

BOARD OF PUBLIC WORKS AND SAFETY (Form B-01-2012)
Agenda Request Form

Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard. Please make sure that your contact information is accurate in case we need to get in touch with you. The Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.

Date Submitted:	5/10/16	Meeting Date:	5/16/16
Contact Information:			
Requested by:	Travis Underhill		
On Behalf of Organization or Individual:	Planning & Engineering		
Telephone:	317-736-3631		
Email address:	tunderhill@franklin.in.gov		
Mailing Address:	70 E Monroe St., Franklin, IN 46131		
Describe Request:			
USACE Feasibility Study Cost Sharing Agreement, Flood Mitigation on Hurricane and Youngs Creeks			
List Supporting Documentation Provided:			
Unmarked Agreement			
Lynn's Cover Letter			
Marked Up Agreement			
Who will present the request?			
Name:	Travis Underhill	Telephone:	317-736-3631

In order for an individual and/or agency to be considered for new business on the Board of Works agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 4:00 p.m. on the Wednesday before the meeting.

1 NOW, THEREFORE, the parties agree as follows:

2

3

ARTICLE I - DEFINITIONS

4

5 A. The term "Study" means the activities and tasks
6 required to identify and evaluate alternatives and the
7 preparation of a decision document that, as appropriate,
8 recommends a coordinated and implementable solution for flood
9 risk management at Youngs Creek and Hurricane Creek in the City
10 of Franklin, Indiana.

11

12 B. The term "shared study costs" means all costs incurred
13 by the Government and Non-Federal Sponsor after the effective
14 date of this Agreement that are directly related to performance
15 of the Study and cost shared in accordance with the terms of
16 this Agreement. The term includes, but is not necessarily
17 limited to, the Government's costs for preparing the PMP; for
18 plan formulation and evaluation, including costs for economic,
19 engineering, real estate, and environmental analyses; for
20 preparation of a floodplain management plan if undertaken as
21 part of the Study; for preparing and processing the decision
22 document; for supervision and administration; for Agency
23 Technical Review and other review processes required by the
24 Government; and for response to any required Independent
25 External Peer Review; and the Non-Federal Sponsor's creditable
26 costs for in-kind contributions. The term does not include any
27 costs for dispute resolution; for participation in the Study
28 Coordination Team; for audits; for an Independent External Peer
29 Review panel, if required; or for negotiating this Agreement.
30 The term also does not include the first \$100,000.00 of costs
31 for the Study incurred by the Government, whether before or
32 after execution of this Agreement.

33

34 C. The term "PMP" means the project management plan, and
35 any modifications thereto, developed in consultation with the
36 Non-Federal Sponsor, that specifies the scope, cost, and
37 schedule for Study activities and tasks, including the Non-
38 Federal Sponsor's in-kind contributions, and that guides the
39 performance of the Study.

40

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

8
9 E. The term "maximum Federal study cost" means the
10 \$1,500,000.00 Federal cost limit for the Study, unless the
11 Government has approved a higher amount, and includes the first
12 \$100,000.00 of costs for the Study incurred by the Government.

13
14 F. The term "fiscal year" means one year beginning on
15 October 1st and ending on September 30th of the following year.

16
17 ARTICLE II - OBLIGATIONS OF THE PARTIES

18
19 A. In accordance with Federal laws, regulations, and
20 policies, the Government shall conduct the Study using funds
21 appropriated by the Congress and funds provided by the Non-
22 Federal Sponsor. The Non-Federal Sponsor shall perform or
23 provide any in-kind contributions in accordance with applicable
24 Federal laws, regulations, and policies.

25
26 B. The Non-Federal Sponsor shall contribute 50 percent of
27 the shared study costs in accordance with the provisions of
28 this paragraph and provide required funds in accordance with
29 Article III.

30
31 1. After considering the estimated amount of credit
32 for in-kind contributions, if any, that will be afforded in
33 accordance with paragraph C. of this Article and the first
34 \$100,000.00 of the costs incurred by the Government that are
35 excluded from shared costs, the Government shall provide the
36 Non-Federal Sponsor with a written estimate of the amount of
37 funds required from the Non-Federal Sponsor for the remainder
38 of the initial fiscal year of the Study. No later than 15
39 calendar days after such notification, the Non-Federal Sponsor
40 shall provide the full amount of such funds to the Government.

