



# Office of the City Clerk

City Hall  
121 N. LaSalle St.  
Room 107  
Chicago, IL 60602  
www.chicityclerk.com

## Legislation Details (With Text)

**File #:** O2015-6435

**Type:** Ordinance

**Status:** Passed

**File created:** 9/24/2015

**In control:** City Council

**Final action:** 11/18/2015

**Title:** Lease agreement with Chicago Park District for use and maintenance of wetland nature area and easements to operate water level control structures of Indian Ridge Marsh

**Sponsors:** Emanuel, Rahm

**Indexes:** Lease

**Attachments:** 1. O2015-6435.pdf

Date	Ver.	Action By	Action	Result
11/18/2015	1	City Council	Passed	Pass
11/9/2015	1	Committee on Housing and Real Estate	Recommended to Pass	Pass
9/24/2015	1	City Council	Referred	

OFFICE OF THE MAYOR

CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

September 24, 2015

TO THE HONORABLE, THE CITY COUNCIL OF THE  
CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Fleet and Facility Management, I transmit herewith ordinances authorizing the execution of lease agreements.

Your favorable consideration of these ordinances will be appreciated.

Mayor

Very truly yours,

## ORDINANCE

WHEREAS, the City of Chicago (the "City") is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970, and as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Chicago Park District (the "Park District") is a body politic and corporate organized and existing under the Chicago Park District Act, 70 ILCS 1505/0.01 seq., with authority to exercise control over and supervise the operation of all parks within the corporate limits of the City; and

*WHEREAS, Indian Ridge Marsh is a wetland nature area that consists of approximately 140 acres bounded by 116<sup>th</sup> Street on the north, Torrence Avenue on the east, 124<sup>th</sup> Street on the south, and Yates Avenue on the west, in Chicago, Cook County, Illinois ("Indian Ridge Marsh"); and '<*

WHEREAS, the Park District and the City are committed to the restoration and operation of Indian Ridge Marsh as a wetland nature preserve, and desire to work together to achieve these mutual goals; and

WHEREAS, the City is the owner of approximately 1,200 lots within Indian Ridge Marsh (the "Premises"), which constitutes the majority of Indian Ridge Marsh; and

WHEREAS, by ordinance adopted on June 30, 2010, and published at pages 95102-95135 in the Journal of the Proceedings of the City Council of the City of Chicago (the "Journal") of such date, the City Council authorized the execution of an intergovernmental agreement with the U.S. Army Corps of Engineers Chicago District for certain ecosystem restoration work at the Premises (the "Restoration Project"); and

WHEREAS, pursuant to the authorizing ordinance, the City entered into that certain "Project Partnership Agreement between the Department of the Army and City of Chicago for Construction of the Indian Ridge Marsh Ecosystem Restoration Project" dated July 19, 2010 (the "Project Partnership Agreement"); and

WHEREAS, the Restoration Project, which was completed in April 2015, involved restoration of wet prairie, naturalization of the existing marsh and pond shorelines, enhancement of aquatic and terrestrial habitats, and restoration of existing trails; and

WHEREAS, after the completion of the Restoration Project, the City has ongoing maintenance and operation requirements for the Premises pursuant to the Project Partnership Agreement; and

WHEREAS, by ordinance adopted on November 9, 2011, and published at pages 113584-113631 in the Journal for such date, the City Council authorized the transfer of the Premises to the Park District in order to ensure its long-term maintenance and protection; and

WHEREAS, the City has not yet transferred the Premises to the Park District due to the fact that there are parcels within Indian Ridge Marsh that are not yet owned by the City; and

WHEREAS, the City is working to acquire the remaining non-City owned parcels to complete the assemblage of Indian Ridge Marsh, and the Park District wishes to wait to accept title to the land until the assemblage is complete; and

WHEREAS, until the City and the Park District finalize the transfer, the Park District wishes to lease the Premises from the City in order to operate and maintain it as a wetland nature area pursuant to the requirements in the Project Partnership Agreement; and

WHEREAS, by ordinance adopted on November 9, 2011 and published at pages 13661-13667 in the Journal of such date, the City Council authorized the City's acquisition of easements over properties adjacent to Indian Ridge Marsh owned by Norfolk Southern Railway Company and the Metropolitan Water Reclamation District of Greater Chicago (the "Easements"); and

WHEREAS, the Easements are for the operation and maintenance of concrete barriers and water level control structures that direct and control the flow of wetland water to Indian Ridge Marsh; and

***WHEREAS, the City wishes to assign the Easements to the Park District, and the Park District wishes to accept such assignment, so that the Park District can operate and maintain the water level control structures as part of the operation of Indian Ridge Marsh; now, therefore,***

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:**

SECTION 1. The foregoing recitals are hereby adopted as the findings of the City Council.

SECTION 2. On behalf of the City as Landlord, the Commissioner of the Department of Fleet and Facility Management is authorized to execute a Lease with the Park District as the tenant for the Premises to be used and maintained as a wetland nature area, such Lease to be approved by the Commissioner of the Department of Planning and Development, and approved as to form and legality by the Corporation Counsel in substantially the form attached hereto as Exhibit A.

SECTION 3. The Commissioner of the Department of Planning and Development is authorized to execute an assignment of the Easements to the Park District for the use of the two easement properties adjacent to Indian Ridge Marsh, such assignments to be approved as to form and legality by the Corporation Counsel.

SECTION 4. This ordinance shall take effect immediately upon its passage and approval.

EXHIBIT A Lease No. 20326

CEASE NO. 20326

\*

(Above Space for Recorder's Use Only)

**LEASE**

THIS LEASE is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between, THE CITY OF CHICAGO, an Illinois municipal corporation and home rule unit of government (herein referred to as "Landlord" or "City") and THE CHICAGO PARK DISTRICT, an Illinois municipal corporation, (hereinafter referred to as "Tenant" or "Park District").

### RECITALS

WHEREAS, Indian Ridge Marsh is a wetland nature area that consists of approximately 140 acres bounded by 116<sup>th</sup> Street on the north, Torrence Avenue on the east, 124<sup>th</sup> Street on the south, and Yates Avenue on the west, in Chicago, Cook County, Illinois ("Indian Ridge Marsh"), as depicted on Exhibit A attached hereto; and

WHEREAS, the City is the owner of the majority of the real estate within Indian Ridge Marsh as legally described on Exhibit B-1 attached hereto (the "Premises"); and

WHEREAS, by ordinance adopted on June 30, 2010, and published at pages 95102-95135 in the Journal of the Proceedings of the City Council of the City of Chicago (the "Journal") of such date, the City Council authorized the execution of an intergovernmental agreement with the U.S. Army Corps of Engineers Chicago District for certain ecosystem restoration work at the Premises (the "Restoration Project"); and

WHEREAS, pursuant to the authorizing ordinance, the City entered into that certain "Project Partnership Agreement between the Department of the Army and City of Chicago for Construction of the Indian Ridge Marsh Ecosystem Restoration Project" dated July 19, 2010 (the "Project Partnership Agreement"); and

WHEREAS,- the Restoration Project, which was completed in April 2015, involved restoration of wet prairie, naturalization of the existing marsh and pond shorelines, enhancement of aquatic and terrestrial habitats, and restoration of existing trails; and

1

LEASE NO. 20326

WHEREAS, pursuant to the ongoing-maintenance and operation requirements for the Premises pursuant to the Project Partnership Agreement; and

WHEREAS, by ordinance adopted on November 9, 2011, and published at pages 113584-113631 in the Journal for such date, the City Council authorized the transfer of the Premises to the Park District in order to ensure its long-term protection; and

WHEREAS, the City has not yet transferred the Premises to the Park District due to the fact that there are a few parcels within Indian Ridge Marsh that are not owned by the City, which are listed and depicted in Exhibit B-2 attached hereto; and

WHEREAS, the City is working to acquire the remaining non-City owned parcels to complete the assemblage of Indian Ridge Marsh, and the Park District wishes to wait to transfer the parcels until the assemblage is complete; and

WHEREAS, until the City and the Park District finalize the transfer, the Park District wishes to lease the Premises from the City in order to operate and maintain it as a wetland nature area pursuant to the requirements in the Project Partnership Agreement; and

WHEREAS, by ordinance adopted on November 9, 2011 and published at pages 13661-13667 in the Journal of such date, the City Council authorized the City's acquisition of easements over properties nearby the Premises owned by Norfolk Southern Railway Company and the Metropolitan Water Reclamation District of Greater Chicago ("Easements"); and

WHEREAS, the Easements are for the operation and maintenance of water level control structures that direct and control the flow of wetland water to the Premises; and

WHEREAS, the City has assigned the Easements to the Park District for the continued maintenance and operation of the water level control structures.

NOW THEREFORE, in consideration of the covenants, terms and conditions set forth herein, the parties hereto agree and covenant as follows:

## **SECTION 1. GRANT**

1.1 Grant. Landlord hereby leases to Tenant the following described premises situated in the City of Chicago, County of Cook, State of Illinois, to wit:

Approximately 1,200 lots bounded by 116<sup>th</sup> Street on the north, Torrence Avenue on the east, 124<sup>th</sup> Street on the south, and Yates Avenue on the west, in Chicago, Cook County, Illinois, located within Indian Ridge Marsh, as legally described on Exhibit B-1 attached hereto (the "Premises").

2

.DEASE NO. 20326

## **SECTION 2. TERM**

2.1 Term. The term of this Lease ("Term") shall commence on the date of execution of this Lease ("Commencement Date") and shall terminate on the earlier of (i) forty (40) years or (ii) the conveyance of the Premises to the Tenant, unless sooner terminated as set forth in this Lease.

## **SECTION 3. RENT, OPERATING COSTS, TAXES, AND UTILITIES.**

1 Rent. Tenant shall pay base rent for the Premises in the amount of: One Dollar (\$1.00) on the Commencement Date of this Lease.

2 Utilities. Tenant shall pay when due all charges for gas, electricity, light, heat, water, power, and telephone, or any other communication service, and all other utility services used by Tenant or supplied to the Premises on Tenant's behalf.

3 Taxes. Tenant shall pay when due, if applicable, any leasehold taxes assessed or levied on the subject Premises. Tenant shall provide Landlord with proof of payment in full within ten (10) days of such payment. Tenant's failure to pay any such taxes shall be constitute a default under this Lease. Notwithstanding the foregoing, nothing herein shall preclude Tenant from contesting any charge or tax levied against the subject Premises. Tenant's tax responsibilities under this section shall survive the expiration, cancellation, or termination of this Lease.

4 Accord and Satisfaction. No payment by Tenant or receipt of such by Landlord of a lesser amount than any installment or payment of the rent or taxes due hereunder shall be deemed to be other than on account of the amount due, and no endorsement of statement or any check or any letter accompanying any check or payment of rent shall be deemed an accord and satisfaction. Landlord may accept such check or payment without prejudice as to Landlord's right to recover the balance of such installment or payment or to pursue any other remedies available to Landlord.

#### **SECTION 4. CONDITION AND ENJOYMENT OF PREMISES**

1 Satisfaction with Condition. Tenant agrees that Tenant has inspected the Premises and all related areas and grounds and that Tenant is satisfied with the physical condition thereof and accepts the Premises in its "As-Is" condition.

2 Covenant of Quiet Enjoyment. Landlord covenants and agrees that Tenant, upon paying the rent and upon observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, observed and performed, shall lawfully and quietly hold, occupy and enjoy the Premises (subject to the provisions of this Lease) during the Term without hindrance or molestation by Landlord or by any person or persons claiming under Landlord.

**LEASE NO. 20326**

#### **SECTION 5. USE AND MAINTENANCE OF THE PREMISES.**

1 Use of the Premises. The use of the Premises is limited to the operation, maintenance, and preservation of the Premises as a nature area and wetlands. Tenant shall not use the Premises in a manner that would violate any Law. Tenant further covenants not to do or suffer any waste or damage, comply in all

respects with the laws, ordinances, orders, rules, regulations, and requirements of all federal, state and municipal governmental departments which may be applicable to the Premises or to the use or manner of use of the Premises, disfigurement or injury to any building or improvement on the Premises, or to fixtures and equipment thereof. Tenant agrees that in utilizing said Premises that it shall not discriminate against any member of the public because of race, religious affiliation, color, national origin, political persuasion, or sexual orientation. Tenant further covenants that the Premises shall not be used for any religious purposes.

2 Maintenance. Tenant shall, at Tenant's expense, keep the Premises in a condition of thorough repair and good order, and in compliance with all applicable provisions of the Municipal Code of Chicago. Tenant shall, at Tenant's expense, perform the maintenance required in the Project Partnership Agreement, attached as Exhibit C hereto, and in the Operation and Maintenance Manual, attached as Exhibit D hereto. If Tenant shall refuse or neglect to perform needed maintenance or repairs within thirty (30) days after written notice thereof sent by Landlord, unless such repair cannot be remedied by thirty (30) days, and Tenant shall have commenced and is diligently pursuing all necessary action to remedy such repair, Landlord, at Landlord's option, is authorized to either make such repairs and Tenant will promptly and within thirty (30) business days of demand reimburse Landlord for the reasonable cost thereof, or Landlord can immediately terminate this Lease by providing the Tenant with written notice thereof. Landlord shall have the right of access to the Premises for the purpose of inspecting and making repairs to the Premises. Pursuant to the Project Partnership Agreement, the Department of the Army, represented by the U.S. Army Engineer, shall also have a right of access to the Premises, at reasonable times and in a reasonable manner, for the purpose of inspecting and making repairs to the Premises.

