proceedings, shall submit to the Government notification in writing of their intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 calendar days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60 day period, the Non-Federal Sponsors shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsors shall consult in good faith to promptly resolve the issues or areas of

disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsors agree as to an appropriate amount, then the Non-Federal Sponsors shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsors cannot agree as to an appropriate amount, then the Non-Federal Sponsors may use the amount set forth in their appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with paragraph C.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for construction, operation, and maintenance of the *Project*, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsors within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D. of this Agreement, and other payments by the Non-Federal Sponsors for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsors in accordance with Article III.A. of this Agreement shall also include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government

and the Non-Federal Sponsors must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

D. After consultation with the Non-Federal Sponsors, the Government shall determine the value of *relocations* in accordance with the provisions of this paragraph.

1. For a *relocation* other than a *highway*, the value shall be only that portion of *relocation* costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a *relocation* of a *highway*, the value shall be only that portion of *relocation* costs that would be necessary to accomplish the *relocation* in accordance with the design standard that the State of Illinois would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. *Relocation* costs shall include, but not necessarily be limited to, actual costs of performing the *relocation*; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the *relocation*, as determined by the Government. *Relocation* costs shall not include any costs due to *betterments*, as determined by the Government, nor any additional cost of using new material when suitable used material is available. *Relocation* costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

E. The value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to *betterments*, as determined by the Government.

F. Any credit afforded or reimbursement provided under the terms of this Agreement for the value of *relocations*, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the *Project* boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, credit or reimbursement may be withheld, in whole or in

part, as a result of the Non-Federal Sponsors' failure to comply with their obligations under these laws.

G. Where the Government, on behalf of the Non-Federal Sponsors pursuant to Article II.G.1. of this Agreement, acquires lands, easements, or rights-of-way, performs *relocations*, or constructs improvements required on lands, easements, or rights-of-way to enable the disposal of dredged or excavated material, the value to be included in *total project costs* and the amount of credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall be the costs of such work performed or provided by the Government that are paid by the Non-Federal Sponsors in accordance with Article VI.D. of this Agreement. In addition, the value to be included in *total project costs* and the amount of such credit to be afforded or the amount of reimbursement provided in accordance with this Agreement shall include the documented costs incurred by the Non-Federal Sponsors in accordance with the terms and conditions agreed upon in writing pursuant to Article II.G.1. of this Agreement subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsors and the Government, not later than 30 calendar days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the *period of construction*. The Government's Project Manager and counterparts named by the SW IL FPDC and the Wood River D&LD shall co-chair the Project Coordination Team.

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

C. Until the end of the *period of construction*, the Project Coordination Team shall generally oversee the *Project*, including matters related to: plans and specifications; scheduling; real property and *relocation* requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for *relocations* and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire *Project* or *functional portions*

of the Project; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, rehabilitation, and replacement of the *Project* including issuance of permits; and other matters related to the *Project*. This oversight of the *Project* shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsors.

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

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

ARTICLE VI - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsors current projections of costs, financial obligations, contributions provided by the parties, and the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement.

1. As of the effective date of this Agreement, *total project costs* are projected to be \$50,283,000; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement is projected to be \$2,259,000; the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement is projected to be \$20,000; the Non-Federal Sponsors' contribution of funds required by Article II.B.1. and Article II.B.3. of this Agreement is projected to be \$15,220,000; the *non-Federal proportionate share* is projected to be 32 percent; the Non-Federal Sponsors' contribution of funds required by Article XVII.B.3. of this Agreement is projected to be \$0; and the Government's total financial obligations for the additional work to be incurred and the Non-Federal Sponsors' contribution of funds for such costs required by Article II.G. of this Agreement are projected to be \$0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with

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

2. By July 1, 2013 and by each quarterly anniversary thereof until the conclusion of the *period of construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsors with a report setting forth all contributions provided to date and the current projections of the following: *total project costs*; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement; the value of the Non-Federal Sponsors' contributions under Article V, Article X, and Article XIV.A. of this Agreement; the Non-Federal Sponsors' total contribution of funds required by Article II.B.1. and Article II.B.3. of this Agreement; the *non-Federal proportionate share*; the Non-Federal Sponsors' total contribution of funds required by Article XVII.B.3. of this Agreement; the total contribution of funds required from the Non-Federal Sponsors for the upcoming *fiscal year*; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsors' contribution of funds for such costs required by Article II.G. of this Agreement.