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

8
9 C. The Government shall include in the shared study costs
10 and credit towards the Non-Federal Sponsor's share of such
11 costs, the costs, documented to the satisfaction of the
12 Government, that the Non-Federal Sponsor incurs in providing or
13 performing in-kind contributions, including associated
14 supervision and administration, after the effective date of
15 this Agreement. Such costs shall be subject to audit in
16 accordance with Article VI to determine reasonableness,
17 allocability, and allowability, and crediting shall be in
18 accordance with the following procedures, requirements, and
19 limitations:

20
21 1. As in-kind contributions are completed and no
22 later than 60 calendar day after such completion, the Non-
23 Federal Sponsor shall provide the Government appropriate
24 documentation, including invoices and certification of specific
25 payments to contractors, suppliers, and the Non-Federal
26 Sponsor's employees. Failure to provide such documentation in
27 a timely manner may result in denial of credit. The amount of
28 credit afforded for in-kind contributions shall not exceed the
29 Non-Federal Sponsor's share of the shared study costs.

30
31 2. No credit shall be afforded for interest charges,
32 or any adjustment to reflect changes in price levels between
33 the time the in-kind contributions are completed and credit is
34 afforded; for the value of in-kind contributions obtained at no
35 cost to the Non-Federal Sponsor; for any items provided or
36 performed prior to completion of the PMP; or for costs that
37 exceed the Government's estimate of the cost for such item if
38 it had been performed by the Government.

39
40 D. To the extent practicable and in accordance with
41 Federal laws, regulations, and policies, the Government shall

1 afford the Non-Federal Sponsor the opportunity to review and
2 comment on solicitations for contracts prior to the
3 Government's issuance of such solicitations; proposed contract
4 modifications, including change orders; and contract claims
5 prior to resolution thereof. Ultimately, the contents of
6 solicitations, award of contracts, execution of contract
7 modifications, and resolution of contract claims shall be
8 exclusively within the control of the Government.

9
10 E. The Non-Federal Sponsor shall not use Federal Program
11 funds to meet any of its obligations under this Agreement
12 unless the Federal agency providing the funds verifies in
13 writing that the funds are authorized to be used for the Study.
14 Federal program funds are those funds provided by a Federal
15 agency, plus any non-Federal contribution required as a
16 matching share therefor.

17
18 F. Except as provided in paragraph C. of this Article,
19 the Non-Federal Sponsor shall not be entitled to any credit or
20 reimbursement for costs it incurs in performing its
21 responsibilities under this Agreement.

22
23 G. In carrying out its obligations under this Agreement,
24 the Non-Federal Sponsor shall comply with all the requirements
25 of applicable Federal laws and implementing regulations,
26 including, but not limited to: Title VI of the Civil Rights Act
27 of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and
28 Department of Defense Directive 5500.11 issued pursuant
29 thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102);
30 and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794),
31 and Army Regulation 600-7 issued pursuant thereto.

32
33 H. If Independent External Peer Review (IEPR) is required
34 for the Study, the Government shall conduct such review in
35 accordance with Federal laws, regulations, and policies. The
36 Government's costs for an IEPR panel shall not be included in
37 the shared study costs or the maximum Federal study cost.

38
39 I. In addition to the ongoing, regular discussions of the
40 parties in the delivery of the Study, the Government and the
41 Non-Federal Sponsor may establish a Study Coordination Team to

1 discuss significant issues or actions. The Government's costs
2 for participation on the Study Coordination Team shall not be
3 included in the shared study costs, but shall be included in
4 calculating the maximum Federal study cost. The Non-Federal
5 Sponsor's costs for participation on the Study Coordination
6 Team shall not be included in the shared study costs and shall
7 be paid solely by the Non-Federal Sponsor without reimbursement
8 or credit by the Government.

9
10 ARTICLE III - PAYMENT OF FUNDS
11

12 A. As of the effective date of this Agreement, the shared
13 study costs are projected to be \$296,010.00, with the
14 Government's share of such costs projected to be \$148,005.00
15 and the Non-Federal Sponsor's share of such costs projected to
16 be \$148,005.00. These amounts are estimates only that are
17 subject to adjustment by the Government and are not to be
18 construed as the total financial responsibilities of the
19 Government and the Non-Federal Sponsor.

20
21 B. The Government shall provide the Non-Federal Sponsor
22 with quarterly reports setting forth the estimated shared study
23 costs and the Government's and Non-Federal Sponsor's estimated
24 shares of such costs; costs incurred by the Government, using
25 both Federal and Non-Federal Sponsor funds, to date; the amount
26 of funds provided by the Non-Federal Sponsor to date; the
27 estimated amount of any creditable in-kind contributions; and
28 the estimated remaining cost of the Study.

29
30 C. The Non-Federal Sponsor shall provide to the
31 Government required funds by delivering a check payable to
32 "FAO, USAED, Louisville" to the District Engineer, or verifying
33 to the satisfaction of the Government that the Non-Federal
34 Sponsor has deposited such required funds in an escrow or other
35 account acceptable to the Government, with interest accruing to
36 the Non-Federal Sponsor, or by providing an Electronic Funds
37 Transfer of such required funds in accordance with procedures
38 established by the Government.

