

DATE: December 6, 2021

MEMO TO: Terry Wilke, Chair
Planning Committee

Julie Simpson, Chair
Finance Committee

FROM: James L. Anderson
Director of Natural Resources

RECOMMENDATION: Recommend approval of a Resolution approving a Project Partnership Agreement with the U.S. Army Corps of Engineers (ACOE) for the Restoration of Dutch Gap Forest Preserve.

STRATEGIC DIRECTIONS SUPPORTED: Conservation; Leadership; Organizational Sustainability

FINANCIAL DATA: The Project Partnership Agreement between the ACOE and the District will provide for the aquatic restoration of Dutch Gap Forest Preserve with an estimated construction cost of \$15,013,000 with the ACOE's share estimated to be \$9,758,450 and the District's 35% local share estimated to be \$5,254,550. The District will receive a credit against its local share for the value of real property interests that it contributes to the project in an amount estimated to be \$4,014,000 – this is referenced by ACOE as the local agency's "LERRD value" (Land, Easements Rights-of-Way, Relocation, and Disposal Areas). The remaining \$1,240,550 of the local share will be funded from the approved Capital Implementation Plan under Habitat Restoration (11104100-803200-60004). These are ACOE's estimates. Construction costs, and the District's local share (including its out-of-pocket expense), could increase.

BACKGROUND: In February 2019, the ACOE Chicago District office was notified that they received funding for the project at Dutch Gap Forest Preserve at the level of \$15 million, indicating a high level of federal enthusiasm for this project. In April 2019, the District was notified that the CAP Section 206 Program through the Chicago District ACOE office received federal approval for aquatic ecosystem restoration at Dutch Gap Forest Preserve in the amount of \$15 million: \$10 million in federal dollars and \$5 million provided by the District as the local sponsor. The CAP Section 206 program had \$50 million available for aquatic ecosystem restoration nationwide. The Dutch Gap project was one of many considered, but the only one supported by the ACOE Great Lakes and Ohio River Division office for federal funding.

In May 2019, the ACOE approved their Federal Interest Determination (FID). The FID is a feasibility study to determine if a restoration project meets the requirements of the ACOE's Section 206 Aquatic Restoration Program and is used by ACOE to determine if it will proceed with project development. In response to this approval, the District provided a non-binding Letter of Intent (May 2019) to begin the Project Management Plan development.

In April of 2019, the Planning and Finance Committees provided policy direction to develop a Project Partnership Agreement under the following assumption: “If the District chooses to move forward with this cooperative project, the District would be able to use the value of the Land, Easements, Rights-Of-Way, Relocation, and Disposal Areas (LERRD value) of the 785 acres at Dutch Gap as its local sponsor match. District and ACOE staff believe the LERRD value of the property will meet or exceed the \$5 million, meaning there will be no out-of-pocket cost to the District for project implementation.” In July 2021, the ACOE approved the Integrated Detailed Project Report and Environmental Assessment. Upon completion of this report, the ACOE contacted the District to inform us that in order to meet the ACOE cost-benefit analysis and project scope the District would now be required to provide an estimated \$1,240,550 out-of-pocket for a portion of the 35% Non-Federal Sponsor Share. In September 2021, the Executive Director provided an update to the Planning, Operation and Finance Committees about this funding change and indicated that funding from the Capital Improvement Plan would be used to fund this cost over the four-year implementation period. In September 2021, the District staff provided a non-binding Letter of Intent to negotiate a Project Partnership Agreement.

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

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
REGULAR DECEMBER MEETING
DECEMBER 14, 2021**

MISTER PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** and **FINANCE COMMITTEE** present herewith “A Resolution Approving a Project Partnership Agreement with the U.S. Army Corps of Engineers for the Restoration of Dutch Gap Forest Preserve,” and request its approval.