5.5 Alterations, Additions, or Improvements. Tenant may make alterations, additions, or improvements to the Premises. Provided, however, that Tenant must first secure the prior written consent for such alterations, additions, or improvements from Landlord's Commissioner of the Department of Planning and Development. If permitted, such alterations, additions, or improvements shall be limited to alterations, additions, or improvements reasonably related to Tenant's use of the Premises as a nature preserve area. Such alterations, additions, or improvements shall be in full compliance with all applicable Laws and codes.

## **SECTION 6. ASSIGNMENT, SUBLEASE, AND LIENS.**

6.1 Assignment and Sublease. Tenant shall not assign this Lease in whole or in part, or sublet the Premises or any part thereof.

DEASE NO. 20326

6"2 Tenahl's~CoVeWhl~A~g^ encumbrance, whether created by act of Tenant, operation of law or otherwise, to attach to or be placed upon Landlord's title or interest in the Premises. All liens and encumbrances created by Tenant shall attach to Tenant's interest only. In case of any such lien attaching, Tenant shall immediately pay and remove such lien or furnish security or indemnify Landlord in a manner satisfactory to Landlord in its sole discretion to protect Landlord against any defense or expense arising from such lien. Except during any period in which Tenant appeals any judgment or obtains a rehearing of any such lien, or in the event judgment is stayed, Tenant shall immediately pay any judgment rendered against Tenant, with all

proper costs and charges, and shall have the lien released and any judgment satisfied. If Tenant fails to pay and remove any lien or contest such lien in accordance herewith, Landlord, at its election, may pay and satisfy same, and all sums so paid by Landlord, with interest from the date of payment at the rate set at 12% per annum.

## SECTION 7. INSURANCE AND INDEMNIFICATION.

1 Self-Insurance. Tenant shall secure shall insurance coverages for each of the insurance requirements as incorporated herein under this Section 7 or Tenant may self-insure for the same types and amounts.

2 Insurance. Tenant shall procure and maintain at all times, at Tenant's own expense, during the Term, the insurance coverages and requirements specified below, insuring all operations related to the Lease. The kind and amounts of insurance required are as follows:

a) Worker's Compensation and Employer's Liability. Workers Compensation as prescribed by applicable law, covering all employees who are to provide a service under this Lease, and Employer's Liability Insurance with limits of not less than \$500,000 each accident, illness or disease.

b) Commercial General Liability (Primary and Umbrella). Commercial General Liability Insurance or equivalent, with limits of not less than \$2,000,000 per occurrence, for bodily injury, personal injury, and property damage liability. Coverage shall include the following: All premises and operations, products/completed operations, defense, separation of insureds, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City of Chicago shall be named as an additional insured under the policy. Such additional insured coverage shall be provided on CG 20 10 or on a similar additional insured form acceptable to the City. The additional insured coverage shall not have any limiting endorsements or language under the policy such as, but not limited to, Tenant's sole negligence or the Additional Insured's vicarious liability. Tenant's liability insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

## 5

LEASE NO. 20326

(c) Automobile Liability (Primary and Umbrella).-When any motor vehicles (owned, non-owned and hired) are used in connection with the Lease, Tenant shall provide and maintain Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The City of Chicago shall be named as an additional insured on a primary, non-contributory basis.

The Tenant shall be responsible for all loss or damage personal property (including, but not limited to materials, equipment, tools and supplies), owned, rented or used by Tenant.



7.3 Other Terms of Insurance. Tenant will furnish the City of Chicago, Department of Fleet and Facility Management, Office of Real Estate Management, 30 North LaSalle Street, Suite 300, Chicago, Illinois 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Lease, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Term. Tenant shall submit evidence of insurance prior to execution of the Lease. The receipt of any certificate does not constitute agreement by Landlord that the insurance requirements in this Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements in the Lease. The failure of Landlord to obtain certificates or other insurance evidence from Tenant shall not be deemed to be a waiver by Landlord. Tenant shall advise all insurers of the Lease provisions regarding insurance. Non-conforming insurance shall not relieve Tenant of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Lease and the Landlord retains the right to terminate or suspend the Lease until proper evidence of insurance is provided.

The Tenant shall provide for 60 days prior written notice to be given to the Landlord in the event coverage is substantially changed, cancelled, or non-renewed.

Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Tenant.

Tenant hereby grants to the Landlord a waiver of any right of subrogation which any insurer of Tenant may acquire against the Landlord by virtue of the payment of any loss under the insurance. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Landlord has received a waiver of subrogation endorsement from the insurer (s).

Tenant expressly understands and agrees that any coverages and limits furnished by Tenant shall in no way limit the Tenant's liabilities and responsibilities specified in this Lease or by law.

Tenant expressly understands and agrees that its insurance is primary and any insurance-or self-insurance programs maintained by the Landlord shall not contribute with insurance provided by Tenant.

6

LEASE NO. 20326

The~recpi~fi~in^ limite'd"by"any~iimitations""expressed"~in~the indemnification language in this Lease or any limitation placed on the indemnity in this Lease given as a matter of law.

If Tenant is a joint venture or limited liability company, the insurance policies shall name the joint venture or limited liability company as a named insured.

If Tenant maintains higher limits than the minimums shown above, Landlord shall be entitled

to coverage for the higher limits maintained by Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Landlord.

Notwithstanding any provision to the contrary, the City of Chicago, Department of Finance, Office of Risk Management, maintains the rights to modify, delete, alter or change these requirements at any time during the Term of Lease.

7.4 Tenant's Indemnification. Tenant shall indemnify, defend, and hold Landlord harmless against all liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, costs, damages, and expenses (including reasonable attorney's fees, expenses, and court costs), whether such claim is related to or arises from personal injury or property damage which may be expended by or accrue against, be charged to, or be recovered from Landlord or Tenant by reason of Tenant's performance of or failure to perform any of Tenant's obligations under this Lease, or Tenant's negligent acts or failure to act, or resulting from the acts or failure to act of Tenant's contractors, respective officers, directors, agents, or employees.

## **SECTION 8. CONFLICT OF INTEREST AND GOVERNMENTAL ETHICS.**

1 Conflict of Interest. No official or employee of the City of Chicago, nor any member of any board, commission or agency of the City of Chicago, shall have any financial interest (as defined in Chapter 2-156 of the Municipal Code), either direct or indirect, in the Premises; nor shall any such official, employee, or member participate in making or in any way attempt to use his or her position to influence any City governmental decision or action with respect to this Lease.

2 Duty of Comply with Governmental Ethics Ordinance. Landlord and Tenant shall comply with Chapter 2-156 of the Municipal Code of Chicago, "Governmental Ethics," including but not limited to section 2-156-120, which states that no payment, gratuity, or offer of employment shall be made in connection with any City of Chicago contract as an inducement for the award of that contract or order. Any contract or lease negotiated, entered into, or performed in violation of any of the provisions of Chapter 2-156 shall be voidable in the sole discretion of the City of Chicago.

## **SECTION 9. ADDITIONAL RESPONSIBILITIES OF TENANT.**

7

LEASE NO. 20326

9.1" 'Securing the Premises. Tenant shall be responsible for securing the-Premises at all times and provide and pay for security where necessary.

2 Illegal Activity. Tenant, or any of its agents or employees, shall not perform or permit any practice or activity that may damage the reputation of, or otherwise be injurious to the Premises or neighborhood, be illegal, or increase the rate of insurance on the Premises.

3 Hazardous Materials. Tenant shall not introduce onto the Premises materials which may cause a fire hazard or safety hazard and comply with reasonable requirements of Landlord's fire insurance carrier.

4 Full Responsibility. Tenant assumes full legal and financial responsibility and liability for any and all use of the Premises by Tenant, Tenant's staff, Tenant's agents, Tenant's invitees, and any other person or persons entering the Premises.

5 No Alcohol or Drugs. Tenant agrees that no alcoholic beverages or illegal drugs of any kind or nature shall be sold, given away, or consumed on the Premises.

6 Permits and Licensing. For any activity which Tenant desires to conduct on the Premises in which a license or permit is required, said license or permit must be obtained by Tenant prior to using the Premises for such activity. Landlord must be notified of any such license or permit. Failure to obtain a required license or permit shall constitute a breach of the terms of this Lease.

7 Non-Discrimination. Tenant shall not discriminate against any participant or employee upon the basis of race, age, color, religion, sex, sexual orientation, military discharge, ancestry, parental or marital status, disability, source of income or national origin; nor shall any person be denied admittance or be prevented from participating in any activity upon the basis of any of the foregoing.

#### **SECTION 10. MISCELLANEOUS.**

10.1 Notice. All notices, demands and requests which may be or are required to be given, demanded or requested by either party to the other shall be in writing. All notices, demands and requests by Tenant to Landlord shall be delivered by national overnight courier or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid addressed to Landlord as follows:

City of Chicago  
Department of Planning and Development City Hall,  
Room 1000 121 North LaSalle Street Chicago, Illinois  
60602 Attn: Commissioner

8

LEASE NO. 20326

City of Chicago Corporation Counsel City Hall, Room 600 121 North LaSalle Street Chicago, Illinois 60602  
Attn: Real Estate Division

City of Chicago  
Department of Fleet and Facility Management 30 North LaSalle Street, Suite 300 Chicago, Illinois 60602 Attn:  
Office of Real Estate Management

or at such other place as Landlord may from time to time designate by written notice to Tenant. All notices, demands, and requests by Landlord to Tenant shall be delivered by a national overnight courier or shall be sent

by United States registered or certified mail, return receipt requested, postage prepaid, addressed to Tenant as follows:

Chicago Park District 541 North Fairbanks  
Chicago, Illinois 60611 Attn: General  
Superintendent

General Counsel Chicago Park District 541 North Fairbanks Chicago, Illinois 60611

or at such other place as Tenant may from time to time designate by written notice to Landlord. Any notice, demand or request which shall be served upon Tenant by Landlord, or upon Landlord by Tenant, in the manner aforesaid, shall be deemed to be sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be mailed.

2 Partial Invalidity. If any covenant, condition, provision, term or agreement of this Lease shall, to any extent, be held invalid or unenforceable, the remaining covenants, conditions, provisions, terms and agreements of this Lease shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Lease shall be valid and in force to the fullest extent permitted by law.

3 Governing Law. This Lease shall be construed and be enforceable in accordance with the laws of the State of Illinois.

4 Entire Agreement. All preliminary and contemporaneous negotiations are merged into and incorporated in this Lease. This Lease contains the entire agreement between the parties and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

9

LEASE NO. 20326

10.5 Captions and Section Numbers. The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Lease nor in any way affect this Lease.

' 10.6 Binding Effect of Lease. The covenants, agreements, and obligations contained in this Lease shall extend to, bind, and inure to the benefit of the parties hereto and their legal representatives, heirs, successors, and assigns, and is subject to no contingencies or conditions except as specifically provided herein.

7 Time is of the Essence. Time is of the essence of this Lease and of each and every provision hereof.

8 No Principal/Agent or Partnership Relationship. Nothing contained in this Lease shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

9 Authorization to Execute Lease. The parties executing this Lease hereby represent and warrant

that they are duly authorized and acting representatives of Landlord and Tenant respectively.

10 Termination of Lease. Landlord and Tenant shall have the right to terminate this Lease by providing each other with sixty (60) days prior written notice at any time after execution of this Lease. In addition, the Lease shall terminate in the event that the Landlord conveys the subject Premises to the Tenant pursuant to Quitclaim Deed or other instrument of conveyance. In such event, this Lease shall terminate as of the date the parties execute such instrument of conveyance.

11 Force Majeure. When a period of time is provided in this Lease for either party to do or perform any act or thing, the party shall not be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, wars, governmental regulation or control, and other causes beyond the reasonable control of the party, and in any such event the time period shall be extended for the amount of time the party is so delayed.

12 Condemnation. If the whole or any substantial part of the Premises are taken or condemned by any competent authority for any public use or purpose, or if any adjacent property or street shall be so condemned or improved in such a manner as to require the use of any part of the Premises, the term of this Lease shall, at the option of Landlord or the condemning authority, be terminated upon, and not before, the date when possession of the part so taken shall be required for such use or purpose, and Landlord shall be entitled to receive the entire award without apportionment with Tenant.

13 Tenant Default. Tenant must adhere to all provisions of this Lease. Failure of Tenant to adhere to all provisions of this Lease will result in default. In the event of such default, Landlord will notify Tenant in writing as to the circumstances giving rise to such default.

10

LEASE NO. 20326

If the Tenant receives such notice, the Tenant must cure such default within ten (10) business days. If the Tenant does not cure such default within ten (10) business days, Landlord may cancel this Lease with five (5) days written notice.