39
40 D. The Government shall draw from the funds provided by
41 the Non-Federal Sponsor to cover the non-Federal share of the

1 shared study costs as those costs are incurred. If the
2 Government determines at any time that additional funds are
3 needed from the Non-Federal Sponsor to cover the Non-Federal
4 Sponsor's required share of the shared study costs, the
5 Government shall provide the Non-Federal Sponsor with written
6 notice of the amount of additional funds required. Within 60
7 calendar days of such notice, the Non-Federal Sponsor shall
8 provide the Government with the full amount of such additional
9 funds.

10
11 E. Upon conclusion of the Study and resolution of all
12 relevant claims and appeals, the Government shall conduct a
13 final accounting and furnish the Non-Federal Sponsor with the
14 written results of such final accounting. Should the final
15 accounting determine that additional funds are required from
16 the Non-Federal Sponsor, the Non-Federal Sponsor, within 60
17 calendar days of written notice from the Government, shall
18 provide the Government with the full amount of such additional
19 funds. Should the final accounting determine that the Non-
20 Federal Sponsor has provided funds in excess of its required
21 amount, the Government shall refund the excess amount, subject
22 to the availability of funds. Such final accounting does not
23 limit the Non-Federal Sponsor's responsibility to pay its share
24 of shared study costs, including contract claims or any other
25 liability that may become known after the final accounting.

26
27 ARTICLE IV - TERMINATION OR SUSPENSION

28
29 A. Upon 30 calendar days written notice to the other
30 party, either party may elect at any time, without penalty, to
31 suspend or terminate future performance of the Study.
32 Furthermore, unless an extension is approved by the Assistant
33 Secretary of the Army (Civil Works), the Study will be
34 terminated if a Detailed Project Report is not completed for
35 the Study within 3 years after the effective date of this
36 Agreement.

37
38 B. In the event of termination, the parties shall
39 conclude their activities relating to the Study. To provide
40 for this eventuality, the Government may reserve a percentage
41 of available funds as a contingency to pay the costs of

1 termination, including any costs of resolution of contract
2 claims, and resolution of contract modifications.

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

14
15 ARTICLE V - DISPUTE RESOLUTION
16

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

29
30 ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT
31

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

39
40 B. The Government may conduct, or arrange for the conduct
41 of, audits of the Study. Government audits shall be conducted

1 in accordance with applicable Government cost principles and
2 regulations. The Government's costs of audits for the Study
3 shall not be included in shared study costs, but shall be
4 included in calculating the maximum Federal study cost.

5
6 C. To the extent permitted under applicable Federal laws
7 and regulations, the Government shall allow the Non-Federal
8 Sponsor to inspect books, records, documents, or other evidence
9 pertaining to costs and expenses maintained by the Government,
10 or at the request of the Non-Federal Sponsor, provide to the
11 Non-Federal Sponsor or independent auditors any such
12 information necessary to enable an audit of the Non-Federal
13 Sponsor's activities under this Agreement. The costs of non-
14 Federal audits shall be paid solely by the Non-Federal Sponsor
15 without reimbursement or credit by the Government.

16
17 ARTICLE VII - RELATIONSHIP OF PARTIES

18
19 In the exercise of their respective rights and obligations
20 under this Agreement, the Government and the Non-Federal
21 Sponsor each act in an independent capacity, and neither is to
22 be considered the officer, agent, or employee of the other.
23 Neither party shall provide, without the consent of the other
24 party, any contractor with a release that waives or purports to
25 waive any rights a party may have to seek relief or redress
26 against that contractor.

27
28 ARTICLE VIII - NOTICES

29
30 A. Any notice, request, demand, or other communication
31 required or permitted to be given under this Agreement shall be
32 deemed to have been duly given if in writing and delivered
33 personally or mailed by certified mail, with return receipt, as
34 follows:

35
36 If to the Non-Federal Sponsor:

37
38 City of Franklin
39 ATTN: City Engineer
40 70 East Monroe Street
41 Franklin, Indiana 46131

1
2 Ms. Lynnette Gray, City Attorney
3 City of Franklin, Indiana
4 Johnson Gray & Johnson
5 63 East Court Street
6 Franklin, Indiana 46131
7

8 If to the Government:
9

10 District Engineer, United States
11 Army Engineer District, Louisville
12 ATTN: CELRL-PM-P
13 P.O. Box 59
14 Louisville, Kentucky 40201-0059
15

16 B. A party may change the recipient or address for such
17 communications by giving written notice to the other party in
18 the manner provided in this Article.
19

20 ARTICLE IX - CONFIDENTIALITY
21

22 To the extent permitted by the laws governing each party,
23 the parties agree to maintain the confidentiality of exchanged
24 information when requested to do so by the providing party.
25

