



SOUTHWESTERN ILLINOIS FLOOD PREVENTION DISTRICT COUNCIL
BOARD OF DIRECTORS MEETING
November 21, 2012 7:30 a.m.

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 October 17, 2012
3. Public Comment on Pending Agenda Items
4. Program Status Report
Les Sterman, Chief Supervisor
5. Budget Update and Approval of Disbursements
Les Sterman, Chief Supervisor
6. Project Budget and Schedule
Jay Martin, AMEC Environment & Infrastructure
7. Corp of Engineers Update on Federal Project
Tracey Kelsey, U.S. Army Corps of Engineers
8. Design Agreement with U.S. Army Corps of Engineers for
Wood River Design Deficiency Correction
9. Public Comment
10. Other Business

Executive Session (if necessary)
11. Adjournment

AGENDA

Next Meeting: December 19, 2012

MINUTES

SOUTHWESTERN ILLINOIS FLOOD PREVENTION DISTRICT COUNCIL BOARD OF DIRECTORS MEETING October 17, 2012

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 October 17, 2012.

Members in Attendance

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

Members Absent

James Pennekamp, President (Chair, Madison County Flood Prevention District)
Alvin Parks, Jr., St. Clair County Flood Prevention District

Others in Attendance

Mark Kern, St. Clair County Board Chair
Delbert Wittenauer, Monroe County Board Chair
Les Sterman, SW Illinois FPD Council
Kathy Andria, American Bottom Conservancy
Gary Andruska, U.S. Army Corp of Engineers
Richard Bird, URS Corp.
Lisa Ciampoli, Madison County Board
Rich Connor, Leadership Council SW Illinois
Rick Fancher, MESD
Walter Greathouse, MESD
Scott Harding, SCI Engineering
Pam Hobbs, Geotechnology
Gary Hoelscher, Hoelscher Engineering
David Human, Husch Blackwell
Bob Johnson, Johnson Consulting
Marvin Johnson, Marks and Associates
Charles Juneau, Juneau Assoc.
Joe Kellett, U.S. Army Corps of Engineers
Tracy Kelsey, U.S. Army Corps of Engineers
Ellen Krohne, Leadership Council SW Illinois
Linda Lehr, Monroe County
Matt MacAnarney, Sen. Durbin's Office

Sandra Marks, Marks and Associates
Jay Martin, AMEC Environment & Infrastructure
Jack Norman, Groundwater Advisory Council
David Oates, Oates Assoc.
Jon Omvig, AMEC Environment & Infrastructure
Joe Parente, Madison County
Adam Saltsgaver, Bank of Edwardsville
Bob Shipley, MESD
Chuck Unger, Bank of Edwardsville

Call to order

Vice-President Dan Maher called the meeting to order.

Approval of minutes of September 19, 2012

Mr. Sterman observed that there was an error on page 5 of the minutes wherein it was noted that Mr. Conrad called on Jay Martin for a report; in fact it was Mr. Pennekamp who had done so. A motion was made by Ron Polka, seconded by Paul Bergkoetter, to approve the minutes of the September 19, 2012 meeting. 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.

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.

Mr. Sterman reported that was a somewhat better month for us. AMEC is working to refine and complete the design of the project. Recognizing that our continuing dispute with the Corps of Engineers regarding underseepage controls known as “graded filters” could not be resolved quickly, and that these design features would trigger additional time consuming and costly review processes within the Corps, we “hit the reset button” on the project design in those levee reaches where graded filters had been proposed. Our consulting team has collected more primary data about subsurface conditions through additional borings, and done more sophisticated

modeling to more precisely calibrate and refine the design. This effort has resulted in a proposed design that includes a combination of more traditional underseepage control elements. Ironically, the revised designs will meet FEMA standards but result in a lesser degree of flood protection than previous designs. Nonetheless the revisions will likely satisfy the Corps' concerns and will not trigger the more extensive review that "other than minor" levee system modifications such as graded filters would require.

A preliminary revised cost estimate suggests that the cost of the revised design will be consistent with the 60% design estimate produced in December 2011. In sum, I now believe that we can produce an affordable project that will meet FEMA standards while keeping our commitment to finish the project by 2015.

Our consultant team is now back on track to complete the 100% design of the project. AMEC has been meeting with the Corps to review key aspects of pending design changes, particularly where existing Corps-installed facilities would be modified. As was previously planned, the design documents necessary for the Corps to complete the Section 408 review will be submitted in a series of packages over the next 6-9 months. There will be more on this subject later on in the agenda.

The review of the financing schedule is underway. As I reported last month ButcherMark Financial Advisors has provided a first draft of modeling results that evaluate the impact of revised financing concepts, along with changes in the interest rate environment, project schedule, and funding need. The objective is to determine how much money can be raised from the proceeds of the FPD sales tax. Initial results are promising; it appears that we can increase the funding proceeds for the project, perhaps by 10-15% using the existing sales tax revenues, which is good news and further illustrates the affordability of the project.

A draft of the periodic inspection for the Prairie DuPont and Fish Lake levee districts has been completed by the Corps. There are several findings that could cause the condition of the affected levee system to be declared "unsatisfactory" by the Corps; however it appears that these findings can be addressed by the levee districts in short order. We will continue to work with the districts to assure that all critical repair issues are addressed as part of the FPD project.

The Corps has also presented the completed Limited Reevaluation Report for the Prairie DuPont and Fish Lake levee districts. The completion of this report will make the project eligible to receive federal funds for the design deficiency correction. However, the Corps has indicated that it is highly unlikely that funds will be forthcoming for work in these levee districts because of a low benefit/cost ratio (slightly over 1.0).

Work is ongoing on the Council's first construction contract, a small contract with Noeth Excavating Systems for restoration of culverts and trench drains in the MESD area. I have executed two change orders to this contract, the net result of which reduced the cost of the work and makes small revisions to the scope.

Discussions with the Illinois Environmental Protection Agency continue on the contents and approach of the Sec. 401 water quality permit. We have now submitted all of the information

requested by IEPA so that they can process our application and take the necessary steps to begin the public review of the project. Because of staffing shortages, the time frame for the review is a potential problem that will affect our schedule, but IEPA has assured us that the project will have their full attention and that they are mindful of our time constraints. This permit is on the critical path for the project schedule.

Marks and Associates developed a draft of our minority business/workforce utilization plan. She will report on the draft at September Board meeting. Our construction management and contracting team will be reviewing the draft before we finalize it and present it to the Board for adoption.

In late September, Congressman Costello introduced HR 6450 “to facilitate and expedite the review of proposed improvements to Federal flood control projects to be constructed by local sponsors...” The primary purpose of this bill is to streamline and rationalize the Section 408 review process, especially for repairs and improvements to existing levee systems by local sponsors. Our attorneys and I have been working with our congressional staff on this bill for nearly a year and I am grateful to them for both recognizing this problem and having the patience to work through a complex and confusing drafting process to bring this bill forward. Ironically, this legislation, were it to pass, would probably come too late to help our project, but something like this is badly needed to support more timely and cost-effective fixes to deficient levee systems across the country.

A motion was made by Ron Motil, seconded by Bruce Brinkman, to accept the Program Status Report by Mr. Sterman. 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.

Budget Update and Approval of Disbursements

Mr. Sterman noted the report that was sent out in the Board packet and a handout that is at the table. Mr. Bergkoetter had picked up several errors in the original report and the handout page is the corrected version. Mr. Sterman said that accrued expenditures for the current fiscal year are \$16,401,010 while revenues amounted to \$12,250,279. Expenditures included a surplus held by the bond Trustee of \$4,683,466 through the end of September that was returned to the counties as required by the bond indenture. A total of \$10,423,241.07 is now held in the county FPD sales tax funds.

Mr. Long asked whether we are now square with the counties on the money that was advanced by them to the project. Mr. Sterman said that the counties had been paid back a while ago and that the current balances held by the counties are from our sales tax and will be retained for the benefit of the project.

Sales tax receipts for July 2012 were down by about 2.01% year over year but are up about 1.87% for the first six months of the year, trends that are slightly below our finance plan projections.