14 Waste Ordinance Provisions. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Tenant warrants and represents that it, and to the best of its knowledge, its contractors and subcontractors, have not violated and are not in violation of any provisions of Section 7-28 or Section 11-4 of the Municipal Code (the "Waste Sections"). During the period while this Lease is executory, Tenant's, any general contractor's or any subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Lease, constitutes a breach of and an event of default under this Lease, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Lease, at law or in equity. This section does not limit Tenant's, general contractor's and its subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Lease. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Lease, and may further affect the Tenant's eligibility for future contract awards.

15 Amendments. This Lease may be amended or modified periodically by the parties hereto

provided such amendment or modification is approved in writing by all of following: the Superintendent of the Chicago Park District, the City of Chicago's Deputy Corporation Counsel (Real Estate Division), the Commissioner of the Department of Fleet and Facility Management, and the Commissioner of the Department of Planning and Development. Provided, however, that such amendment or modification shall not materially alter the provisions of this Lease or extend the term hereof.

16 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original instrument and all of which together shall constitute one and the same instrument.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

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**LEASE NO. 20326**

IN WITNESS WHEREOF, \h!T^ first above written.

**LANDLORD:**

CITY OF CHICAGO, an Illinois municipal corporation

**THE DEPARTMENT OF FLEET AND FACILITY MANAGEMENT**

By:

Commissioner

THE DEPARTMENT OF PLANNING AND DEVELOPMENT

By:

.



NOTARY PUBLIC

LEASE NO. 20326

STATE OF ILLINOIS )  
COUNTY OF COOK ) ss.  
COUNTY OF COOK )

I, the undersigned, a notary public in and for said County, in the State aforesaid, do hereby certify that David L. Reifman, the Commissioner of the Department of Planning and Development of the City of Chicago, an Illinois municipal corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, being first duly sworn by me, acknowledged that, as said Commissioner, he signed and delivered the foregoing instrument pursuant to authority given by the City of Chicago as his free and voluntary act and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this       day of       , 2015.

NOTARY PUBLIC



14

LEASE NO. 20326

"" "STATE"OF ILLINOIS )-"  
 )SS.  
COUNTY OF COOK )

-■----

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Michael P. Kelly, the General Superintendent and CEO of the Chicago Park District, an Illinois municipal corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, being first duly sworn by me, acknowledged that, as said General Superintendent and CEO, he signed and delivered the foregoing instrument pursuant to authority given by the Chicago Park District as his free and voluntary act and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this       day of       , 2015.

NOTARY PUBLIC

15

EXHIBIT A

16

INDIAN RIDGE MARSH

LEASE NO. 20326

**EXHIBIT IM LEGAL DESCRIPTION OF PREMISES**

LOTS 25 THROUGH 48, INCLUSIVE, IN BLOCK 1 IN ALLEN'S SUBDIVISION, RECORDED JANUARY 25, 1869 IN BOOK 168, PAGE 55 AS DOCUMENTS NUMBER 196289, IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 11615-57 S. Hoxic, Chicago, IL 60633

P.I.N.(S): 25-24-209-007-0000 THROUGH 25-24-209-024-0000; 25-24-209-051 -0000

LOTS 1 THROUGH 13, INCLUSIVE, AND LOTS 15 THROUGH 48, INCLUSIVE, IN BLOCK 2 IN ALLEN'S SUBDIVISION, RECORDED JANUARY 25, 1869 IN BOOK 168, PAGE 55 AS DOCUMENT NUMBER 196289, IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 11601-57 S. Calhoun, Chicago, IL 60633

P.I.N.(S): 25-24-208-001-0000 THROUGH 25-24-208-033-0000; 25-24-208-035-0000 THROUGH 25-24-208-044-0000

LOTS 1 AND 2, AND LOTS 6 THROUGH 38 INCLUSIVE, AND LOTS 40 THROUGH 48 INCLUSIVE, IN BLOCK

3 IN ALLEN'S SUBDIVISION, RECORDED JANUARY 25, 1869 IN BOOK 168, PAGE 55 AS DOCUMENT NUMBER 196289, IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS

ADDRESS: 11601-21; 11641-45; 11649-57 S. Bensley, Chicago, IL 60633  
P.I.N.(S): 25-24-207-001 -0000 THROUGH 26-24-009-00000; 25-24-207-018-0000; 25-24-207-020-0000  
THROUGH 25-24-207-026-0000; 25-24-207-032-0000; 25-24-207-033-0000; 25-24-207-044-0000; 25-24-207-047-0000 THROUGH 25-24-207-053-0000

LOTS 1 AND 2, AND LOTS 4 THROUGH 48, INCLUSIVE, IN BLOCK 4 IN ALLEN'S SUBDIVISION, RECORDED JANUARY 25, 1869 IN BOOK 168, PAGE 55 AS DOCUMENT NUMBER 196289, IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS

ADDRESS: 11601-11; 11639 S. Yates, Chicago, IL 60633  
P.I.N.(S): 25-24-206-001-0000 THROUGH 25-24-206-006-0000; 25-24-206-022-0000; 25-24-206-023-0000; 25-24-206-025-0000 THROUGH 25-24-206-036-0000; 25-24-206-046-0000 THROUGH 25-24-206-048-0000

17

LEASE NO. 20326

"COTS~THR"OUGH" 217 INCLUSIVE; LOTS23 "THROUGH ~48;INCLUSIVE, - (N-BLOCK-5 IN-ALLEN'S SUBDIVISION, RECORDED JANUARY 25, 1869 IN BOOK 168, PAGE 55 AS DOCUMENT 196289, IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 11701-11745; ] 1751-57 S. Yales, Chicago, IL 60633  
P.I.N.(S): 25-24-214-008-0000 THROUGH 25-24-214-010-0000; 25-24-214-015-0000; 25-24-214-019-0000  
THROUGH 25-24-214-027-0000; 25-24-214-040-0000 THROUGH 25-24-214-045-0000; 25-24-214-047-0000 THROUGH 25-24-214-053-0000

LOTS 1 THROUGH 3, INCLUSIVE, AND LOTS 6 THROUGH 48, INCLUSIVE, IN BLOCK 6 IN ALLEN'S SUBDIVISION, RECORDED JANUARY 25, 1869 IN BOOK 168, PAGE 55 AS DOCUMENT NUMBER 196289, IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 11701-57 S. Bensley, Chicago, IL 60633  
P.I.N.(S): 25-24-215-001-0000 THROUGH 25-24-215-006-0000; 25-24-215-013-0000  
THROUGH 25-24-215-015-0000; 25-24-215-025-0000 THROUGH 25-24-215-027-0000; 25-24-215-030-0000; 25-24-215-031-0000; 25-24-215-034-0000 THROUGH 25-24-215-052-0000

LOTS 1 THROUGH 26, INCLUSIVE, AND LOTS 31 THROUGH 33, INCLUSIVE, LOT 42, AND LOTS 44

THROUGH 48, INCLUSIVE, IN BLOCK 7 IN ALLEN'S SUBDIVISION, RECORDED JANUARY 25, 1869 IN BOOK 168, PAGE 55 AS DOCUMENT NUMBER 196289, IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 11700-56 S. Hoxie, Chicago, IL 60633

P.I.N.(S): 25-24-216-001-0000 THROUGH 25-24-216-005-0000; 25-24-216-007-0000; 25-24-216-016-0000  
THROUGH 25-24-216-018-0000; 25-24-216-023-0000 THROUGH 25-24-216-048-0000

LOTS 1 THROUGH 19, INCLUSIVE, AND LOTS 21 THROUGH 48, INCLUSIVE, IN BLOCK 8 IN ALLEN'S SUBDIVISION, RECORDED JANUARY 25, 1869 IN BOOK 168, PAGE 55 AS DOCUMENT NUMBER 196289, IN THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 11700-44; 11750-56 S. Torrence, Chicago, IL 60633

P.I.N.(S): 25-24-217-001-0000 THROUGH 25-24-217-038-0000; 25-24-217-040-0000 THROUGH 043-0000

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LEASE NO. 20326

LTjTSn"THKOUGH~46;"INCEUSIVEpN Bl:OCK"1-'IN-WH!TTIER'S-SUBDIV-ISI0N,REe0RDEB AUGUST 18, 1871 AND JANUARY 13, 1887 AS DOCUMENT NUMBER 789678, IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 11800 S. Torrence, Chicago, IL 60633 P.I.N.: 25-24-407-001-0000

LOTS 1 THROUGH 42, INCLUSIVE. AND LOTS 44 THROUGH 46, INCLUSIVE, IN BLOCK 2 IN WHITTIER'S SUBDIVISION, RECORDED AUGUST 18, 1871 AND JANUARY 13, 1887 AS DOCUMENT NUMBER 789678, IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 11800-56 S. Hoxie, Chicago, IL 60633

P.I.N.(s): 25-24-406-001-0000 THROUGH 25-24-406-003-0000; 25-24-406-005-0000 THROUGH 25-24-406-046-0000

LOTS 1 THROUGH 46, INCLUSIVE, IN BLOCK 3 IN WHITTIER'S SUBDIVISION, RECORDED AUGUST 18, 1871 AND JANUARY 13, 1887 AS DOCUMENT NUMBER 789678, IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 11800-56 S. Calhoun, Chicago, IL 60633  
P.I.N.(S): 25-24-405-001 -0000 THROUGH 25-24-405-046-0000

LOTS 1 THROUGH 6, INCLUSIVE, AND LOTS 13 THROUGH 23, INCLUSIVE, AND LOTS 26 THROUGH 46, INCLUSIVE, IN BLOCK 4 IN WHITTIER'S SUBDIVISION, RECORDED AUGUST 18, 1871 AND JANUARY 13, 1887 AS DOCUMENT NUMBER 789678, IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 11800- 12; 1 1834-50 S. Bensley, Chicago, IL 60633  
P.I.N.(S): 25-24-404-013-0000 THROUGH 25-24-404-021-0000; 25-24-404-024-0000  
THROUGH 25-24-404-029-0000; 25-24-404-041-0000; 25-24-404-042-0000; 25-24-404-047-0000  
THROUGH 25-24-404-049-0000

19

LEASE NO. 20326

LOTS 37 THROUGH 46, INCLUSIVE, IN BLOCK 5 IN WHITTIER'S SUBDIVISION, RECORDED AUGUST 18, 1871 AND JANUARY 13, 1887 AS DOCUMENT NUMBER 789678, IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 11909-23 S. Yates, Chicago, IL 60633  
P.I.N.(S): 25-24-412-006-0000 THROUGH 25-24-412-010-0000; 25-24-412-047-0000

LOTS 1 THROUGH 46, INCLUSIVE, IN BLOCK 6 IN WHITTIER'S SUBDIVISION, RECORDED AUGUST 18, 1871 AND JANUARY 13, 1887 AS DOCUMENT NUMBER 789678, IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 11901-57 S. Bensley, Chicago, IL 60633  
P.I.N.(S): 25-24-413-001-0000 THROUGH 25-24-413-046-0000

LOTS 1 THROUGH 46, INCLUSIVE, IN BLOCK 7 IN WHITTIER'S SUBDIVISION, RECORDED AUGUST 18, 1871 AND JANUARY 13, 1887 AS DOCUMENT NUMBER 789678, IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL

MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 11901 -53 S Calhoun, Chicago, IL 60633

P.I.N.(S): 25-24-414-001-0000 THROUGH 25-24-413-012-0000; 25-24-414-024-0000 <sup>1</sup> THROUGH 25-24-413-047-0000

LOTS 1 THROUGH 46, INCLUSIVE, IN BLOCK 8 IN WHITTER'S SUBDIVISION, RECORDED AUGUST 18, 1871 AND JANUARY 13, 1887 AS DOCUMENT NUMBER 789678, IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

ADDRESS: 11900 S. Torrence P.I.N.: 25-24-415-001-0000

20

LEASE NO. 20326

LOTS1 THROUGH^, INCLUSIVE, IN BLOCK 1INPERSON'S SUBDIVISION, RECORDED MARCH 15, 1923 AS DOCUMENT NUMBER 7840537, IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12000-56 S Torrance, Chicago, IL 60633

P.I.N.(S): 25-24-423-001-0000 THROUGH 25-24-423-044-0000

LOTS 1 THROUGH 40, INCLUSIVE, IN BLOCK 2 IN PERSON'S SUBDIVISION, RECORDED MARCH 15, 1923 AS DOCUMENT NUMBER 7840537, IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12000-06; 12012-56 S. Hoxie, Chicago, IL 60633 P.I.N.(S): 25-24-422-001-0000 THROUGH 25-24-422-040-0000

LOTS 1 THROUGH 40, INCLUSIVE, IN BLOCK 3 IN PERSON'S SUBDIVISION, RECORDED MARCH 15, 1923 AS DOCUMENT NUMBER 7840537, IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK

COUNTY, ILLINOIS.

