

DATE: August 4, 2025

MEMO TO: Paul Frank, Chair
Planning Committee

Gina Roberts, Chair
Finance Committee

FROM: Pati Vitt
Director of Natural Resources

RECOMMENDATION: Recommend approval of a Resolution Approving a Project Partnership Agreement with the U.S. Army Corps of Engineers (ACOE) to continue design and implementation for the Des Plaines Phase II projects at Raven Glen, Prairie Stream and Sedge Meadow Forest Preserves.

STRATEGIC DIRECTIONS SUPPORTED: Conservation; Leadership; Organizational Sustainability

FINANCIAL DATA: The proposed Project Partnership Agreement between the ACOE and the District estimates construction costs (excluding cost-shared monitoring and adaptive management) at \$92,401,339.72. Of this amount, the ACOE is expected to contribute \$60,060,870.82 (65%), while the local sponsors are responsible for \$32,340,468.90 (35%). The local sponsors' shares include projected credit for real property interests totaling \$32,340,468.90, projected in-kind contributions valued at \$20,845.00. If all three projects proceed, no additional District funds will be required to meet its cost-share responsibilities.

The Prairie Stream project specifically requires the participation and consent of the Illinois Department of Natural Resources (IDNR), because that project includes a portion of Red Wing Slough (owned by IDNR). If IDNR does not participate in the project, ACOE estimates that the District's local share would be \$550,000.

Following initial project implementation, the costs for five years of monitoring and adaptive management across all three projects are projected at \$3,343,662.98. Of this, the ACOE would cover \$2,173,380.94 (65%), and the local sponsors would cover \$1,170,282.04 (35%). It is anticipated that District staff will provide the required monitoring services as an in-kind contribution to satisfy its share.

The ACOE estimates the average annual costs for operation, maintenance, repair, replacement, and rehabilitation at \$222,910.97.

BACKGROUND: In 2012, the ACOE prepared the Upper Des Plaines River Phase II Feasibility Plan (the "Phase II Plan") to address flooding and water quality issues in Lake County and surrounding counties. On January 17, 2014 the District executed a Letter of Intent with the ACOE indicating interest in entering into cost-sharing agreements for six habitat restoration projects that are

part of the ACOE's proposed Upper Des Plaines River Phase II Project, arising out of the Phase II Plan. From time to time, the District has executed additional Letters of Intent in support of some or all of these projects.

The Phase II Plan projects are federally authorized under Section 1401 of the Water Resources Development Act of 2016 as an aquatic ecosystem restoration priority, following the comprehensive feasibility analysis completed and approved by ACOE's Chicago District Commander in January 2016. In May, 2023, the District entered into a Project Engineering and Design (PED) Agreement, kicking off a collaborative design effort for the project at Raven Glen that included District staff and ACOE engineering and other personnel. The next stage in the development and implementation of the projects at Raven Glen, Sedge Meadow, and Prairie Stream requires the District and the ACOE to enter into a Project Partnership Agreement (PPA). Further, as discussed below, full implementation of the Prairie Stream project will require IDNR participation.

The Phase II Plan proposes several projects to address flooding and water quality issues, including the following District projects that would require the use of District land (and, in one case, land owned by IDNR) and have ecological restoration benefits for the District, including water retention and native species habitat restoration, which are described in more detail in the Phase II Plan:

- Pollack Lake and Hastings Creek Riparian Wetlands (Raven Glen Forest Preserve)
- Red Wing Slough and Deer Lake Wetland Complex (this project area includes Prairie Stream Forest Preserve (owned by the District) and land owned by IDNR)
- Gurnee Woods Riparian Wetlands (Sedge Meadow Forest Preserve)

Because the Red Wing Slough and Deer Lake Wetland Complex (Prairie Stream) project includes land owned by IDNR, the project cannot be fully implemented on that site unless and until IDNR enters into an agreement with ACOE that allows Red Wing Slough to be part of the project (the "IDNR Agreement"). Any IDNR Agreement would likely be in the form of a future amendment to the PPA. District staff has had initial discussions with IDNR concerning its participation in the Prairie Stream project. IDNR staff acknowledged the benefits provided by the project.

ACOE staff has stated that it is willing to put the Prairie Stream project on hold, including design activities that would generate local cost share obligations, unless and until the IDNR Agreement is reached. Although that commitment is not included in the PPA, District staff will seek to secure this commitment in a letter agreement with ACOE.