PLANNING COMMITTEE

Date: _____ Roll Call Vote: Ayes: ____ Nays: _____
 Voice Vote Majority Ayes; Nays: _____

FINANCE COMMITTEE:

Date: _____ Roll Call Vote: Ayes: ____ Nays: _____
 Voice Vote Majority Ayes; Nays: _____

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

**A RESOLUTION APPROVING A PROJECT PARTNERSHIP AGREEMENT
WITH THE U.S. ARMY CORPS OF ENGINEERS
FOR THE RESTORATION OF DUTCH GAP FOREST PRESERVE**

WHEREAS, the Lake County Forest Preserve District (the “District”) owns property on Route 45, in North Mill Creek that is commonly known as Dutch Gap Forest Preserve (the “Property”); and

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

WHEREAS, the Project was identified as part of the North Central Ecological Complex identified in the Lake County Green Infrastructure Model and Strategy (2016) and the Upper Des Plains River and Tributaries Study (2015) as a priority project; and

WHEREAS, the U.S. Army Corps of Engineers Section 206 Aquatic Ecosystem Restoration Assistance Program (the “Program”) provides funds to restore and protect aquatic wildlife, plant communities and ecosystem functions , under which Program local sponsors must provide local match funding of thirty five percent of project costs; and

WHEREAS, it is in the best interests of the District and consistent with the District’s Road Map to 2025 to enter into a Project Partnership Agreement (the “Agreement”) with the U.S. Army Corps of Engineers for the completion of the Project through the Program, under which the District will be required to provide local match funding for the Project of thirty five percent of the Project cost, which local share is currently estimated to be \$5,254,550, of which \$4,014,000 will be credited as land value;

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

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

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

Section 3: Execution of Agreement. The Executive Director and Secretary of the District are hereby authorized and directed to execute and attest to the Agreement in substantially the form attached hereto.

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

PASSED this _____ day of _____, 2021

AYES:

NAYS:

APPROVED this _____ day of _____, 2021

Angelo D. Kyle, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary
Lake County Forest Preserve District

Exhibit No. _____

AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE LAKE COUNTY FOREST PRESERVE DISTRICT
FOR THE
DUTCH GAP SECTION 206 AQUATIC ECOSYSTEM RESTORATION STUDY

THIS AGREEMENT is entered into this _____ day of _____, _____, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Chicago District (hereinafter the "District Commander") and the Lake County Forest Preserve District (hereinafter the "Non-Federal Sponsor"), represented by its President.

WITNESSETH, THAT:

WHEREAS, Section 206 of the Water Resources Development Act of 1996, as amended, 33 U.S.C. § 2330, authorizes a study for aquatic ecosystem restoration of the Dutch Gap natural area near Antioch, Lake County, Illinois;

WHEREAS, Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements; and

WHEREAS, the Government and the Non-Federal Sponsor have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Study" means the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, as appropriate, recommends a coordinated and implementable solution for aquatic ecosystem restoration at Dutch Gap natural area, Lake County, Illinois.

B. The term "shared study costs" means all costs incurred by the Government and Non-Federal Sponsor after the effective date of this Agreement that are directly related to performance of the Study and cost shared in accordance with the terms of this Agreement. The term includes, but is not necessarily limited to, the Government's costs for preparing the PMP; for plan formulation and evaluation, including costs for economic, engineering, real estate, and environmental analyses; for preparation of a floodplain management plan if undertaken as part of the Study; for preparing and processing the decision document; for supervision and administration; for Agency Technical Review and other review processes required by the Government; and for response to any required Independent External Peer Review; and the Non-Federal Sponsor's creditable costs for

in-kind contributions, if any. The term does not include any costs for dispute resolution; participation in the Study Coordination Team; audits; an Independent External Peer Review panel, if required; or negotiating this Agreement. The term also does not include the first \$100,000 of costs for the Study incurred by the Government, whether before or after execution of this Agreement.

C. The term “PMP” means the project management plan, and any modifications thereto, developed in consultation with the Non-Federal Sponsor, that specifies the scope, cost, and schedule for Study activities and tasks, including the Non-Federal Sponsor’s in-kind contributions, and that guides the performance of the Study.

D. The term “in-kind contributions” means those planning activities (including data collection and other services) that are integral to the Study and would otherwise have been undertaken by the Government for the Study and that are identified in the PMP and performed or provided by the Non-Federal Sponsor after the effective date of this Agreement and in accordance with the PMP.

E. The term “maximum Federal study cost” means the \$1,500,000 Federal cost limit for the Study, unless the Government has approved a higher amount, and includes the first \$100,000 of costs for the Study incurred by the Government.

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

ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Study using funds appropriated by the Congress and funds provided by the Non-Federal Sponsor. The Non-Federal Sponsor shall perform or provide any in-kind contributions in accordance with applicable Federal laws, regulations, and policies.