ADDRESS: 12000-56 S. Calhoun, Chicago, IL 60633

P.I.N.(S): 25-24-421 -001 -0000 THROUGH 25-24-421 -040-0000

ALL OF BLOCK 4 IN PERSON'S SUBDIVISION, RECORDED MARCH 15, 1923 AS DOCUMENT NUMBER 7840537, IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12000 S. Bensley, Chicago, IL 60633 P.I.N.(S): 25-24-420-001-0000

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LEASE NO. 20326

LTJTSTTHROTJGH "237INCEUSIVE~~AND"COTS~2 6THROUG H~4 47 IN C LU SIV E; IN~B LOG K~MN FORD MANOR SUBDIVISION, RECORDED AUGUST 15, 1923 AS DOCUMENT NUMBER 8064867, IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12100-54 S Torrence, Chicago, IL 60633

P.I.N.(S): 25-24-431 -001 -0000 THROUGH 25-24-431-019-0000; 25-24-431 -021 -0000 THROUGH 25-24-431-043-0000

LOTS 1 THROUGH 31, INCLUSIVE, AND LOTS 33 THROUGH 40, INCLUSIVE, IN BLOCK 2 IN FORD MANOR SUBDIVISION, RECORDED AUGUST 15, 1923 AS DOCUMENT NUMBER 8064867, IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, , TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12100-12156 S Hoxie, Chicago, IL 60633

P.I.N.(S): 25-24-430-001-0000 THROUGH 25-24-430-008-0000; 25-24-430-010-0000 THROUGH 25-24-430-040-0000

LOTS 1 THROUGH 40, INCLUSIVE, IN BLOCK 3 IN FORD MANOR SUBDIVISION, RECORDED AUGUST 15, 1923 AS DOCUMENT NUMBER 8064867, IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12100-56 S. Calhoun, Chicago, IL 60633  
P.I.N.(S): 25-24-429-001-0000 THROUGH 25-24-429-040-0000

LOTS 1 THROUGH 40, INCLUSIVE, IN BLOCK 4 IN FORD MANOR SUBDIVISION, RECORDED AUGUST 15, 1923 AS DOCUMENT NUMBER 8064867, IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: M2101-33, 12139-57 S. Yates, Chicago, IL 60633 P.I.N.(5): 25-24-428-001-0000 THROUGH 25-24-428-040-0000

**22**

LEASE NO. 20326

LOTS 1 THROUGH 40, INCLUSIVE, IN BLOCK 1 IN WISNER'S SUBDIVISION, RECORDED JULY 30, 1870, IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12200-06; 12216-56 S. Torrence, Chicago, IL 60633  
P.I.N.(S): 25-25-207-001-0000 THROUGH 25-25-207-028-0000; 25-25-207-032-0000 THROUGH 25-25-207-048-0000

LOTS 2 THROUGH 48, INCLUSIVE, IN BLOCK 2 IN WISNER'S SUBDIVISION, RECORDED JULY 30, 1870, IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12202-56 S. Hoxie, Chicago, IL 60633  
P.I.N.(S): 25-25-206-001-0000 THROUGH 25-25-206-024-0000; 25-25-206-026-0000 THROUGH 25-25-



206-048-0000

LOTS 1 THROUGH 48, INCLUSIVE, IN BLOCK 3 IN WISNER'S SUBDIVISION, RECORDED JULY 30, 1870, IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12200-12256 S. Bensley, Chicago, IL 60633 P.I.N.(S): 25-25-205-001-0000 THROUGH 25-25-204-048-0000

LOTS 1 THROUGH 48, INCLUSIVE, IN BLOCK 4 IN WISNER'S SUBDIVISION, RECORDED JULY 30, 1870, IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12200-56 S. Bensley, Chicago, IL 60633  
P.I.N.(S): 25-25-204-001 -0000 THROUGH 25-25-204-048-0000  
LEASE NO. 20326

LOTS 1 THROUGH 48, INCLUSIVE, IN BLOCK 9 IN WISNER'S SUBDIVISION; RECORDED JULY 30, 1870, IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12300-56 S Bensley, Chicago, IL 60633  
P.I.N.(S): 25-25-212-001-0000 THROUGH 25-25-207-048-0000

LOTS 1 THROUGH 48, INCLUSIVE, IN BLOCK 10 IN WISNER'S SUBDIVISION, RECORDED JULY 30, 1870, IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12300-56 S Calhoun, Chicago, IL 60633  
P.I.N.(S): 25-25-213-001-0000 THROUGH 25-25-213-048-0000

LOTS 1 THROUGH 48, INCLUSIVE, IN BLOCK 11 IN WISNER'S SUBDIVISION, RECORDED JULY 30, 1870, IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12300-56 S Hoxie, Chicago, IL 60633 P.I.N.(S): 25-25-214-001-0000 THROUGH 25-25-214-048-0000

LOTS 1 THROUGH 48, INCLUSIVE, IN BLOCK 12 IN WISNER'S SUBDIVISION, RECORDED JULY 30, 1870, IN THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 25, TOWNSHIP 37 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS.

ADDRESS: 12300-56 S. Torrence, Chicago, IL 60633

P.I.N.(S): 25-25-215-001-0000 THROUGH 25-25-215-048-0000

24

LEASE NO. 20326

EXHIBITB-2

**NON-CITY OWNED PARCELS WITHIN INDIAN RIDGE MARSH (EXCLUDED  
FROM PREMISES)**

25-24-206-024-0000; 25-24-207-010-0000; 25-24-207-049-0000; 25-24-208-034-0000-25-24-214-046-0000; 25-24-2] 5-028-0000; 25-24-215-029-0000; 25-24-216-006-0000; 25-24-216-008-0000 THROUGH 25-24-216-015-0000-25-24-216-019-0000 THROUGH 25-24-216-022-0000; 25-24-217-039-0000'

-f 18th ST

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LEASE NO. 20326

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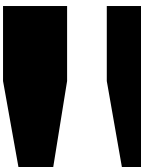
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LEASE NO. 20326

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EXHIBIT C~

## PROJECT PARTNERSHIP AGREEMENT

(to be attached)



29

PROJECT PARTNERSHIP AGREEMENT BETWEEN THE  
DEPARTMENT OF THE ARMY AND  
CITY OF CHICAGO FOR  
CONSTRUCTION OF THE  
INDIAN RIDGE MARSH ECOSYSTEM RESTORATION PROJECT

*THIS AGREEMENT is entered into this*                      *day of ..W*      , *Zo\ Qoy*  
and between the Department of the Army (hereinafter the "Government"), represented by the U.S. Army Engineer,  
Chicago District and the City of Chicago (hereinafter the "Non-Federal Sponsor"), represented by the Commissioner of

the City of Chicago Department of Environment.

WITNESSETH, THAT:

WHEREAS, construction of the Calumet Harbor and River, IL and IN (hereinafter the "Existing Project", as defined in Article LA. of this Agreement) at the southwest shore of Lake Michigan about 11 miles southeast of Chicago Harbor in Chicago, IL and Indiana and extending inland 7 miles to Lake Calumet in Chicago, IL was completed by the Secretary of the Army in 1984;

WHEREAS, the construction or operation of the Existing Project has contributed to the degradation of the quality of the environment;

WHEREAS, construction of the Indian Ridge Marsh Ecosystem Restoration Project (hereinafter the "Project", as defined in Article LB. of this Agreement) at Indian Ridge Marsh, Chicago, Illinois was approved by the Director of Programs for the Great Lakes and Ohio River Division on May 12, 2003 pursuant to the authority contained in Section 1135(c) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2309a: hereinafter "Section 1135");

WHEREAS, Section 4 of the Flood Control Act of 1944, Public Law 78-534, as amended (16 U.S.C. 460d) and the Federal Water Project Recreation Act of 1965, Public Law 89-72, as amended (16 U.S.C. 4601-12 et seq.) provide authority to include recreation as a Project purpose;

*WHEREAS, performance of monitoring (as defined in Article I.V. of this Agreement) was approved as part of the Project;*

WHEREAS, Section 1135 provides that not to exceed \$40,000,000 in Federal funds are authorized to be appropriated annually to carry out projects for the purpose of: (1) making such modifications in the structures and operations of water resources projects

constructed by the Secretary of the Army which the Secretary determines will improve the quality of the environment, or (2) undertaking measures for restoration of environmental quality when the Secretary determines that construction or operation of a water resources project has contributed to the degradation of the quality of the environment; and not more than \$5,000,000 in Federal funds may be expended on any single modification or measure carried out or undertaken pursuant to Section 1135;

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

*WHEREAS, Section 1135 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2309a) and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2213) specify the cost-sharing requirements applicable to the Project;*

*WHEREAS, the Non-Federal Sponsor has waived reimbursement for the value of lands, easements, rights-of-way, relocations, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined by the Government to be required or necessary for the ecosystem restoration features that exceeds 25 percent of total ecosystem restoration costs;*

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 implementation of the Project.*

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

## ARTICLE I - DEFINITIONS

A. The term "Existing Project" shall mean the Calumet Harbor and River, IL and IN, a navigation project authorized by the Rivers and Harbors Acts of 1899, 1902, 1935, 1960, 1962 and 1965, which consists of an outer harbor, by two miles of breakwater, an approach channel, a harbor channel, a river navigation channel, three turning basins, a confined disposal facility, a boat shed facility, and a stone dock; and involved the disposal of dredged materials from maintenance dredging into the Indian Ridge Marsh.

## 2

B. The term "Project" shall mean the ecosystem restoration features and the recreation features as generally described in the Ecosystem Restoration Report dated March 2003 and approved by the Director of Programs for the Great Lakes and Ohio River Division on May 12, 2003.

C. The term "ecosystem restoration features" shall mean restoration of the site to allow a return to wet prairie along the northeastern portion of the site, naturalization of the existing marsh and pond shorelines, and enhancement of aquatic and terrestrial habitats as generally described in the Ecosystem Restoration Report dated March 2003 and approved by the Director of Programs for the Great Lakes and Ohio River Division on May 12, 2003.

D. The term "recreation features" shall mean the restoration of existing trails as generally described in the Ecosystem Restoration Report dated March 2003 and approved by the Director of Programs for the Great Lakes and Ohio River Division on May 12, 2003.

E. *The term "total project 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 construction of the Project and the pre-Agreement planning and design costs incurred by the Government. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: the Government's pre-Agreement planning and design costs; the Government's engineering and design costs during construction; the Non-Federal Sponsor's and the Government's costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; the Government's costs of historic preservation activities in accordance with Article XVII.A. and Article XVII.B.1. of this Agreement; the Government's actual construction costs; the Government's costs of monitoring in accordance with Article U.K. and Article ILL. of this Agreement; the Government's supervision and administration costs; the Non-Federal Sponsor's and the Government's costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; the Government's costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit toward the Non-Federal Sponsor's*

*share of total ecosystem restoration costs in accordance with Article IV of this Agreement; the value of lands, easements, rights-of-way, relocations, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for which the Government affords credit toward the Non-Federal Sponsor's share of total recreation costs in accordance with Article IV of this Agreement or for which reimbursement by the Government is required pursuant to Article 11.D.3. of this Agreement; and the Non-Federal Sponsor's and the Government's costs of audit in accordance with Article X.B. and Article X.C. of this Agreement. The tenn does not include any value for lands, easements, rights-ofway, relocations, and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined by the Government to be required or necessary for the ecosystem restoration features that exceeds 25 percent of total*

### 3

ecosystem restoration costs; any costs for operation, maintenance, repair, rehabilitation, or replacement of the Project; any costs of betterments under Article II.J.2. of this Agreement; any costs of dispute resolution under Article VII of this Agreement; the Government's costs for data recovery activities associated with historic preservation in accordance with Article XVII. B.2. and Article XVI.B.3. of this Agreement; or the Non-Federal Sponsor's costs of negotiating this Agreement.

*F. The tenn "total ecosystem restoration costs" shall mean that portion of total project costs allocated to the ecosystem restoration features.*

*G. The tern, "total recreation costs" shall mean that portion of total project costs allocated to the recreation features.*

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

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

J. The term "non-Federal proportionate share" shall mean the ratio of the Non-Federal Sponsor's total contribution of funds required by Article H.C.2., Article H.D.2., Article II.D.4., and Article II.E.2. of this Agreement to financial obligations for construction, as projected by the Government.

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

L. The term "relocation" shall mean providing a functionally equivalent facility to the owner of a utility, cemetery, highway, railroad, or public facility when such action is authorized in accordance with applicable legal principles of just compensation. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant demolition of the affected facility or part thereof.

M. The term "functional portion of the Project"<sup>1</sup> shall mean a portion of the Project for which construction has been completed and that can function independently, as determined by the U.S. Army Engineer, Chicago District (hereinafter the "District Engineer") in writing, although the remainder of the Project is not complete.

4

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

O. 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.

P. The term "Section 1135 Project Limit" shall mean the \$5,000,000 statutory limitation on the Government's financial participation in the planning, design, and construction of the Project as specified in Section 1135 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2309a).

Q. The term "Section 1135 Annual Program Limit" shall mean the statutory limitation on the Government's annual appropriations for planning, design, and construction of all projects implemented pursuant to Section 1135 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2309a). As of the effective date of this Agreement, such limitation is \$40,000,000.

R. The term "fiscal year" shall mean one year beginning on October 1 and ending on September 30.

S. The term "fiscal year of the Non-Federal Sponsor" shall mean one year beginning on October 1 and ending on September 30.

*T. The term "pre-Agreement planning and design costs" shall mean all costs that were incurred by the Government prior to the effective date of this Agreement for planning and design of the Project.*

U. The term "monitoring" shall mean activities, including the collection and analysis of data, that are necessary to determine if predicted outputs of the ecosystem restoration features are being achieved.