The Letters of Support that the District has sent over the years included a number of criteria for a future PPA. While most of those criteria are satisfied by the PPA or by other federal requirements, some are not, including:

1. **A prompt, complete, and detailed accounting of the Non-Federal Share from the Federal government upon completion of the District Project** – While the PPA requires a "final accounting," it does not define that term. ACOE staff rejected detailed language proposed by Corporate Counsel. While ACOE staff is willing to seek ACOE Headquarters approval for the District's alternative language, ACOE staff said that could result in a six-month delay. The PPA does allow the District to audit the ACOE at the District's cost.

2. **Valuing any land, easements, or rights-of-way at their highest and best use** – Under the ACOE’s appraisal methodology, the District’s land will be valued as conservation land, not at its “highest and best use”. This will likely be a moot issue if the IDNR Agreement is approved, because the value of the IDNR-owned property, even at conservation land values, will be sufficient (in aggregate with the value of District land) to satisfy the local sponsors’ local share obligations.

The PPA encompasses three high-priority restoration sites. The restoration aims to improve regional flood attenuation, water quality, and ecological function on District-owned lands, and to provide enduring public and environmental benefits aligned with District strategic goals. District staff (i) believes that all three projects proposed as part of the Phase II Plan provide substantial benefit to the District's long-term restoration goals and (ii) recommends Board approval of the PPA. District staff will continue to work with IDNR in an effort to secure its participation in the PPA and to minimize the District’s local share.

REVIEW BY OTHERS: Chief Operations Officer, Director of Finance, Manager of Board Operations, Corporate Counsel.

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**A RESOLUTION APPROVING A PROJECT PARTNERSHIP AGREEMENT WITH
THE U.S. ARMY CORPS OF ENGINEERS FOR THE UPPER DES PLAINES RIVER
PHASE II PROJECTS AT RAVEN GLEN, PRAIRIE STREAM, AND SEDGE
MEADOW FOREST PRESERVES**

WHEREAS, the Lake County Forest Preserve District (the “District”) owns properties (Properties) known Raven Glen Forest Preserve, Prairie Stream Forest Preserve, and Sedge Meadow Forest Preserve in Lake County, Illinois; and

WHEREAS, it is in the best interests of the District to restore these Properties to improve aquatic ecological communities and hydrological process within a tributary of the Des Plaines River (the “Project”); and

WHEREAS, the Project was identified as part of the Upper Des Plaines River and Tributaries Aquatic Ecosystem Restoration Project, which is authorized by Section 1401 of the Water Resources Development Act of 2016 (P.L. 114-322) as a priority project; and

WHEREAS, Section 1401 Water Resources Development Act authorizes a program (the “Program”) that provides funds to restore and protect aquatic wildlife, plant communities and ecosystem functions, under which Program local sponsors must provide local match funding of thirty five percent of project costs; and

WHEREAS, it is in the best interests of the District and consistent with the District’s Road Map to 2025 to enter into a Project Partnership Agreement (the “Agreement”) with the U.S. Army Corps of Engineers for the completion of the Project through the Program, under which the District will be required to provide local match funding for the Project of thirty five percent of the Project cost;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois **THAT**:

Section 1: Recitals. The recitals set forth above are incorporated as a part of this Resolution by this reference.

Section 2: Approval of the Agreement. The Agreement is hereby approved in substantially the form attached hereto.

Section 3: Execution of Agreement. The Executive Director and Secretary of the District are hereby authorized and directed to execute and attest to the Agreement in substantially the form attached hereto. The Executive Director and Corporate Counsel are further authorized to execute such other documents as are necessary to effectuate the Agreement, provided that such documents are consistent with this Resolution and the Agreement.

Section 4: Effective Date. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this _____ day of _____, 2025

AYES:

NAYS:

APPROVED this _____ day of _____, 2025

Jessica Vealitzek, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____

PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
LAKE COUNTY FOREST PRESERVE DISTRICT
FOR
UPPER DES PLAINES RIVER AND TRIBUTARIES AQUATIC ECOSYSTEM
RESTORATION PROJECT

THIS AGREEMENT is entered into this ____ day of _____, _____, by and between the Department of the Army (hereinafter the “Government”), represented by the District Commander and the Lake County Forest Preserve District (hereinafter the “Non-Federal Sponsor”), represented by its Executive Director.