B. The SW IL FPDC shall provide the contributions of funds required by Article II.B.1., Article II.B.3., and Article XVII.B.3. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 30 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the *Project* or commencement of construction of the *Project* using the Government's own forces, the Government shall notify the Non-Federal Sponsors in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsors, after consideration of any cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement, to meet: (a) the *non-Federal proportionate share of financial obligations for construction* incurred prior to the commencement of the *period of construction*; (b) the projected *non-Federal proportionate share of financial obligations for construction* to be incurred in the first *fiscal year*; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the projected *non-Federal proportionate share of financial obligations for construction* through the first *fiscal year*; and (c) the Non-Federal Sponsors' share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement to be incurred in the first *fiscal year*; or, if use of a continuing contract has been approved pursuant to Federal laws, regulations, and policies, the Non-Federal Sponsors' share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement through the first *fiscal year*. Not later than such scheduled date, the SW IL FPDC shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, St. Louis District (B3)" to the District Engineer, or verifying to the satisfaction of the Government that the SW IL

FPDC has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the SW IL FPDC, or by presenting the Government with an irrevocable letter of credit acceptable to the Government for such required funds, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

2. Thereafter, until the construction of the *Project* is complete, the Government shall notify the Non-Federal Sponsors in writing of the funds the Government determines to be required from the Non-Federal Sponsors, and the SW IL FPDC shall provide such funds in accordance with the provisions of this paragraph.

a. Where the Government will use a continuing contract approved pursuant to Federal laws, regulations, and policies to make *financial obligations for construction* of the *Project* or financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement, the Government shall notify the Non-Federal Sponsors in writing, no later than 60 calendar days prior to the beginning of each *fiscal year* in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsors, after consideration of any cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement, to meet: (a) the projected *non-Federal proportionate share of financial obligations for construction* for that *fiscal year* for such continuing contract and (b) the Non-Federal Sponsors' share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement for that *fiscal year* for such continuing contract. No later than 30 calendar days prior to the beginning of that *fiscal year*, the SW IL FPDC shall make the full amount of such required funds for that *fiscal year* available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. For each contract for the *Project* where the Government will not use a continuing contract to make *financial obligations for construction* or financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement, the Government shall notify the Non-Federal Sponsors in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for such contract, of the funds the Government determines to be required from the Non-Federal Sponsors, after consideration of any cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement, to meet: (a) the projected *non-Federal proportionate share of financial obligations for construction* to be incurred for such contract and (b) the Non-Federal Sponsors' share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement to be incurred for such contract. No later than such scheduled date, the SW IL FPDC 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.

c. Where the Government projects that it will make *financial obligations for construction* of the *Project* using the Government's own forces or financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement using the Government's own forces, the Government shall notify the Non-Federal Sponsors in writing, no later than 60 calendar days prior to the beginning of each *fiscal year* in which the Government projects that it will make such financial obligations, of the funds the Government determines to be required from the Non-Federal Sponsors, after consideration of any cash contribution provided by a non-Federal interest pursuant to the terms of the Design Agreement, to meet: (a) the projected *non-Federal proportionate share of financial obligations for construction* using the Government's own forces for that *fiscal year* and (b) the Non-Federal Sponsors' share of the projected financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement using the Government's own forces for that *fiscal year*. No later than 30 calendar days prior to the beginning of that *fiscal year*, the SW IL FPDC shall make the full amount of such required funds for that *fiscal year* 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 SW IL FPDC such sums as the Government deems necessary, after consideration of any contributions provided by a non-Federal interest pursuant to the terms of the Design Agreement, to cover: (a) the *non-Federal proportionate share of financial obligations for construction* incurred prior to the commencement of the *period of construction*; (b) the *non-Federal proportionate share of financial obligations for construction* as *financial obligations for construction* are incurred; and (c) the Non-Federal Sponsors' share of financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement as those financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsors to cover the Non-Federal Sponsors' share of such financial obligations in the current *fiscal year*, the Government shall notify the Non-Federal Sponsors 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 SW IL FPDC 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 construction* and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsors with written notice of the results of such final accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsors with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsors with written notice of the results of such final