26 ARTICLE X - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES
27

28 Nothing in this Agreement is intended, nor may be
29 construed, to create any rights, confer any benefits, or
30 relieve any liability, of any kind whatsoever in any third
31 person not a party to this Agreement.
32

33 ARTICLE XI - OBLIGATIONS OF FUTURE APPROPRIATIONS
34

35 The Non-Federal Sponsor intends to fulfill fully its
36 obligations under this Agreement. Nothing herein shall
37 constitute, nor be deemed to constitute, an obligation of
38 future appropriations by the City of Franklin, Indiana, where
39 creating such an obligation would be inconsistent with Indiana
40 Code 36-4-7-8.
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BY: _____
Robert Swinehamer, Member, Board
of Public Works and Safety, City
of Franklin, Indiana

ATTEST: _____
Jayne Rhoades, Clerk-Treasurer,
City of Franklin, Indiana

Ordinance: This Agreement was executed pursuant to City of
Franklin, Indiana, Ordinance Number 16- _____, being duly
passed and adopted by the Common Council of the City of
Franklin, Indiana, on the ____ day of _____, 2016.

Dated this ____ day of _____, 2016.

CITY OF FRANKLIN, INDIANA

BY: _____
Jayne Rhoades, Clerk-Treasurer
City of Franklin, Indiana

IN TESTIMONY WHEREOF, witness the signature of the United
States Department of the Army, acting by and through the
District Engineer, United States Army Engineer District,
Louisville, this ____ day of _____, 2016. This
Project Partnership Agreement shall become effective upon the
date of execution by the District Engineer, United States Army
Engineer District, Louisville.

1 UNITED STATES DEPARTMENT OF
2 THE ARMY, ACTING BY AND THROUGH
3 THE DISTRICT ENGINEER, UNITED
4 STATES ARMY ENGINEER DISTRICT,
5 LOUISVILLE
6
7

8 BY: _____
9 Christopher G. Beck
10 Colonel, Corps of Engineers
11 District Engineer, United States
12 Army Engineer District, Louisville
13

14
15 CERTIFICATE OF AUTHORITY
16

17 I, Lynnette Gray, Johnson Gray & Johnson, do hereby
18 certify that I am the City Attorney for the City of Franklin,
19 Indiana, that the City of Franklin, Indiana is a legally
20 constituted public body with full authority and legal
21 capability to perform the terms of the Agreement between the
22 United States Department of the Army and the City of Franklin,
23 Indiana in connection with the City of Franklin, Indiana,
24 Continuing Authorities Program, Section 205, Flood Risk
25 Management Feasibility Study, and to pay damages, if necessary,
26 in the event of the failure to perform in accordance with the
27 terms of this Agreement and that the person who executed this
28 Agreement on behalf of the City of Franklin, Indiana has acted
29 within his statutory authority.
30

31 Witness the signature of Lynnette Gray, Johnson
32 Gray & Johnson, City Attorney, City of Franklin, Indiana, this
33 ____ day of _____, 2016.
34
35
36
37
38
39
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41

CITY OF FRANKLIN, INDIANA

BY: _____
Lynnette Gray, Johnson Gray &
Johnson, City Attorney City of
Franklin, Indiana

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his 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.

1 This certification is a material representation of fact
2 upon which reliance was placed when this transaction was made
3 or entered into. Submission of this certification is a
4 prerequisite for making or entering into this transaction
5 imposed by 31 U.S.C. 1352. Any person who fails to file the
6 required certification shall be subject to a civil penalty of
7 not less than \$10,000.00 and not more than \$100,000.00 for each
8 such failure.

9
10 Witness the signature of Joseph E. McGuinness,
11 Mayor, City of Franklin, Indiana, this ____ day of
12 _____, 2016.

13
14
15 CITY OF FRANKLIN, INDIANA

16
17
18 BY: _____
19 Joseph E. McGuinness, Mayor, City
20 of Franklin, Indiana
21



JOHNSON GRAY & JOHNSON

ATTORNEYS AT LAW

RUSSELL A. JOHNSON • LYNNETTE GRAY • HEATH Y. JOHNSON

KYLE A. JOHNSON

WWW.JGMLAWFIRM.COM

April 26, 2016

Travis Underhill, PE
LEED AP, CPESC
City Engineer
City of Franklin
70 E. Monroe Street
Franklin, IN 46131

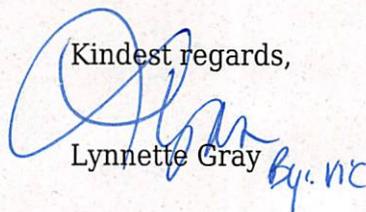
Re: Agreement between the Department of the Army & the City of Franklin

Dear Travis,

Please find attached my few comments regarding the Army Engineer Report. As we are both aware, the Federal Government will not amend this agreement in any way but I would like to have my red-lined comments included in the packet so that the Board can be fully informed. As I indicated in my prior correspondence, this is better than prior drafts. If we monitor the contract closely, we should be able to control expenses given the quarterly accounting provisions as well as the termination provision. I understand this will be on the May 18th, 2016 Board of Works agenda and if you could include my red-lined draft and the original for the Board's signature, I am hopeful this will be moved along.