WITNESSETH, THAT:

WHEREAS, construction of the Upper Des Plaines River and Tributaries Aquatic Ecosystem Restoration Project (hereinafter the “Project”, as further defined in Article I.A. of this Agreement) was authorized by Section 1401 of the Water Resources Development Act of 2016 (P.L. 114-322);

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

WHEREAS, the Non-Federal Sponsor has waived reimbursement for the value of real property interests and relocations that exceeds 35 percent of construction costs; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement and acknowledge that Section 221 of the Flood Control Act of 1970, as amended (42 U.S.C. 1962d-5b), provides that this Agreement shall be enforceable in the appropriate district court of the United States.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term “Project” means aquatic ecosystem restoration at Pollack Lake and Hasting’s Creek Riparian Wetlands (AKA Raven Glen) Red Wing Slough (AKA Prairie Stream), and Gurnee Woods Riparian Wetland (AKA Sedge Meadow) in Lake County, Illinois, as generally described in the Upper Des Plaines River and Tributaries, Illinois and Wisconsin Integrated Feasibility Report and Environmental Assessment, dated January 2015 and approved by the District Commander for Chicago District on January 7, 2016 (hereinafter the “Decision Document”).

B. The term “HTRW” means hazardous, toxic, and radioactive wastes, which includes any material listed as a “hazardous substance” (42 U.S.C. 9601(14)) regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter “CERCLA”) (42 U.S.C. 9601-9675) and any other regulated material in accordance with applicable laws and regulations.

C. The term “construction costs” means all costs incurred by the Government and Non-Federal Sponsor in accordance with the terms of this Agreement that are directly related to design and construction of the Project and cost shared. The term includes the Government’s costs and the Non-Federal Sponsor’s creditable contributions pursuant to the terms of the Design Agreement executed on May 04, 2023; the Government’s engineering, design, and construction costs, including cost shared monitoring and adaptive management, if any; the Government’s supervision and administration costs; the Non-Federal Sponsor’s creditable costs for providing real property interests and relocations and for providing in-kind contributions, if any; and the costs of historic preservation activities except for data recovery for historic properties. The term does not include any costs for operation, maintenance, repair, rehabilitation, or replacement; HTRW cleanup and response; dispute resolution; participation by the Government and the Non-Federal Sponsor in the Project Coordination Team to discuss significant issues and actions; audits; or the Non-Federal Sponsor’s cost to negotiate this Agreement.

D. The term “real property interests” means lands, easements, and rights-of-way, including those required for relocations and borrow and dredged material placement areas. Acquisition of real property interests may require the performance of relocations.

E. The term “relocation” means the provision of a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is required by applicable legal principles of just compensation. Providing a functionally equivalent facility may include the alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

F. The term “functional portion thereof” means a portion of the Project that has been completed and that can function independently, as determined in writing by the District Commander for Chicago District (hereinafter the “District Commander”), although the remainder of the Project is not yet complete.

G. The term “cost shared monitoring” means those activities, including the collection and analysis of data, for a period not to exceed 10 years, that the Government identifies as necessary to determine if predicted outputs of the Project are being achieved and to determine if adaptive management is necessary, as generally described in the Decision Document. The term does not include monitoring after the Division Commander for Great Lakes and Ohio River Division (hereinafter the “Division Commander”) has determined that ecological success has been achieved or monitoring beyond the 10-year period, with any such monitoring the responsibility of the Non-Federal Sponsor, at no cost to the Government.

H. The term “cost shared adaptive management” means physical modifications to the Project, in response to the cost shared monitoring results to ensure the functionality and benefits of the Project are garnered, as explicitly described in the performance standards section of the adaptive management plan or other sections in the Decision Document and its supporting documentation. The term does not include operational changes, which are the responsibility of the Non-Federal Sponsor, at no cost to the Government, as part of operation and maintenance of the Project.

I. The term “in-kind contributions” means those materials or services provided by the Non-Federal Sponsor that are identified as being integral to the Project by the Division Commander. To be integral to the Project, the material or service must be part of the work that the Government would otherwise have undertaken for design and construction of the Project. The in-kind contributions also include any initial investigations performed by the Non-Federal Sponsor to identify the existence and extent of any HTRW that may exist in, on, or under real property interests required for the Project; however, it does not include HTRW cleanup and response.

J. The term “fiscal year” means one year beginning on October 1st and ending on September 30th of the following year.

K. The term “Maximum Cost Limit” means the statutory limitation, as applicable, on the total cost of the Project, as determined by the Government in accordance with Section 902 of WRDA 1986, as amended (33 U.S.C. 2280) and Government regulations issued thereto.

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall undertake construction of the Project using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including but not limited to, if applicable, Section 601 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

B. The Non-Federal Sponsor shall contribute 35 percent of construction costs, as follows:

1. In accordance with Article III, the Non-Federal Sponsor shall provide the real property interests and relocations required for construction, operation, and maintenance of the Project.