## 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 construct 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 construction of the Project or commence construction of the Project using the Government's own forces until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project.*

2. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. To the extent possible, the Government shall afford the Non-Federal 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 construction using the Government's own forces, execution of contract modifications, resolution of contract claims, and performance of all work on the Project shall be exclusively within the control of the Government.

3. At the time the District Engineer furnishes the contractor with the Government's Written Notice of Acceptance of Completed Work for each contract awarded by the Government for the Project, the District Engineer shall furnish a copy thereof to the Non-Federal Sponsor.

4. Notwithstanding paragraph A.2. of this Article, if the award of any contract for construction or monitoring of the Project, or continuation of construction or monitoring of the Project using the Government's own forces, would result in total project costs exceeding \$6,666,667, the Government and the Non-Federal Sponsor agree to defer award of that contract, award of all remaining contracts for construction or monitoring of the Project, and continuation of construction or monitoring of the Project using the Government's own forces until such time as the Government and the Non-Federal Sponsor agree in writing to proceed with further contract awards for the Project or the continuation of construction or monitoring of the Project using the Government's own forces, but in no event shall the award of contracts or the continuation of construction or monitoring of the Project using the Government's own forces be deferred for more than three years. Notwithstanding this general provision for deferral, in the event the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts or continuation of construction or monitoring of the Project using the Government's own forces must proceed in order to comply with law or to protect human life or property from imminent and substantial harm, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts, or continue with construction or monitoring of the Project using the Government's own forces.

6

B. *The Government shall allocate total project costs between total ecosystem restoration costs and total recreation costs.*

C. The Non-Federal Sponsor shall contribute 25 percent of total ecosystem restoration costs in accordance with the provisions of this paragraph.

1. *In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, and rights-of-way, including those required for relocations, the borrowing of material, and the disposal of dredged or excavated material, shall perform or ensure performance of all relocations, and shall construct improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the*

*Government determines to be required or to be necessary for construction, operation, and maintenance of the ecosystem restoration features'.*

2. The Non-Federal Sponsor shall provide funds in accordance with Article VLB. of this Agreement in the amount necessary to meet the Non-Federal Sponsors required share of 25 percent of total ecosystem restoration costs if the Government projects at any time that the collective value of the following contributions that are determined by the Government to be attributable to the ecosystem restoration features will be less than such required share: (a) the value of the Non-Federal Sponsor's contributions under paragraph C.1. of this Article that is included in total project costs as determined in accordance with Article IV of this Agreement; and (b) the value of the Non-Federal Sponsor's contributions under Article V. Article X, and Article XIV.A. of this Agreement.

3. The Government, subject to the availability of funds and as limited by the Section 1135 Project Limit and the Section 1135 Annual Program Limit, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 25 percent of total ecosystem restoration costs if the Government determines at any time that the collective value of the following contributions that are determined by the Government to be attributable to the ecosystem restoration features has exceeded 25 percent of total ecosystem restoration costs: (a) the value of the Non-Federal Sponsor's contributions under paragraph C. 1. of this Article that is included in total project costs as determined in accordance with Article IV of this Agreement; (b) the value of the Non-Federal Sponsor's contributions under paragraph C.2. of this Article; and (c) the value of the Non-Federal Sponsors contributions under Article V, Article X, and Article XIV.A. of this Agreement.

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

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

7

2. The Non-Federal Sponsor shall provide funds in accordance with Article VLB. of this Agreement in the amount necessary to meet the Non-Federal Sponsor's required share of 50 percent of total recreation costs if the Government projects at any time that the collective value of the following contributions that are determined by the Government to be attributable to the recreation features will be less than such required share: (a) the value of the Non-Federal Sponsor's contributions under paragraph D.1. of this Article as determined in accordance with Article IV of this Agreement; and (b) the value of the Non-Federal Sponsor's contributions under Article V. Article X, and Article XIV.A. of this Agreement.

3. The Government, subject to the availability of funds and as limited by paragraph D.4. of this Article, the Section 1135 Project Limit, and the Section 1135 Annual Program Limit, shall refund or reimburse to the Non-Federal Sponsor any contributions in excess of 50 percent of total recreation costs if the Government determines at any time that the collective value of the following contributions that are determined by the Government to be attributable to the recreation features has exceeded 50 percent of total recreation costs: (a) the value of the Non-Federal Sponsor's contributions under paragraph D. 1. of this Article as determined in accordance with Article IV of this Agreement; (b) the value of the Non-Federal Sponsor's contributions under paragraph D.2. of this Article; and (c) the value of the Non-Federal Sponsor's contributions under Article V, Article X, and Article XIV.A. of this Agreement. After such a

determination, the Government, in its sole discretion, may acquire any remaining lands, easements, and rights-of-way required for the recreation features, perform any remaining relocations necessary for the recreation features, or construct any remaining improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material required for the recreation features on behalf of the Non-Federal Sponsor. Notwithstanding the acquisition of lands, easements, and rights-of-way, performance of relocations, or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material by the Government under this paragraph, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

4. Notwithstanding any other provision of this paragraph, the Government's share of total recreation costs shall not exceed an amount equal to 10 percent of the Government's share of total ecosystem restoration costs. The Non-Federal Sponsor shall be responsible for all total recreation costs in excess of this amount and shall pay any such costs in accordance with Article VLB. of this Agreement.

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

*• I. In the event the Government projects that the amount of Federal funds the Government will make available to the Project through the then-current fiscal year, or the amount of Federal funds the Government will make available for the Project through the upcoming fiscal year, is not sufficient to meet the Federal share of total project costs*

8

and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement that the Government projects to be incurred through the then-current or upcoming fiscal year, as applicable, the Government shall notify the Non-Federal 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 and the parties shall proceed in accordance with Article XIII.B. of this Agreement.

2. In accordance with Section 1135 of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2309a), the Government's total financial obligations for planning, design, and construction of the Project (except for costs incurred on behalf of the Non-Federal Sponsor in accordance with paragraph J. of this Article) shall not exceed the Section 1135 Project Limit. Notwithstanding any other provision of this Agreement, the Non-Federal Sponsor shall be responsible for all costs in excess of this limit and shall pay any such costs in accordance with Article VLB. of diis Agreement.

3. If the Government determines that the total amount of Federal funds-provided by Congress for all projects implemented pursuant to Section 1135 has reached the Section 1135 Annual Program Limit, and the Government projects that the Federal funds the Government will make available to the Project within the Section J135 Annual Program Limit will not be sufficient to meet the Federal share of total project costs and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII.B.2. and Article XVII.B.3. of this Agreement, 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 within die Section J135 Annual Program Limit, future performance under this Agreement shall be suspended and the parties shall proceed in accordance with Article XIII.B. of this Agreement.



4. *As of the effective date of this Agreement, \$1,000,000 of Federal funds is currently projected to be available for the Project. The Government makes no commitment to request Congress to provide additional Federal funds for the Project. Further, the Government's financial participation in the Project is limited to the Federal funds that the Government makes available to the Project.*

F. When the District Engineer determines that except for monitoring, the entire Project, or a functional portion of the Project, is complete, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with a final Operation, Maintenance, Repair, Rehabilitation, and Replacement Manual (hereinafter the "OMRR&R Manual") or, if the final OMRR&R Manual is not available, an interim OMRR&R Manual for the entire Project or such completed portion. Upon such notification, the Government also shall furnish to the Non-Federal Sponsor a copy

9

of all final as-built drawings for the entire Project or such completed portion if such drawings are available. Not later than 6 months after such notification by the Government that the entire Project is complete, the Government shall furnish the Non-Federal Sponsor with the final OMRR&R Manual and all final as-built drawings for the entire Project. In the event the final OMRR&R Manual or all final as-built drawings for the entire Project cannot be completed within the 6 month period, the Government shall provide written notice to the Non-Federal Sponsor, and the Government and the Non-Federal Sponsor shall negotiate an acceptable completion date for furnishing such documents. Further, after completion of all contracts for the Project, copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project that have not been provided previously shall be provided to the Non-Federal Sponsor.

G. Upon notification from the District Engineer in accordance with paragraph F. of this Article, the Non-Federal Sponsor shall operate, maintain, repair, rehabilitate, and replace the entire Project, or (he. functional portion of the Project as the case may be, in accordance with Article VIII of this Agreement.

H. Upon the District Engineer's determination that, except for monitoring, the entire Project is complete, the Government shall conduct an interim accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor. Further, upon conclusion of the period of construction the Government shall amend the interim accounting to complete the final accounting, in accordance with Article VI.C. of this Agreement, and furnish the results to the Non-Federal Sponsor.

I. 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.

J. 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 VI.D. of this Agreement.

1. Acquisition of lands, easements, and rights-of-way; performance of relocations; or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material for the Project. Notwithstanding acquisition of lands, easements, and rights-of-way, performance of

10

relocations, or construction of improvements by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for any costs of cleanup and response in accordance with Article XIV.C. of this Agreement.

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

K. Prior to completion of construction of the ecosystem restoration features, the Government, in consultation with the Non-Federal Sponsor and, as appropriate, other concerned agencies, shall finalize the plan for monitoring of the ecosystem restoration features. The monitoring plan shall describe the specific parameters to be monitored; how these parameters relate to achieving the desired outcomes; methods for measuring those parameters; frequency and duration of monitoring of the ecosystem restoration features; criteria for measuring the success of the ecosystem restoration features; preparation and distribution of monitoring reports and other coordination requirements; and estimated monitoring costs. As of the effective date of this Agreement, the costs of monitoring for the ecosystem restoration features are estimated to be \$3,000.

L. Upon providing notification to the Non-Federal Sponsor that the ecosystem restoration features are complete in accordance with paragraph F. of this Article, the Government shall perform monitoring of the ecosystem restoration features in accordance with the monitoring plan for a period of 5 consecutive years from the date of such notification. The Government's performance of monitoring shall be concurrent with the Non-Federal Sponsor's performance of operation, maintenance, repair, rehabilitation, and replacement for the completed ecosystem restoration features. The monitoring of the ecosystem restoration features by the Government shall end prior to the expiration of such 5 year period upon the occurrence of either of the following events; (1) the award of the next contract for monitoring of the ecosystem restoration features, or continuation of monitoring of the ecosystem restoration features using the Government's own forces, would result in the costs incurred for monitoring of the ecosystem restoration features exceeding 1 percent of the amount equal to total ecosystem restoration costs minus the costs for monitoring of the ecosystem restoration features; or (2) the District Engineer determines that continued monitoring of the ecosystem restoration features is not necessary.

M. The Non-Federal Sponsor shall prevent obstructions or encroachments on the Project (including prescribing and enforcing regulations to prevent such obstructions or encroachments) such as any new developments on Project lands, easements, and rights-of-way or the addition of facilities which might reduce the outputs produced by the ecosystem restoration features, hinder operation and maintenance of the Project, or interfere with the Project's proper function.

11

N. The Non-Federal Sponsor shall not use the ecosystem restoration features, or the lands, easements, and rights-of-way required pursuant to Article III of this Agreement for such features, as a wetlands bank or mitigation credit for

any other project.

O. The Non-Federal Sponsor shall keep the recreation features, and access roads, parking areas, and other associated public use facilities, open and available to all on equal terms.

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

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

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

12

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

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material associated with construction, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such improvements that are required, respectively, for the ecosystem restoration

features and for the recreation features in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the issuance of the solicitation for each Government contract for construction of the Project, or prior to the Government initiating construction of a portion of the Project using the Government's own forces, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications. Furthermore, prior to the end of the period of construction, the Non-Federal Sponsor shall provide all improvements set forth in such descriptions.

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

J

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

A. Except as provided otherwise in this Article, the Government shall include in total-project costs and afford credit toward the Non-Federal Sponsor's share of total ecosystem restoration costs for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement for the ecosystem restoration features; for the value of the relocations that the Non-Federal

*Sponsor must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement for the ecosystem restoration features; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article III.C. of this Agreement for the ecosystem restoration features. The Government also shall include in total project costs and afford credit toward the Non-Federal Sponsor's share of total recreation costs for the value of the lands, easements, and rights-of-way that the Non-Federal Sponsor must provide pursuant to Article III.A. of this Agreement for the recreation features; for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance pursuant to Article III.B. of this Agreement for the recreation features; and for the value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that the Non-Federal Sponsor must provide pursuant to Article III.C. of this Agreement for the recreation features. However, no amount shall be included in total project costs, no credit shall be afforded, and no reimbursement shall be provided for the value of any lands, easements, rights-of-way, relocations, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that have been provided previously as an item of cooperation for another Federal project including the Existing Project. In addition, no amount shall be included in total project costs, no credit shall be afforded, and no reimbursement shall be provided for the value of lands, easements, rights-of-way, relocations, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material that were acquired or performed using Federal program funds unless the Federal agency providing the Federal portion of such funds verifies in writing that affording credit for the value of such items is expressly authorized by Federal law. Finally, no amount shall be included in total project costs, no credit shall be afforded pursuant to this Article, and no reimbursement shall be provided to the Non-Federal Sponsor, for any value of lands, easements, rights-of-way, relocations, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined by the Government to be required or necessary for the ecosystem*

*restoration features that exceeds 25 percent of total ecosystem restoration costs.*

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

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

14

market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

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

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

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The Non-Federal Sponsor shall provide the Government with the appraisal no later than 6 months after the Non-Federal Sponsor provides the Government with an authorization for entry for such real property interest. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, the Non-Federal Sponsor chooses not to obtain a second appraisal, or the Non-Federal Sponsor does not provide the first appraisal as required in this paragraph, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph C.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole

discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph C.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph C.2.a. of this Article.