Thank you for your patience

Kindest regards,


Lynnette Gray

LG:vh

63 E. COURT STREET • P.O. BOX 160 • FRANKLIN, IN 46131

TELE: (317) 738-3365 • FAX: (317) 738-3862

1 NOW, THEREFORE, the parties agree as follows:
2

3 ARTICLE I - DEFINITIONS
4

5 A. The term "Study" means the activities and tasks
6 required to identify and evaluate alternatives and the
7 preparation of a decision document that, as appropriate,
8 recommends a coordinated and implementable solution for flood
9 risk management at Youngs Creek and Hurricane Creek in the City
10 of Franklin, Indiana.
11

12 B. The term "shared study costs" means all costs incurred
13 by the Government and Non-Federal Sponsor after the effective
14 date of this Agreement that are directly related to performance
15 of the Study and cost shared in accordance with the terms of
16 this Agreement. The term includes, but is not necessarily
17 limited to, the Government's costs for preparing the PMP; for
18 plan formulation and evaluation, including costs for economic,
19 engineering, real estate, and environmental analyses; for
20 preparation of a floodplain management plan if undertaken as
21 part of the Study; for preparing and processing the decision
22 document; for supervision and administration; for Agency
23 Technical Review and other review processes required by the
24 Government; and for response to any required Independent
25 External Peer Review; and the Non-Federal Sponsor's creditable
26 costs for in-kind contributions. The term does not include any
27 costs for dispute resolution; for participation in the Study
28 Coordination Team; for audits; for an Independent External Peer
29 Review panel, if required; or for negotiating this Agreement.
30 The term also does not include the first \$100,000.00 of costs
31 for the Study incurred by the Government, whether before or
32 after execution of this Agreement.
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35 any modifications thereto, developed in consultation with the
36 Non-Federal Sponsor, that specifies the scope, cost, and
37 schedule for Study activities and tasks, including the Non-
38 Federal Sponsor's in-kind contributions, and that guides the
39 performance of the Study.
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1 D. The term "in-kind contributions" means those planning
2 activities (including data collection and other services) that
3 are integral to the Study and would otherwise have been
4 undertaken by the Government for the Study and that are
5 identified in the PMP and performed or provided by the Non-
6 Federal Sponsor after the effective date of this Agreement and
7 in accordance with the PMP.

8
9 E. The term "maximum Federal study cost" means the
10 \$1,500,000.00 Federal cost limit for the Study, unless the
11 Government has approved a higher amount, and includes the first
12 \$100,000.00 of costs for the Study incurred by the Government.

Comment [VH1]: There is no cap on costs. Only projections.

13
14 F. The term "fiscal year" means one year beginning on
15 October 1st and ending on September 30th of the following year.

16 ARTICLE II - OBLIGATIONS OF THE PARTIES

17
18
19 A. In accordance with Federal laws, regulations, and
20 policies, the Government shall conduct the Study using funds
21 appropriated by the Congress and funds provided by the Non-
22 Federal Sponsor. The Non-Federal Sponsor shall perform or
23 provide any in-kind contributions in accordance with applicable
24 Federal laws, regulations, and policies.

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27 the shared study costs in accordance with the provisions of
28 this paragraph and provide required funds in accordance with
29 Article III.

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32 for in-kind contributions, if any, that will be afforded in
33 accordance with paragraph C. of this Article and the first
34 \$100,000.00 of the costs incurred by the Government that are
35 excluded from shared costs, the Government shall provide the
36 Non-Federal Sponsor with a written estimate of the amount of
37 funds required from the Non-Federal Sponsor for the remainder
38 of the initial fiscal year of the Study. No later than 15
39 calendar days after such notification, the Non-Federal Sponsor
40 shall provide the full amount of such funds to the Government.

Comment [VH2]: We pay within 15 days

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

8
9 C. The Government shall include in the shared study costs
10 and credit towards the Non-Federal Sponsor's share of such
11 costs, the costs, documented to the satisfaction of the
12 Government, that the Non-Federal Sponsor incurs in providing or
13 performing in-kind contributions, including associated
14 supervision and administration, after the effective date of
15 this Agreement. Such costs shall be subject to audit in
16 accordance with Article VI to determine reasonableness,
17 allocability, and allowability, and crediting shall be in
18 accordance with the following procedures, requirements, and
19 limitations:

20
21 1. As in-kind contributions are completed and no
22 later than 60 calendar day after such completion, the Non-
23 Federal Sponsor shall provide the Government appropriate
24 documentation, including invoices and certification of specific
25 payments to contractors, suppliers, and the Non-Federal
26 Sponsor's employees. Failure to provide such documentation in
27 a timely manner may result in denial of credit. The amount of
28 credit afforded for in-kind contributions shall not exceed the
29 Non-Federal Sponsor's share of the shared study costs.