2. If providing in-kind contributions as part of its 35 percent cost share, the Non-Federal Sponsor shall obtain all applicable licenses and permits necessary for such work. As functional portions of the work are completed, the Non-Federal Sponsor shall begin operation

and maintenance of such work. Upon completion of each functional portion of the work, the Non-Federal Sponsor shall so notify the Government within 30 calendar days and provide the Government with a copy of as-built drawings for the work.

3. After considering the contributions provided pursuant to the Design Agreement and the estimated amount of credit that will be afforded to the Non-Federal Sponsor pursuant to paragraphs B.1. and B.2., above, the Government shall determine the estimated amount of funds required from the Non-Federal Sponsor to meet its 35 percent cost share for the then-current fiscal year. No later than 60 calendar days after receipt of notification from the Government, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.C.

4. No later than August 1st prior to each subsequent fiscal year, the Government shall provide the Non-Federal Sponsor with a written estimate of the full amount of funds required from the Non-Federal Sponsor during that fiscal year to meet its cost share. No later than September 1st prior to that fiscal year, the Non-Federal Sponsor shall provide the full amount of such required funds to the Government in accordance with Article VI.C.

C. To the extent practicable and in accordance with Federal law, regulations, and policies, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on contract solicitations, including relevant plans and specifications, prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

D. The Government, as it determines necessary, shall undertake actions associated with historic preservation, including the identification and treatment of historic properties as those properties are defined in the National Historic Preservation Act of 1966, as amended (54 U.S.C. 300101-307108). All costs incurred by the Government for such work (including the mitigation of adverse effects other than data recovery) shall be included in construction costs and shared in accordance with the provisions of this Agreement. If historic properties are discovered during construction and the effect(s) of construction are determined to be adverse, strategies shall be developed to avoid, minimize, or mitigate these adverse effects. In accordance with 54 U.S.C. 312507, up to 1 percent of the total amount authorized to be appropriated for the Project may be applied toward data recovery of historic properties and such costs shall be borne entirely by the Government. In the event that costs associated with data recovery of historic properties exceed 1 percent of the total amount authorized to be appropriated for the Project, in accordance with 54 U.S.C. 312508, the Government will seek a waiver from the 1 percent limitation under 54 U.S.C. 312507 and upon receiving the waiver, will proceed with data recovery at full Federal expense. Nothing in this Agreement shall limit or otherwise prevent the Non-Federal Sponsor from voluntarily contributing costs associated with data recovery that exceed 1 percent.

E. When the District Commander determines that construction of the Project, excluding cost shared monitoring and adaptive management, or a functional portion thereof, is complete, the District Commander shall so notify the Non-Federal Sponsor in writing within 30 calendar

days of such determination, and the Non-Federal Sponsor, at no cost to the Government, shall operate, maintain, repair, rehabilitate, and replace the Project, or such functional portion thereof. Such activities will generally consist of removal of invasive species, planting native species, and controlled burns. The Government shall furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the “OMRR&R Manual”) and copies of all as-built drawings for the completed work. The Government shall provide the Non-Federal Sponsor with an updated OMRR&R Manual and as-built drawings, as necessary, based on the cost shared monitoring and adaptive management.

1. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner consistent with the Project’s authorized purpose and in accordance with applicable Federal laws and regulations, and the Government’s specific directions in the OMRR&R Manual. The Government and the Non-Federal Sponsor shall consult on any subsequent updates or amendments to the OMRR&R Manual.

2. The Government may enter, at reasonable times and in a reasonable manner, upon real property interests that the Non-Federal Sponsor now or hereafter owns or controls to inspect the Project, and, if necessary, to undertake any work necessary to the functioning of the Project for its authorized purpose. If the Government determines that the Non-Federal Sponsor is failing to perform its obligations under this Agreement and the Non-Federal Sponsor does not correct such failures within a reasonable time after notification by the Government, the Government, at its sole discretion, may undertake any operation, maintenance, repair, rehabilitation, or replacement of the Project. No operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of its obligations under this Agreement or preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance of this Agreement.

F. The Non-Federal Sponsor shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) that might reduce the outputs produced, hinder operation and maintenance, or interfere with the proper function of the Project.

G. The Non-Federal Sponsor shall not use the Project, or real property interests required for construction, operation, and maintenance of the Project, as a wetlands bank or mitigation credit for any other project.

H. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Project. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

I. In addition to the ongoing, regular discussions between the parties regarding Project delivery, the Government and the Non-Federal Sponsor may establish a Project Coordination Team to discuss significant issues or actions. The Government’s costs for participation on the

Project Coordination Team shall not be included in construction costs that are cost shared but shall be included in calculating the Maximum Cost Limit. The Non-Federal Sponsor's costs for participation on the Project Coordination Team shall not be included in construction costs that are cost shared and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE III - REAL PROPERTY INTERESTS AND RELOCATIONS

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the real property interests required for construction, operation, and maintenance of the Project. The Government shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the real property interests that the Government determines the Non-Federal Sponsor must provide for construction, operation, and maintenance of the Project, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition. Prior to initiating acquisition and in accordance with Article IV.A., the Non-Federal Sponsor shall investigate to verify that HTRW does not exist in, on, or under the real property interests required for construction, operation, and maintenance of the Project. Subject to the requirements in Article IV.B., the Non-Federal Sponsor shall acquire the real property interests and shall provide the Government with authorization for entry thereto according to the Government's construction schedule for the Project. The Non-Federal Sponsor shall ensure that real property interests provided for the Project are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations required for construction, operation, and maintenance of the Project, provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations, and provide the Non-Federal Sponsor with a written notice to proceed with such relocations. The Non-Federal Sponsor shall perform or ensure the performance of these relocations in accordance with the Government's construction schedule for the Project.

C. To the maximum extent practicable, no later than 60 calendar days after the Government provides the Non-Federal Sponsor with written descriptions and maps of the real property interests and relocations required for construction, operation, and maintenance of the Project, the Non-Federal Sponsor may request in writing that the Government acquire all or specified portions of such real property interests, or perform the necessary relocations. If the Government agrees to such a request, the Non-Federal Sponsor, in accordance with Article VI.F., must provide funds sufficient to cover the costs of the acquisitions, or relocations in advance of the Government performing the work. The Government shall acquire the real property interests, and perform the relocations, applying Federal laws, policies, and procedures. The Government shall acquire real property interests in the name of the Non-Federal Sponsor except, if acquired by eminent domain, the Government shall convey all of its right, title, and interest to the Non-Federal Sponsor by quitclaim deed or deeds. The Non-Federal Sponsor shall accept delivery of such deed or deeds. The Government's provision of real property interests or performing relocations on the Non-Federal Sponsor's behalf does not alter the Non-Federal Sponsor's

responsibility under Article IV for the performance and costs of any HTRW cleanup and response related thereto.

D. In acquiring the real property interests for the Project, the Non-Federal Sponsor assures the Government that it will comply with the following:

(1) fair and reasonable relocation payments and assistance shall be provided to or for displaced persons, as are required to be provided by a Federal agency under 42 U.S.C. 4622, 4623 and 4624;

(2) relocation assistance programs offering the services described in 42 U.S.C. 4625 shall be provided to such displaced persons;

(3) within a reasonable period of time prior to displacement, comparable replacement dwellings will be available to displaced persons in accordance with 42 U.S.C. 4625(c)(3);

(4) in acquiring real property, the Non-Federal Sponsor will be guided, to the greatest extent practicable under State law, by the land acquisition policies in 42 U.S.C. 4651 and the provisions of 42 U.S.C. 4652; and

(5) property owners will be paid or reimbursed for necessary expenses as specified in 42 U.S.C. 4653 and 4654.

ARTICLE IV - HTRW

A. The Non-Federal Sponsor shall be responsible for undertaking any investigations to identify the existence and extent of any HTRW regulated under applicable law that may exist in, on, or under real property interests required for construction, operation, and maintenance of the Project.

B. In the event it is discovered that HTRW exists in, on, or under any of the real property interests needed for construction, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide written notice to each other within 15 calendar days of such discovery, in addition to providing any other notice required by applicable law. If HTRW is discovered prior to acquisition, the Non-Federal Sponsor shall not proceed with the acquisition of such real property interests until the parties agree that the Non-Federal Sponsor should proceed. If HTRW is discovered after acquisition of the real property interests, no further Project activities within the contaminated area shall proceed until the parties agree on an appropriate course of action.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall consider any liability that might arise under applicable law and determine whether to initiate construction, or if already initiated, whether to continue, suspend, or terminate construction.

1. Should the parties initiate or continue construction, the Non-Federal Sponsor shall be solely responsible, as between the Government and the Non-Federal Sponsor, for the performance and costs of HTRW cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. The Non-Federal Sponsor shall pay such costs without reimbursement or credit by the Government. In no event will the Government proceed with that construction before the Non-Federal Sponsor has completed the required cleanup and response actions.

