

AMENDMENT NUMBER 1
TO THE
PROJECT PARTNERSHIP AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE METRO EAST SANITARY DISTRICT
AND
THE SOUTHWESTERN ILLINOIS FLOOD PREVENTION DISTRICT COUNCIL
FOR
CONSTRUCTION
OF THE
DESIGN DEFICIENCY CORRECTIONS FOR EAST ST. LOUIS, ILLINOIS FLOOD
PROTECTION PROJECT

THIS AMENDMENT is entered into this 01 day of APRIL, 2019, by and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer, St. Louis District (hereinafter the "District Commander"), and the Metro East Sanitary District (hereinafter the "MESD"), represented by the President of the Board of Commissioners, and the Southwestern Illinois Flood Prevention District Council (hereinafter the "SW IL FPDC"), represented by the Chief Supervisor of Construction and the Works (the MESD and the SW IL FPDC when referred to collectively are referred to as the "Non-Federal Sponsors").

WITNESSETH, THAT:

WHEREAS, construction of the Design Deficiency Corrections for East St. Louis, Illinois Flood Protection Project for flood risk management at Madison and St. Clair Counties, Illinois was authorized by Section 5 of the Flood Control Act of 1936, Public Law 74-738, as modified by Section 204 of the Flood Control Act of 1965, Public Law 89-298, and Section 137 of the Water Resources Development Act of 1976, Public Law 94-587;

WHEREAS, the Government and the Non-Federal Sponsors entered into a Project Partnership Agreement on March 7, 2014 (hereinafter the "Agreement") for construction of the Design Deficiency Corrections for East St. Louis, Illinois Flood Protection Project (hereinafter the "Project", as defined in Article I.A. of the Agreement);

WHEREAS, Section 221(a)(4) of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b(a)(4)), authorizes the Secretary of the Army, subject to certain limitations and conditions, to afford credit toward the non-Federal share of the cost of the Project for the value of in-kind contributions made by the Non-Federal Sponsors determined by the Government to be integral to the Project;

WHEREAS, the Government and the Non-Federal Sponsors executed a Memorandum of Understanding (MOU) on March 6, 2015, to preserve the Non-Federal Sponsors' eligibility for

credit toward the non-Federal share of the cost of the Project as in-kind contributions the value of certain work performed after the execution of the MOU but before the execution of this Amendment Number 1 to the Agreement;

WHEREAS, the Non-Federal Sponsors have provided or performed or may provide or perform work for the Project that the Government has determined to be integral to the Project on September 20, 2018 (hereinafter the “in-kind contributions”, as defined in Article I.L. of the Agreement, as amended), for which credit has not been afforded previously under the Project, and the value of such contributions is eligible for credit toward the non-Federal share of the costs of the Project in accordance with the provisions of the Agreement, as amended; and

WHEREAS, the Government and the Non-Federal Sponsors desire to amend the Agreement to add provisions to allow the Government to afford credit toward the non-Federal share of the cost of the Project for the value of in-kind contributions.

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

1. Insert after the eighth WHEREAS clause the following:

“WHEREAS, Section 221(a)(4) of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b(a)(4)), authorizes the Secretary of the Army, subject to certain limitations and conditions, to afford credit toward the non-Federal share of the cost of the *Project* for the value of *in-kind contributions* made by the Non-Federal Sponsors determined by the Government to be integral to the *Project*;

WHEREAS, the Government and the Non-Federal Sponsors executed a Memorandum of Understanding (MOU) on March 6, 2015, to preserve the Non-Federal Sponsors’ eligibility for credit toward the non-Federal share of the cost of the *Project* as *in-kind contributions* the value of certain work performed after the execution of the MOU but before the execution of Amendment Number 1 to the Agreement;

WHEREAS, the Non-Federal Sponsors have provided or performed or may provide or perform work for the *Project* that the Government has determined to be integral to the *Project* on September 20, 2018 (hereinafter the “*in-kind contributions*”, as defined in Article I.L. of the Agreement, as amended), for which credit has not been afforded previously under the *Project*, and the value of such contributions is eligible for credit toward the non-Federal share of the costs of the *Project* in accordance with the provisions of the Agreement, as amended;”

2. ARTICLE I. – DEFINITIONS is amended as follows:

a. The second sentence of the definition of “*total project costs*” in Article I.B. is amended by inserting the phrase “the value of *in-kind contributions* for which the Government affords credit in accordance with Article IV.C.6. of this Agreement;” after “pursuant to Article II.B.4. of this Agreement;” and before “and the Non-Federal Sponsors’ and the Government’s costs of audit”.