15

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

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

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60 day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

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

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. In the event the Government modifies its determination made pursuant to Article III.A. of this Agreement, the Government shall afford credit for the documented incidental costs associated with preparing to acquire the lands, easements, or rights-of-way identified in the original determination, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs,

16

appraisal costs, survey costs, attorney's fees, plat maps, mapping costs, actual amounts expended for payment of any relocation assistance benefits provided in accordance with Article III.D. of this Agreement, and other payments by the Non-Federal Sponsor for items that are generally recognized as compensable, and required to be paid, by applicable state law due to the acquisition of a real property interest in accordance with Article III of this Agreement. The value of the interests provided by the Non-Federal Sponsor in accordance with Article III.A. of this Agreement also shall include the documented costs of obtaining appraisals pursuant to paragraph C.2. of this Article, as determined by the Government, and subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs.

5. Waiver of Appraisal. Except as required by paragraph C.3. of this Article, the Government may waive the requirement for an appraisal pursuant to this paragraph if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, the Government and the Non-Federal Sponsor must agree in writing to the value of such real property interest in an amount not in excess of \$10,000.

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

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

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

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

E. The value of the improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowability of such costs. Such costs shall include, but not necessarily be limited to, actual costs of

17

providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

F. Any credit afforded or reimbursement provided under the terms of this Agreement for the value of relocations, or improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material, performed within the Project boundaries is subject to satisfactory compliance with applicable Federal labor laws covering non-Federal construction, including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et

seq.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 et seq.), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)). Notwithstanding any other provision of this Agreement, credit or reimbursement may be withheld, in whole or in part, as a result of the Non-Federal Sponsor's failure to comply with its obligations under these laws.

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

## ARTICLE V - PROJECT COORDINATION TEAM

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

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of

18

significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of construction, the Project Coordination Team shall generally oversee the Project, including matters related to: plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the application of and compliance with 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 et seq.), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)) for relocations and improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material; the investigations to identify the existence and extent of hazardous substances in accordance with Article XIV.A. of this Agreement; historic preservation activities in accordance with Article XVII of this Agreement; the Government's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the proposed OMRR&R Manual; finalization of the monitoring plan; performance of monitoring; 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 Project Coordination Team may make recommendations to the District Engineer on matters related to the Project that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for design and construction of the Project, has the discretion to accept or reject, in whole or in part, the Project Coordination Team's recommendations.

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

## ARTICLE VI - METHOD OF PAYMENT

A. In accordance with the provisions of this paragraph, the Government shall maintain current records and provide to the Non-Federal Sponsor current projections of costs, financial obligations, contributions provided by the parties, the value included in total project costs for lands, easements, rights-of-way, relocations, and improvements

19

required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material determined in accordance with Article IV of this Agreement.

1. As of the effective date of this Agreement, total project costs are projected to be \$6,666,667; total ecosystem restoration costs are projected to be \$6,629,897; the Non-Federal Sponsors contribution of funds required by Article II.C.2. of this Agreement is projected to be \$0; total recreation costs are projected to be \$36,770; the Non-Federal Sponsor's contribution of funds required by Article II.D.2. and Article II.D.4. of this Agreement is projected to be \$0; the Non-Federal Sponsor's contribution of funds required by Article II.E.2. of this Agreement is projected to be \$0; the non-Federal proportionate share is projected to be 0 percent; the Non-Federal Sponsor's contribution of funds required by Article XVII.B.3. of this Agreement is projected to be \$0; 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 \$1,657,474 for the ecosystem restoration features and \$8,385 for the recreation features; and the Government's total financial obligations for the additional work to be incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article IV 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 30 September 2010 and by each quarterly anniversary thereof until the conclusion of the period of construction and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of the following: total project costs; total ecosystem restoration costs; the Non-Federal Sponsor's total contribution of funds required by Article II.C.2. of this Agreement; total recreation costs; the Non-Federal Sponsor's total contribution of funds required by Article II.D.2. and Article II.D.4. of this Agreement; the Non-Federal Sponsor's contribution of funds required by Article II.E.2. of this Agreement; the non-Federal proportionate share; the Non-Federal Sponsor's total contribution of funds required by Article XVII. B.3. of this Agreement; 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; and the Government's total financial obligations for additional work incurred and the Non-Federal Sponsor's contribution of funds for such costs required by Article 11. J. of this Agreement.

B. The Non-Federal Sponsor shall provide the contributions of funds required by Article II.C.2., Article II.D.2., Article II.D.4., Article II.E.2., and Article XVII.C.4. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 45 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for construction of the Project or commencement

20

of construction of the Project using the Government's own forces, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet its projected share under Article II.C.2., Article II.D.2., Article II.D.4., Article II.E.2., and Article XVII.B.3. of this Agreement. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of such required funds by delivering a check payable to "FAO. USAED, Chicago H6" 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. 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 construction incurred prior to the commencement of the period of construction; (b) the non-Federal proportionate share of financial obligations for construction as financial obligations for construction are incurred; and (c) the Non-Federal Sponsor's share of financial obligations for data recovery activities associated with historic preservation pursuant to Article XVII.B.3. of this Agreement as those financial obligations are incurred. If at any time the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the Non-Federal Sponsor's share of such financial obligations, 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 the District Engineer's determination that, except for monitoring, the entire Project is complete and all relevant claims and appeals and eminent domain proceedings have been resolved, the Government shall conduct an interim accounting and furnish the results to the Non-Federal Sponsor. Further, upon conclusion of the period of construction and resolution of all relevant claims and appeals and eminent domain proceedings, the Government shall amend the interim accounting to complete the final accounting and furnish the results to the Non-Federal Sponsor. If outstanding relevant claims and appeals or eminent domain proceedings prevent a final accounting from being conducted in a timely manner, the Government shall conduct an interim accounting or amend the previous interim accounting, as applicable, and furnish the Non-Federal Sponsor with written notice of the results of such interim or amended interim accounting, as applicable. Once all outstanding relevant claims and appeals and eminent domain proceedings are resolved, the Government shall 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 project costs, total ecosystem restoration costs, total recreation costs, and the costs of any data recovery

activities associated with historic preservation. In addition, for each set of costs, the interim or final accounting, as applicable, shall determine each party's required share thereof, and each party's total contributions thereto as of the date of such accounting.

1. Should the interim or final accounting, as applicable, show that the Non-Federal Sponsor's total required shares of total ecosystem restoration costs, total recreation costs, and the costs of any data recovery activities associated with historic preservation exceed 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, Chicago H6" 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 ecosystem restoration costs, total recreation costs, and the costs of any data recovery activities associated with historic preservation exceed the Non-Federal Sponsor's total required shares thereof, the Government, subject to the availability of funds and as limited by Article 11.D.4. of this Agreement, the Section 1135 Project Limit, and the Section J J35 Annual Program Limit, shall refund or reimburse the excess amount to the Non-Federal Sponsor within 90 calendar days of the date of completion of such accounting. In the event the Non-Federal Sponsor is due a refund or reimbursement and funds are not available to refund or reimburse the excess amount to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund or reimbursement.

D. The Non-Federal Sponsor shall provide the contribution of funds required by Article II.J. 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.I. 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.I. of this Article.

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

## ARTICLE VII - DISPUTE RESOLUTION

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

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

A. Upon receipt of the notification from the District Engineer in accordance with Article II.F. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsor, pursuant to Article II.G. of this Agreement, shall operate, maintain, repair, rehabilitate, and replace the entire Project or functional portion of the Project, at no cost to the Government. The Non-Federal Sponsor shall conduct its operation, maintenance, repair, rehabilitation, and replacement responsibilities in a manner compatible widi the Project \s authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions

## 23

prescribed by the Government in the interim or final OMRR&R Manual and any subsequent amendments thereto.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that die Non-Federal Sponsor now or hereafter owns or controls for access to die Project for the purpose of inspection and, if necessary, for die purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the Project. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-perfonnance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of such written notice by the Government, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor now or hereafter owns or controls for the purpose of completing, operating, maintaining, repairing, rehabilitating, or replacing the Project. No completion, operation, maintenance, repair, rehabilitation, or replacement by the Government shall relieve the Non-Federal Sponsor of

responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

#### ARTICLE IX - HOLD AND SAVE

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

#### ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

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

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

#### 24

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 project costs and shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act Amendments of 1996. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and shared in accordance with the provisions of this Agreement.

#### ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal 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; Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in

Programs and Activities Assisted or Conducted by the Department of the Army"; and all applicable Federal labor standards requirements including, but not limited to, 40 U.S.C. 3141-3148 and 40 U.S.C. 3701-3708 (revising, codifying and enacting without substantive change the provisions of the Davis-Bacon Act (formerly 40 U.S.C. 276a et seq.), the Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. 327 et seq.), and the Copeland Anti-Kickback Act (formerly 40 U.S.C. 276c)).

## ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal 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.

25

## ARTICLE XIII - 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 work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.*

B. In the event future performance under this Agreement is suspended pursuant to Article II.E. of this Agreement, such suspension shall remain in effect until such time that the Government notifies the Non-Federal Sponsor in writing that sufficient Federal funds are available to meet the Federal share of total project costs and the Federal share of costs for data recovery activities associated with historic preservation in accordance with Article XVII. B. 2. and Article XVII.B.3. of this Agreement the Government projects to be incurred through the then-current or upcoming fiscal year, or the Government or the Non-Federal Sponsor elects to terminate this Agreement.

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

D. In the event that this Agreement is terminated pursuant to this Article or Article XIV.C. of this Agreement, both parties shall conclude their activities relating to the Project and conduct an accounting in accordance with Article VI.C. of this Agreement. To provide for this eventuality, the Government may reserve a percentage of total Federal funds

made available for the Project and an equal percentage of the total funds contributed by the Non-Federal Sponsor in accordance with Article H.C.2., Article H.D.2., Article II.D.4., Article II.E.2., and Article XVII.B.3. of this Agreement as a contingency to pay costs of termination, including any costs of resolution of contract claims and contract modifications.

26

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

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or ensure performance of, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601-9675; hereinafter "CERCLA"), that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the Project. However, for lands, easements, and rights-of-way that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

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

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

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

C. The Government and the Non-Federal Sponsor shall determine whether to initiate construction of the Project, or, if already in construction, whether to continue with

*construction of the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous-substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for construction, operation, and maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with construction of the Project after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response, including the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs, in the event the Non-Federal Sponsor does not reach agreement with the Government on whether to proceed or to terminate this Agreement under this paragraph, or fails to provide any funds necessary to pay for cleanup and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government, in its sole discretion, may either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.*

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

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

#### ARTICLE XV - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or sent by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor: Commissioner City of  
Chicago Department of Environment 30 N. LaSalle Street. 2  
nd Floor Chicago, IL 60601

If to the Government:

28

District Commander U.S. Army Engineer District, Chicago 111  
North Canal Street, Suite 600 Chicago, IL 60606

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 XVI - CONFIDENTIALITY

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

## ARTICLE XVII - HISTORIC PRESERVATION

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

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

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

2. *As specified in Section 7(a) of Public Law 86-523, as amended by Public Law 93-291 (16 U.S.C. 469c(a)), the costs of data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the Section 1135 Project Limit.*

3. The Government shall not incur costs for data recovery activities associated with historic preservation that exceed the statutory one percent limit specified in paragraph B.2. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit and the Secretary of the Interior has concurred in the waiver in accordance with Section 208(3) of Public Law 96-515, as amended (16 U.S.C. 469c-2(3)).

### 29

a. Any costs of data recovery' activities associated with historic preservation that exceed the one percent limit and are determined by the Government to be attributable to the ecosystem restoration features shall not be included in total project costs but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements for Section 1135, as follows: 25 percent will be borne by the Non-Federal Sponsor and 75 percent will be borne by the Government.

b. Any costs of data recovery' activities associated with historic preservation that exceed the one percent limit and are determined by the Government to be attributable to the recreation features shall not be included in total project costs but shall be shared between the Non-Federal Sponsor and the Government consistent with the cost sharing requirements for recreation, as follows: 50 percent will be borne by the Non-Federal Sponsor and 50 percent will be borne by the Government.

C. If, during its performance of relocations or construction of improvements required on lands, easements, and rights-of-way to enable the disposal of dredged or excavated material in accordance with Article III of this Agreement, the Non-Federal Sponsor discovers historic properties or other cultural resources that have not been evaluated by the Government pursuant to this Article, the Non-Federal Sponsor shall provide prompt written notice to the Government of such discovery. The Non-Federal Sponsor shall not proceed with performance of the relocation or construction of the improvement that is related to such discovery until the Government provides written notice to the Non-Federal Sponsor that it should proceed with such work.