Attached are lists of bank transactions for September 2012. Total disbursements for the month were \$613,438.29. The largest payment was to AMEC and its subcontractors for design and construction management services. We also made our first payment to Noeth Excavating Systems for work on construction.

A motion was made by Mr. Long, seconded by Mr. Polka, to accept the budget report and approve the disbursements for August 2012. At Mr. Maher's request, 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.

Design and Schedule Revisions

Mr. Maher called on Jay Martin, AMEC's project manager, to provide a report.

Mr. Martin used a PowerPoint[®] presentation to illustrate his remarks (copy attached). He updated the Board on the project schedule and showed a graphic that illustrated the various components of the schedule. One Sec. 408 review package will be submitted to the Corps this year, with the remaining packages submitted in the first quarter of next year. We have lost 3-6 months as a result of our disagreements with the Corps but hope to make up that time later in the project.

Mr. Martin then showed a summary of the cost estimate comparison between the December 2011 estimate and the current estimate. The difference turns out to be very small – an increase of around \$800,000.

Mr. Long asked for clarification on the estimate and observed that we are still within our budget.

Mr. Martin reviewed the updated design features of the project in the places where graded filters had been previously proposed. He described the difference between at-grade filters and the deep trenches that had been previously proposed.

Mr. Wittenauer asked whether the revised design would produce less flow of underseepage. Mr. Martin suggested that underseepage shouldn't increase, but we don't have the details yet.

Mr. Martin then described upcoming design tasks as well as the status of resolution of Corps comments on construction package 2a (pump stations in the Prairie DuPont/Fish Lake area). Relief well testing will continue as well as test boring at the site of the proposed cutoff wall.

Mr. Sterman asked when significant construction can start. Mr. Martin said that construction could not likely start until the second quarter of next year.

Mr. Long asked how the extended period of design and re-design would affect design fees. Mr. Martin said that he couldn't answer that question precisely at this time.

Mr. Polka asked about how the change order process would work. Mr. Sterman indicated that AMEC has to review and sign off on change orders. The change orders so far have been very small, but in the future larger change orders will come to the Board for approval. We will develop a policy for the Board's review in the future.

Mr. Maher asked for a motion to accept Mr. Martin's progress report. A motion was made by Mr. Long with a second by Mr. 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 – absent
Mr. Pennekamp – absent

The motion was approved.

Corps of Engineers Update on Federal Project

Mr. Maher called on Tracey Kelsey of the Corps of Engineers to make a report. Ms. Kelsey used a PowerPoint® presentation to illustrate her remarks (copy attached).

Ms. Kelsey summarized Corps expenditures and pending design and construction activities on each of the levee systems. She described the cost estimate to complete projects in each of the districts and the projected date of construction completion. She noted that funding for Prairie DuPont/Fish Lake was unlikely given the low benefit/cost ratio.

Mr. Sterman noted that the completion dates for each of the projects depend on federal appropriations, which tend to be slow in coming.

Mr. Maher asked where the sponsor funding would come from. Ms. Kelsey said that those funds would come from the FPD and levee districts.

Mr. Long asked how much of the Corps' work would need to be done to complete our project. Ms. Kelsey responded that none of the work needed to be done, but that it would be beneficial if we could identify common elements of both projects, so that we could benefit from federal funds.

Ms. Kelsey summarized the status of work on the Mel Price levee reach and the Chain of Rocks levee. She also showed a table of projected project costs and the likely amount of non-federal fund required.

Mr. Long asked when we would need to come up with our share of the funds. Mr. Sterman said that we might choose to have the Corps take on certain portions of our project if they get a significant appropriation and if they could actually save us money. However, we do not want to compromise our goals of getting the project done by 2015 for the money that we have.

Mr. Wittenauer asked about the differences between the 100-year and 500-year level of protection and a discussion ensued about the various aspects of that question, including costs, the role of floodfighting, the Corps authorized levee height, the status of the operating plan for Mel Price, etc. Mr. Kellett and Mr. Kern also participated in this discussion.

Ms. Kelsey noted that we would be working together to identify common elements of the two projects.

Update on Minority Business/Workforce Utilization Plan

Mr. Maher asked Mr. Sterman to provide a report. Mr. Sterman summarized the role and purpose of the Minority Business/Workforce Utilization Plan and introduced Sandra Marks and Marvin Johnson, who are working to produce the plan. She noted that a draft plan has been submitted on schedule and was distributed as part of your packet.

Ms. Marks described her experience working in the area of minority business utilization. Her goal is to build long term capacity in the local contracting community, rather than simply achieving short term numerical goals.

She then reviewed the contents of the Plan with the Board. The plan stresses outreach and pre-assessment to identify capable minority firms. Work on implementing the Plan is tied closely to the schedule of the project, as well as the bid package breakdown, so she has been reviewing these closely.

Mr. Motil asked how bid packages are broken down to facilitate greater minority business participation. Mr. Johnson discussed how that process would work. Mr. Motil asked whether this program would be described in the bid documents. Mr. Johnson answered affirmatively.

Mr. Kern asked about bonding and insurance. Mr. Johnson suggested that this would be handled by prime contractors.

Ms. Marks then discussed the workforce participation opportunities by connecting with existing training programs for minorities. She stressed that the objective is not simply to achieve a number but to help people build long-term careers.

Mr. Johnson reviewed risks and challenges as the project moves forward.

Mr. Motil asked if the building and construction trades have been involved in reviewing this Plan. Mr. Sterman said that we have met with Dale Stewart and we will meet with him again. We want to make sure that this Plan is realistic and can be implemented before we ask the Board to adopt it.

Mr. Long asked whether we will be asked to approve a contract with Marks and Associates. Mr. Sterman said that our only commitment so far is to develop the Plan. Any subsequent work would be solicited through a competitive process.

Mr. Wittenauer asked whether we will concentrate on local firms, since the sales tax is coming from the local area. Ms. Marks indicated that we are focusing on local firms.

Public Comment

Kathy Andria asked how much less protection would be provided by the current design proposal compared to the previous proposal for graded filters. Mr. Martin addressed the question.

Ms. Andria said that she is concerned that our plan did not take into account climate change and increased river levels. The big problem is the length of time that the river is up against the levee, rather than the height of the levee. Ms. Andria said that she is concerned that the people living behind the levee will have a false sense of security. She also brought up the issue of increased flows of water behind the levee.

Mr. Martin agreed that the length of time that the river is up against the levee is indeed a big concern and that has been addressed in our design. Managing stormwater runoff is a job of the local governments and while we are accounting for existing runoff, increases will need to be managed by others.

Other Business

There was no other business.