b. The definition of “*financial obligations for construction*” in Article I.D. is amended by inserting the phrase “and the costs for *in-kind contributions*, as determined by the Government,” after “the Government” and before “that result”.

c. Article I.E. is amended by inserting the phrase “sum of the costs included in *total project costs* for *in-kind contributions*, as determined by the Government, and the” after “ratio of the” and before “Non-Federal Sponsors’ total”.

d. Article I. is further amended by adding the following paragraph L. at the end thereof:

“L. The term “*in-kind contributions*” means the design and construction of 226 new relief wells; an 11 cubic feet per second seepage pump station; a 3,100 gallon per minute pump and 16-inch force main added to an existing pump station; 1,200 linear feet of seepage berms; a small fill area along the levee; 1,300 linear feet of shallow slurry trench cutoff wall; 3,800 linear feet of clay filled cutoff trench; and 6,000 linear feet of riverside clay blanket provided or performed by the Non-Federal Sponsors that were identified as being integral to the *Project* by the Division Commander for the Mississippi Valley Division on September 20, 2018.”

3. ARTICLE II. – OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSORS is amended as follows:

a. Article II.A. is amended by inserting the phrase “except for *in-kind contributions*,” after “approaches thereto)” and before “applying those procedures”.

b. The last sentence of Article II.A.1. is amended by inserting the phrase “except for *in-kind contributions*” after “performance of all work on the *Project*” and before “shall be exclusively within the control of the Government.”

c. Articles II.B.3. and II.B.4. are amended by inserting the phrase “and the value of *in-kind contributions* for which the Government affords credit” after “under Paragraph B.2. of this Article” and before “, as determined in accordance with Article IV”.

d. Article II.B.4. is further amended by inserting the following after the first sentence:

“Notwithstanding any other provision of this Agreement, the Non-Federal Sponsors shall not be entitled to reimbursement of any costs for *in-kind contributions* that exceed the amount of costs for *in-kind contributions* included in *total project costs* for which credit is afforded as determined in accordance with Article IV.C.6. of this Agreement.”

e. Article II.B. is further amended by adding the following paragraphs 5. and 6. at the end thereof:

“5. In providing *in-kind contributions*, the Non-Federal Sponsors shall obtain all applicable licenses and permits necessary for such work, and shall comply with all applicable Federal, State and local laws, regulations, and policies, including the laws and regulations specified in Article XI.

At the time the Non-Federal Sponsors furnish a contractor with a notice of acceptance of completed work for each contracted awarded by the Non-Federal Sponsors for the *in-kind contributions*, the Non-Federal Sponsors shall furnish a copy thereof to the Government. As *functional portions of the Project* are completed, the Non-Federal Sponsors shall begin operation and maintenance of such work. Upon completion of the work, the Non-Federal Sponsors shall so notify the Government and provide the Government with a copy of as-built drawings for the construction portion of such work.

6. The Non-Federal Sponsors shall not commence activities required to provide *in-kind contributions* until the designs, detailed plans and specifications, and arrangements for such work have been approved by the Government. Changes proposed by the Non-Federal Sponsors to approved designs and plans and specifications also must be approved by the Government in advance of the related construction. The Non-Federal Sponsors shall afford the Government the opportunity to review and comment on the solicitations for all contracts for the *in-kind contributions*, including relevant plans and specifications, prior to the Non-Federal Sponsors' issuance of such solicitations. To the extent possible, the Non-Federal Sponsors shall afford the Government the opportunity to review and comment on all proposed contract modifications, including change orders. In any instance where providing the Government with notification of a contract modification is not possible prior to execution of the contract modification, the Non-Federal Sponsors shall provide such notification in writing at the earliest date possible. To the extent possible, the Non-Federal Sponsors also shall afford the Government the opportunity to review and comment on all contract claims prior to resolution thereof. The Non-Federal Sponsors shall consider in good faith the comments of the Government but the contents of solicitations, award of contracts, execution of contract modifications, resolution of contract claims, and performance of all work on the *in-kind contributions* shall be exclusively within the control of the Non-Federal Sponsors, except as otherwise required by the provisions of this Agreement, including compliance with applicable Federal, State, or local laws or regulations. The Non-Federal Sponsors shall include appropriate provisions in its contracts for design and construction of the *in-kind contributions*, as necessary, to ensure compliance with such laws, regulations, ordinances, and policies.”