2. In the event the parties cannot reach agreement on how to proceed or the Non-Federal Sponsor fails to discharge its responsibilities under this Article upon direction by the Government, the Government may suspend or terminate construction. Additionally, the Government may undertake any actions it determines necessary to avoid a release of such HTRW with the Non-Federal Sponsor responsible for such costs without credit or reimbursement by the Government.

D. In the event of a HTRW discovery, the Non-Federal Sponsor and the Government shall initiate consultation with each other within 15 calendar days in an effort to ensure that responsible parties bear any necessary cleanup and response costs as required by applicable law. Any decision made pursuant to this Article shall not relieve any third party from any HTRW liability that may arise under applicable law.

E. To the maximum extent practicable, the Government and Non-Federal Sponsor shall perform their responsibilities under this Agreement in a manner that will not cause HTRW liability to arise under applicable law.

F. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the owner and operator of the Project for purposes of CERCLA liability or other applicable law.

ARTICLE V - CREDIT FOR REAL PROPERTY INTERESTS, RELOCATIONS, AND IN-KIND CONTRIBUTIONS

A. The Government shall include in construction costs, and credit towards the Non-Federal Sponsor's share of such costs, the value of Non-Federal Sponsor provided real property interests and relocations, and the costs of in-kind contributions determined by the Government to be required for the Project.

B. To the maximum extent practicable, no later than 3 months after it provides the Government with authorization for entry onto a real property interest or pays compensation to the owner, whichever occurs later, the Non-Federal Sponsor shall provide the Government with documents sufficient to determine the amount of credit to be provided for the real property interests in accordance with paragraph C.1. of this Article. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsor shall provide the

Government with documentation sufficient for the Government to determine the amount of credit to be provided for other creditable items in accordance with paragraph C. of this Article.

C. The Government and the Non-Federal Sponsor agree that the amount of costs eligible for credit that are allocated by the Government to construction costs shall be determined and credited in accordance with the following procedures, requirements, and conditions and subject to audit in accordance with Article X.B. to determine reasonableness, allocability, and allowability of costs.

1. Real Property Interests.

a. General Procedure. For each real property interest, the Non-Federal Sponsor shall obtain an appraisal of the fair market value of such interest that is prepared by a qualified appraiser who is acceptable to the parties. Subject to valid jurisdictional exceptions, the appraisal shall conform to the Uniform Standards of Professional Appraisal Practice. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government.

(1) Date of Valuation. For any real property interests owned by the Non-Federal Sponsor on the effective date of this Agreement and required for construction performed after the effective date of this Agreement, the date the Non-Federal Sponsor provides the Government with authorization for entry thereto shall be used to determine the fair market value. For any real property interests required for in-kind contributions covered by an In-Kind Memorandum of Understanding between the Government and Non-Federal Sponsor, the date of initiation of construction shall be used to determine the fair market value. The fair market value of real property interests acquired by the Non-Federal Sponsor 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) Except for real property interests not eligible for credit, or those acquired through eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall submit an appraisal for each real property interest to the Government for review and approval no later than, to the maximum extent practicable, 60 calendar days after the Non-Federal Sponsor provides the Government with an authorization for entry for such interest or concludes the acquisition of the interest through negotiation or eminent domain proceedings, whichever occurs later. If, after coordination and consultation with the Government, the Non-Federal Sponsor is unable to provide an appraisal that is acceptable to the Government, the Government shall obtain an appraisal to determine the fair market value of the real property interest for crediting purposes.

(3) The Government shall credit the Non-Federal Sponsor the appraised amount approved by the Government. Where the amount paid or proposed to be paid by the Non-Federal Sponsor exceeds the approved appraised amount, the Government, at the Non-Federal Sponsor's request, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the appraised amount for crediting purposes.

b. Eminent Domain Procedure. For real property interests acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall notify the Government in writing of its intent to institute such proceedings. If such real property interests are eligible for credit, the Non-Federal Sponsor shall submit the appraisals of the specific real property interests to be acquired for review and approval by the Government. If the Government provides written approval of the appraisals, the Non-Federal Sponsor shall use the amount set forth in such appraisals as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If the Government provides written disapproval of the appraisals, the Government and the Non-Federal Sponsor shall consult to promptly resolve the issues that are identified in the Government's written disapproval. In the event that the issues cannot be resolved, the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. The fair market value for crediting purposes shall be either the amount of the court award for the real property interests taken or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

c. Waiver of Appraisal. Except as required by paragraph C.1.b. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if, in accordance with 49 C.F.R. Section 24.102(c)(2):