accounting. The interim or final accounting, as applicable, shall determine *total project costs* and the costs of any data recovery activities associated with historic preservation. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine 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 Sponsors' total required shares of *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsors' total contributions provided thereto, the SW IL FPDC, 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, St. Louis District (B3)" to the District Engineer or by 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 Sponsors for *total project costs* and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsors' total required shares thereof, the Government, subject to the availability of funds, shall refund or reimburse the excess amount to the SW IL FPDC within 90 calendar days of the date of completion of such accounting. However, the SW IL FPDC shall not be entitled to any refund of the 5 percent cash contribution required pursuant to Article II.B.1. of this Agreement. In the event the SW IL FPDC is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the SW IL FPDC, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The SW IL FPDC shall provide the contribution of funds required by Article II.G. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 60calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsors in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsors to cover the costs of the additional work. No later than 30 calendar days prior to the Government incurring any financial obligation for additional work, the SW IL FPDC shall provide the Government with the full amount of the funds required to cover the costs of such additional work through any of the payment mechanisms specified in paragraph B.1. of this Article.

2. The Government shall draw from the funds provided by the SW IL FPDC such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. If at any time the Government determines that the Non-Federal Sponsors must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsors in

writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the SW IL FPDC 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.

3. At the time the Government conducts the interim or final accounting, as applicable, the Government shall conduct an accounting of the Government's financial obligations for additional work incurred and furnish the Non-Federal Sponsors with written notice of the results of such accounting. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting of additional work from being conducted in a timely manner, the Government shall conduct an interim accounting of additional work and furnish the Non-Federal Sponsors with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall amend the interim accounting of additional work to complete the final accounting of additional work and furnish the Non-Federal Sponsors with written notice of the results of such final accounting. Such interim or final accounting, as applicable, shall determine the Government's total financial obligations for additional work and the Non-Federal Sponsors' contribution of funds provided thereto as of the date of such accounting.

a. Should the interim or final accounting, as applicable, show that the total obligations for additional work exceed the total contribution of funds provided by the SW IL FPDC for such additional work, the SW IL FPDC, 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, St. Louis District" to the District Engineer or by providing an Electronic Funds Transfer in accordance with procedures established by the Government.

b. Should the interim or final accounting, as applicable, show that the total contribution of funds provided by the SW IL FPDC for additional work exceeds the total obligations for such additional work, the Government, subject to the availability of funds, shall refund the excess amount to the SW IL FPDC within 90 calendar days of the date of completion of such accounting. In the event the SW IL FPDC is due a refund and funds are not available to refund the excess amount to the SW IL FPDC, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - 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 VIII - OPERATION, MAINTENANCE, REPAIR, REHABILITATION, AND REPLACEMENT (OMRR&R)

A. Upon receipt of the notification from the District Engineer in accordance with Article II.C. of this Agreement and for so long as the *Project* remains authorized, the Wood River D&LD, pursuant to Article II.D. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire *Project* or *functional portion of the Project*, at no cost to the Government. The Wood River D&LD shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible with the *Project's* authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Wood River D&LD hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Wood River D&LD now or hereafter owns or controls for access to the *Project* for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. If an inspection shows that the Wood River D&LD for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Wood River D&LD. If, after 30 calendar days from receipt of such written notice by the Government, the Wood River D&LD continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Wood River D&LD now or hereafter owns or controls for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the *Project*. No completion, operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Wood River D&LD of responsibility to meet the Wood River D&LD's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX – HOLD AND SAVE