4. ARTICLE IV. – CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, AND DISPOSAL AREA IMPROVEMENTS is amended as follows:

a. The title of ARTICLE IV. is amended to read as follows:

“ARTICLE IV. - CREDIT FOR VALUE OF LANDS, EASEMENTS, RIGHTS-OF-WAY, RELOCATIONS, DISPOSAL AREA IMPROVEMENTS, AND IN-KIND CONTRIBUTIONS”

b. The first sentence of Article IV.A. is amended by inserting the phrase “for the value of *in-kind contributions* determined by the Government to be required for the *Project* pursuant to Article IV.C.6. of this Agreement;” after “share of *total project costs*” and before “for the value of the lands, easements, and rights-of-way”.

c. Article IV.C.1.a. is amended by inserting the following at the end of the first sentence: “, except for any real property interests required for *in-kind contributions*, for which the date of initiation of construction shall be used to determine the fair market value.”

d. Following Article IV.C.5., insert paragraphs 6., 6.a., 6.b., 6.c., and 6.d. as follows:

“6. In-Kind Contributions. The Government shall include in construction costs and credit towards the Non-Federal Sponsors’ share of such costs, the value of *in-kind contributions* that are integral to the *Project* in accordance with the following procedures, requirements, and conditions. Such costs shall be subject to audit in accordance with Article X.C. of this Agreement to determine the reasonableness, allocability, and allowability of the costs.

a. To the maximum extent practicable, no less frequently than on a quarterly basis, the Non-Federal Sponsors shall provide the Government with documentation sufficient for the Government to determine the amount of credit to be provided for *in-kind contributions*.

b. The value shall be equivalent to the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsors incurred to provide the *in-kind contributions*. Such costs shall include, but not necessarily be limited to, actual costs of constructing the *in-kind contributions*; engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the *in-kind contributions*, but shall not include any costs associated with *betterments*, as determined by the Government. Appropriate documentation includes invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsors’ employees.

c. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the *in-kind contributions* are completed and credit is afforded; for the value of *in-kind contributions* obtained at no cost to the Non-Federal Sponsors; for any *in-kind contributions* performed prior to the March 6, 2015 MOU executed between the Government and Non-Federal Sponsors; or for costs that exceed the Government’s estimate of the cost for such *in-kind contributions* if they had been provided by the Government.

d. All work submitted for *in-kind contributions* shall be subject to a review or on-site inspection, as applicable, and certification by the Government that the work was accomplished in a satisfactory manner and in accordance with applicable Federal laws, regulations, and policies.”

e. The first sentence of Article IV.F. is amended by inserting the phrase “*in-kind contributions*,” after “for the value of” and before “*relocations*”.

5. ARTICLE VI. – METHOD OF PAYMENT is amended as follows:

a. Article VI.A. is amended by deleting “and” after “provided by the parties” and before “the value included”, and by inserting the phrase “, and the amount of credit to be afforded for *in-kind contributions* in accordance with Article IV.C.6. of this Agreement.” at the end thereof.

b. Article VI.A.1. is amended by striking the current text of the paragraph and replacing the current text with the following:

“1. As of the effective date of this Agreement, *total project costs* are projected to be \$156,313,000; the value included in *total project costs* for lands, easements, rights-of-way, *relocations*, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV. of this Agreement is projected to be \$6,853,000; the value of the Non-Federal Sponsors’ contributions under Article V., Article X., and Article XIV.A. of this Agreement is projected to be \$0; the Non-Federal Sponsors’ contribution of funds required by Article II.B.1. and Article II.B.3. of this Agreement is projected to be \$54,709,550; the *non-Federal proportionate share* is projected to be 32.0 percent; the amount of credit to be afforded for *in-kind contributions* is projected to be \$40,040,900; the Non-Federal Sponsors’ contribution of funds required by Article XVI.B.3. of this Agreement is projected to be \$0; and the Government’s total financial obligations for the additional work to be incurred and the Non-Federal Sponsors’ contribution of funds for such costs required by Article II.G. of this Agreement are projected to be \$0. These amounts and percentage are estimates subject to adjustment by the Government, after consultation with the Non-Federal Sponsors, and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.”

c. Article VI.A.2. is amended by inserting the phrase “the value of any creditable *in-kind contributions*,” after “Article XIV.A. of this Agreement;” and before “the Non-Federal Sponsors’ total”.

d. Article VI.B.1. is amended by inserting “less any projected credit to be afforded for *in-kind contributions* in accordance with Article IV.C.6. of this Agreement that has not been previously afforded” after “incurred in the first *fiscal year*” and before “; or, if use of a continuing contract” in condition (b).