Adjournment

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

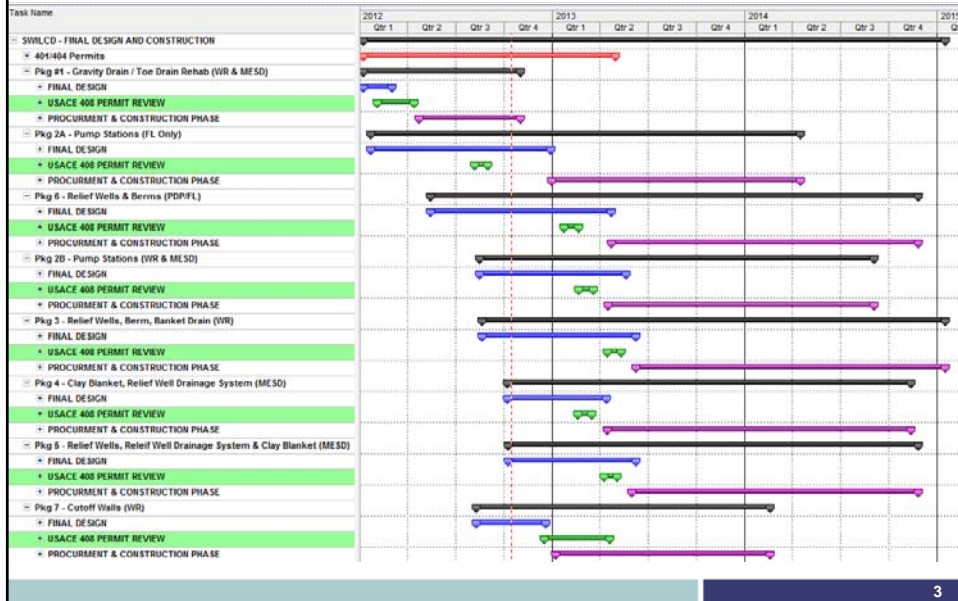
Respectfully submitted,

John Conrad,
Secretary/Treasurer, Board of Directors

**SOUTHWESTERN ILLINOIS FLOOD PROTECTION DISTRICT COUNCIL
GENERAL FUND
STATEMENT OF REVENUES AND EXPENDITURES - BUDGET AND ACTUAL
TWELVE MONTHS ENDED SEPTEMBER 30, 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	\$ 11,401,874	\$ 401,874
Interest Income	878,365	878,365	848,405	\$ (29,960)
Other Contributions	-	-	-	-
Total Revenues	<u>11,878,365</u>	<u>11,878,365</u>	<u>12,250,279</u>	<u>371,914</u>
EXPENDITURES				
Current				
Design and Construction				
Engineering Design & Construction Management	6,000,000	6,000,000	3,597,557	2,402,443
Construction	20,000,000	20,000,000	1,132,115	18,867,885
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>4,729,672</u>	<u>22,370,328</u>
Professional Services				
Legal & Legislative Consulting	126,000	126,000	154,641	(28,641)
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	2,085	17,915
Bond Underwriter/Conduit Issuer	93,529	93,529	-	93,529
Total Design and Construction	<u>400,529</u>	<u>400,529</u>	<u>196,873</u>	<u>203,656</u>
Refund of Surplus Funds to County FPD Accounts				
Madison County	1,999,276	1,999,276	2,213,968	(214,692)
Monroe County	260,706	260,706	217,032	43,674
St. Clair County	1,241,796	1,241,796	2,252,466	(1,010,670)
Total Refund of Surplus Funds to County	<u>3,501,778</u>	<u>3,501,778</u>	<u>4,683,466</u>	<u>(1,181,688)</u>
Debt Service				
Principal and Interest	7,107,440	7,107,440	7,101,539	5,901
Federal Interest Subsidy	(910,140)	(910,140)	(566,408)	(343,732)
Total Debt Service	<u>6,197,300</u>	<u>6,197,300</u>	<u>6,535,131</u>	<u>(337,831)</u>
Total Operating Expenses	<u>37,199,607</u>	<u>37,199,607</u>	<u>16,145,142</u>	<u>21,054,465</u>
General and Administrative Costs				
Salaries, Benefits	189,365	189,365	189,627	(262)
Advertising	2,500	2,500	-	2,500
Bank Service Charges	420	420	692	(272)
Conference Registration	700	700	458	242
Equipment and Software	2,300	2,300	77	2,223
Fiscal Agency Services	20,000	20,000	34,871	(14,871)
Furniture	300	300	-	300
Meeting Expenses	1,000	1,000	186	814
Miscellaneous Startup Expenses	-	-	-	-
Office Rental	-	-	-	-
Postage/Delivery	600	600	250	350
Printing/Photocopies	2,500	2,500	351	2,149
Professional Services	18,000	18,000	14,900	3,100
Publications/Subscriptions	200	200	-	200
Supplies	1,350	1,350	1,095	255
Telecommunications/Internet	3,500	3,500	3,317	183
Travel	12,500	12,500	9,054	3,446
Other Business Expenses	-	-	-	-
Insurance	3,000	3,000	990	2,010
Total General & Administrative Costs	<u>258,235</u>	<u>258,235</u>	<u>255,868</u>	<u>2,367</u>
Total Expenditures	<u>37,457,842</u>	<u>37,457,842</u>	<u>16,401,010</u>	<u>21,056,832</u>
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES				
	(25,579,477)	(25,579,477)	(4,150,731)	21,428,746
OTHER FINANCING SOURCES				
Proceeds From Borrowing	-	-	-	-
NET CHANGE IN FUND BALANCE	<u>\$ (25,579,477)</u>	<u>\$ (25,579,477)</u>	<u>\$ (4,150,731)</u>	<u>\$ 21,428,746</u>

Project Schedule



3

Current Construction Cost Estimate



Description	60% Construction Cost Estimate	Revised Construction Cost	Difference
Wood River - Total	\$ 47.0M	\$ 43.3M	-\$ 3.7M
MESD - Total	\$ 39.1M	\$ 38.8M	-\$ 0.3M
PdP/FL - Total	\$ 28.2M	\$ 33.0M	\$ 4.8M
Project -Total	\$ 114.3M	\$ 115.1M	\$0.8M

- Includes 20% Contingency (30% on cutoff walls)
- Not final, but conservative with a high degree of confidence in the overall project cost estimate

4

Selected Alternative



Levee	Design	Reach	Length, LF	Main River or Tributary	Feature Type	Alternate	Depth
UWR	143+65	153+00	935	Main River	filter	at-grade	0
UWR	216+00	219+00	300	Tributary	filter	filter	<5

Selected Alternative



Levee	Design	Reach	Length, LF	Main River or Tributary	Feature Type	Alternate	Depth
LWR	225+00	236+00	1100	Main River	filter	at-grade	0
LWR	568+90	577+05	815	Tributary	filter	at-grade	0
LWR	593+25	597+10	385	Tributary	filter	at-grade	<5

Selected Alternative



Levee	Design	Reach	Length, LF	Main River or Tributary	Feature Type	Alternate	Depth
MESD	1315+00	1316+00	100	Tributary	filter	at-grade	2

7

Next Steps



- Complete designs and press forward with 408 submittals to the Corps (last submittal in early Q2 2013)
- Update each district on the revised solutions
- Finalize Minority Business and Work Force Utilization plan and implement
- Schedule meetings with the Corps for further cutoff walls discussions
- Retain firm for real estate land acquisition and begin process
- Finalize wetland mitigation plan
- Work through certification of Mel Price and COR
- Continue to respond to Corps comments on design
- Complete permitting activities (Sec. 401 and Sec. 404)
- Continue to explore reaches that could align with the Corps plans

8

401 – IL Water Quality



- Met face-to face with IEPA on October 10, 2012
- Discussed outstanding responses to IEPA letter and other items
- Remainder of information, calculations and maps requested by IEPA will be submitted for Council review on 10/19/2012 (This Friday)
- Anticipate submittal to the IEPA during the week of 10/22 thru 10/26.
- IEPA Review schedule:
 - 30 days for IEPA to review full submittal and prepare documentation
 - 30 days to public notice
 - 45 days out to public
 - 30 - 32 days for public notice comment submittals
 - 14 - 45 Days to review and respond to comments, time depends on qty of comments.
 - 6 – 9 months if a hearing is needed to address comments

9

Bid Package #2A



- Dr Checks comments posted (59 Total Comments)
- Our responses posted and resolving with the Corps:
 - 28 Comments Closed
 - 31 Comments Open
 - 24 pending back check by Corps (Oct. 15, 2012)
 - 7 are being worked through with Corps (3 Related to 401/404)

10

Field Activities



- Drilling for cut off walls
- Relief well testing

11



QUESTIONS?