ARTICLE XVIII - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

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

Vincent V. Quarles Colonel U.S. Army District Commander

t/ty-toio      DATE: nl^liaio

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CERTIFICATE OF AUTHORITY

Iff>, do hereby certify that I am the priricipal legal officer of the City of Chicago, that theJCiry of Chicago is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between die Department of the Army and the City of Chicago in connection with the In«dian Ridge Marsh Ecosystem Restoration Project, and to pay damages, if necessary, ten the event of the failure to perform in accordance with the terms of this Agreement and that ithe persons who ■have executed this Agreement on behalf of the City of Chicago have acted ^thin their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this  
Ipt<sup>13^</sup> day of J IXU, 20 IP.

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#### 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.

^K^? lOftUec-- McfcennL. Commissioner

#### CERTIFICATE OF AUTHORITY

, do hereby certify' that I am the principal legal officer of

the City of Chicago\that the City of Chicago is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the ArnW and the City of Chicago in connection with the Indian Ridge Marsh Ecosystem Restoration 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 City of Chicago have acted within their statutory authority.

IN WITNESS WHERE?

day of

^F, I have made and executed this certification this 20 .

31

LEASE NO. 20326

EXHIBITD

OPERATION AND MAINTENANCE MANUAL (to be attached)

**30**

DEPARTMENT OF THE ARMY

CHICAGO DISTRICT, U.S. ARMY CORPS OF ENGINEERS 231 SOUTH LASALLE STREET CHICAGO IL 60604

**27 APR 2915**

Planning, Programs &

Project Management Division Project Management Branch

Mr. Nelson Chueng Department of Planning  
& Development City of Chicago  
121 N LaSalle Street, Room 1000 Chicago, IL 60602

Subject: Indian Ridge Marsh, Section 1135, Ecosystem Restoration Project - Turnover Letter for Operation and Maintenance (O&M)

Dear Mr. Chueng:

This letter is to notify you that we are turning over the Indian Ridge Marsh, Section 1135, Ecosystem Restoration Project to the City of Chicago for O&M. As stated in the Project Partnership Agreement (PPA) signed July 19, 2010, the City shall conduct routine inspections and maintenance of this project over the project life. Please find enclosed the O&M manual that describes the inspection and maintenance requirements.

We are proceeding with fiscal close out of the entire project. We will notify you in a separate letter when fiscal close out has been completed.

If you have any additional questions, please contact Ms. Kirston Buczak at 312-846-5552 or [kirston.a.buczak@usace.army.mil](mailto:kirston.a.buczak@usace.army.mil) <<mailto:kirston.a.buczak@usace.army.mil>>.

^rroSsfbher T. Drew Coloe, U.S. Army District Commander

Enclosure

Cc: Zhanna Yermakov

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**p3j**

**U.S. Army Corps**  
of Engineers Chicago District

## **Indian Ridge Marsh Ecoiosical Restoration**

**21 April 2015**

Prepared For; City of Chicago  
121 N. LaSalle Street, Room 1000 Chicago, IL 60602

Prepared By;

U.S. Army Corps of Engineers, Chicago District 231 S. LaSalle Street, Suite  
1500 Chicago, IL 60602

## TABLE OF CONTENTS

SECTION 1. GENERAL	3	
		PURPOSE OF MANUAL 3
SECTION 2. AUTHORIZATION	4	
SECTION 3. LOCATION	4	
SECTION 4. NOT USED		
SECTION 5. CONSTRUCTION	4	
		PROJECT FEATURES 5
Weir Structure	5	
Carp Removal and Fish Stocking	5	
Native Vegetation	6	
Culverts	6	
Boardwalk	6	
SECTION 6. MAINTENANCE AND INSPECTION	6	
GENERAL	6	
MAINTENANCE REQUIREMENTS	6	
		Planted Areas 7
PROJECT SPONSOR INSPECTIONS & MONITORING ACTIVITIES	11	
SITE REQUIREMENTS	12	
Native Plant Species	12	
Invasive Species	12	
SECTION 7. REPAIR, REPLACEMENT, AND REHABILITATION (RR&R)	14	
GENERAL	14	
PROJECT MODIFICATIONS	14	

## LIST OF TABLES

Table 1. Construction Contracts

Table 2 Palustrine Fish Assemblage & Introduction Schedule

## LIST OF APPENDICES

APPENDIX A	Contact List
APPENDIX B	Project Cooperation Agreement
APPENDIX C	As-Built Drawings
APPENDIX D	Seeding & Planting List
APPENDIX E	Plant Monitoring Reports

## INDIAN RIDGE MARSH ECOLOGICAL RESTORATION OPERATION & MAINTENANCE MANUAL

### SECTION I. GENERAL PURPOSE OF MANUAL

The purpose of the Operations, Maintenance, Repair, Replacement, and Rehabilitation (OMRR&R) Manual is to provide the Chicago Park District, identified as the Project Sponsor, with a document which summarizes the basic design criteria, and presents the requirements for operations and maintenance of Indian Ridge Marsh. This information is presented in order to allow the Project Sponsor to understand the design concepts involved and prevent possible damages from occurring through proper operations and maintenance activities, thereby protecting the investment made by the Project Sponsor and the U. S. Army Corps of Engineers (Chicago District). The Project Sponsor is responsible for the operation, maintenance repair, replacement, and rehabilitation of the overall project as indicated in the Project Partnership Agreement. This manual is in accordance with the U.S. Army Corps of Engineers', ER 1110-2-401, 'Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual for Projects and Separable Elements Managed by Project Sponsors', 30 September 1994.

This Manual may be updated as needed by the Chicago Park District or by the Chicago District to account for project modifications, changed conditions, or if warranted to correct conditions discovered during inspections. Such updating will be performed in agreement between the Project Sponsor and the Chicago District.



Once construction of the project has been completed, the COE will transfer ownership to the project Local Sponsor. The local sponsor will, thereafter, be responsible for inspecting, operating, maintaining, repairing, and rehabilitating the project facilities in accordance with regulations or directions prescribed by the COE.

## PROJECT DESCRIPTION

The Lake Calumet area was once the site of shallow glacial lakes, sandy ridge and swale complexes, and marshes with abundant waterfowl and other wildlife. Over the last 120 years, extensive manufacturing, disposal of industrial waste, dredging and land filling activities have altered the area.

Indian Ridge Marsh site was used for the disposal of slag from steel-making operations and dredged materials from the Calumet Harbor and River during the 1970s. Large portions of the marsh were filled by the disposal activities of the U.S. Army Corps of Engineers (COE). Since then, lower quality wetlands have been reestablished throughout the site: The poor hydrology of the disturbed area has isolated the wetlands and ponds, allowing the wetlands to become overgrown with non-native species, and a reduction of diversity in the aquatic and terrestrial habitat.

## 3

This project will help return this area to wetland prairie, shallow ponds and marsh. The aquatic and terrestrial habitat will be enhanced to allow greater diversity and stability. This enhancement will also help reestablish valuable nesting areas for several endangered species. Some passive recreational benefits will occur with added fish and wildlife. Educational benefits will occur with added trails and controlled access to the site.

## SECTION 2. AUTHORIZATION

The Indian Ridge Marsh Ecosystem Restoration is authorized by Section 1135, under the 1986 Water Resources Development Act. Section 1135 authorizes the COE to modify the structures and operations of projects, improve the quality of the environment and restore the ecosystem functions impaired by projects that are built by the COE.

## SECTION 3. LOCATION

Indian Ridge Marsh is a 140-acre parcel between Lake Calumet and the Calumet River in southeast Chicago. The site boundaries are 116th Street to the north, Torrence Avenue to the east, the Calumet River on the south, and the Norfolk and Western railroad on the west.

## SECTION 4. NOT USED SECTION 5. CONSTRUCTION

The construction of the Red Mill Pond consisted of base work and several options. The base work included installing the sheet pile weir and work platform, diverting water, erosion control. All of the options in the contract were awarded and four modifications were awarded during construction. Tabic 1 lists the various stages of construction and pertinent contract information.

Table 1. Construction Contracts

CONTRACTOR	CONTRACT NUMBER	AMOUNT	START DATE	COMPLETION 1 DATE
Pizzo & Associates, Ltd.	W912P6-10-C-0021	\$2,482,638	January 2011	January 2015 1

## PROJECT FEATURES

## Weir Structure

A notched steel sheet pile weir structure was constructed across the inlet next to railroad embankment. This structure ensures that current water levels and fluctuations can be controlled. Sheet pile was driven into the side banks a 4 ft notch was built with a bottom elevation 580 ft. The small notch allows for continuous flow through the channel connecting the marsh to the Calumet River. This structure also acts as carp control preventing the species from gaining access to the marsh ponds.

## Carp Removal and Fish Stocking

The pond habitats on the site were over ridden with invasive fish species that created poor conditions for native pond plant species to flourish. The pond habitat had rotenone applied to eradicate all fish species. The high abundance of nonnative (common carp), tolerant and uncharacteristic native pond species (black bullhead) were seriously degrading water quality and limiting the establishment of other native species. However, some of the tolerant fish species within the wetlands were important forage to migratory and resident bird species found on the site. In order to mitigate the loss of these forage species, fathead minnows *Pimephales promelas* and golden shiners *Notemigonus crysoleucas*, native pond species, were stocked at a rate of about 25-lbs/acre for each species to provide ample forage for birds. Fathead minnows and golden shiners will also be important prey species for predatory native fish that will continue to be stocked from surrounding source populations as the aquatic habitat continues to establish. About 12 native species will eventually be introduced to achieve a balanced pond fish assemblage.

Table 2 Palustrine Fish Assemblage &amp; Introduction Schedule

Species	Common Name	2012	2014	2015
<i>Ameiurus nebulosus</i> <i>Amia</i>	brown bullhead	X X	XX	X X X
<i>calva</i> <i>Erimyzon sucetta</i>	bowfin lake	X	X	X X
<i>Esox amerlconus</i>	chubsucker grass		X X	
<i>Etheostoma nigrum</i>	pickerel Johnny		X X	
<i>Fundulus diaphanus</i>	darter banded killifish			
<i>Lepomis gibbosus</i> <i>Lepomis</i>	pumpkinseed			
<i>gulosus</i> <i>Notemigonus</i>	warmouth golden			
<i>crysoleucas</i> <i>Noturus gyrinus</i>	shiner tadpole			
<i>Pimephales promelas</i>	madtom fathead			
<i>Umbra limi</i>	minnow central			
	mudminnow			

### Native Vegetation

Appropriate native plant communities were established throughout the project area and consist of shallow marsh, savanna, wcl/mesic woodland and prairie communities. Invasive plant species removal and prescribed burns occurred over the entire project duration within all plant communities.

### Culverts

An existing 24 inch metal culvert that crosses 122nd street that connects the north cell to the south cell was cleaned this allows for the elevation in the ponds to be maintained at similar level.

### Boardwalk.

Approximately 120' long, a boardwalk was installed within the shallow marsh south of 122<sup>nd</sup> connecting two trails.

### Debris Removal

Approximately 480 tons total of debris was removal from Indian Ridge Marsh including concrete (majority), tires (approx. 1000 tires), bricks, tiles, shingles, glass, furniture, solid waste, landscape waste, paint cans, abandoned cars, and metal objects.

## SECTION 6. MAINTENANCE AND INSPECTION

### GENERAL

No encroachment or trespass which will adversely affect the efficient maintenance of the project works shall be permitted upon the rights-of-way for the project. No excavation or construction shall be permitted within the limits of the project rights-of-way, nor shall any change be made in any feature of the works without prior determination by the District Engineer or his authorized representative that such improvements, excavation, construction, or alteration will not adversely affect the functioning of the project. Such improvements or alterations as may be found to be desirable and permissible under the above practice. Advice regarding the effect of proposed improvements or alterations on the functioning of the project and information concerning methods of construction acceptable under standard engineering practice shall be submitted for his approval. Drawings or prints showing such improvements or alterations as finally constructed shall be furnished to the District Engineer after completion of the work.