Comment [VH3]: We must document in kind cost within 60 days of completion.

30
31 2. No credit shall be afforded for interest charges,
32 or any adjustment to reflect changes in price levels between
33 the time the in-kind contributions are completed and credit is
34 afforded; for the value of in-kind contributions obtained at no
35 cost to the Non-Federal Sponsor; for any items provided or
36 performed prior to completion of the PMP; or for costs that
37 exceed the Government's estimate of the cost for such item if
38 it had been performed by the Government.

39
40 D. To the extent practicable and in accordance with
41 Federal laws, regulations, and policies, the Government shall

1 afford the Non-Federal Sponsor the opportunity to review and
2 comment on solicitations for contracts prior to the
3 Government's issuance of such solicitations; proposed contract
4 modifications, including change orders; and contract claims
5 prior to resolution thereof. Ultimately, the contents of
6 solicitations, award of contracts, execution of contract
7 modifications, and resolution of contract claims shall be
8 exclusively within the control of the Government.

9
10 E. The Non-Federal Sponsor shall not use Federal Program
11 funds to meet any of its obligations under this Agreement
12 unless the Federal agency providing the funds verifies in
13 writing that the funds are authorized to be used for the Study.
14 Federal program funds are those funds provided by a Federal
15 agency, plus any non-Federal contribution required as a
16 matching share therefor.

Comment [VH4]: Can't use federal funds for our share unless Feds. O.K.

17
18 F. Except as provided in paragraph C. of this Article,
19 the Non-Federal Sponsor shall not be entitled to any credit or
20 reimbursement for costs it incurs in performing its
21 responsibilities under this Agreement.

22
23 G. In carrying out its obligations under this Agreement,
24 the Non-Federal Sponsor shall comply with all the requirements
25 of applicable Federal laws and implementing regulations,
26 including, but not limited to: Title VI of the Civil Rights
27 of 1964 (P.L. 88-352), as amended (42 U.S.C. 2000d), and
28 Department of Defense Directive 5500.11 issued pursuant
29 thereto; the Age Discrimination Act of 1975 (42 U.S.C. 6102);
30 and the Rehabilitation Act of 1973, as amended (29 U.S.C. 794),
31 and Army Regulation 600-7 issued pursuant thereto.

32
33 H. If Independent External Peer Review (IEPR) is required
34 for the Study, the Government shall conduct such review in
35 accordance with Federal laws, regulations, and policies. The
36 Government's costs for an IEPR panel shall not be included in
37 the shared study costs or the maximum Federal study cost.

38
39 I. In addition to the ongoing, regular discussions of the
40 parties in the delivery of the Study, the Government and the
41 Non-Federal Sponsor may establish a Study Coordination Team to

1 discuss significant issues or actions. The Government's costs
2 for participation on the Study Coordination Team shall not be
3 included in the shared study costs, but shall be included in
4 calculating the maximum Federal study cost. The Non-Federal
5 Sponsor's costs for participation on the Study Coordination
6 Team shall not be included in the shared study costs and shall
7 be paid solely by the Non-Federal Sponsor without reimbursement
8 or credit by the Government.

9
10 ARTICLE III - PAYMENT OF FUNDS
11

12 A. As of the effective date of this Agreement, the shared
13 study costs are projected to be \$296,010.00, with the
14 Government's share of such costs projected to be \$148,005.00
15 and the Non-Federal Sponsor's share of such costs projected to
16 be \$148,005.00. These amounts are estimates only that are
17 subject to adjustment by the Government and are not to be
18 construed as the total financial responsibilities of the
19 Government and the Non-Federal Sponsor.

Comment [VH5]: No cap.

20
21 B. The Government shall provide the Non-Federal Sponsor
22 with quarterly reports setting forth the estimated shared study
23 costs and the Government's and Non-Federal Sponsor's estimated
24 shares of such costs; costs incurred by the Government, using
25 both Federal and Non-Federal Sponsor funds, to date; the amount
26 of funds provided by the Non-Federal Sponsor to date; the
27 estimated amount of any creditable in-kind contributions; and
28 the estimated remaining cost of the Study.

Comment [VH6]: This and termination are our
cost control mechanism.

29
30 C. The Non-Federal Sponsor shall provide to the
31 Government required funds by delivering a check payable to
32 "FAO, USAED, Louisville" to the District Engineer, or verifying
33 to the satisfaction of the Government that the Non-Federal
34 Sponsor has deposited such required funds in an escrow or other
35 account acceptable to the Government, with interest accruing to
36 the Non-Federal Sponsor, or by providing an Electronic Funds
37 Transfer of such required funds in accordance with procedures
38 established by the Government.