(1) the owner is donating the real property interest to the Non-Federal Sponsor and releases the Non-Federal Sponsor in writing from its obligation to appraise the real property interest, and the Non-Federal Sponsor submits to the Government a copy of the owner's written release; or

(2) the Non-Federal Sponsor determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the real property interest proposed for acquisition is estimated at \$15,000 or less, based on a review of available data. When the Non-Federal Sponsor determines that an appraisal is unnecessary, the Non-Federal Sponsor shall prepare the written waiver valuation required by 49 C.F.R. Section 24.102(c)(2) and submit a copy thereof to the Government for approval. The Government may approve exceeding the \$15,000 threshold, up to an amount of \$35,000, if the Non-Federal Sponsor offers the owner the option of having the Non-Federal Sponsor appraise the real property interest.

(3) if the Non-Federal Sponsor determines that the acquisition is uncomplicated, has a low fair market value, and the Non-Federal Sponsor offers the owner the option to have the property appraised, the Non-Federal Sponsor may request in writing approval to use a waiver valuation for properties with estimated values of more than \$35,000 and up to \$50,000. If use of a waiver valuation is approved by the Government, the Non-Federal Sponsor shall provide a report measuring the cost and time benefits, condemnation rate, settlement rate, and other relevant metric to document the administrative savings, accuracy, and efficacy of the use of the waiver valuation.

d. Incidental Costs. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the incidental costs the Non-Federal Sponsor incurred in acquiring any real property interests required pursuant to Article III for the Project within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, that are documented to the satisfaction of the Government. Such incidental costs shall include 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., and other payments by the Non-Federal Sponsor 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 pursuant to Article III.

2. Relocations. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of any relocations performed by the Non-Federal Sponsor that are directly related to construction, operation, and maintenance of the Project. Only relocations performed after the effective date of this Agreement are eligible for credit, unless such relocations were required for in-kind contributions covered by an In-Kind Memorandum of Understanding between the Government and Non-Federal Sponsor.

a. 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 the salvage value of any removed items.

b. For a relocation of a highway, which is any highway, roadway, or street, including any bridge thereof, that is owned by a public entity, 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.

c. Relocation costs, as determined by the Government, include actual costs of performing the relocation; planning, engineering, and design costs; and supervision and administration costs. Relocation costs do not include any costs associated with betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available.

3. In-Kind Contributions. The Government shall include in construction costs and credit towards the Non-Federal Sponsor's share of such costs, the value of in-kind contributions that are integral to the Project.

a. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurred to provide the in-kind contributions, which may include engineering and design; construction; and supervision and administration, but shall not include any costs associated with betterments, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees.

b. No credit shall be afforded for the following: interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; any in-kind contributions performed prior to the effective date of this Agreement unless covered by an In-Kind Memorandum of Understanding between the Government and Non-Federal Sponsor; or costs that exceed the Government's estimate of the cost for such in-kind contributions.

4. Compliance with Federal Labor Laws. Any credit afforded under the terms of this Agreement 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 (labor standards originally enacted as the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Anti-Kickback Act), and credit may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

D. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall only be entitled to credit or reimbursement for real property interests and relocations up to 35 percent of construction costs. In addition, the Non-Federal Sponsor shall not receive credit or reimbursement for real property interests that were previously provided as an item of local cooperation for another Federal project.

ARTICLE VI – PAYMENT OF FUNDS

A. As of the effective date of this Agreement, construction costs, excluding cost shared monitoring and adaptive management, are projected to be \$92,401,339.72, with the Government's share of such costs projected to be \$60,060,870.82 and the Non-Federal Sponsor's share of such costs projected to be \$32,340,468.90, which includes creditable real property interests and relocations projected to be \$32,340,468.90, creditable in-kind contributions projected to be \$0, and the amount of funds required to meet its 35 percent cost share projected to be \$0. Construction costs for cost shared monitoring and adaptive management are projected to be \$3,343,662.98, with the Government's share of such costs projected to be \$2,173,380.94 and the Non-Federal Sponsor's share of such costs projected to be \$1,170,282.04. Average annual costs for operation, maintenance, repair, replacement, and rehabilitation of the Project are projected to be \$222,910.87. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with monthly reports setting forth the estimated construction costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable real property interests and relocations; the estimated

amount of any creditable in-kind contributions; and the estimated amount of funds required from the Non-Federal Sponsor during the upcoming fiscal year.