The Non-Federal Sponsors shall hold and save the Government free from all damages arising from construction, operation, maintenance, repair, rehabilitation, and replacement of the *Project* and any *betterments*, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - 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 Sponsors 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 Sponsors 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 Sponsors 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 Sponsors are responsible for complying with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507), as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsors and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsors and independent auditors any information necessary to enable an audit of the Non-Federal Sponsors' 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 *Project* shall be included in *total project 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 Sponsors are 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 No. 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 project costs* and shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsors and the Government shall comply with all applicable Federal and State laws and regulations, including, but not limited to: Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d) and Department of Defense Directive 5500.11 issued pursuant thereto; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements

including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a *et seq.*), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 *et seq.*) and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors each act in an independent capacity, and none are to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, no party shall provide, without the consent of the other parties, any contractor with a release that waives or purports to waive any rights the other parties may have to seek relief or redress against that contractor either pursuant to any cause of action that the other parties may have or for violation of any law.

ARTICLE XIII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsors fail to fulfill their 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 work on the *Project* 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 *Project*.

B. In the event the Government projects that the amount of Federal funds the Government will make available to the *Project* through the then-current *fiscal year*, or the amount of Federal funds the Government will make available for the *Project* through the upcoming *fiscal year*, is not sufficient to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsors 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 *Project* will be exhausted. Upon the exhaustion of Federal funds made available by the Government to the *Project*, future performance under this Agreement shall be suspended. Such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsors in writing that sufficient Federal funds are available to meet the Federal share of *total project costs* and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement the

Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsors elect to terminate this Agreement.

C. In the event that the Government and the Non-Federal Sponsors determine to suspend future performance under this Agreement in accordance with Article XIV.C. of this Agreement, such suspension shall remain in effect until the Government and the Non-Federal Sponsors agree to proceed or to terminate this Agreement. In the event that the Government suspends future performance under this Agreement in accordance with Article XIV.C. of this Agreement due to failure to reach agreement with the Non-Federal Sponsors on whether to proceed or to terminate this Agreement, or the failure of the Non-Federal Sponsors to provide funds to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsors' responsibilities under Article XIV.C. of this Agreement, such suspension shall remain in effect until: 1) the Government and Non-Federal Sponsors reach agreement on how to proceed or to terminate this Agreement; 2) the Non-Federal Sponsors provide funds necessary to pay for cleanup and response costs and otherwise discharge their responsibilities under Article XIV.C. of this Agreement; 3) the Government continues work on the *Project*; or 4) the Government terminates this Agreement in accordance with the provisions of Article XIV.C. of this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article or Article XIV.C. of this Agreement, all parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article VI.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total funds contributed by the SW IL FPDC in accordance with Article II.B.1., Article II.B.3., and Article XVII.B.3. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

E. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XIV.C. of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsors 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 XIV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the SW IL FPDC shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsors determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA") (42 U.S.C. 9601-9675), that may exist in, on, or under lands, easements, and

rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsors with prior specific written direction, in which case the SW IL FPDC shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the SW IL FPDC for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

2. All actual costs incurred by the Government for such investigations for hazardous substances shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*, the Non-Federal Sponsors and the Government, in addition to providing any other notice required by applicable law, shall provide prompt written notice to each other, and the Non-Federal Sponsors shall not proceed with the acquisition of the real property interests until the parties agree that the Non-Federal Sponsors should proceed.

C. The Government and the Non-Federal Sponsors shall determine whether to initiate construction of the *Project*, or, if already in construction, whether to continue with construction of the *Project*, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the *Project*. Should the Government and the Non-Federal Sponsors determine to initiate or continue with construction of the *Project* after considering any liability that may arise under CERCLA, the SW IL FPDC shall be responsible, as between the Government and the Non-Federal Sponsors, for the costs of cleanup and response, including 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 *total project costs*. In the event the Non-Federal Sponsors do not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fail to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsors' responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the *Project*.

D. The Non-Federal Sponsors and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary cleanup and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsors, the Wood River D&LD shall be considered the operator of the *Project* for purposes of CERCLA liability. To the maximum extent practicable, the Wood River D&LD shall operate, maintain, repair, rehabilitate, and replace the *Project* in a manner that will not cause liability to arise under CERCLA.