12



Metro East Levees System

Wood River Levee District

- Current Construction Activities:
 - Reconstruction Project: \$26M; \$2.6M remaining
- Pending Activities:
 - Design Deficiency Correction:
 - * LRR approved August 2011
 - * Eligible for funding: 2013
 - * Estimated Cost: \$50.3M (\$32.7 F, \$17.6 NF)
 - * Projected Construction Completion: 2018

Metro East Sanitary District

- Current Construction Activities:
 - Reconstruction Project: \$42M; N PS Relief wells and O&M manuals remain (\$785k)
- Pending Activities:
 - Design Deficiency Correction:
 - * LRR approved August 2010
 - * Initial Funding Received: FY12
 - * Estimated Cost: \$141.6M (\$80.5 F, \$61.1M NF)
 - * Projected Construction Completion: 2021

Prairie du Pont/Fish Lake

- Pending Activities:
 - Design Deficiency Correction:
 - * LRR approved October 2012
 - * Potential for funding: 2015
 - * Estimated Cost: \$53.1M (\$34.5M F, \$18.6M NF)
 - * Projected Construction Completion: 2016



Metro East Levees System

Mel Price Lock and Dam

- **Current Activities:**

- Interim Operations Plan

- **Pending Activities:**

- Design Deficiency Correction:
 - * LRR approved August 2012
 - * Potential for funding: 2014
 - * Estimated Cost: \$34M (All Fed)
 - * Projected Construction Completion: 2016

Chain of Rocks Levee

- **Current Activities:**

- Complete Berms 2012
- Complete Relief Wells 2013
- Complete Pump Station 2013
- Complete Ditch Work, Ph 2 2013
- Estimated Cost: \$59.3M (All Fed)
- Projected Construction Completion: 2013

Summary of Pending Cost Shared Projects (Deficiency Correction) Projected Construction Completion Date: 2021

	Cost Shared Projects	Cost Shared w/o PdP\FL
Federal Cost	147.7	113.2
Non-Federal Cost*	97.3	78.7
Program Cost	245	191.9

*includes 100% Non-Federal HTRW



Memo to: Board of Directors
From: Les Sterman
Subject: Program Status Report for November, 2012
Date: November 18, 2012

Work is continuing to complete the design of the project, particularly in areas where the 60% design has been reworked to replace or redesign graded filters. Our consulting team has collected more primary data about subsurface conditions through additional borings, and done more sophisticated modeling to more precisely calibrate and refine the design.

A revised project schedule has now been developed and vetted with the Corps. A new project cost estimate has been developed as well. Both will be presented at the November Board meeting for your review. I will likely ask you to adopt the revised cost estimate and schedule at the December meeting, so we can be clear about the expectations for the project and so that we can communicate those expectations to the public.

The most important message at this time is that we can produce an affordable project that will meet FEMA standards while keeping our commitment to finish the project by 2015. That is not discounting that significant challenges lie ahead. The Corps Sec. 408 process is a continuing concern. While the Corps has committed to a schedule of initial reviews, the resolution of comments in those reviews continues in an ambiguous and onerous fashion that has no schedule. Similarly, the Sec. 401 water quality permit being addressed by the Illinois Environmental Protection Agency is ongoing, but with a schedule for completion that is only speculative at this point. In sum, we will only meet our cost and time objective through a very aggressive and diligent effort to complete the design and permitting process.

There has been great progress in revising our financial plan. ButcherMark Financial Advisors has now provided two drafts of modeling results that evaluate some new financing strategies, along with changes in the interest rate environment, project schedule, and cash flow expectations. The objective is to determine how much money can be raised from the proceeds of the FPD sales tax. I believe that we will be able to raise significantly more money than previously expected through a strategy of postponing future bond issues as long as possible and meeting cash needs through use of currently unused sales tax receipts and short term borrowing. While the additional funds will not be needed directly for our project, they will be essential to match federal appropriations for Corps projects and to pay for ongoing operation and maintenance of improvements to the levee system.

The Council's first construction contract, a small contract with Noeth Excavating Systems for restoration of culverts and trench drains in the MESD area is now virtually complete. It was completed on schedule and under budget.

I issued a Request for Proposal for Real Estate Services on November 8. The purpose of the services that we are seeking is to secure appraisals for the property interests (mainly easements for construction access) that we will require and to negotiate for acquisition of those interests. Proposals are due on December 7. As is our custom, I will ask for Board members to volunteer to serve on a committee to evaluate the proposals and recommend a selection to the full Board of Directors (most likely at the December meeting).

Discussions with the Illinois Environmental Protection Agency continue on the analysis that will be the basis for Sec. 401 water quality permit. We are working closely with the IEPA to address all of the data and analysis requirements, and address questions that have arisen in our discussion with IEPA so that they can process our application and take the necessary steps to begin the public review of the project. The time frame for issuing the permit is a potential problem that will affect our schedule, but IEPA has assured us that the project will have their full attention and that they are mindful of our time constraints.

I have reviewed and edited the draft of the minority business/workforce utilization plan developed by Marks and Associates that was presented to you at the October meeting. As we discussed at that time, the draft is being reviewed by stakeholders to assess whether the goals and methods of the Plan are realistic. That process is taking place and I expect to have a recommendation to adopt the Plan at the December Board meeting.

We are working with the Corps of Engineers to identify design elements that are common to our project to achieve FEMA standards and to the Corps' ongoing project to meet the authorized level of flood protection. The goal would be for the Corps to undertake parts of our project and partially pay for construction using Federal funds, thereby producing a cost saving to our project. In a meeting this month, we identified a number of areas that seemed like candidates for Corps participation. However, for Corps participation to be of value to us, four conditions must be met:

- 1. The improvements must contribute to achieving the FEMA standard.*
- 2. There must be a net cost saving to the FPD; i.e. the local cost-share of the Corps work must not exceed the cost for the FPD to accomplish the same work.*
- 3. The Corps must be able to meet our schedule so that the 2015 completion date is not compromised.*
- 4. There must be certainty that the Corps has adequate appropriated funds to accomplish the agreed upon work.*

While we will make every effort to work with the Corps to accomplish our mutual objectives, there should be no illusion that this will be doable. The Corps has very limited appropriations at this time and the future is hardly certain. Our goal remains very specific and non-negotiable – meet the FEMA standard by 2015 at a cost that we can afford using solely the receipts from the FPD sales tax. The Corps, of course, has no such limits on cost or schedule.



Memo to: Board of Directors
From: Les Serman
Subject: Budget and Disbursement Report for October 2012
Date: November 19, 2012

Budget Highlights

Attached is the financial statement for October 2012 prepared by our fiscal agent, LarsonAllen. The report includes an accounting of revenues and expenditures for the month ending October 31, 2012, as compared to our fiscal year budget for the year.

Accrued expenditures for the current fiscal year are \$2,898,069 while revenues amounted to \$970,539. This imbalance results largely from the semiannual payment of principal and interest on the Council's Series 2010 bonds. Expenditures included a surplus held by the bond Trustee of \$633,532 through the end of October that was returned to the counties as required by the bond indenture. A total of \$10,956,773 is now held by the counties in their respective FPD sales tax funds.

Monthly sales tax receipts for August 2012 were down by about 3.02% year over year (primarily due to a significant unexplained drop in receipts from Madison County for the month) but are up about 1.87% for the first six months of the year, trends that are slightly below our financial plan projections.

Disbursements

Attached are lists of bank transactions for October 2012. Total disbursements for the month were \$1,014,365.75. The largest payment was to AMEC and its subcontractors for design and construction management services. The interest rate subsidy totaling \$455,069.99 from the IRS was also transferred to the bond trustee as required by our indenture.

Recommendation:

Accept the budget report and disbursements for October 2012.

**SOUTHWESTERN ILLINOIS FLOOD PREVENTION
DISTRICT COUNCIL**

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

ONE MONTH ENDING OCTOBER 2012 AND 2011

DRAFT



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 one month ended October 2012 and 2011. 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.