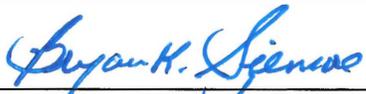
e. Articles VI.B.2.a., VI.B.2.b. and VI.B.2.c. are amended by inserting the following “less any projected credit to be afforded for *in-kind contributions* in accordance with Article IV.C.6. of this Agreement that has not been previously afforded” at the end of condition (a) before “and (b)”.

6. All other terms and conditions of the Agreement remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment Number 1, which shall become effective upon the date it is signed by the District Commander.

DEPARTMENT OF THE ARMY

SOUTHWESTERN ILLINOIS FLOOD
PREVENTION DISTRICT COUNCIL

BY: 
Bryan K. Sizemore
Colonel, U.S. Army
District Commander

BY: 
Charles Etwert
Chief Supervisor of Construction and the
Works

DATE: 21 APRIL 2019

DATE: 4/1/2019

METRO EAST SANITARY DISTRICT

BY: 
Charles Brinza
President, Board of Commissioners

DATE: 4/1/19

CERTIFICATE OF AUTHORITY

I, Robert Sprague, do hereby certify that I am the principal legal officer of the Southwestern Illinois Flood Prevention District Council, that the Southwestern Illinois Flood Prevention District Council is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment No. 1 between the Department of the Army, the Metro East Sanitary District, and the Southwestern Illinois Flood Prevention District Council in connection with 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 Amendment No. 1, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Amendment No. 1 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

1 day of APRIL 2019.



Robert Sprague

Attorney for Southwestern Illinois Flood Prevention District Council

CERTIFICATE OF AUTHORITY

I, James Craney, do hereby certify that I am the principal legal officer of the Metro East Sanitary District, that the Metro East Sanitary District is a legally constituted public body with full authority and legal capability to perform the terms of the Amendment No. 1 between the Department of the Army, the Metro East Sanitary District, and the Southwestern Illinois Flood Prevention District Council in connection with 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 Amendment No. 1, as required by Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the persons who have executed this Amendment No. 1 on behalf of the Metro East Sanitary District have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this
01 day of APRIL 2019.



James Craney.
Attorney for Metro East Sanitary District

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



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

DATE: 4/1/2019

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.

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Charles Brinza
President, Board of Commissioners
Metro East Sanitary District

DATE: 4/1/19

**NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS**

I, Stephen J. Adler, do hereby certify that I am the Executive Director of the Metro East Sanitary District(a "Non-Federal Sponsor"); that I am aware of the financial obligations of the Metro East Sanitary District for the Design Deficiency Corrections for East St. Louis, Illinois Flood Protection Project; and that the Metro East Sanitary District has the financial capability to satisfy the Metro East Sanitary District's obligations under Amendment No. 1 of the Project Partnership Agreement for the Design Deficiency Corrections for East St. Louis, Illinois Flood Protection Project.

IN WITNESS WHEREOF, I have made and executed this certification this 01 day of
APRIL, 2019.

BY: 

TITLE: Executive Director

DATE: 4-1-2019

**NON-FEDERAL SPONSOR'S
SELF-CERTIFICATION OF FINANCIAL CAPABILITY
FOR AGREEMENTS**

I, Charles Etwert, do hereby certify that I am the Chief Supervisor of Construction and the Works of the Southwestern Illinois Flood Prevention District Council(a “Non-Federal Sponsor”); that I am aware of the financial obligations of the Southwestern Illinois Flood Prevention District Council for the Design Deficiency Corrections for East St. Louis, Illinois Flood Protection Project; and that the Southwestern Illinois Flood Prevention District Council has the financial capability to satisfy the Southwestern Illinois Flood Prevention District Council’s obligations under Amendment No 1 of the Project Partnership Agreement for the Design Deficiency Corrections for East St. Louis, Illinois Flood Protection Project.

IN WITNESS WHEREOF, I have made and executed this certification this 15th day of April, 2019.

BY: 

TITLE: Chief Supervisor of Construction and the Works

DATE: 4/1/2019