B. The Non-Federal Sponsor shall contribute 50 percent of shared study costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. After considering the estimated amount of credit for in-kind contributions, if any, that will be afforded in accordance with paragraph C. of this Article and the first \$100,000 of the costs incurred by the Government that are excluded from shared costs, the Government shall provide the Non-Federal Sponsor with a written estimate of the amount of funds required from the Non-Federal Sponsor to meet its share of shared study costs for the remainder of the initial fiscal year of the Study. No later than 15 calendar days after such notification, the Non-Federal Sponsor shall provide the full amount of such funds to the Government.

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

C. The Government shall include in shared study costs and credit towards the Non-Federal Sponsor's share of such costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsor incurs in providing or performing in-kind contributions, including associated supervision and administration, after the effective date of this Agreement. Such costs shall be subject to audit in accordance with Article VI to determine reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

1. As in-kind contributions are completed and no later than 60 calendar day after such completion, the Non-Federal Sponsor shall provide the Government appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsor's employees. Failure to provide such documentation in a timely manner may result in denial of credit. The amount of credit afforded for in-kind contributions shall not exceed the Non-Federal Sponsor's share of shared study costs.

2. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsor; for any items provided or performed prior to completion of the PMP; or for costs that exceed the Government's estimate of the cost for such item if it had been performed by the Government.

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

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

F. Except as provided in paragraph C. of this Article, the Non-Federal Sponsor shall not be entitled to any credit or reimbursement for costs it incurs in performing its responsibilities under this Agreement.

G. In carrying out its obligations under this Agreement, the Non-Federal Sponsor shall comply with all the requirements of applicable Federal laws and implementing regulations, including, but not limited to: Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Army Regulation 600-7 issued pursuant thereto.

H. If Independent External Peer Review (IEPR) is required for the Study, the Government shall conduct such review in accordance with Federal laws, regulations, and policies. The Government's costs for an IEPR panel shall not be included in shared study costs or the maximum Federal study cost.

I. In addition to the ongoing, regular discussions of the parties in the delivery of the Study, the Government and the Non-Federal Sponsor may establish a Study Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Study Coordination Team shall not be included in the shared study costs, but shall be included in calculating the maximum Federal study cost. The Non-Federal Sponsor's costs for participation on the Study Coordination Team shall not be included in shared study costs and shall be paid solely by the Non-Federal Sponsor without reimbursement or credit by the Government.

ARTICLE III - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, shared study costs are projected to be \$200,000, with the Government's share of such costs projected to be \$100,000 and the Non-Federal Sponsor's share of such costs projected to be \$100,000. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Government shall provide the Non-Federal Sponsor with quarterly reports setting forth the estimated shared study costs and the Government's and Non-Federal Sponsor's estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsor funds, to date; the amount of funds provided by the Non-Federal Sponsor to date; the estimated amount of any creditable in-kind contributions; and the estimated remaining cost of the Study.

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

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

E. Upon completion of the Study and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsor, the Non-Federal Sponsor, within 60 calendar days of written notice from the Government, shall provide the Government with the full amount of such additional funds. Should the final accounting determine that the Non-Federal Sponsor has provided funds in excess of its required amount, the Government shall refund the excess amount, subject to the availability of funds. Such final accounting does not limit the Non-Federal Sponsor's responsibility to pay its share of shared study costs, including contract claims or any other liability that may become known after the final accounting.

ARTICLE IV - TERMINATION OR SUSPENSION

A. Upon 30 calendar days written notice to the other party, either party may elect at any time, without penalty, to suspend or terminate future performance of the Study. Furthermore, unless an extension is approved by the Assistant Secretary of the Army (Civil Works), the Study may be terminated if a Detailed Project Report is not completed for the Study within 3 years after the effective date of this Agreement.

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

C. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsor pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the

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

ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

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

B. The Government may conduct, or arrange for the conduct of, audits of the Study. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits for the Study shall not be included in shared study costs, but shall be included in calculating the maximum Federal study cost.

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

ARTICLE VII - RELATIONSHIP OF PARTIES

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

ARTICLE VIII - NOTICES

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

If to the Non-Federal Sponsor:
President
Lake County Forest Preserve District
1899 W. Winchester Road
Libertyville, Illinois 60048

If to the Government:
District Commander
U.S. Army Corps of Engineers, Chicago District
231 S. LaSalle Street, Suite 1500
Chicago, Illinois 60604

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

ARTICLE IX - 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 X - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

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

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

DEPARTMENT OF THE ARMY

LAKE COUNTY FOREST PRESERVE DISTRICT

BY: _____

Aaron W. Reisinger
Colonel, U.S. Army
District Commander

BY: _____

Angelo D. Kyle
President