CliftonLarsonAllen LLP

St. Louis, Missouri
November 19, 2012

DRAFT

**SOUTHWESTERN ILLINOIS FLOOD PROTECTION DISTRICT COUNCIL
GENERAL FUND
STATEMENT OF REVENUES AND EXPENDITURES - BUDGET AND ACTUAL
ONE MONTH ENDED OCTOBER 31, 2012 (Actual)
FISCAL YEAR ENDING SEPTEMBER 30, 2013 (Budget)**

	BUDGET		ACTUAL	VARIANCE WITH FINAL BUDGET
	ORIGINAL	FINAL		POSITIVE (NEGATIVE)
REVENUES				
Sales Tax Proceeds From Districts	\$ 11,639,000	\$ 11,639,000	\$ 896,547	\$ 10,742,453
Interest Income	960,000	960,000	73,992	886,008
Other Contributions	-	-	-	-
Total Revenues	12,599,000	12,599,000	970,539	11,628,461
EXPENDITURES				
Current				
Design and Construction				
Engineering Design & Construction Management	6,000,000	6,000,000	259,332	5,740,668
Construction	42,600,000	42,600,000	26,254	42,573,746
Construction and design by US ACE	1,400,000	1,400,000	-	1,400,000
Federal Cost-Share	-	-	-	-
Total Design and Construction	50,000,000	50,000,000	285,586	49,714,414
Professional Services				
Legal & Legislative Consulting	126,000	126,000	3,000	123,000
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	-	93,529
Total Design and Construction	409,529	409,529	3,000	406,529
Refund of Surplus Funds to County FPD Accounts				
Madison County	2,955,782	2,955,782	299,469	2,656,313
Monroe County	280,157	280,157	29,356	250,801
St. Clair County	2,907,860	2,907,860	304,677	2,603,183
Total Refund of Surplus Funds to County	6,143,799	6,143,799	633,502	5,510,297
Debt Service				
Principal and Interest	7,107,440	7,107,440	2,298,720	4,808,721
Federal Interest Subsidy	(910,140)	(910,140)	(343,732)	(566,408)
Total Debt Service	6,197,300	6,197,300	1,954,988	4,242,313
Total Operating Expenses	62,750,628	62,750,628	2,877,075	59,873,553
General and Administrative Costs				
Salaries, Benefits	192,331	192,331	16,688	175,643
Advertising	-	-	-	-
Bank Service Charges	420	420	52	368
Conference Registration	500	500	61	439
Equipment and Software	3,000	3,000	-	3,000
Fiscal Agency Services (EWG)	23,000	23,000	1,800	21,200
Furniture	-	-	-	-
Meeting Expenses	1,000	1,000	-	1,000
Postage/Delivery	400	400	133	267
Printing/Photocopies	2,500	2,500	514	1,986
Professional Services	15,000	15,000	-	15,000
Publications/Subscriptions	250	250	-	250
Supplies	1,500	1,500	119	1,381
Telecommunications/Internet	2,000	2,000	50	1,950
Travel	15,000	15,000	600	14,400
Insurance	1,000	1,000	977	23
Total General & Administrative Costs	257,901	257,901	20,994	236,907
Total Expenditures	63,008,529	63,008,529	2,898,069	60,110,460
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	(50,409,529)	(50,409,529)	(1,927,530)	48,481,999
OTHER FINANCING SOURCES				
Proceeds From Borrowing	-	-	-	-
NET CHANGE IN FUND BALANCE	\$ (50,409,529)	\$ (50,409,529)	\$ (1,927,530)	\$ 48,481,999

**SOUTHWESTERN ILLINOIS FLOOD PROTECTION DISTRICT COUNCIL
GENERAL FUND
STATEMENT OF REVENUES AND EXPENDITURES - BUDGET AND ACTUAL
ONE MONTH ENDED OCTOBER 31, 2011 (Actual)
FISCAL YEAR ENDING SEPTEMBER 30, 2012 (Budget)**

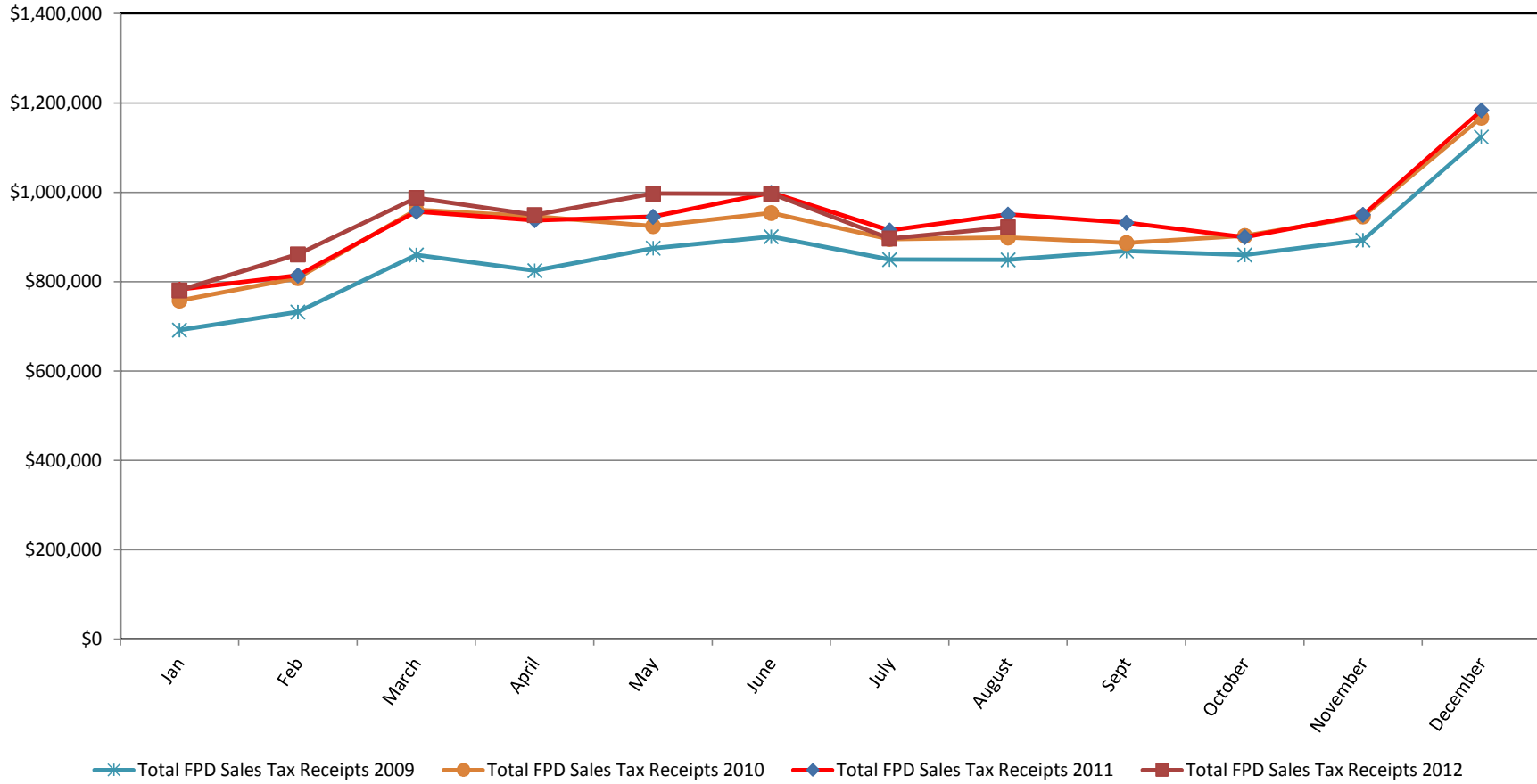
	BUDGET		ACTUAL	VARIANCE WITH
	ORIGINAL	FINAL		FINAL BUDGET
				POSITIVE (NEGATIVE)
REVENUES				
Sales Tax Proceeds From Districts	\$ 11,000,000	\$ 11,000,000	\$ 914,984	\$ 10,085,016
Interest Income	878,365	878,365	355	878,010
Other Contributions	-	-	-	-
Total Revenues	11,878,365	11,878,365	915,339	10,963,026
EXPENDITURES				
Current				
Design and Construction				
Engineering Design & Construction Management	6,000,000	6,000,000	574,528	5,425,472
Construction	20,000,000	20,000,000	-	20,000,000
Construction and design by US ACE Federal Cost-Share	1,100,000	1,100,000	-	1,100,000
Total Design and Construction	27,100,000	27,100,000	574,528	26,525,472
Professional Services				
Legal & Legislative Consulting	126,000	126,000	3,000	123,000
Construction Oversight	160,000	160,000	6,251	153,749
Impact Analysis/Research	1,000	1,000	-	1,000
Financial Advisor	20,000	20,000	-	20,000
Bond Underwriter/Conduit Issuer	93,529	93,529	-	93,529
Total Design and Construction	400,529	400,529	9,251	391,278
Refund of Surplus Funds to County FPD Accounts				
Madison County	1,999,276	1,999,276	-	1,999,276
Monroe County	260,706	260,706	-	260,706
St. Clair County	1,241,796	1,241,796	-	1,241,796
Total Refund of Surplus Funds to County	3,501,778	3,501,778	-	3,501,778
Debt Service				
Principal and Interest	7,107,440	7,107,440	-	7,107,440
Federal Interest Subsidy	(910,140)	(910,140)	-	(910,140)
Total Debt Service	6,197,300	6,197,300	-	6,197,300
Total Operating Expenses	37,199,607	37,199,607	583,779	36,615,828
General and Administrative Costs				
Salaries, Benefits	189,365	189,365	15,517	173,848
Advertising	2,500	2,500	-	2,500
Bank Service Charges	420	420	96	324
Conference Registration	700	700	-	700
Equipment and Software	2,300	2,300	-	2,300
Fiscal Agency Services (EWG)	20,000	20,000	6,198	13,802
Furniture	300	300	-	300
Meeting Expenses	1,000	1,000	-	1,000
Postage/Delivery	600	600	109	491
Printing/Photocopies	2,500	2,500	-	2,500
Professional Services	18,000	18,000	-	18,000
Publications/Subscriptions	200	200	-	200
Supplies	1,350	1,350	-	1,350
Telecommunications/Internet	3,500	3,500	245	3,255
Travel	12,500	12,500	600	11,900
Insurance	3,000	3,000	-	3,000
Total General & Administrative Costs	258,235	258,235	22,765	235,470
Total Expenditures	37,457,842	37,457,842	606,544	36,851,298
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	(25,579,477)	(25,579,477)	308,795	25,888,272
OTHER FINANCING SOURCES				
Proceeds From Borrowing	-	-	-	-
NET CHANGE IN FUND BALANCE	\$ (25,579,477)	\$ (25,579,477)	\$ 308,795	\$ 25,888,272