ARTICLE XV - 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:

Chairman
Southwestern Illinois Flood Prevention District Council
104 United Drive
Collinsville, Illinois 62234

President
Wood River Drainage and Levee District
543 West Madison Avenue
Wood River, Illinois 62095

If to the Government:

District Engineer
U.S. Army Corps of Engineers, St. Louis
1222 Spruce Street
St. Louis, Missouri 63103

B. A party may change the address to which such communications are to be directed by giving written notice to the other parties 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 XVI - 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 XVII - HISTORIC PRESERVATION

A. The Government, as it determines necessary for the *Project*, shall perform any identification, survey, or evaluation of historic properties. Any costs incurred by the Government for such work shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

B. The Government, as it determines necessary for the *Project*, shall perform or ensure the performance of any mitigation activities or actions for historic properties or that are otherwise associated with historic preservation including data recovery activities.

1. Any costs incurred by the Government for such mitigation activities, except for data recovery activities associated with historic preservation, shall be included in *total project costs* and shared in accordance with the provisions of this Agreement.

2. As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in *total project costs*, up to the statutory limit of one percent of the total amount authorized to be appropriated to the Government for the *Project*.

3. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph B.2. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)). Any costs of data recovery activities associated with historic preservation that exceed the one percent limit shall not be included in *total project costs* but shall be shared between the Non-Federal Sponsors and the Government consistent with the minimum cost sharing requirements for flood risk management, as follows: 35 percent will be borne by the SW IL FPDC and 65 percent will be borne by the Government.

C. If, during its performance of *relocations* or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material in accordance with Article III of this Agreement, the Non-Federal Sponsors discover historic properties or other cultural resources that have not been evaluated by the Government pursuant to this Article, the Non-Federal Sponsors shall provide prompt

written notice to the Government of such discovery. The Non-Federal Sponsors shall not proceed with performance of the *relocation* or construction of the improvement that is related to such discovery until the Government provides written notice to the Non-Federal Sponsors that they should proceed with such work.

ARTICLE XVIII - 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.

ARTICLE XIX - NON-LIABILITY OF OFFICERS AND EMPLOYEES

No officer, agent, consultant, or employee of the Non-Federal Sponsors, nor any officer, agent, consultant, or employee of the Government, may be charged personally, or held liable, under the terms or provisions of this Agreement because of any breach, attempted breach, or alleged breach thereof, except as provided in Section 912(b) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (42 U.S.C. 1962d-5b note), or other applicable law.

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

DEPARTMENT OF THE ARMY

SOUTHWESTERN ILLINOIS FLOOD PREVENTION DISTRICT COUNCIL

BY: _____
Christopher Hall
Colonel, US Army
District Commander

BY: _____
Les Sterman
Chief Supervisor of Construction
and the Works

DATE: _____

DATE: _____

WOOD RIVER DRAINAGE AND LEVEE DISTRICT

BY: _____
Steve Kochan
President

DATE: _____

CERTIFICATE OF AUTHORITY

I, Robert Sprague, do hereby certify that I am the principal legal officer of the Southwestern Illinois Flood Prevention District Council, that the Southwestern Illinois Flood Prevention District Council 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 Southwestern Illinois Flood Prevention District Council in connection with the Design Deficiency Corrections for Wood River, Illinois Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the Southwestern Illinois Flood Prevention District Council have acted within their statutory authority.

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

Robert Sprague
Attorney for the Southwestern Illinois
Flood Prevention District Council

CERTIFICATE OF AUTHORITY

I, Rene Butler, do hereby certify that I am the principal legal officer of the Wood River Drainage and Levee District, that the Wood River Drainage and Levee District 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 Wood River Drainage and Levee District in connection with the Design Deficiency Corrections for Wood River, Illinois Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Agreement on behalf of the Wood River Drainage and Levee District have acted within their statutory authority.

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

Rene Butler
Attorney
Wood River Drainage and Levee District

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.

Les Sterman
Chief Supervisor of Construction and the Works
Southwestern Illinois Flood Prevention District Council

DATE: _____

Steve Kochan
President
Wood River Drainage and Levee District

DATE: _____