39
40 D. The Government shall draw from the funds provided by
41 the Non-Federal Sponsor to cover the non-Federal share of the

1 shared study costs as those costs are incurred. If the
2 Government determines at any time that additional funds are
3 needed from the Non-Federal Sponsor to cover the Non-Federal
4 Sponsor's required share of the shared study costs, the
5 Government shall provide the Non-Federal Sponsor with written
6 notice of the amount of additional funds required. Within 60
7 calendar days of such notice, the Non-Federal Sponsor shall
8 provide the Government with the full amount of such additional
9 funds.

10
11 E. Upon conclusion of the Study and resolution of all
12 relevant claims and appeals, the Government shall conduct a
13 final accounting and furnish the Non-Federal Sponsor with the
14 written results of such final accounting. Should the final
15 accounting determine that additional funds are required from
16 the Non-Federal Sponsor, the Non-Federal Sponsor, within 60
17 calendar days of written notice from the Government, shall
18 provide the Government with the full amount of such additional
19 funds. Should the final accounting determine that the Non-
20 Federal Sponsor has provided funds in excess of its required
21 amount, the Government shall refund the excess amount, subject
22 to the availability of funds. Such final accounting does not
23 limit the Non-Federal Sponsor's responsibility to pay its share
24 of shared study costs, including contract claims or any other
25 liability that may become known after the final accounting.

26
27 ARTICLE IV - TERMINATION OR SUSPENSION
28

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

37
38 B. In the event of termination, the parties shall
39 conclude their activities relating to the Study. To provide
40 for this eventuality, the Government may reserve a percentage
41 of available funds as a contingency to pay the costs of

1 termination, including any costs of resolution of contract
2 claims, and resolution of contract modifications.

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

14
15 ARTICLE V - DISPUTE RESOLUTION
16

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

29
30 ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT
31

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

39
40 B. The Government may conduct, or arrange for the conduct
41 of, audits of the Study. Government audits shall be conducted

1 in accordance with applicable Government cost principles and
2 regulations. The Government's costs of audits for the Study
3 shall not be included in shared study costs, but shall be
4 included in calculating the maximum Federal study cost.

5
6 C. To the extent permitted under applicable Federal laws
7 and regulations, the Government shall allow the Non-Federal
8 Sponsor to inspect books, records, documents, or other evidence
9 pertaining to costs and expenses maintained by the Government,
10 or at the request of the Non-Federal Sponsor, provide to the
11 Non-Federal Sponsor or independent auditors any such
12 information necessary to enable an audit of the Non-Federal
13 Sponsor's activities under this Agreement. The costs of non-
14 Federal audits shall be paid solely by the Non-Federal Sponsor
15 without reimbursement or credit by the Government.

16
17 ARTICLE VII - RELATIONSHIP OF PARTIES

18
19 In the exercise of their respective rights and obligations
20 under this Agreement, the Government and the Non-Federal
21 Sponsor each act in an independent capacity, and neither is to
22 be considered the officer, agent, or employee of the other.
23 Neither party shall provide, without the consent of the other
24 party, any contractor with a release that waives or purports to
25 waive any rights a party may have to seek relief or redress
26 against that contractor.

27
28 ARTICLE VIII - NOTICES

29
30 A. Any notice, request, demand, or other communication
31 required or permitted to be given under this Agreement shall be
32 deemed to have been duly given if in writing and delivered
33 personally or mailed by certified mail, with return receipt, as
34 follows:

35
36 If to the Non-Federal Sponsor:

37
38 City of Franklin
39 ATTN: City Engineer
40 70 East Monroe Street
41 Franklin, Indiana 46131

1
2 Ms. Lynnette Gray, City Attorney
3 City of Franklin, Indiana
4 Johnson Gray & Johnson
5 63 East Court Street
6 Franklin, Indiana 46131
7

8 If to the Government:
9

10 District Engineer, United States
11 Army Engineer District, Louisville
12 ATTN: CELRL-PM-P
13 P.O. Box 59
14 Louisville, Kentucky 40201-0059
15

16 B. A party may change the recipient or address for such
17 communications by giving written notice to the other party in
18 the manner provided in this Article.
19

20 ARTICLE IX - CONFIDENTIALITY
21

22 To the extent permitted by the laws governing each party,
23 the parties agree to maintain the confidentiality of exchanged
24 information when requested to do so by the providing party.
25

26 ARTICLE X - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES
27

28 Nothing in this Agreement is intended, nor may be
29 construed, to create any rights, confer any benefits, or
30 relieve any liability, of any kind whatsoever in any third
31 person not a party to this Agreement.
32

33 ARTICLE XI - OBLIGATIONS OF FUTURE APPROPRIATIONS
34

35 The Non-Federal Sponsor intends to fulfill fully its
36 obligations under this Agreement. Nothing herein shall
37 constitute, nor be deemed to constitute, an obligation of
38 future appropriations by the City of Franklin, Indiana, where
39 creating such an obligation would be inconsistent with Indiana
40 Code 36-4-7-8.
41

Comment [VH7]: Protection in the event we can't fund improvements recommended by the Study.