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						
St. Clair	\$361,727	\$415,491	\$468,490	\$432,173	\$468,782	\$473,567	\$425,923	\$441,838						
Monroe	\$37,471	\$38,904	\$46,086	\$46,051	\$46,231	\$45,671	\$43,063	\$45,307						
Total Month	\$780,668	\$860,871	\$987,625	\$949,415	\$997,002	\$996,492	\$896,548	\$921,748						
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						
% change/month	-0.21%	5.76%	3.21%	1.29%	5.48%	-0.27%	-2.01%	-3.02%						
% change/total	-0.21%	2.83%	2.98%	2.52%	3.15%	2.52%	1.87%	1.23%						

FPD Sales Tax Trends

Actual Receipts 2009-2011



**SOUTHWESTERN ILLINOIS FLOOD PROTECTION DISTRICT COUNCIL
 SUPPLEMENTARY SUPPORTING SCHEDULE
 BANK TRANSACTIONS
 NOVEMBER 2012**

Beginning Bank Balance November 1					\$ 234,127.94
Receipts		Date	Check No	Description	Amount
	UMB	10/8/2012		Transfers	556,586.57
	UMB	10/8/2012		Transfers	17,568.33
	US Treasury	10/9/2012		Interest to UMB	343,732.27
	The Bank of Edwardsville	10/31/2012		Interest	108.65
				Total Receipts	917,995.82
Disbursements					
	Cricket Wireless	10/03/2012		Telephone	50.00
	AMEC Earth & Environmental, Inc.	10/04/2012	1577	Design/Construction	533,575.07
	CliftonLarsonAllen LLP	10/04/2012	1578	Fiscal Agent	1,800.00
	Dorgan, McPike & Assoc, LTD	10/04/2012	1579	Services	3,000.00
	Husch Blackwell Sanders	10/04/2012	1580	Services	14,939.55
	Marks & Associates	10/04/2012	1581	Services	4,500.00
	Wisper ISP, Inc.	10/04/2012	1582	Internet Service	89.99
	The Bank-Service Fees	10/05/2012		Wire Fee	10.00
	The Bank-Service Fees	10/09/2012		Wire Fee	10.00
		10/11/2012		Funds Transfer	455,069.89
	Selective Insurance Co. of America	10/11/2012	1583	992-125-422	977.00
	The Bank-Service Fees	10/11/2012		Wire Fee	15.00
	Illinois Secretary of State	10/16/2012		Registration	61.00
	SmartDraw Software LLC	10/16/2012		Software Upgrade	118.95
	Endicia	10/17/2012		Postage	100.00
	Endicia	10/30/2012		Postage Lables	32.60
	The Bank-Service Fees	10/31/2012		Bank Charges	16.70
				Total Disbursements	(1,014,365.75)
Ending Bank Balance November 30, 2011					137,758.01



Memo to: Board of Directors

From: Les Serman

Subject: Authorization to Execute Design Agreement with the Corps of Engineers for Levee System Improvements in the Metro-East Sanitary District

Date: November 14, 2012

The Corps of Engineers is expecting a Federal appropriation of funds for design deficiency correction in the Wood River Drainage and Levee District. The President's budget for FY2013 contains \$4,202,000 for this purpose, although those funds have not yet been appropriated by Congress. Additional monies may be coming in Federal FY2014. The FY2013 appropriation would need to be matched by \$2,263,000 in local funds provided by the Council. The next step in advancing the Federal project is the engineering design. The subject agreement covers the design of the Federal project, for which the total cost is projected to be \$5,442,000. Of that amount, the non-federal share is 25% or \$1,360,500. Note that this amount covers the design of the entire project, a project currently estimated by the Corps to cost \$50.3 million.

While the objective of the Corps project is to achieve the 500-year or authorized level of protection, the agency has previously agreed to prioritize expenditures so that these funds would be expended on levee system improvements that contribute to the Council's goal of FEMA certification and accreditation. We are working now to identify the common elements of the two projects.

For the Council to be able to use the Federal funds cost-effectively to accomplish our mission four conditions must exist:

1. *The improvements must contribute to achieving the FEMA standard.*
2. *There must be a net cost saving to the FPD; i.e. the local cost-share of the Corps work must not exceed the cost for the FPD to accomplish the same work.*
3. *The Corps must be able to meet our schedule so that the 2015 completion date is not compromised.*
4. *There must be certainty that the Corps has adequate appropriated funds to accomplish the agreed upon work.*

While difficult, I believe it may be possible to identify projects that will meet our needs as shown above.

In order for the Corps to continue to work with us on the project, the Council needs to execute a Design Agreement. This agreement spells out the cost-share arrangement wherein the Council would pay the local cost share for design work. The Board will approve expenditures prior to any work.

The Design Agreement is the model Corps document that is effectively impossible to alter; we have executed a similar contract previously in the Metro East Sanitary District. A draft of the agreement is attached. While the agreement is decidedly one-sided in the Corps' favor, it does not effectively obligate the Council to spend any money, so we can choose whether to proceed with the project (or not) in the future through our decisions to contribute or withhold funds. At this point we would likely only agree to pay for our share of the design for those portions of the project that we determine to be beneficial to our interests.

Recommendation: Authorize the Chief Supervisor to execute the Design Agreement with the Corps of Engineers, contingent upon assent by the Wood River Levee and Drainage District. Any expenditure made by the Council under the terms of this agreement must be separately approved by the Board of Directors.

DESIGN AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE SOUTHWESTERN ILLINOIS FLOOD PREVENTION DISTRICT COUNCIL
FOR
DESIGN
FOR 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 District Engineer and the Southwestern Illinois Flood Prevention District Council (hereinafter SW IL FPDC), (hereinafter the “Non-Federal Sponsor”) represented by the President.

WITNESSETH, THAT:

WHEREAS, Federal Construction, General funds for Fiscal Year 2013, included funds for the Government to initiate design of the **Design Deficiency Corrections for Wood River Levee System, Wood River Illinois** (hereinafter the “*Project*” as defined in Article I.A. of this Agreement) in **Madison County, Illinois;**

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into an agreement (hereinafter the “Agreement”) for the provision of design for the *Project*;

WHEREAS, construction or implementation of the *Project* is authorized by the Flood Control Act of 1938, Public Law 75-761.