## MAINTENANCE REQUIREMENTS

### Planted Areas

Maintenance of the native plant communities that were installed will need to occur on an annual basis, during critical seasonal periods. Maintenance activities are mainly geared toward the control of invasive herbaceous and woody plant species. Control of invasive species shall occur whenever they are detected within the area. Maintenance activities include patrolling/mapping invasive patch locations, and application of chemical or mechanical treatment at the proper times of year. At times, the removal of seed heads or other suppression strategies may be employed. A common mistake is to allow the invasive plant species to grow, flower and produce seed before control measures are taken. Never assume you will be able to return the site the next year to easily control species. Always be prepared to take immediate action to quickly eradicate species directly after detection. This is the most effective and efficient method of invasive plant species control. The following is a list of plant species that are and could potentially be invasive within the newly installed native plant communities:

*Tree-of-Heaven (Ailanthus altissima)*  
*Garlic mustard (Alliaria petiolata)*  
*Common Burdock (Arctium minus)*  
*Common mugwort (Artemisia vulgaris)*  
*Japanese Barberry (Berberis thunbergii)*  
*Asian Bittersweet (Celastrus orbiculatus)*  
*Canada Thistle (Cirsium arvense)*  
*Teasel (Dipsacus spp.)*  
*Autumn-Olive (Elaeagnus umbellata)*  
*Japanese Black-Bindweed (Ipomoea japonica)*  
*Glossy Buckthorn (Frangula alnus)*  
*White Bedstraw (Galium mollugo)*  
*Japanese Hop (Humulus japonicus)*  
*Privet (Ligustrum spp.)*  
*Amur Honeysuckle (Lonicera maackii)*  
*Tatarian Honeysuckle (Lonicera tatarica)*  
*Hybrid Honeysuckles (Lonicera X spp.)*  
*Garden Bird's-Foot-Trefoil (Lotus corniculatus)*  
*Purple Loosestrife (Lythrum salicaria)*  
*Moneywort (Lysimachia nummularia)*  
*Sweet Clover (Melilotus spp.)*  
*White Mulberry (Morus alba)*  
*Wild Parsnip (Pastinaca sativa)*  
*Reed Canary Grass (Phalaris arundinacea)*  
*Common Reed (Phragmites australis ssp. australis)*  
*Common Buckthorn (Rhamnus cathartica)*  
*Black Locust (Robinia pseudoacacia)*  
*Multi-flora Rose (Rosa multiflora)*  
*Sandbar Willow (Salix interior)*  
*Crown Vetch (Securigera varia)*  
*Tall Goldenrod (Solidago altissima)*  
*Seaside Goldenrod (Solidago sempervirens)*  
*Comfrey (Symphytum officinale)*

7

#### Invasive Species Physical or Mechanical Removal:

Some species, such as sweet clover, can be controlled with hand-pulling when found in small patches. However, across this large site, mechanical methods (typically some form of mowing) is more cost effective and efficient. Mowing, scything or other means of cutting can be employed to prevent seed-set in herbaceous plants and in combination with herbicide can be used to reduce woody invasive cover. Mechanical removal over large areas should be timed to limit negative impacts to ground-nesting bird species whenever possible.

#### Invasive Species Herbicide Application:

Herbicide can be an effective means to reduce invasive cover. It can be used in a variety of useful ways. It can be applied to the base or stump of an invasive shrub to retard regrowth after cutting, it can be applied directly to leaves with a wick in sensitive areas. It can be applied to leaves via a foliar spray. It can be applied via a boom-sprayer across larger acres to control large infestations. The proper technique can be determined by the applicator based on the extent of the infestation, the nature of the plant being treated, and the biological context of the infestation.

In addition to the variety of application techniques, herbicides have different qualities that make them very useful. Some are rated for aquatic use; others are specific to a particular plant group (example grass-specific). The applicator can determine the best herbicide based on a combination of experience, the sensitivity of the treatment area, and the proper uses as described on the EPA approved product label.

#### Prescribed Burning:

Burning is a highly effective method for the control of woody species and will help facilitate the establishment of native species. Burning should only be attempted by a highly trained burn boss with appropriate equipment, crew and during appropriate seasonal and weather conditions. Prescribed burning can be applied during the dormant season in late fall/winter or early spring. It can also be applied during the growing season as a tool to impact tough invasives and to reduce warm season grasses. Burning shall be employed at Indian Ridge Marsh at least every three years. Burning may be at a greater frequency depending on the results of previous burns and the type of plant species targeted to be controlled with the burn. For example, a hot spring burn is a good way to control many woody species, but if weather conditions are not conducive for a hot burn, a burn may be attempted again within the same year or again the next spring. Burning may be difficult within the newly installed area because of the wetness of the area. Weather conditions will play a large role in the hotness of the fire.

### 8

#### Native Plant Species Enrichment:

In some areas it may be appropriate to supplement the initial planting effort with further seed and plug installation. These areas may undergo dramatic invasive species coverage that will result in bare areas when invasive species are removed. To ensure adequate competition for invasive species within these bare areas, reseeding and plugging is recommended. Plant species that were installed as a part of the initial installation effort are shown in Appendix E. It is recommended that any reseeding or plug installation efforts be chosen from this list. This list is by no means the only species that would be appropriate for this area, but it is recommended that a USACE botanist or ecologist be consulted before any new species are installed. Also, genetic origins of plant material should come from the region of central to northeast Illinois, central to northwest Indiana or as close to this region as possible, but no further than a 150 miles radius from the Indian Ridge Marsh. This is to ensure that no species are installed that may change the overall character of the plant communities by inserting a different less adapted set of genetic material into the current gene pool.

It is recommended that all Common Reed (*Phragmites australis* ssp. *australis*) and other invasive species be eradicated from the Black-crowned Night Heron Protection Zone identified in the contract plans and planted with species identified within the shallow marsh planting list, predominately Hard-stemmed Bulrush (*Schoenoplectus acutus*). The Project Sponsor may consult with a USACE botanist or ecologist before any new species are installed within this area. It is recommended this area be converted to a native wetland plant community as soon

as newly restored areas outside the Black-crowned Night Heron Protection Zone have established to provide suitable nesting habitat for Black-crowned Night Heron.

#### Boardwalk

The boardwalks should be visually inspected yearly looking for rot, popped decking boards, screws that can be tightened. The main task of this visual inspection should focus on the safety of the boardwalks. The boardwalk should be stained every 5 years to protect against severe weathering.

#### Culverts

The 24 inch culvert maintenance consists of clearing the culverts and inlet and outlet structures of debris and excessive sediment deposits. This should be completed on a yearly basis at the beginning of the spring to ensure water level from rising due to backed up culvert.

#### Water Control Structure

The stop logs should be adjusted based on the current yearly condition of the marsh to ensure for proper water elevation for the plants. A botanist should be part of this decision

9

making process. Clearing the weir of debris and potential excessive sedimentation should be based upon yearly condition of the v/cir.

#### Debris Removal

The project site had a significant quantity of debris removed due to historic fly dumping on the site. The site should be maintained by ensuring that this now critical piece of wildlife refuge does not now become a dumping ground. A critical piece to ensure this is visual inspection of the fencing to insure keeping vehicles out of the area. Any additional material that is dumped should be cleaned up in the spring to maintain appearance of the site and not promote further use of the site as a fly dumping site.

#### Permitted Sewer/Stormwater Discharges near IRM

During construction, it was discovered that residential homes at the corner of 116<sup>th</sup> and Torrence Ave have non-permitted sewer/stormwater discharges across the alley and into Indian Ridge Marsh. It is our understanding that the City issued citations and the property owners are now working with the state (IL Department of Public Health) to correct the situation. CPD should continue to follow-up with the City and state to ensure homes are not emptying waste discharge in this manner into Indian Ridge Marsh. High nutrients from sewer/stormwater discharges exacerbate problems with invasive species and water quality and increase costs associated with invasive species removal and establishment of native plant communities.

## PROJECT SPONSOR INSPECTIONS & MONITORING ACTIVITIES

Inspection activities are necessary to ensure that project features will remain fully operational and are critical as being the principal method of protection against major problems. The requirements for inspections and maintenance are broken down into various categories according to time period when they are to occur. The Project Sponsor shall have organizational structure for carrying out the maintenance and inspection responsibilities associated with the project. It is the responsibility of the Project Sponsor to complete inspections. Maintenance measures or repairs identified during inspections shall be made within the timeframe specified by the inspector.

### Planted Areas

During the first few years of maintenance, inspections should occur monthly throughout the growing season, May to September. Inspections should be conducted by walking through the area in a grid like fashion in order to visually assess the majority of the area. Visual assessment should include identifying any newly germinating invasive species, coverage of high quality vegetation and any bare areas in need of reseeding. As the native plant community ages and becomes established there will be less need for monthly inspections. Inspections can then be scaled back to twice a year, once in the spring and again during the summer. Inspections may be done in coordination with USACE, Chicago District. Monitoring activities should be performed to collect appropriate data to inform future management decisions. Data collection during the monitoring periods is an integral part of an adaptive management strategy.

### Monitoring

Spring (March 15 - June 15) and/or Fall (September 15 - October 15) - Informal monitoring (qualitative visual inspection) should be completed to determine the presence and location of invasive species and to prioritize areas for management actions. This could be completed by staff, contractors or volunteer stewards, based on sponsor needs. Appropriate maintenance activities should be taken to control invasive species to the greatest extent possible and encourage native plant growth. The spring and fall inspections are complimentary. The effect of past treatments may be easier to see in spring or fall depending on species. Informal monitoring will occur in spring or fall or both to best assess the level of infestation and results of invasive treatments (maintenance activities). This current plan is based on current Best Management Practices (BMPs) and may be changed or replaced by new or improved BMPs in the future.

Summer (June 15 - September 15) - the first formal monitoring shall be performed within 3 years following completion of the construction phase of this project and at a minimum of every A years thereafter in accordance with methodologies identified in the Monitoring Reports provided in Appendix D. Although monitoring performed during the construction contract used a quantitative random sampling method for invasive species coverage, this method could be scaled back in effort. The plant community types and transect locations shall remain as delineated within previous monitoring efforts. A monitoring system will be used to measure threats to the system - in particular invasive plant infestations, the biggest threat to the project success. Through a combination of quadrats and mapping, coverage of invasive vs. native cover will be assessed. These assessments will lead directly to decisions on where and when to employ invasive management strategies.

#### *SITE REQUIREMENTS Native Plant Species*

In order to maintain and track the progress of the native plant communities, the results of the monitoring efforts should document the number of native plants found, their abundances and their Floristic Quality Assessment scores (i.e., results of monitoring activities). The number of native plant species and their associated abundances per community should increase as time increases, although 5-7 years post construction shows a much slower rate of new species accrual. The Mean Coefficient of Conservatism (Mean C) should be maintained at or above 3 per plant community type and hopefully will increase with time. However, it has been found that most native plant restorations tend to plateau and no longer show increases overtime.

If the results of the monitoring efforts show a decline in these three metrics, 1) number of native plant species, 2) abundance of native plant species and 3) Mean C, over time, remedial actions should be taken to correct trends. A negative trend will be indicated by two or more years in a row with a less than desirable outcome, such as, if the Mean C value for any one community dips below 2 for two consecutive years post construction. Comparisons of trends in plant community metrics will be made with post construction monitoring data.

#### *Invasive Species*

None of the dominant species within a plant community type (e.g., marsh) shall be an invasive species as listed above. Invasive species should not be the most abundant (as measured by percent cover) nor frequent (as measured by number of occupied quadrats) along an' one transect. It is important to continue to reduce the amount of viable weed seed in the seed bank, this will reduce the level of effort needed in future years to maintain a low level of invasive species within the site. Monitoring efforts should show a decline in abundance and frequency of occurrence of invasive species over time. However, if monitoring efforts document the opposite trend, invasive species increasing in abundance or frequency, then remedial management efforts should be taken to correct trends.

#### **Culverts**

The culverts shall be inspected for visible structural damage to the culverts and/or trash racks. The culverts and inlet and



outlet channels should be checked for debris and excessive sediment deposition and erosion. The areas around the pipes should be inspected for seepage, saturated areas, or boils. Inspection of the culverts should take place in early spring.

#### Weir Structure

The weir structure will need regular monitoring and clearing of debris build-up which may result in reduced flow capacity and impact the water level. Recurring maintenance problems which require frequent, extensive or expensive repair must be referred to the COE, Chicago District for technical assistance.

#### Channel

Because the channel slopes are relatively flat, they are susceptible to debris build-up and water ponding/stagnation which may result in odor and mosquito problems. Reduced flow capacity can result in the channel overflowing, often resulting in erosion of overbank areas. Changes in the ditch horizontal and/or vertical alignment require special attention, as scour and/or sediment deposition may occur in these areas. Recurring maintenance problems which require frequent, extensive or expensive, repair must be referred to the COE, Chicago District for technical assistance.

## SECTION 7. REPAIR, REPLACEMENT, AND REHABILITATION (RR&R)

### GENERAL

1. Repair is considered to entail those activities of a routine nature that maintain the project in a well kept condition. Replacement covers those activities taken when a worn-out element or portion thereof is replaced. Rehabilitation refers to a set of activities as necessary to bring a deteriorated project back to its original condition. RR&R actions are to conform to the project as-built plans and specifications unless other arrangements are made with the Chicago District. These activities are the responsibility of the Project Sponsor.

## PROJECT MODIFICATIONS

Encroachments shall be not allowed within the project rights-of-way, unless reviewed and approved as a project modification. Improvements that pass over, under, or through the project rights-of-way shall not allowed without prior determination of the Chicago District that such improvements or alterations will not adversely affect the functioning of the project. Any improvements considered by die Project Sponsor to be worthwhile shall be submitted lo the Chicago District as a Project Modification Request, with all appropriate design computations and drawings and other pertinent information. These requests must be approved before the modifications can be allowed to proceed. Upon the physical completion of the approved Project Modifications, the Project As-Built drawings and this O&M Manual shall be updated as necessary.

INDIAN RIDGE MARSH SECTION 1135  
ECOSYSTEM RESTORATION PROJECT O&M MANUAL - APPENDIX A  
CON TACT LIST

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Environmental Engineer  
Fisheries Biologist  
Designer of Record/Tetra Tech  
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