1 IN TESTIMONY WHEREOF, witness the signature of the City of
2 Franklin, Indiana, a third class city organized and existing
3 under and pursuant to the laws of the State of Indiana, by its
4 duly qualified and elected Mayor, Joseph E. McGuinness, pursuant
5 to an Ordinance duly passed and adopted by the affirmative vote
6 of a majority of the duly qualified and elected members of the
7 Common Council of the City of Franklin, Indiana, on the ____ day
8 of _____, 2016. This Agreement shall become
9 effective upon the date of execution by the District Engineer,
10 United States Army Engineer District, Louisville.

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CITY OF FRANKIN, INDIANA

BY: _____
Joseph E. McGuinness, Mayor, City
of Franklin, Indiana

CITY OF FRANKIN, INDIANA, BOARD
OF PUBLIC WORKS AND SAFETY

BY: _____
Joseph E. McGuinness, Mayor and
Chairman, Board of Public Works
and Safety, City of Franklin,
Indiana

BY: _____
Stephen Barnett, City of Franklin,
Indiana, Common Council
Representative, Board of Public
Works and Safety, City of Franklin,
Indiana

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BY: _____
Robert Swinehamer, Member, Board
of Public Works and Safety, City
of Franklin, Indiana

ATTEST: _____
Jayne Rhoades, Clerk-Treasurer,
City of Franklin, Indiana

Ordinance: This Agreement was executed pursuant to City of
Franklin, Indiana, Ordinance Number 16-_____, being duly
passed and adopted by the Common Council of the City of
Franklin, Indiana, on the ____ day of _____, 2016.

Dated this ____ day of __, 2016.

CITY OF FRANKIN, INDIANA

BY: _____
Jayne Rhoades, Clerk-
Treasurer City of Franklin,
Indiana

IN TESTIMONY WHEREOF, witness the signature of the United
States Department of the Army, acting by and through the
District Engineer, United States Army Engineer District,
Louisville, this ____ day of _____, 2016. This
Project Partnership Agreement shall become effective upon the
date of execution by the District Engineer, United States Army
Engineer District, Louisville.

1 UNITED STATES DEPARTMENT OF
2 THE ARMY, ACTING BY AND THROUGH
3 THE DISTRICT ENGINEER, UNITED
4 STATES ARMY ENGINEER DISTRICT,
5 LOUISVILLE
6
7

8 BY: _____
9 Christopher G. Beck
10 Colonel, Corps of Engineers
11 District Engineer, United States
12 Army Engineer District, Louisville
13
14

15 CERTIFICATE OF AUTHORITY
16

17 I, Lynnette Gray, Johnson Gray & Johnson, do hereby
18 certify that I am the City Attorney for the City of Franklin,
19 Indiana, that the City of Franklin, Indiana is a legally
20 constituted public body with full authority and legal
21 capability to perform the terms of the Agreement between the
22 United States Department of the Army and the City of Franklin,
23 Indiana in connection with the City of Franklin, Indiana,
24 Continuing Authorities Program, Section 205, Flood Risk
25 Management Feasibility Study, and to pay damages, if necessary,
26 in the event of the failure to perform in accordance with the
27 terms of this Agreement and that the person who executed this
28 Agreement on behalf of the City of Franklin, Indiana has acted
29 within his statutory authority.
30

31 Witness the signature of Lynnette Gray, Johnson
32 Gray & Johnson, City Attorney, City of Franklin, Indiana, this
33 ____ day of _____, 2016.
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CITY OF FRANKLIN, INDIANA

BY: _____
Lynnette Gray, Johnson Gray &
Johnson, City Attorney City of
Franklin, Indiana

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his 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.

1 This certification is a material representation of fact
2 upon which reliance was placed when this transaction was made
3 or entered into. Submission of this certification is a
4 prerequisite for making or entering into this transaction
5 imposed by 31 U.S.C. 1352. Any person who fails to file the
6 required certification shall be subject to a civil penalty of
7 not less than \$10,000.00 and not more than \$100,000.00 for each
8 such failure.

9
10 Witness the signature of Joseph E. McGuinness,
11 Mayor, City of Franklin, Indiana, this ____ day of
12 _____, 2016.

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CITY OF FRANKIN, INDIANA

BY: _____
Joseph E. McGuinness, Mayor,
City of Franklin, Indiana