WHEREAS, Section 105(c) of the Water Resources Development Act of 1986, Public Law 99-662 (33 U.S.C. 2215), provides that the costs of design of a water resources project shall be shared in the same percentage as the purposes of such project;

WHEREAS, the Government and the Non-Federal Sponsor agree that, during the *period of design*, the Non-Federal Sponsor shall contribute 25 percent of *total design costs* and that, if a Project Cooperation Agreement for construction of the *Project* is executed between the Government and a non-Federal interest, such non-Federal interest shall contribute any remaining portion of the non-Federal share of the costs of design in accordance with the provisions of such Project Cooperation Agreement;

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

WHEREAS, the Government and the Non-Federal Sponsor, in connection with this Agreement, desire to foster a partnering strategy and a working relationship between the Government and the Non-Federal Sponsor through a mutually developed formal strategy of commitment and communication embodied herein, which creates an environment where trust and teamwork prevent disputes, foster a cooperative bond between the Government and the Non-Federal Sponsor, and facilitate the successful design and implementation of the *Project*.

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

ARTICLE I - DEFINITIONS

A. The term “*Project*” shall mean new relief wells; filling existing wood stave relief wells with grout; ditching and pipe collector systems; 3 seepage pump stations, seepage berms; slurry trench cutoff wall through the riverside levee toe and to bedrock; shallow cutoff wall at the riverside levee toe; environmental and archeological mitigation work; utility relocations and easements for berms; relief wells in locations with no existing wells, three flowage areas, slurry trench cutoff wall staging areas and equipment access areas; an excavated material disposal area, and environmental mitigation areas as generally described in the Limited Reevaluation Report on Design Deficiency Corrections for Wood River, Illinois Project, dated August, 2011 and approved by Commander, Mississippi Valley Division on August 31, 2011.

B. The term “*total design costs*” shall mean the sum of all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to design of the *Project*. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government’s costs of engineering and design, economic and environmental analyses, and evaluation performed after a feasibility report whether performed prior to or after the effective date of this Agreement that were not previously shared with a non-Federal interest pursuant to any other agreement; the Government’s supervision and administration costs; the Non-Federal Sponsor’s and the Government’s costs of participation in the Design Coordination Team in accordance with Article III of this Agreement; the Government’s costs of contract dispute settlements or awards; and the Non-Federal Sponsor’s and the Government’s costs of audit in accordance with Article VII.B. and Article VII.C. of this Agreement. The term does not include any costs of additional work under Article II.E. of this Agreement; any costs of dispute resolution under Article V of this Agreement; any costs incurred as part of reconnaissance studies for the *Project*; any costs incurred as part of feasibility studies under any other agreement for the *Project*; the Non-Federal Sponsor’s costs of negotiating this Agreement; or any costs of negotiating a project cooperation agreement for the *Project* or separable element thereof.

C. The term “*period of design*” shall mean the time from the effective date of this Agreement to the date that a Project Cooperation Agreement for construction of the

Project, or a separable element thereof, is executed between the Government and a non-Federal interest or the date that this Agreement is terminated in accordance with Article X of this Agreement, whichever is earlier.

D. The term “*financial obligations for design*” shall mean the financial obligations of the Government that result or would result in costs that are or would be included in *total design costs*.

E. The term “*non-Federal proportionate share*” shall mean the ratio of the Non-Federal Sponsor’s total contribution of funds required by Article II.B.1. of this Agreement to *financial obligations for design*, as projected by the Government.

F. The term “*betterment*” shall mean a difference in the design 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 design of that element. The term does not include any design for features not included in the *Project* as defined in paragraph A. of this Article.

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

H. 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 SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter the “Congress”) and using those funds and funds provided by the Non-Federal Sponsor expeditiously shall design the *Project*, 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 design of the *Project* or commence design of the *Project* using the Government's own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with design of the *Project*.

2. To the extent possible, the Government shall design the *Project* in accordance with the Project Management Plan for the *Project* developed and updated as required by the Government after consultation with the Non-Federal Sponsor.

3. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant scopes of work, prior to the Government’s issuance of such solicitations. To the extent possible, the

Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Non-Federal Sponsor with notification of a contract modification is not possible prior to execution of the contract modification, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts or commencement of design 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.

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

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

B. The Non-Federal Sponsor shall contribute 25 percent of *total design costs* in accordance with the provisions of this paragraph.

1. The Non-Federal Sponsor shall provide funds in accordance with Article IV.B. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's share of 25 percent of *total design costs* if the Government projects at any time that the collective value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement will be less than such share.

2. The Government, subject to the availability of funds, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 25 percent of *total design costs* if the Government determines at any time that the collective value of the following contributions has exceeded 25 percent of *total design costs*: (a) the value of the Non-Federal Sponsor's contributions under paragraph B.1. of this Article; and (b) the value of the Non-Federal Sponsor's contributions under Article III and Article VII of this Agreement.

C. Upon conclusion of the *period of design*, the Government shall conduct an accounting, in accordance with Article IV.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

D. The Non-Federal Sponsor shall not use Federal program funds to meet any of its obligations for the Project under this Agreement unless the Federal agency providing the Federal portion of such funds verifies in writing that expenditure of such funds for such purpose is expressly authorized by Federal law.

E. The Non-Federal Sponsor may request the Government to perform or provide, on behalf of the Non-Federal Sponsor, 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 Sponsor 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 Sponsor 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 IV.D. of this Agreement.

1. Inclusion of *betterments* in the design of the *Project*. In the event the Government elects to include any such *betterments*, the Government shall allocate the costs of designing the features of the *Project* that include *betterments* between *total design costs* and the costs of the additional work.

2. Preparation of a floodplain management plan, required by Section 402 of the Water Resources Development Act of 1986, as amended (33 U.S. C. 701b-12), in connection with design of the flood or hurricane damage reduction features of the Project.

F. If the Government and a non-Federal interest enter into a Project Cooperation Agreement for construction of the *Project*, or a separable element thereof, the Government, in accordance with the provisions of this paragraph, shall include the amount of *total design costs* in total project costs for the *Project*, or separable element thereof. Further, the Government, in accordance with the provisions of this paragraph, shall afford credit toward the non-Federal interest’s share of total project costs for the *Project*, or separable element thereof, for the Non-Federal Sponsor’s contributions toward *total design costs* under this Agreement.

1. If the Government and a non-Federal interest enter into a Project Cooperation Agreement for construction of the entire *Project*, the Government shall include the amount of *total design costs* in total project costs for the *Project*. Further, the Government shall afford credit toward the non-Federal interest’s share of total project costs for the Non-Federal Sponsor’s contributions toward *total design costs*, including any excess amount determined in accordance with Article IV.C.2. or Article IV.D.3.b. of this Agreement that was not refunded or reimbursed by the Government.

2. If the Government and a non-Federal interest enter into a Project Cooperation Agreement for construction of a separable element of the *Project*, the

Government shall determine the portion of *total design costs* that are allocable to such separable element and include such amount in total project costs for such separable element. Further, the Government shall determine the amount of the Non-Federal Sponsor's contributions toward *total design costs*, including any excess amount determined in accordance with Article IV.C.2. or Article IV.D.3.b. of this Agreement that was not refunded or reimbursed by the Government, that are allocable or attributable to such separable element and shall afford credit for such amount toward the non-Federal interest's share of total project costs of such separable element.

3. If the Government and a non-Federal interest do not enter into a Project Cooperation Agreement for construction of the *Project* or a separable element thereof, the Government shall not be obligated to refund or reimburse the Non-Federal Sponsor, in whole or in part, for the Non-Federal Sponsor's 25 percent contribution of *total design costs*. Further, refund or reimbursement by the Government for any excess amount determined in accordance with Article IV.C.2. or Article IV.D.3.b. of this Agreement is subject to the availability of funds.

4. Notwithstanding any other provision of Article II.F. of this Agreement, any amount credited for the value of the Non-Federal Sponsor's contributions toward *total design costs* provided in accordance with Articles III and VII of this Agreement shall not be applied toward the 5 percent cash share required by Section 103(a)(1) (A) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213(a)(1)(A)).

G. This Agreement shall not be construed as obligating either party to seek funds for, or to participate in, construction or implementation of the *Project* or a separable element thereof or as relieving the Non-Federal Sponsor of any future obligation under the terms of any Project Cooperation Agreement.