C. The Non-Federal Sponsor shall provide the funds required to meet its share of construction costs by delivering a check payable to “FAO, USAED, Chicago (H6)” to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsor to cover the non-Federal share of construction costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor’s required share of such construction costs, the Government shall provide the Non-Federal Sponsor with written notice of the amount of additional funds required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds.

E. Within 60 calendar days after completion of construction, except for cost shared monitoring and adaptive management, and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. The Government shall conduct another final accounting within 60 calendar days after completion of cost shared monitoring and adaptive management and, within such 60-calendar day period, furnish the Non-Federal Sponsor with the written results of such final accounting. Should either final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of receipt of written notice from the Government, shall provide the Government with the full amount of such additional required funds by delivering a check payable to “FAO, USAED, Chicago H(6)” to the District Commander, or by providing an Electronic Funds Transfer of such funds in accordance with procedures established by the Government. A final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of construction costs, including contract claims or any other liability that may become known after the final accounting. If the final accounting after cost shared monitoring and adaptive management determines that funds provided by the Non-Federal Sponsor exceed the amount of funds required to meet its share of construction costs, the Government shall refund such excess amount, subject to the availability of funds for the refund.

F. If the Government agrees to acquire or perform, as applicable, real property interests or relocations on the Non-Federal Sponsor’s behalf, the Government shall provide written notice to the Non-Federal Sponsor of the amount of funds required to cover such costs. No later than 60 calendar days of receipt of such written notice, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through either payment method specified in Article VI.E.. If at any time the Government determines that additional funds are required to cover such costs, the Non-Federal Sponsor shall provide those funds within 60 calendar days from receipt of written notice from the Government. If the Government

determines that funds provided by the Non-Federal Sponsor exceed the amount that was required for the Government to complete such work, the Government shall refund any remaining unobligated amount.

ARTICLE VII - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Government may suspend or terminate construction of the Project unless the Assistant Secretary of the Army (Civil Works) determines that continuation of such work is in the interest of the United States or is necessary in order to satisfy agreements with other non-Federal interests.

B. If the Government determines at any time that the Federal funds made available for construction of the Project are not sufficient to complete such work, the Government shall so notify the Non-Federal Sponsor in writing within 30 calendar days, and upon exhaustion of such funds, the Government shall suspend construction until there are sufficient funds appropriated by the Congress and funds provided by the Non-Federal Sponsor to allow construction to resume. In addition, the Government may suspend construction if the Maximum Cost Limit is exceeded.

C. If HTRW is found to exist in, on, or under any required real property interests, the parties shall follow the procedures set forth in Article IV.

D. In the event of termination, the parties shall conclude their activities relating to construction of the Project. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of real property acquisition, resolution of contract claims, and resolution of contract modifications.

E. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement 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 VIII - HOLD AND SAVE

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

ARTICLE IX - 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 the 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 X - MAINTENANCE OF RECORDS AND AUDITS

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsor of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Project. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits shall not be included in construction costs, but shall be included in calculating the Maximum Cost Limit.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsor to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the Non-Federal Sponsor's request, provide to the Non-Federal Sponsor or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The Non-Federal Sponsor shall pay the costs of non-Federal audits without reimbursement or credit by the Government.

ARTICLE XI - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

ARTICLE XII - 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 mailed by registered or certified mail, with return receipt, as follows:

If to the Non-Federal Sponsor:
Executive Director

Lake County Forest Preserve District
1899 W. Winchester Road
Libertyville, Illinois 60048

If to the Government:

District Commander
U.S. Army Corps of Engineers, Chicago District
231 S. LaSalle Street, Suite 1500
Chicago, Illinois 60604

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

ARTICLE XIII - 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 XIV - 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 a party to this Agreement.

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

DEPARTMENT OF THE ARMY

LAKE COUNTY FOREST PRESERVE
DISTRICT

BY: _____

Kenneth P. Rockwell
Colonel, U.S. Army

BY: _____

Alex Ty Kovach
Executive Director

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, do hereby certify that I am the principal legal officer for the Lake County Forest Preserve District, that the Lake County Forest Preserve 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 in connection with the Upper Des Plaines River and Tributaries Aquatic Ecosystem Restoration, 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 Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Agreement on behalf of the Lake County Forest Preserve District acted within [**INSERT: his or her, as applicable**] statutory authority.

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

[**INSERT TYPED NAME**]
[**Insert Full Title**]

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.

[SIGNATURE OF PPA SIGNATORY]

ALEX TY KOVACH
EXECUTIVE DIRECTOR

DATE: _____