ARTICLE III - DESIGN COORDINATION TEAM

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

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

C. Until the end of the *period of design*, the Design Coordination Team shall generally oversee the *Project*, including matters related to: design; completion of all

necessary environmental coordination and documentation; scheduling of reports and work products; plans and specifications; real property and relocation requirements for construction of the *Project*; design contract awards and modifications; design contract costs; the Government's cost projections; 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 Sponsor.

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

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

ARTICLE IV - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, and the contributions provided by the parties.

1. As of the effective date of this Agreement, *total design costs* are projected to be \$5,442,000; the Non-Federal Sponsor's contribution of funds required by Article II.B.1. of this Agreement is projected to be \$1,360,500; the *non-Federal proportionate share* is projected to be 25 percent; and the Government's total financial obligations to be incurred for additional work and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.E. 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 Sponsor, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

2. By March 30, 2013 and by each quarterly anniversary thereof until the conclusion of the *period of design* and resolution of all relevant claims and appeals, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: *total design*

costs; the Non-Federal Sponsor's total contribution of funds required by Article II.B.1. of this Agreement; the *non-Federal proportionate share* the total contribution of funds required from the Non-Federal Sponsor for the upcoming contract and upcoming *fiscal year*; and the Government's total financial obligations to be incurred for additional work and the Non-Federal Sponsor's contribution of funds for such costs required by Article II.E. of this Agreement.

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

1. Not less than 7 calendar days after the effective date of this Agreement, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor to meet: (a) the *non-Federal proportionate share of financial obligations for design* incurred prior to the commencement of the *period of design*; (b) the projected *non-Federal proportionate share of financial obligations for design* to be incurred for such contract; and (c) the projected *non-Federal proportionate share of financial obligations for design* using the Government's own forces through the first *fiscal year*. Within 30 calendar days of receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO, USAED, St. Louis District, (B3)" to the District Engineer, or verifying to the satisfaction of the Government that the Non-Federal Sponsor has deposited such required funds in an escrow or other account acceptable to the Government, with interest accruing to the Non-Federal Sponsor, or 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 design of the *Project* is complete, the Government shall notify the Non-Federal Sponsor in writing of the funds the Government determines to be required from the Non-Federal Sponsor, and the Non-Federal Sponsor shall provide such funds in accordance with the provisions of this paragraph.

a. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the scheduled date for issuance of the solicitation for each remaining contract for design of the *Project*, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected *non-Federal proportionate share of financial obligations for design* to be incurred for such contract. No later than such scheduled date, the Non-Federal Sponsor shall make the full amount of such required funds available to the Government through any of the payment mechanisms specified in paragraph B.1. of this Article.

b. The Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of each *fiscal year* in which the Government projects that it will make *financial obligations for design* of the *Project*

using the Government's own forces, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the projected *non-Federal proportionate share of financial obligations for design* 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 Non-Federal Sponsor 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 Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the *non-Federal proportionate share of financial obligations for design* incurred prior to the commencement of the *period of design*; and (b) the *non-Federal proportionate share of financial obligations for design* as *financial obligations for design* are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations for the current contract or to cover the Non-Federal Sponsor's share of such financial obligations for work performed using the Government's own forces in the current *fiscal year*, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 60 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

C. Upon conclusion of the *period of design* and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. If outstanding relevant claims and appeals prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting and furnish the Non-Federal Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the Government shall amend the interim accounting to complete the final accounting and furnish the Non-Federal Sponsor with written notice of the results of such final accounting. The interim or final accounting, as applicable, shall determine *total design costs*. In addition, 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 Sponsor's total required share of *total design costs* exceeds the Non-Federal Sponsor's total contributions provided thereto, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, 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 Sponsor for *total design costs* exceed the

Non-Federal Sponsor's total required share thereof, the Government, subject to the availability of funds, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement. If such appropriations are not received or, if the Non-Federal Sponsor requests that the Government not refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall apply the excess amount toward the share of total project costs for the *Project* that is required of the non-Federal interest executing a Project Partnership Agreement or agreements for the *Project* or separable element thereof in accordance with Article II.F. of this Agreement.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.E. of this Agreement for additional work in accordance with the provisions of this paragraph.

1. Not less than 60 calendar days prior to the scheduled date for the first financial obligation for additional work, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and of the full amount of funds the Government determines to be required from the Non-Federal Sponsor 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 Non-Federal Sponsor 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 Non-Federal Sponsor 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 Sponsor must provide additional funds to pay for such additional work, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required and provide an explanation of why additional funds are required. Within 30 calendar days from receipt of such notice, the Non-Federal Sponsor shall provide the Government with the full amount of such additional required funds through any of the payment mechanisms specified in paragraph B.1. of this Article.

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 Sponsor with written notice of the results of such accounting. If outstanding relevant claims and appeals 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 Sponsor with written notice of the results of such interim accounting. Once all outstanding relevant claims and appeals are resolved, the

Government shall amend the interim accounting of additional work to complete the final accounting of additional work and furnish the Non-Federal Sponsor 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 Sponsor's 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 Non-Federal Sponsor for such additional work, the Non-Federal Sponsor, no later than 90 calendar days after receipt of written notice from the Government, shall make a payment to the Government in an amount equal to the difference by delivering a check payable to "FAO, USAED, St. Louis District (B3)" 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 Non-Federal Sponsor 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 Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund and funds are not available to refund the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund. If such appropriations are not received or, if the Non-Federal Sponsor request that the Government not refund the excess amount to the Non-Federal Sponsor, the Government shall apply the excess amount toward the share of total project costs for the *Project* that is required of the non-Federal interest executing a Project Partnership Agreement or agreements for the *Project* or separable element thereof in accordance with Article II.F. of this Agreement.

ARTICLE V - DISPUTE RESOLUTION

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

ARTICLE VI – HOLD AND SAVE

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from design of the *Project* and design of any additional work pursuant to Article

II.E. of this Agreement, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VII - MAINTENANCE OF RECORDS AND AUDIT

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

B. In accordance with 32 C.F.R. Section 33.26, the Non-Federal Sponsor 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 Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133, and such costs as are allocated to the *Project* shall be included in *total design costs* and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor 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 design costs* and shared in accordance with the provisions of this Agreement.

ARTICLE VIII - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor 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 and Army Regulation 600-7, entitled “Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army”.

ARTICLE IX - RELATIONSHIP OF PARTIES

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

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

ARTICLE X - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of design of 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 design costs* that the Government projects to be incurred through the then-current or upcoming *fiscal year*, as applicable, the Government shall notify the Non-Federal Sponsor in writing of such insufficiency of funds and of the date the Government projects that the Federal funds that will have been made available to the *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 Sponsor in writing that sufficient Federal funds are available to meet the Federal share of *total design costs* the Government projects to be incurred through the then-current or upcoming *fiscal year*, or the Government or the Non-Federal Sponsor elect to terminate this Agreement.

C. In the event the Government determines that modifications to the *Project* are required and that additional authorization by Congress will be required before the Government may construct such modifications, the Government shall notify the Non-Federal Sponsor in writing of such determinations and shall terminate this Agreement.

D. In the event that this Agreement is terminated pursuant to this Article, all parties shall conclude their activities relating to the *Project* and conduct an accounting in accordance with Article IV.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds made available for the *Project* and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article II.B.1. 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 shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment owed by the Non-Federal Sponsor shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE XI - 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

If to the Government:

District Engineer
U.S. Army Corps of Engineers, St. Louis
1222 Spruce Street
St. Louis, Missouri 63103-2833

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

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

ARTICLE XII - 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 XIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

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

DEPARTMENT OF THE ARMY

**SOUTHWESTERN ILLINOIS FLOOD
PREVENTION DISTRICT COUNCIL**

BY: _____
Christopher Hall
Colonel U.S. Army
District Commander

BY: _____
Les Sterman
Supervisor of Construction and the Works

DATE: _____

DATE: _____

CERTIFICATE OF AUTHORITY

I, _____, 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 design of the Design Deficiency Corrections for East St. Louis, Illinois Flood Protection Project, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of this Agreement and that the persons who have executed this Agreement on behalf of the 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

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

DATE: _____